

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.161 of 2014

Syed Mahmud Hussain, through his Legal Heirs

v.

Province of Sindh and Eleven (11) Others

- Plaintiff: Syed Mahmud Hussain since deceased through his legal heirs
(a) Shafiqa Mahmud Hussain (widow),
(b) Farhana Mahmud Hussain (daughter),
(c) Rakshanda Hussain (daughter)
(d) Shazia Hussainn (daughter)
through Mr Muhammad Haseeb Jamali, Advocate
- Defendant Nos.1 to 4: Province of Sindh (Defendant No.1); The Sub-Registrar-I, Gulshan-e-Iqbal Town, Karachi (Defendant No.2); Sub-Registrar-I, Clifton Town, Karachi (Defendant No.3); and the Photo-Registrar Micro at City Court, Karachi (Defendant No.4) through Mr Ziauddin Junejo, AAG
- Defendant Nos.5, 6 & 7: Inspector-General of Police, Karachi (Defendant No.5); S.H.O. P.S. Clifton, Karachi (Defendant No.6); and S.I. Ch. Amanat P.S. Clifton Investigation, Karachi (Defendant No.7). Nemo.
- Defendant No.8: MEO (Karachi Circle). Nemo
- Defendant No.9: Defence Officers Housing Authority, Karachi. Nemo
- Defendant No.10: Mohammad Asif s/o Zulfiqar Ahmed. Nemo
- Defendant No.11: Faisal Qureshi s/o Nasim Qureshi. Nemo
- Defendant No.12: Ashfaq-ur-Rehman s/o Siruj-ur-Rehman. Nemo

Dates of Hearing: 06.09.2023, 15.09.2023, 28.09.2023,
02.10.2023, 07.10.2023, 09.10.2023

Date of Decision: 22.12.2023

J U D G M E N T

Jawad Akbar Sarwana, J.: On 29.01.2014, 86 years old, Plaintiff Syed Mahmud Hussain filed the above-titled Suit for declaration, cancellation of documents, permanent injunction and recovery of damages, etc., wherein he prayed for the following reliefs:

- A) To declare that the Plaintiff being absolute owner of the suit property i.e., Bungalow No.17/1, situated at Khayaban-e-Shaheen, Phase-V, DHA, Karachi, never ever, executed any General Power of Attorney or any other documents i.e. sale deed, Gift, Dee, Sale Agreement, mortgage deed, will of any nature in respect of the suit property in favour of anyone in his lifetime therefore, to pass an order for cancellation of all such documents or if any General Power of Attorney, sale deed, sale agreement, Gift deed, mortgage deed, including power of attorney vide Registration No.1266 Book IV-Addl. Karachi dated 23.06.2010 and MF Photo Register Roll No.439160/1320 dated 02.07.2010 being void-abinitio in the eye of law. Since the original Plaintiff has expired, left behind only the surviving legal heirs of Plaintiffs a, b, c, d, i.e one widow and three daughters, therefore, to issue direction to the defendant No.8 and 9 to mutate the suit property in their name.
- B) To grant money decree on account of damages in sum of Rs.20 Million against the defendants jointly and severally except the defendant No.8 and 9 but if they involve in any illegality in respect of "The Suit

Property” then they also liable to pay the damages to the plaintiff.

- C) Issue decree of permanent injunction by restraining the defendants their legal heirs, representatives, attorneys any person/ persons from creating any third party interest with “The Suit Property” so also restraining in same manners from harassing the plaintiff or depriving him from the suit property or alienating “The Suit Property”, with any manner, whatsoever.
- D) Any other relief/reliefs which may deem fit and proper in the facts and circumstances of the case may also be grant in the interest of justice.
- E) Cost of the suit.
- F) Any other order, or other better relief/reliefs which this Hon’ble Court may deem fit and proper in the circumstances of the case may also be granted in favour of the plaintiff.

2. During the pendency of the titled Suit, the Plaintiff passed away on 06.09.2016, and the named legal heirs (stated herein) were brought on record vide the Court’s Order dated 18.05.2018 passed on CMA No.1286/2018. The daughters of the deceased Plaintiff/Syed Mahmud Hussain, namely, Farhana Mehmud Hussain (Plaintiff No.1-b) and Rakhshanda Hussain Young (Plaintiff No.1-c) are/were residing in USA, authorized their mother Shafiq M Hussain (Plaintiff No.1-a) as their attorney by executing General Power of Attorney (Exh.”PW1/2” and “PW1/3”) to represent their interest in this suit. Another daughter of the deceased Plaintiff, namely Shazia Mahmud Hussain (Plaintiff No.1-d), also executed a Power of Attorney (Exh.”PW1/4”) in favour of her mother, Shafiq M Hussain (Plaintiff No.1-a), to represent her interest in the present

suit. Thus, the Amended Title of the Plaintiff recorded the Plaintiff's legal heirs as follows:

- (a) Shafiqa M Hussain (widow),
- (b) Farhana Mahmud Hussain (daughter),
- (c) Rakshanda Hussain Young (daughter), and
- (d) Shazia Mahmud Hussain (daughter).

