

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Muhammad Shafi Siddiqui

Suit No. 2273 of 2017

Mst. Shehnaz Sultana

Versus

Kamal Ahmed Qureshi & others

Date of Hearing: 31.10.2022

Plaintiff: Through Mr. Ahsan Badar Advocate.

Defendant No.1: Through Mr. Kuttubuddin Qureshi Advocate.

Defendants No.2 to 4: Through Ms. Jamila Siraj Advocate.

Defendants No.5 & 6: None present.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- This suit of the plaintiff is for declaration, partition, cancellation, mesne profit and mandatory and permanent injunction in relation to a property described as House No.S-1-301, Saudabad, Malir, Karachi, along with business under the name of “Students Bakery” established therein by defendant No.1. The property measures 80 sq. yards.

2. Notices and summons were issued to defendants and in pursuance thereof defendants No.1 to 4 responded and filed their respective written statements wherein they have denied any right of inheritance subsisting over it, in view of facts described therein.

3. On the pleadings of the parties on 15.10.2021, following issues were framed:-

1. Whether the instant suit is not maintainable?
2. Whether the due share of plaintiff in the suit property is amounting to Rs.400,000/-?

3. Whether the current market value of suit property is Rs.30 Million approximately?
4. Whether the plaintiff has executed any relinquishment deed or has done any act justifying that she has relinquished her right in the subject property in favour of defendant No.1?
5. Whether the defendant No.1 has lawfully got transferred the suit property in his name?
6. Whether the transfer of allotment as well as lease deed registered No.2836, Book-I, Sub-Registrar T. Div.III-A Karachi dated 28.04.2004 in favour of defendant No.1 as Annexure 'C' are illegal and liable to be cancelled?
7. Whether the plaintiff is entitled for mesne profit in respect of suit property against the defendant No.1?
8. Whether the plaintiff is entitled to the relief(s) claimed?
9. What should the decree be?

4. Plaintiff examined herself as PW-1 along with her two sons as witnesses i.e. Syed Inam-ur-Rehman and Syed Obaid-ur-Rehman, both sons of Zia-ur-Rehman as PW-2 and PW-3 respectively. They have also exhibited certain documents as Ex-P-1 to P-21. All of them were cross examined.

5. Defendants No.1 and 2 were examined as DW-1 and DW-2. They were also subjected to cross-examination. They have also exhibited certain documents as Ex-D-2 to D-10 and Ex-Y to Y-12. Defendant No.2 Jamal Ahmed Qureshi was examined for self and also deposed evidence as attorney of rest of the defendants.

6. I have heard learned counsel appearing for plaintiff and defendants No.1 to 4 and perused material available on record including the depositions and exhibits filed at the time of recording evidence.

7. Brief facts as disclosed in the memo of plaint/pleadings as well as in the affidavit-in-evidence are that the deceased Muhammad Kamil Qureshi survived by five children i.e. plaintiff and defendants No.1 to 4.

At some point of time the subject property under an allotment was owned by Muhammad Kamil Qureshi, father of the parties, who died in the year 1966 leaving behind subject property as his sole asset. The plaintiff got married in 1980 to one Syed Zia-ur-Rehman. It is also disclosed in the pleadings that defendant No.1 opened a shop in the subject property under the name and style "Students Bakery". The plaintiff claimed to have received a sum of Rs.400,000/- towards claim of inheritance. She further disclosed that while she enquired about property, she came to know that it had been transferred and lease was executed in this regard in favour of defendant No.1.

8. Let us now, on the strength of the evidence available on record, discuss the claim of the plaintiff issue-wise.

Issue No.1:-

9. Since it is suit for partition, cancellation and mesne profit, substantially for the administration of the property which was originally owned by the deceased father of plaintiff and defendants No.1 to 4, I do not see any reason to oust the plaintiff on the count of it being barred by limitation. Furthermore, it is not pointed out by the defendants as to how the suit is not maintainable; case of the plaintiff may have merits and demerits but then the claim of inheritance has to be seen, notwithstanding that it has been filed belatedly. The suit as such is maintainable and the issue is answered accordingly.

Issues No.2, 4, 5 & 6

10. These issues are integrated and interconnected and hence are being decided by common reasoning and findings.

11. Plaintiff examined herself and in the cross-examination her case is completely fallen apart and tattered. She admitted that her father Muhammad Kamil Qureshi died in 1966 leaving behind plaintiff and

defendants as legal heirs. She further deposed that at the time of her father's death she (plaintiff) was 11 years old and her brother Kamal Ahmed Qureshi (defendant No.1) was 9 years old. Her father was an employee of KDA and had no pension claim and no money was received by her father from KDA. Whereas she stated that her brother Kamal Ahmed Qureshi was an employee of Pakistan Steel Mills since 1997 and all expenses of family were born by Kamal Ahmed Qureshi from his salary amount.

