

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Suit No. 316 of 2016

Khawaja Muhammad Arif and Another

Versus

Mst. Zeenat Begum & Others

- 1.For hearing of CMA No.10462/2023.
- 2.For hearing of CMA No.10463/2023.
- 3.For hearing of CMA No.6691/2022.
- 4.For hearing of CMA No.13335/2023.
- 5.For hearing of CMA No.2006/2016.
- 6.For hearing of CMA No.12860/2019.
- 7.For hearing of CMA No.3564/2020.
- 8.For hearing of CMA No.11427/2023.
- 9.For orders on CMA No.14710/2023.

Plaintiffs : Through Ms. Sabira Qaiser, Advocate.

Defendant Nos.1&3 : Through Mr. Abdul Wajid Wyne, Advocate.

Defendant No.5 : Through Mr. Muhammad Yousuf, Advocate.

Intervenor : Through Mr. Khalid Javed, Advocate.

Date of hearing : 4 October 2023 and 2 March 2024

ORDER

MOHAMMAD ABDUR RAHMAN, J. By this Order I will be deciding CMA NO. 12860 of 2019, CMA No. 3564 of 2020 and CMA NO. 6991 of 2022, each being applications maintained under Clause (3) of Rule 2 of Order XXXIX Rule of the Code of Civil Procedure, 1908 read with Section 3 of the Contempt of Court Ordinance, 2003 (hereinafter collectively referred to as the “Contempt Applications”) and which have each been maintained by the Plaintiff as against the alleged contemnors for purportedly violating an order of this Court dated 9 February 2016. This order will also decide CMA No. 11427 of 2023 being an application under Order 1 Rule 10 of the Code of Civil Procedure, 1908 whereby the intervenor who has maintained that application seeks to be impleaded as a Defendant in this Suit.

2. The dispute involved in this *lis* is in respect of the ownership and a right to inherit to Plot No. E-113, Block F, North Nazimabad, Karachi Development Authority Scheme No. 2, Karachi admeasuring 1500 square

yards (hereinafter referred to as the "Said Property"). The Said Property was at some time owned by Mr. Khawaja Muhammad Yousuf and who had, admittedly, on 21 September 1980 caused to be registered a document confirming an oral gift that was made by him of his entire right, title and interest in the Said Property in favour of his wife i.e. the Defendant No. 1. Mr. Khawaja Muhammad Yousuf died on 14 May 2000 leaving behind the Plaintiffs and the Defendant No. 1 to 5 as his legal heirs.

3. The Plaintiffs contend that despite the registration of the registered Deed of Gift in favour of the Defendant No. 1, the Defendant No. 1's status as an owner of the Said Property was in fact that of a benamidar, the father being the real owner of the Said Property. In this context, it is contended, that a Final Will/Waseatnama was executed whereby it was agreed that the Said Property should be distributed in accordance with the terms indicated in that document. This document is contested, inter alia, by the Defendant No. 1 who claim ownership to the Said Property as a real owner. Needless to say, there is acrimony as between the Plaintiffs and the Defendants No. 1 to 5 and which has led the Plaintiffs to maintain this Suit claiming that after their fathers demise the Said Property should be treated as a Benami Property and should be distributed in accordance within the Final Will/Waseatnama.

4. In their Written Statement, the Defendant No. 1 and the Defendant No. 3 have confirmed that the Defendant No. 1 had registered a document confirming an oral gift that was made of the Said Property by the Defendant No. 1 in favour of the Defendant No. 3 and have also contended that as initially Suit No. 2359 of 2015 had been instituted by the Plaintiffs before this Court and which was withdrawn and subsequently this suit was presented on 26 January 2016, the Plaint was liable to be rejected. An issue as to maintainability on this ground was raised by this Court on the premise of Order II Rule 2 of the Code of Civil Procedure, 1908 and which was decided on 12 February 2021 in favour of the Plaintiff. Apparently, no appeal was maintained as against that order.

