

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Jawad Akbar Sarwana

High Court Appeal No. 316 of 2022

Zahid Rasheed
Versus
Anita Nalini Das & others

Date of Hearing: 08.11.2023

Appellant: Through Mr. Rasheed Ashraf Mughal Advocate.

Respondent No.1: Through Mr. Shahrukh Khan Brohi Advocate.

Respondent No.6: Through Mr. Muhammad Shahabuddin Advocate.

Respondent No.7: Through Mr. Suleman Hudda Advocate.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- In a suit involving a declaration of a property¹ wherein appellant has shown interest, an application under order I rule 10 CPC was filed, contested and got dismissed on the count that controversy in the suit is only between the parties already arrayed and intervener's dispute is not germane to the dispute raised in the suit.

2. Heard the counsels and perused record.

3. To cut the controversy short, brief facts are that respondent No.1 filed a suit (through her next friend/husband, as claimed) for a declaration concerning subject property that she still is the owner of subject property and conveyance deed (duly registered on 29.01.2016) executed by her in favour of Muhammad Juman (respondent No.2) be treated a null and void including Power of Attorney and other related documents etc.

4. On the strength of said conveyance deed, referred above, a title was then passed on to the appellant by virtue of convenience deed

¹ House bearing No.11-B/I, DHA, Phase-I, Karachi

dated 28.12.2017, duly registered before concerned Sub-Registrar and that too after inviting public objections. It is in respect of the deed of 2016 ibid, on the basis of which appellant has acquired title in 2017, which the plaintiff (respondent No.1) has sought to be cancelled without impleading a subsequent buyer in chain of title.

5. Jumman who passed on title to appellant might not have serious interest left in the matter or may have some other ulterior motives but the ultimate buyer is the most necessary and proper party without whom title of property could never be conclusively decided and adjudicated upon.

6. If she (respondent No.1) is presented and shown as a person of unsound mind at the “relevant times” then on one hand it is claimed that she was mentally unfit person to execute all such documents and conveyance deed and on the other hand her husband filed the suit on her behalf without any certificate issued by District Judge under Mental Health Ordinance, 2001.

7. Nonetheless, the application could not have been dismissed in view of facts as narrated above. Subject matter of suit was/is nothing but title of property, which is claimed by the appellant and is being determined in the suit in the absence of appellant.

8. In view of above the High Court Appeal is allowed, Impugned order is set aside and the application under order I Rule 10 CPC is allowed and the appellant be impleaded as one of the defendants in the suit to contest it in accordance with law.

9. Above are reasons of our short order dated 08.11.2023.

Dated: 11.11.2023

J U D G E

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