

## THE HIGH COURT OF SINDH, KARACHI

### J.M. No. 02 of 2022

[Mrs. Motia Begum versus Hafiz Amjad Jalil and others]

Applicant : Mrs. Motia Begum Widow of Late Mubarak Ali through M/s Abdul Kareem Khan and Azain Nadeem Memon, Advocates.

Respondents 1-3 : Hafiz Amjad Jalil, Mrs. Shahnaz Shahid and Hafiz Javed Jalil through M/s. Muhammad Nouman Jamali and Abdur Razzaq, Advocates.

Respondent 4 : Nemo.

Respondents 5-7 : Mrs. Surriya Shahab, Mrs. Farah Naz & Mrs. Rehana Jalil, through M/s. Mujtaba Sohail Raja and Muhammad Hussain, Advocates.

Auction Purchaser : Naresh Kumar through Mr. Khursheed Javed, Advocate.

Dates of hearing : 27-09-2022 & re-hearing on 14-12-2023.

Date of decision : 19-12-2023

### ORDER

**Adnan Iqbal Chaudhry J.** - By order dated 30-04-2019 in Suit No. 645/2018, a preliminary decree was passed under Order XX Rule 13 CPC by consent of the Plaintiffs and the Defendants 2 to 4 (Respondents herein), appointing the Nazir of this Court as Administrator of the estate of late Hafiz Abdul Jaleel **[the Deceased]** who had passed away on 31-12-2008. The estate included Industrial Plot No. A-297, measuring 8.73 acres, at SITE, Nooriabad, Jamshoro **[subject plot]**. After the preliminary decree two further orders were passed at the instance of the Plaintiffs and the Defendants 2 to 4. First, order dated 03-03-2021 directing the Nazir to take possession of the subject plot to prevent encroachment. Second, orders dated 15-09-2021 and 24-12-2021 permitting said parties to sell the subject plot by private sale. This J.M. is an application by one Motia Begum

under section 12(2) CPC for setting aside the order and preliminary decree dated 30-04-2019 to the extent of the subject plot, and the orders that followed on 03-03-2021 and 24-12-2021.

2. It appears that the SITE is the licensor of the subject plot, and with the concurrence of the original licensee the license was transferred by the SITE to the Deceased by letter dated 15-12-2004.

3. The Applicant submits that the Plaintiffs and the Defendants 2 to 4 (Respondents 1 to 3 and 5 to 7 herein), who are the legal heirs of the Deceased, had concealed from the Court that the Deceased had assigned the license of the subject plot to the Applicant for consideration during his life-time; and that the Applicant had then appointed one Imran Ahmed as her Attorney to manage the subject plot, but the Attorney duped her by fabricating documents to portray that the Applicant had assigned her rights in the plot to the Attorney. It seems that when the order dated 03-03-2021 was passed directing the Nazir to take possession of the subject plot, it was Imran Ahmed who was vying for possession thereof. However, Imran Ahmed's application under Order I Rule 10 CPC was dismissed for non-prosecution on 13-10-2021.

4. By orders dated 15-09-2021 and 24-12-2021 passed in the Suit, the Plaintiffs and Defendants 2 to 4 were granted permission to sell the subject plot by private sale, and pursuant thereto one Naresh Kumar deposited the sale price before the Nazir. However, on 08-01-2022, the Applicant (Motia Begum) filed this J.M. and simultaneously an application under Order I Rule 10 CPC in the Suit. Due to the *status quo* order dated 11-01-2022 passed in this J.M., the sale to Naresh Kumar could not go through, and by order dated 21-09-2023 passed in the Suit, he was permitted to withdraw the sale price.

5. Heard learned counsel and perused the record.

6. It is averred by the Applicant that the Deceased had assigned the license of the subject plot to the Applicant for consideration during his life-time, and therefore the subject plot did not vest in the Deceased at the time of his death, and consequently the preliminary decree dated 30-04-2019 and the orders that followed thereupon had been obtained by fraud and misrepresentation. In support of that averment the Applicant's counsel relied on the following documents:

- (i) Agreement of Assignment dated 02-02-2005 allegedly executed by the Deceased in favour of the Applicant in consideration of Rs. 3,000,000/;
- (ii) Registered Power of Attorney dated 05-06-2005 allegedly executed by the Deceased in favour of the Applicant;
- (iii) SITE's letter dated 18-12-2006 addressed to the Deceased acknowledging his request to transfer the license of the subject plot to the Applicant;
- (iv) Mutation letter dated 19-12-2006 issued by the SITE to mutate the subject plot to the Applicant.