Reference to "the Plaintiff", made in this Judgment, as the case may be, include, interchangeably, the deceased and his legal heirs impleaded as the Plaintiffs in the suit.

3. The Plaintiff, Syed Mahmud Hussain, claimed in his lifetime that he was the owner and resident of Bungalow No.17/1, situated at Khayaban-e-Shaheen, Phase-V, DHA, Karachi (hereinafter referred to as the "Suit Property"). The Plaintiff had acquired the Suit Property through Pakistan Defense Officers Housing Authority, Karachi ("PDOHA")(Defendant No.9). Sometime in the year 2006, the Original file of the Suit Property was stolen, including Form-B Lease dated 19th September 2007. The Plaintiff obtained true/certified copies of the originals from the concerned Authorities. The Plaintiff claims that his ownership in the Suit Property thereafter was challenged from time to time by strangers attempting to assert ownership in the Suit Property but the Plaintiff managed to thwart all such efforts successfully. In the year 2011, when Plaintiff visited the MEO Karachi Circle (Defendant No.8), he was informed that a General Power of Attorney dated 02.07.2010 allegedly registered and executed by Defendant Nos.2 and 4 in favour of Defendant No.10 (Muhammad Asif s/o Zulfiqar Ahmed) had been submitted by the latter for recordal with the MEO Karachi Circle (Defendant No.8). Accordingly, on 15.06.2011, Plaintiff immediately registered with SHO, PS Clifton, Karachi (Defendant No.6) a criminal complaint against Defendant No.10 vide FIR No.126/2011. Further investigation by the Plaintiff revealed that the

said General Power of Attorney had the Plaintiff's signature, which was fake and forged. Plaintiff had neither met Defendant No.10 nor knew him nor executed any document in favour of the said Defendant No.10. Additionally, the said fake and fabricated General Power of Attorney was witnessed by Faisal Qureshi and Ashfaq-ur-Rehman, Defendant Nos.11 and 12 respectively, and had been registered with the Sub-Registrar, Gulshan Iqbal, Karachi (Defendant No.2).

4. The Plaintiff's suit proceeded *exparte* against Defendant Nos.1 to 8 vide this Court's Order dated 09.05.2016; whereas Defendant No.10 (Mohammad Asif) and Defendant No.9 (PDOHA) entered appearance and filed their Written Statement. Defendant No.10 (Muhammad Asif) filed his Written Statement on 19.05.2017, denying the contents of the Plaint and submitting that the answering Defendant had no objection if the prayer clause-1 was granted. Additionally, the answering Defendant No.10 also stated that he was not concerned with the Plaintiff's sale deed, gift deed, a general power of attorney, sale agreement, and mortgage deed attached to the Plaint. He also distanced himself from the alleged registered Power of Attorney for which Plaintiff had prayed for cancellation. Meanwhile, PDOHA submitted in their Written Statement that according to their records, the "B-Lease" of the Suit Property stood in the Plaintiff's name (Paragraph 2 of the Written Statement). Further, PDOHA (Defendant No.9) submitted that they had no hold on "B-Lease" properties, as the owner of such a lease can dispose of the leased property by registered sale/conveyance deed with the Sub-Registrar-I Clifton Town, Karachi (Defendant No.3)(Paragraph 6 of the Written Statement).