12. Plaintiff in her cross-examination further stated that her marriage was solemnized in the year 1980 and at that time entire family was residing at subject house i.e. S-1/301 Malir. She has also stated that her marriage expenses were paid by Kamal Ahmed Qureshi. The adjacent house i.e. House No.S-1/300 admitted to have been purchased by defendant No.1 i.e. brother Kamal Ahmed Qureshi wherein a bakery was established. After sad demise of her (plaintiff's) husband in the year 2003 she claimed her inheritance in the property i.e. S-1/301 Malir Saudabad, Karachi.

13. Plaintiff in her cross-examination also accepted that all legal heirs of her deceased father held a meeting and decided that market value of the subject property be ascertained and merited amount be distributed amongst all the legal heirs. She also accepted and admitted market value of the property at the relevant time when the share was distributed as 25 lacs. She however voluntarily stated that the market value at the time of recording evidence was in crores. She also admitted that she received Rs.4 lacs from Kamal Ahmed Qureshi (defendant No.1), as her share in the subject property.

14. Plaintiff admitted her signature in the affidavit-in-evidence to which she was cross-examined as well as on the "deed of relinquishment of 2004" and that since then until filing of the suit no claim was raised

by the plaintiff. She also admitted that her brother Kamal Ahmed Qureshi was looking after her i.e. plaintiff and children financially.

15. Similar is the cross-examination of her son Syed Inam-ur-Rehman wherein he admitted that her mother (plaintiff) to have received Rs.4 lacs from defendant No.1, though in the year 2007, being share of inheritance. However, it was voluntarily stated that defendant No.1 promised the remaining share to be paid soon.

16. Likewise the cross-examination of Inam-ur-Rehman above was adopted for Syed Abdul Rehman.

17. Indeed, from the evidence of plaintiff's side it appears that there is no dispute that an amount of Rs.4 lacs was paid, either in the year 2004 or 2007, when all the brothers and sisters sat for an amicable settlement and since then until filing of the suit in the year 2017 plaintiff kept quiet. Plaintiff has not been able to satisfactorily discharge the burden in terms of Issue No.2 as to what her due share was in the 2004 or 2007 when admittedly an amount of Rs.4 lacs was paid by defendant No.1 towards her share. Similarly, for Issue No.2 the plaintiff has not been able to discharge her burden as to the value of the property in the year 2004 and 2007 and hence her statement on oath that she has received her share when a sum of Rs.4 lacs was paid and is sufficient towards her entitlement of inheritance. There was no attempt made by plaintiff for the evaluation of the property through any reliable estate agent and/or survey or in the year 2004 and/or 2017 as nothing in this regard has been stated in the entire evidence as being critically examined. Indeed in our society women have been deprived of their due share in the property but the preponderance of evidence yield it other way as not only has she admitted to have received Rs.4 lacs as her share in the property but also admitted to have been maintained throughout

her life by her brother/defendant No.1. No other sibling came to support her claim.

18. More importantly the Deed of Relinquishment is not denied; in fact plaintiff admitted her signature on it. It was executed in the year 2004 and on the strength of which the lease in favour of defendant No.1 was executed. This relinquishment deed was executed by all legal heirs including plaintiff Shehnaz Sultana. Even the widow of the deceased (mother of plaintiff and defendants) relinquished her share and there is no question of any inheritance out of the assets left by Saira Kamal since she left nothing in this property as she has already relinquished her share in favour of defendant No.1. Consequently, the transfer of the allotment which transformed into a lease deed registered on 28.04.2004 in favour of defendant No.1 apparently is lawful conveyance and the plaintiff is not entitled for any claim of any nature whatsoever. Though there is no issue framed in relation to business of "Students Bakery" but rightly so as it was started by defendant No.1 in the year 1982, much after the death of plaintiff's father.

19. Upshot of the above discussion is that plaintiff has not been able to prove her claim in respect of these issues. Accordingly, Issue No.2, 4 and 5 are answered in affirmative whereas issue No.6 is answered in negative.

Issue No.3

20. Since this issue pertains to current market value of the subject property or value when suit was filed, whereas the controversy revolves around the period from 2004 to 2007. This issue is thus irrelevant. The current market value may be to the tune of Rs.30 Million approximately, as ascertained/claimed by the plaintiff's counsel but that would not turn anything. When the amount of inheritance was paid in terms of the value of the property in the year 2004 and/or 2007, the claim of plaintiff is set

at rest at the relevant time, irrespective of the current value of the property. The issue as such is answered accordingly.

Issues No.7 and 8

21. In view of my findings on issues No.2 to 6, plaintiff is neither entitled for the mesne profit nor any other relief(s), as claimed and both the issues are answered in Negative.

Issue No.9

22. Upshot of the above discussion is that plaintiff has not been able to make out a case in her favour for any of the reliefs claimed hence the suit is dismissed however with no orders as to costs.

23. Above are the reasons of my short order dated 31.10.2022

Dated: 05-11-2022

J U D G E