

IN THE HIGH COURT OF SINDH, KARACHI

Suit No. 2039 of 2019

[Mst. Shaista Bibi and another versus Brig. (R) Ijaz Bhatti & Others]

Plaintiffs : Mst. Shaista Bibi and another
through Mr. Muhammad Haseeb
Jamali, Advocate.

Defendants : Nemo.

Date of hearing : 02.02.2023

Date of decision : 27.02.2023

J U D G M E N T

AMJAD ALI SAHITO J. - The Plaintiffs have filed this suit for Declaration, Direction, Specific Performance, Permanent Injunction, Damages and Compensation with following prayers:

- A. *Declare that the Plaintiff No.1 is entitled to avail the one-sided transfer policy of the Defendant No. 6, 7, 8 and 9 for transfer of the subject property in her or her nominee's favour.*
- B. *Specifically enforce Agreement of Sale dated 23/01/1993 (Annex A/3) along with Registered Irrevocable Sub-Power of Attorney dated 23/01/1993 (Annex A/5) in favour of the Plaintiff No.1 in terms of One side Transfer Policy as deduced by Defendant No.8 to cater the finalize of outstanding transfers of Askari Properties.*
- C. *Direct the Defendant No. 8&9 to apply the one sided transfer policy for transfer of the subject property in favour of the Plaintiff No.1 or her nominee.*
- D. *Direct the Defendant No. 6, 7, 8 & 9 to insert the name of the Plaintiff No.1 in its record as the lawful and exclusive owner of the Suit Property and accordingly issue lease deed/mutation in favour of the Suit Property in favour of the Plaintiff No.1 or her nominee;*
- E. *Declare that the Defendant No.1 has no right, title or interest in the subject property.*
- F. *Grand permanent injunction against all the Defendants & their legal representative(s) legal successors including Defendants No. 1, 9 & 10 restraining them from transferring the same in favour of LRs of the Deceased Original Allottee including Defendant No.1 and from creating any other third party interest in the suit property which is contrary to the interest of the Plaintiffs.*
- G. *Restrain the Defendants jointly and severally, their servants, agents or any other person(s) acting on their behalf, either directly or indirectly, from creating any disturbance, let and/or hindrance*

in the Plaintiff's peaceful possession, use and enjoyment of the suit Property in any manner whatsoever;

H. Grant compensation in tune of PKR 5 Million to the Plaintiffs in view of the sufferings and mental torture given by the Defendant No.1 in order to attain his ill-found financial aims.

I. Grant damages amounting to PKR 10 Million in view of the loss, distress, torture and medical condition suffered by the Plaintiffs at the hands of the Defendant No.1.

J. Grant any other relief deemed just and proper.

2. The case of the Plaintiffs is that the Plaintiff No.1 claims to be the owner of the property by virtue of irrevocable sub-power of Attorney Flat No. 2-G, 3rd Floor, [with garage on ground floor], situated in Block-2, Askari Apartment, Army Housing Scheme, Ch. Khaliq-uz-Zaman road, Karachi [**“the Suit Property”**]. The brief background of the case is that the Suit Property was initially allotted to the father of the Defendant No.1 on 03.12.1986 by the Defendant No.8, who thereafter sold the Suit Property to Defendants No. 2 and 3, whereas the said Defendants then sold the Suit Property to Defendants 4 and 5, from whom the Plaintiff No.1 has purchased the Suit Property. The mode of procedure in respect of the Suit Properties allotted to by the Defendants 8 & 9 [Director General Housing Directorate & ADH Askari Colonies] is on the basis of Agreements as well as Power of Attorney(s) duly registered as the lease has not been executed. Basically, the Suit Property was purchased by the Plaintiffs in the year 1994 and since then the Plaintiffs are in possession of the Suit Property so also in possession of all the original title documents, including belong to the previous set of owners. Per the Plaintiffs, the official Defendants have now formulated a new policy to regulate the transfer and sale of the property for which the Original Allottee are also required to approach the official Defendants. Per the Plaintiffs, now the son of the Original Allottee/Defendant No.1 is creating obstruction and hindrance in the smooth transfer of the Suit Property and when the official Defendants approached the Defendant No.1, he has shown some reservations and reluctance, hence, this suit. It is relevant to mention here that the chain/history of the transfers of the Suit Property:

A. **History of First Transfer:**

That on 31.12.1986, the Suit Property was allotted to one Maj (R) Inayat Ullah Bhatti [Deceased/father of the Defendant No.1] by the Defendant No.8 vide allotment letter dated 31.12.1986. Copy of the Allotment Letter is annexed as P/6 available at page-93 in the file, which appears that the Suit Property was allotted in the name of the father of the Defendant No.1.