5. The Court settled the following issues on 03.12.2019:

1. Whether the cause of action has been accrued to the plaintiff to file the present suit or not?
 2. Whether the plaintiffs are entitled for the damages if so to what extent?
 3. Whether the plaintiffs are entitled to the reliefs claimed, if yes, to what extent?
 4. What should the decree be?
6. On 12.04.2022, the Court appointed a Commissioner for Recording of Evidence. Plaintiff No.1-a, Shafiq M. Hussain, widow of the deceased, entered the witness box and filed her Affidavit-in-Evidence as "PW-1" on 10.12.2022. She produced the following documents in support of her claim:
- i) Affidavit in evidence as Exhibit "PW1/1";
 - ii) Two General Power of Attorneys dated 05.09.2017 and 05.10.2017 duly attested by the Pakistani Embassy in Washington DC, USA as Exhibits "PW1/2" and "PW1/3";
 - iii) General Power of Attorney dated 04.11.2017 executed in Karachi as Exhibit "PW1/4";
 - iv) "B" Lease of Plot No.17/1, Khayaban-e-Shaheen, Phase-V, DHA, Karachi bearing Registration No.4585 duly registered before Sub-Registrar-I, Clifton Town, Karachi as Exhibit "PW1/5";
 - v) Copy of the complaint made before SHO of Police Station Clifton which was received by the said Police Station on 06.10.2007 as exhibit "PW1/6";
 - vi) Statement of Mst. Mahmooda Begum dated 19.07.2007 as Exhibit "PW1/7";
 - vii) Photostat copy of a letter having subject of Submission of General Power of Attorney, addressed to the Military Estate Officer, Karachi Circle, Karachi dated 22.07.2007 marked as "X/1";

- viii) Photostat copy of the General Power of Attorney 23.06.2010 marked as "X/2";
- ix) Photostat copy of FIR No.126 of 2011 under Sections 420, 468, 471 and 34 PPC registered at PS Clifton, Karachi marked as "X/3";
- x) Photostat copy of the Legal Notice dated 28.06.2013 addressed to Sub-Registrar-I, Gulshan-e-Iqbal Town, Karachi as marked as "X/4";
- xi) Photostat copy of the reply to the legal notice sent by DHA dated 05.07.2013 marked as "X/5";
- xii) Eleven Perfect Express Couriers delivery reports as Exhibits "PW1/8" to "PW1/18", respectively;
- xiii) Death Certificate of Syed Mahmud Hussain issued on 03.11.2016 as Exhibit "PW1/19";
- xiv) Family Registration Certificate of Syed Mahmud Hussain as Exhibit "PW1/20";
- xv) Heirship Certificate dated 06.03.2017 issued by Assistant Commissioner, Civil Lines, District (South) Karachi as Exhibit "PW1/21";
- xvi) Photostat copy of the Letter dated 05.10.2013 by the previous counsel of the plaintiff addressing the plaintiff marked as "X/6";
- xvii) Complaint lodged by the late Syed Mahmud Hussain to the Sub-Registrar, DHA, Karachi on 20.06.2007 as Exhibit "PW1/22";
- xviii) Copy of a complaint dated 30.06.2007 lodged before the SHO of Clifton Police Station as Exhibit "PW1/23";
- xix) Copy of Roznamcha Entry dated 27.09.2006 as Exhibit "PW1/24";
- xx) Photostat copy of the legal notice dated 28.06.2013 addressed to Sub-Registrar-I, Gulshan-e-Iqbal Town, Karachi marked as "X/7";
- xxi) Copy of DHA letter dated 05.07.2013 together with the envelope as Exhibits "PW1/25" and "PW1/26".

7. According to the Commissioner's Report filed in Court on 15.12.2022, no one cross-examined the Plaintiff's Witness except that PDOHA (Defendant No.9) submitted a letter dated 07.12.2022 addressed to the Commissioner that they did not wish to adduce any evidence being a formal party. The Defendants did not cross-examine Plaintiff's witness. Thus, the Plaintiff's side was closed with Defendant's Cross-Examination marked as "Nil". Additionally, the Commissioner's Report dated 04.05.2023 reported that Defendant No.10 who was also sent notices, but these were returned to the Courier Company with a manuscript note "Return on Call". Evidence of Defendant No.10 was kept pending by the Commissioner for Recording Evidence on 24.12.2022, 25.01.2023 and 23.02.2023 but when none appeared on 16.03.2023 his side was also closed. None of the Defendants led any evidence.

8. During final arguments, the learned Counsel for the Plaintiffs submitted that Defendant No.10 (Muhammad Asif), who had registered a fake and fabricated General Power of Attorney, has submitted under oath in his Written Statement that he did not have any objections with regard to the first prayer in the Plaint which related to the declaration concerning the ownership of the Suit Property and cancellation of the General Power of Attorney of which the Defendant No.10 was donee. Therefore, Defendant No.10 had impliedly admitted that he had committed the illegal and unlawful act of registration of the General Power of Attorney and did not intend to defend his actions. The Plaintiff's Counsel further submitted that the Land Registry of the Suit Property, namely, PDOHA had also accepted the ownership and title of the Plaintiff in the Suit Property. Accordingly, the Counsel for Plaintiff prayed that the suit should be decreed as prayed.

