

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

Suit No.923 of 2019

Mst. Irshad Bibi

Versus

Samiullah Niazi & others

Date	Order with signature of Judge
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1. For hearing of CMA 10157/19
2. For hearing of CMA 7983/19
3. For orders on CMA 14995/19

Dated: 04.11.2022

(Order on CMA 7983/2019)

Ms. Nausheen Khan Tajjamul for plaintiff.

Mr. Muhammad Arif for defendants No.1 to 5.

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Muhammad Shafi Siddiqui, J.- This suit is in relation to an immovable property regarding which an application under Order XXXIX Rule 1 and 2 CPC has been filed for an interim relief. Elementary declaration sought by plaintiff that her deceased father was the actual owner who died in the year 1985, whereas defendants No.1 and 2 along with their deceased mother acquired title in the year 2004 i.e. after sad demise of father.

2. Learned counsel for plaintiff submits a case that the subject property was in fact financed by the deceased father Ameer Abdullah Niazi. Originally, as claimed, it was purchased by the deceased father, in the name of his "nephew" Khaliqdad son of Abdul Haq Khan, defendant No.6, vide sale deed executed on 25.06.1983, which was then conveyed for consideration to two sons and widow of Ameer Abdullah Niazi vide sale deed dated 24.03.2004. The plaintiff has thus sought a declaration that it was as such a Benami in favour of nephew and collusively transferred in the name of two sons and a widow, however, the reason that was assigned during arguments was that since daughters of

deceased were house wives/household ladies and could not attend the office of Registrar, it was therefore, executed in favour of two sons and the widow of the deceased, namely Bishitan Bibi. Defendants No.1 to 5 are also sons and daughters of deceased father Ameer Abdullah Niazi.

3. Above fact is denied by the defendants No.1 to 5 jointly in written statement to the extent that it was not objected since 2004 and it was in her (plaintiffs) knowledge that two sons acquired property for consideration. It was further argued that the property was not only conveyed to the two sons of the deceased but it was also conveyed in favour of widow as well. If above reasoning is accepted that the ladies could not have attended the office of the Sub-Registrar, how could widow of deceased appeared before Sub-Registrar and got it transferred. Learned counsel for defendants further submits that the present proceedings of suit are in fact triggered due to eviction proceeding that were initiated by the defendant No.1, in respect of upper portion of said house where plaintiff's husband was housed as a tenant. Copy of ejectment order was also filed and available on record.

4. I have heard learned counsel for parties and perused material available on record as well as the written statement of defendant No.6.

5. Proceedings of this suit commenced when eviction order was passed in Rent Case No.20/2018 in March, 2019 and this suit was filed on 22nd May, 2019.

6. Defendant No.6 in his written statement has disclosed in paragraph 2 that the subject property was in fact purchased by the deceased father of plaintiff in his name but disclosed no source. At the very outset it has not been demonstrated as to why in a suit for administration (as designed), an outsider i.e. nephew of the deceased father, was arrayed as one of the defendants.

7. No logic or convincing arguments were made by the plaintiff as to why the subject property was purchased by deceased in the name of his nephew in preference of his sons and daughters. No source of fund was disclosed. It is not convincing argument that it was not in knowledge of plaintiff at the relevant time in the year 2004 when this property was conveyed to the two sons of the deceased and the widow.

8. The reason that was assigned that the daughters being house wives were not in a position to attend the office of the Sub-Registration is also not convincing. The property was conveyed in the name of the two sons as well the widow and if widow of the deceased could attend the office of Sub-Registrar why can't plaintiff and other daughters of the deceased. Other daughters have also denied the version of plaintiff in the written statement.

9. Furthermore, in terms of Article 91 of Limitation Act since subject sale deed is a registered instrument it is deemed to be in the knowledge of plaintiff and the facts entitling the plaintiff to have the instrument cancelled known to her at the relevant time but she did not take any action. The convincing arguments were not advanced by the plaintiff that she was either not aware of this registration or she was prevented from sufficient cause to attend the office of Sub-Registrar. Thus, plaintiff has not been able to make out a prima facie case for injunction. So also neither balance of inconvenience nor irreparable loss goes in her favour. This being the situation, I am not satisfied with the reasoning assigned by the plaintiff's counsel and as such injunction application is dismissed.

10. However, learned counsel for defendants No.1 to 5 conceded that as far as share in the property that plaintiff has derived through her mother's share only shall be given to her. Hence, to such an extent the plaintiff shall have a lien over the subject property and as such, as

undertaken by the defendants counsel, the share of plaintiff be calculated and be disbursed at the earliest preferably in two months' time which is already conceded by Mr. Arif, learned counsel for defendants No.1 to 5. Nazir is thus directed to evaluate the property through reliable estate agents of area and submit report in four weeks' time. Nazir's fee of Rs.20,000/- shall be borne by defendant No.1. Once the property is evaluated, the plaintiff's share out of the deceased mother's share be deposited in Court.

CMA No.10157/2019

Learned counsel for defendants No.1 to 5 does not press this application under order VII Rule 11 CPC, which is accordingly dismissed.

CMA No.14995/2019

Nazir to call report from defendant No.7 in a week's time. In the meantime notices of this application may also be issued to defendants.

Judge