

**IN THE HIGH COURT OF SINDH AT KARACHI**

**SUIT NO.541/2006**

**PRESENT: MR. JUSTICE SALAHUDDIN PANHWAR**

Plaintiff : Syed Jamil Muzaffar,  
through Mirza Sarfraz Ahmed, advocate.

Defendants : Imtiaz Sheikh and others,  
through Mr. S. Zafar Ali Shah, advocate for  
defendants No.1 and 2.

Date of hearing : 08.09.2016.

Date of judgment : 08.09.2016.

**JUDGMENT**

By the dint of this judgment, I intend to dispose of above titled suit. Brief facts of the case are that plaintiff is lawful owner of Flat No.C-104, Rabia Heights, Metrovill III, KDA Scheme 33, Gulshan-e-Iqbal, Karachi by virtue of sub-lease executed by Omema Construction (Pvt) Ltd on 12.10.1993 in favour of plaintiff; entire cost of the flat through installments as well as loan of House Building Finance Corporation (HBFC) were paid by plaintiff, since the subject flat was mortgaged with HBFC (defendant No.3), thus original sub lease is with defendant No.3; possession of the flat was handed over to plaintiff on 21.11.1993; after taking over the possession of the flat plaintiff resided there about 8 months alongwith his family and thereafter let it out to his tenants till March 2003 when he returned back from Saudi Arabia where he was serving, he again left for Saudi Arabia by putting his lock on the flat and arrived back on 01.04.2005 on receiving message from his brother in law regarding illegal

occupation on his flat by defendants No.1 and 2 and his hooligans when the flat was full of household articles worth Rs.500,000/- which too have been misappropriated/sold out by defendants No.1 and 2; plaintiff approached the area police for legal action but they did not take any action on the excuse that defendants No.1 and 2 are holding a fictitious general power of attorney allegedly executed by plaintiff in their favour; such fictitious GPA was got executed by defendants No.1 and 2 with the connivance of sub-registrar concerned (defendant No.4) by manipulating/fabricating fictitious CNIC issued by NADRA (defendant No.6); that on 06.07.2005 at the old address i.e. House No.12, Deen Bai Villa, Mir Karam Ali Talpur Road, Saddar, Karachi, which address is quite incorrect as at present no house No.12 is in existence at Mir Karam Ali Talpur Road, defendants No.1 and 32 have obtained such address from old NIC of plaintiff lying with defendant No.3 as about 22 years ago plaintiff had left such house; that on the date of execution of fictitious GPA i.e. 29.11.2005 plaintiff was in Saudi Arabia and not in Pakistan therefore a fictitious person has been produced before defendant No.4 who forged and manipulated the signature of plaintiff and executed GPA in favour of defendant No.2 to deprive the plaintiff of his valuable property purchased by him from his hard earned money, as such such fictitious GPA and CNIC are ab-initio void, illegal and having no legal effect and liable to be canceled; that due to aforesaid acts of defendants No.1 and 2, plaintiff has sustained mental torture, physical discomfort and inconveniences including expenses borne by him for arriving to Pakistan thereby deprived of his one month's salary, hence entitled for damages to the tune of Rs.5000,000/- from each defendant No.1 and 2, totaling Rs.1000,000/-. In such background plaintiff prayed that :-

- a. To declare that general power of attorney (annexure H) is a void instrument and same has been executed by plaintiff and same has no legal effect and consequences therefore same be adjudged void and delivered up/canceled the same.
- b. To cancel the N.I.C issued on 06.07.2005 available at page No.9 of (annexure H).
- c. To direct the defendant No.1, 2 or any other person if found in possession to hand over the peaceful and vacant possession of flat No.C-104, Rabia Heights, Metrovill III, KDA Scheme 33, Gulshan-e-Iqbal, Karachi to plaintiff.
- d. To award a decree of damages/compensation of Rs.500,000/- in account of loss of household goods against defendant No.1, 2.
- e. To award a decree of damages of Rs.1000,000/- against the defendant No.1 and 2 jointly or severally.
- f. To award a decree of mesne profit at the rate of Rs.10,000/- per month in favour of plaintiff and against the defendant No.1, 2 in respect of flat No.C-104, Rabia Heights, Metrovill III, KDA Scheme 33, Gulshan-e-Iqbal, Karachi with effect from February 2006 to till realization of possession of suit flat.
- g. Cost of the suit.
- h. Any other better or further relief(s), which this honourable Court deem fit and proper under the circumstances of the case.