B. **History of Second Transfer:**

That on 25.11.1989, the father of the Defendant No.1 (Original Allottee of the Suit Property) executed an Agreement of Sale dated 25.11.1989 in favour of the Defendant No.2 against some consideration. Copy of the Agreement of Sale is annexed as P/7 available at page-95 of the file. Clause-2 of the Agreement state that the property is transferable with permission of the Quartering Directorate, QMG's Branch, General Headquarter, Rawalpindi so also it was the responsibility of the Vendor to obtain such permission or any other approval required for affecting such Sale Deed. No such permission was obtained. It is also mentioned in the Agreement that the transaction of such sale was for consideration, the Deceased (Original Allottee) executed a Registered Irrevocable General Power of Attorney of the Subject Property dated 25.11.1989 in favour of the nominee of the Defendant No.2 i.e. her son Defendant No.3. Copy of the Irrevocable General Power of Attorney in favour of the nominee of the Defendant No.2 is annexed as P/8 available at page-107 of the file.

C. **History of Third Transfer:**

That on 01.09.1993, the Defendant No.2 entered into other Sale Agreement with the present Defendant No.4. In furtherance of said Sale Agreement, on the same date, the Defendant No.3 executed a registered Sub-Power of Attorney pertaining to the Suit Property in favour of the Defendant No.5, who has the nominee of the Defendant No.4. Copy of the Sale Agreement dated 01.03.1993 and Registered Sub-Power of Attorney dated 01.03.1993 are annexed as Annexure P/10 and P/12 available at pages 125 and 145 of the file.

D. **History of Fourth Transfer:**

That a Sale Agreement executed by the Defendant No.4 in favour of the Plaintiff No.1 dated 18.01.1994; that the Defendant No.3 executed a registered Irrevocable Sub-Power of Attorney dated 23.01.1994, in favor of the Plaintiff No.2.

3. The learned counsel for the Plaintiffs contended that the Plaintiffs are the owners of the Suit Property by virtue of irrevocable sub-power of Attorney. He submits that the Plaintiffs have purchased the Suit Property in the year of 1994 and since then the Plaintiffs are in possession of the same and holding all the originals and previous title documents and including Sale Agreements, Receipts, Registered Power of Attorney(s) and Sub-Attorneys; learned counsel further submits that the power of Attorney are coupled with interest. He further submits that the Plaintiffs are regularly paying all the property taxes, utility bills as well as association charges. He further added that the Defendant No.8 introduced a policy of mutation. The Plaintiffs attempted to locate the legal heirs of the deceased Original Allottee for several years, but could not trace them and as a result, the mutation in the record of rights was delayed. Learned counsel further contended that due to new policy of the Defendant No.8, whereby the purchaser can mutate the property in his/her favour by way of one-time transfer without the involvement of an untraceable seller was subject to certain conditions.

4. The learned counsel further pointed out that in one case regarding the transfer of a property, the Plaintiffs have come to know that the Defendant No.8 vide its letter dated 14.04.2017 has transferred the property to the name of the allottees. Consequently, the Plaintiffs approached the Defendant No.8 for similar treatment; that through letter dated 19.10.2017 the Plaintiffs requested the Defendant No.8 to finalize the transfer of Suit Property in favour of the Plaintiffs; however, the Defendant No.8 through its letter dated 15.12.2017 informed the Plaintiffs that due to objections to transfer taken by the Defendant No.1, who is one of the legal heirs of the Original Allottee/Deceased, the Defendant No.8 had refused to process the case of one-time transfer without the consent of all the legal heirs of the deceased/original allottee by stating that the Plaintiffs may settle the matter with the LRs of the original allottee/deceased or to approach before the Competent Court of Law; that when the Plaintiffs approached the Defendant No.1, the Defendant No.1 through another person demanded Rs.5 Million for NOC to the subject on-sided transfer; that in the year 2018 the Plaintiffs were threatened by the Defendant No.1 by demanding Rs.10 Million for not NOC.

5. The learned counsel further submitted that owing to harassment and blackmailing of the Defendant No.1, the Plaintiffs being in advance age have suffered mental torture, agony and distress; that the Plaintiffs have also failed to register/transfer the Suit Property; hence, the Plaintiffs have approached this Honorable Court for seeking relief(s).