9. None appeared to submit final arguments on behalf of Defendants except that the learned AAG sought time to obtain better particulars of the Suit Property to assist the Court with regard to the genuineness of Plaintiff's claims. The bench heard his arguments piecemeal on 15.09.2023, 28.09.2023 and 02.10.2023. Finally, on 09.10.2023. the learned AAG recorded his "No Objection" to the Plaint as against the Defendant Nos.1 to 4.

10. I have heard the learned Counsels, read the pleadings and material/evidence available on the record and considered the applicable law. My findings on the above Issues are as follows:

- 1) Affirmative.
- 2) Negative.
- 3) Affirmative as discussed.
- 4) Suit is decreed.

REASONS

Issue No. (1)

11. The Plaintiff has filed this suit within three (3) years from the date when he discovered that a forged and fake General Power of Attorney had been registered with Defendant Nos.1 to 4. He was diligent; he safeguarded his interests based on the information obtained and available; filed FIR against Defendant No.10 and subsequently instituted this claim seeking a declaration of Plaintiff's title in the Suit Property and cancellation of the fake and forged registered Power of Attorney. Accordingly, a valid cause of action accrued in favour of the Plaintiff claiming cancellation of the said General Power of Attorney on the ground that it was forged and fabricated and a declaration regarding his title and ownership in the suit property. In view of the above, Issue No.1 is decided in the affirmative.

Issue No. (2)

12. The Plaintiff was born on 19.03.1928 and after filing the suit in 2014, passed away on 06.09.2016. The Plaintiff during his lifetime filed the claim for damages in the sum of Rs.20 million. The claim is essentially in tort. In Paragraph-15 of her Affidavit-in-Evidence, the PW-1 Shafiqa Mehmood Hassan, has pleaded as under:

“15. That the plaintiffs have suffered mental torture due to actionable wrong at the part of defendant No.10 to 12 in collusion with the offices staff of defendant No.1 to 7”.

13. In fact the Plaintiff made the claim in tort in person. On the plaintiff's demise, this claim for damages under tort died with the Plaintiff, and the right to agitate this claim (Issue No.2) did not survive to his legal heirs. Additionally, the head of this claim does not fall within the said exception in Order XXII Rule 6 CPC. I am fortified by my learned brother's judgment in the case of Zahid Hussain Awan v. United Bank Limited, 2018 MLD 1369. Even otherwise the Plaintiffs have failed to prove their claim. It was neither shown nor indicated in any document nor averred in the Plaint nor deposed during evidence as to how the damages have been claimed and how the Government Officials were responsible for them. No calculation is provided for claiming damages of Rs.20 million, and no evidence was produced in support thereof. It was incumbent upon the Plaintiffs to show as to and under which head of account and how such damages have been sustained. In the absence of such proof, special damages cannot be allowed. General damages are loss or injury sustained or caused as the direct or proximate consequence of the wrongful act. No loss or injury has been proved. In view of the above, this issue is answered in the negative. Consequently, the Plaintiffs are not entitled to any damages.

Issue No. (3)

14. The Plaintiffs have proved, by evidence, their title and ownership in the Suit Property of Mr Syed Mahmud Hussain, and, accordingly, his legal heirs are entitled to the declaration that they are the absolute owners of the Suit Property. Accordingly, Defendant No.8 (MEO) Defendant No.9 (PDOHA) are directed to amend and to bring on their record in connection with the Suit Property all the legal heirs of the Late Syed Mahmud Hussain as identified in the amended title of the Plaint/Family Registration Certificate dated 07.02.2017 issued by NADRA as available in the suit file and in accordance with the rules and regulations of the relevant Authorities subject to applicable payments, levy, charges, duties, etc. payable on the Suit Property, if any, by the legal heirs.

Issue No. (4)

15. In view of the facts, circumstances and legal position as stated above, the claim of the Plaintiffs is unrebutted, uncontroverted, unchallenged and not denied by any of the Defendants. **Therefore, the suit of the Plaintiffs, i.e. the legal heirs of Mr Syed Mahmud Hussain is decreed only in terms of prayer clauses (a) and (c) of the Plaint relating to the reliefs of declaration and cancellation; and, permanent injunction (prayer clause (d)) as prayed therein; and in terms of clause (e) of the prayer clause, as none of the Defendants opposed the grant of relief to the Plaintiffs, hence there shall be no order as to costs of the suit.**

16. Office is directed to draw up a decree in the above terms.

J U D G E

Announced by me.

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