2. Whereas defendant No.1 and 2 filed written statement claiming that defendant No.2 is bonafide purchaser of subject flat from one Syed Jamil Muzafar s/o Syed Muzafar Ali through Muhammad Ismail on consideration of Rs.14,00,000/- including HBFC loan vide sale agreement dated 29.11.2005, payment was made through cheques dated 29.11.2005 duly encashed, defendant No.2 has also cleared HBFC loan; that vendor Syed Jamil Muzafar after receiving the sale price of the aforesaid flat executed GPA in favour of defendant No.2 which is registered in office of sub-registrar concerned; the defendant No.2 rented it out to defendant No.1; that

said vendor also handed over peaceful possession of subject flat alongwith documents at the time of execution of sale agreement and general power of attorney; these defendants claimed that plaintiff is not entitled to any relief and prayed for dismissal of plaint with cost.

3. On pleadings of the parties, following issues were framed:-

- 1) Whether defendants No.1 and 2 are illegally enjoying the possession of flat No.C-104, Rabia Heights, Metrovile-III, KDA Scheme 33, Gulshan-e-Iqbal, Karachi ? If so, what will be its effect?
- 2) Whether defendants No.1 and 2 have misappropriated household articles of plaintiff lying in his flat as per Para 9 of the plaint? If so, to what will be its effect?
- 3) Whether the plaintiff is entitled to relief prayed for?
- 4) What should the decree be?

4. Plaintiff examined his attorney Taufiq-ur-Rehman as well defendants examined Abdul Hameed (defendant No.2) to substantiate their respective pleas. Mumtaz Ahmed Soomro, Senior Head Clerk (legal) of NADRA was also examined.

5. Heard, pursued the record.

**ISSUES NO.1 AND 2**

6. Material issues in instant case are Issues No.1 and 2. *Onus probandi* of issues framed is on the plaintiff whereas admittedly defendant claims possession on the basis of sale agreement and it is settled principle of law that sale agreement does not create legal

character or title. Admittedly, suit No.483/2006 was filed by defendant No.2 and that was rejected while observing that plaintiff (defendant No.2) failed to establish his case on the in question sale agreement.

7. It is worth to refer cross examination of plaintiff's attorney Taufiq-ur-Rehman, wherein it came on record as under:-

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8. Defendant No.2 in his cross examination stated :-

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9. It is matter of record that title of flat is not disputed that it was purchased by plaintiff and installments were paid as well there was loan of HBFC, case of the plaintiff is that he paid major portion of loan whereas the defendant contends that he paid Rs.73,500/- to HBFC. Case of plaintiff is that plaintiff was residing in Saudi Arabia and on forged CNICs the defendant No.1 and 2 prepared sale agreement and to substantiate this plea plaintiff has examined Mumtaz Ahmed Soomro, Senior Head Clerk (legal), NADRA on oath. It is matter of fact that defendant failed to cross examine that witness. It is settled principle of law that to prove the sale agreement marginal witnesses are required to be examined as provided under article 79 of the Qanoon-e-Shahadat Order 1984. Admittedly defendant failed to examine those marginal witnesses, it is an open case and plaintiff has shifted the burden. Admittedly the CNIC was prepared by defendant for sale of subject matter flat through fake CNICs as well sale agreement and they are in possession of the property, accordingly I answer Issues No.1 and 2 as affirmative, thereby suit is decreed as prayed.

**ISSUES NO.3 AND 4**

10. Suit is decreed as prayed.

Further office is directed to lodge FIR against defendants No.1 and 2 with regard to false sale agreement and CNICs.

Imran/PA

**J U D G E**