6. The notices/summons issued to the Defendants and upon service on the Defendants through all modes including publication, suit was ordered to be proceeded ex-parte against the Defendants. The Plaintiffs were required to file affidavit-in-ex-parte-proof, which was filed on 19.05.2022. Vide order dated 19.05.2019, the evidence of the Attorney/Plaintiff No.2(ii) – Sanaullah Khan Jomezai was recorded. He has produced Special Power of Attorney as PW.-1/2 and 3, Receipt dated 17.01.1994 as PW.-1/4, Agreement of Sale dated 18.01.1994 as PW.-1/5, Receipt of Payment as PW.-1/6, Registered Sub-Power of Attorney dated 23.01.1994 as PW.-1/7, Allotment of Apartment Letter dated 31.12.1986 as PW.-1/8, Agreement of Sale dated 25.11.1989 as PW.-1/9, Registered Irrevocable General Power of Attorney dated 25.11.1989 as PW.-1/10, Supplementary Agreement of Sale dated 19.12.1990 as PW.-1/11, Agreement of Sale as PW.-1/12, Payment Receipt as PW.-1/13, Registered Sub-Power of Attorney dated 01.03.1993 as PW.-1/14, Registered Revocation Deed, General Sub-Power of Attorney dated 23.01.1994 as PW.-1/15, Photostat copies of Pay Orders dated 07.01.1993 and 11.01.1993 as PW.-1/X-1 & X-2, Letter dated D A D Works dated 24.01.1993 as PW.-1/17, Letter dated 31.01.1993 as PW.-1/18, Copies of paid challans of property tax, utility bills, Board Bills and other receipts as PW.-1/19, PW.-1/X-3 to 1/X-5, Tenancy Agreements dated 06.01.2014, 18.07.2006, 20.02.2000 as PW.-1/20 to 22, Photostat copy of SOP / Procedure for Sale / Transfer of Non-Leased Colonies along with three Annexure as PW.-1/X-6, Photostat copy of letter of Defendant No.8 dated 14.04.2017 as PW.-1/X-7, Letter addressed to Col. Muhammad Azam as PW.-1/23, Photostat copy of letters dated 13.10.2017 and 19.10.2017 along with courier receipts as PW.-1/X-8 & 1/X-9, Letter dated 15.12.2017 along with its Envelop as PW.-1/24, Letter of Defendant No.1 in response to letter dated 13.10.2017 as PW.-1/25, Photostat copy of presentation letter dated 09.12.2019 as PW.-1/X-10, Photostat copies of Death Certificate of

Plaintiff No.2 and Family Registration Certificate as PW.-1/X-11 & X-12 and NOC issued by Askari Apartments Residents Association along with two receipts of Residents Association along with two receipts of Residents Executive Committee Askari-1, Karachi and paid utility bills of different months as PW.-1/26 to PW.-1/26-A to 26-N. Since none was present on that date, the cross-examination was marked as “Nil”.

7. I have heard learned counsel for the Plaintiffs and have perused the material recorded through evidence of the plaintiff.

8. The matter has not been contested by any of the defendants though all of them were served with notices. The evidence of the Attorney/plaintiff No.2 was recorded and he has produced above mentioned documents in his affidavit-in-evidence as Exh. P.W-1/2 and 3 to P.W-1/26-A to 26-N. Since no one was present on behalf of defendants, the cross-examination was marked as “Nil”. On 27.01.2023, learned counsel for the Plaintiffs filed an affidavit-in-evidence of the Plaintiffs’ witness namely; Major (R) Jawaid Iqbal son of Ghulam Rasool, wherein he has stated/deposed that he is an estate agent, the Suit Property is purchased and possessed by the Plaintiffs and he has supported the contents of the Plaint. The averments of the Plaintiffs have been supported by evidence. The Plaintiffs have filed original documents executed by the Defendants at that time (which were seen and returned at the time of examination-in-chief).

9. In the circumstances the irrevocable power of Attorney and sub-power of Attorney which are registered are coupled with interest. All the requisite title documents of the suit property have been produced in the evidence which established that the plaintiff No.1 is lawful owner of the subject property. In view of the foregoing, the suit is decreed in terms of prayer clauses A to G. The office is directed to draw the decree accordingly.

JUDGE

Karachi
Dated: 27-02-2023