7. On the other hand, the Respondents 1 to 3 (Plaintiffs) contend that the documents filed by the Applicant to lay claim to the subject plot are forged and fabricated. To substantiate that allegation counsel for the said Respondents invited the Court's attention to the following facts:

- (i) that the Deceased's application for transfer of rights in the subject plot to the Applicant was processed by the SITE and the plot was mutated to the Applicant on the same day, which fact is unbelievable;
- (ii) that the Power of Attorney dated 05-06-2005 by the Deceased to the Applicant was allegedly executed and microfilmed on the same day, which again is unbelievable;
- (iii) that pages 2 to 4 of the Power of Attorney dated 05-06-2005 do not reconcile with its page-1;

(iv) that *vide* letter dated 23-04-2021 the Microfilming Unit has opined that the Power of Attorney dated 05-06-2005 by the Deceased to the Applicant is fictitious as it does not exist in its record.

8. The record reflects that by a statement dated 25-10-2019 filed in the Suit, a Law Officer of the SITE affirmed that the subject plot was held by the Deceased. But subsequently, on 06-06-2022, another statement was filed by the Law Officer of the SITE to back-track from its earlier statement by suggesting that the SITE had issued transfer letter dated 19-12-2006 in favor of the Applicant.

9. Under the circumstances where the Applicant relies on documents said to be executed by the Deceased and the SITE to contend that rights in the subject property were transferred to her by the Deceased during his lifetime, the contention of the Respondents that those documents are forged and/or fabricated cannot be decided without recording evidence.

10. Regards the order dated 03-03-2021 directing the Nazir to take possession of the subject plot, that shows that it was passed essentially for preserving the subject plot from encroachers, and not necessarily as a consequence of the preliminary decree. Such order could have been passed regardless of the preliminary decree. However, the same cannot be said of orders permitting the Respondents to sell the subject plot which include the order dated 24-12-2021, for those orders are in consequence to the preliminary decree and cannot continue if the preliminary decree for the subject plot is eventually set-aside. In any case, those orders were obtained by representing the Deceased as 'owner' of the subject plot, whereas the documents subsequently brought on the record suggest that the Deceased was only a licensee of the SITE under an unregistered instrument *albeit* the license was transferable with the consent of the SITE.

11. For the foregoing reasons, the following issues are settled for deciding this J.M:

- (i) Whether the Agreement of Assignment dated 02-02-2005 was executed by the Deceased in favour of the Applicant in consideration of Rs. 3,000,000/- ?
- (ii) Whether the registered Power of Attorney dated 05-06-2005 said to have been executed by the Deceased in favor of the Applicant is a forged and/or fabricated document ?
- (iii) Whether letters dated 18-12-2006 and 19-12-2006 were issued by the SITE to the Deceased and the Applicant respectively ? If so, to what effect ?
- (iv) Whether the Deceased was SITE's licensee at the subject plot and not owner ? If so, to what effect ?

List of witnesses shall be filed in 7 days, and list of documents in 2 weeks. Mr. Dilawar Hussain Advocate is appointed Commissioner to record evidence on the above issues. His fee is fixed at Rs. 30,000/- per witness to be borne by the parties for their respective witnesses. The parties may lead evidence by way of affidavit-in-evidence. The commission shall return in 3 months.

12. Till final orders in this J.M., CMA No. 237/2022 by the Applicant is allowed by suspending the preliminary decree 30-04-2019 to the extent of the subject plot, and as a consequence, so also the subsequent orders permitting the sale of the subject plot which include the order dated 24-12-2021. However, the order dated 03-03-2021 shall continue till it is varied or set-aside in the Suit. CMA No. 902/2022 by the Respondents 1 to 3 is dismissed.

**JUDGE**

Karachi  
Dated: 19-12-2023