5. Regarding interim injunctive relief an ex-parte ad interim injunction was granted by this Court on 9 February 2016 on two applications bearing CMA No. 2004 of 2016 and CMA NO. 2005 of 2016, that were maintained by the Plaintiff, and on which applications this Court had directed for notices to be issued to the Defendants and "in the meantime" i.e. until notices were issued, the parties were directed to maintain "status quo." The interim order was continued on the next date of hearing but after that date it was not recorded in any order as to whether the interim order had been continued

or not and which was primarily on account of the absence of the Plaintiff's Counsel from the proceedings in this Suit. The interim order was however continued by an order of this Court on 13 December 2018 but thereafter was not recorded in any order as having been continued until 21 April 2022 and on which date the interim injunctive order dated 9 February 2016 that was passed on CMA No. 2004 of 2016 was confirmed with the consent of the Defendant No. 1 to 3. That on the basis of that order CMA No. 2005 of 2016 was not pressed by the Plaintiff.

6. At this belated stage, CMA No. 11427 of 2023 was maintained under Order 1 Rule 10 of the Code of Civil Procedure, 1908 by a person contending that he had purchased the Said Property from the Defendant No. 3 by a registered Deed of Conveyance dated 4 November 2019 and which has *inter alia* led the Plaintiff to maintain that the injunctive order dated 9 February 2016 that was confirmed on 21 April 2022 has been violated by the Defendant No. 1 and the Defendant No. 3 and in respect of which proceedings for contempt of court should be instituted as against the contemnors indicated in the Contempt Applications. Interestingly, the Defendant No. 3 had on 21 April 2002, when the ad interim injunction was confirmed, failed to disclose to the Court that he had sold out the Said Property.

7. Ms. Sabira Qasier has contended that in light of the interim order dated 9 February 2016 directing the parties to maintain status quo and which order was confirmed on 21 April 2022 the documents attached to CMA No. 11427 of 2023 clearly disclose that the status quo order was violated by the Defendant No. 3 and hence proceedings for contempt of Court should be instituted as against the Contemnors.

8. Mr. Abdul Wajid Wyne has entered appearance on behalf of the Defendant No. 1 and the Defendant No. 3 who is also representing the alleged Contemnor No. 1 in CMA No 3564 of 2023 and the alleged Contemnor No. 1 and Contemnor No. 2 in CMA No. 6991 of 2022, has contended that while the interim order directing the parties to maintain status quo had been passed on 9 February 2016, on account of the apathy of the Plaintiff or their Counsel in the failing to attend proceedings in this Suit, the interim order had not been continued after 13 December 2018 and as such on 4 November 2019 when the Deed of Conveyance was registered the interim order was not in the field. He hence contended that the Defendant No. 3 could not be held liable for contempt and CMA NO. 12860 of 2019 CMA No. 3564 of 2020 and CMA NO. 6991 of 2022 should each be dismissed.

9. Mr. Khalid Jawed who entered appearance on behalf of the Intervenor while supporting Mr. Abdul Wajid Wyne arguments also contended that on account of the apathy of the Plaintiff or their Counsel in the failing to attend proceedings in this Suit, the interim order had not been continued after 13 December 2018 and as such on 4 November 2019 when the Deed of Conveyance was registered the interim order was not in the field and hence the intervenor had validly purchased the Said Property and being an owner of the Said Property was hence a necessary party to this Suit. Regarding the status of an interim order which had not been continued Mr. Khalid Jawed relied on a decision of a Division Bench of this Court reported as **Muzzafar Ali Khan vs. Sind Co-operative Housing Authority and 2 others**¹ in which, where a contempt application was maintained alleging a violation of an interim order that had not been continued it was held that:

“ ... 10. It is submitted by Mr. S. Mahmoodul Hassan that the respondents have disobeyed the order of this Court passed on 24-1-1984, whereby respondents were directed not to announce the result till the hearing of the injunction application. When we pointed out to him that the order passed on 24-1-1984, was on C.M.A. No. 152 of 1984, and lasted only till 25-1-1984, when this application was dismissed as having become infructuous in view of the fresh order passed on that day, whereby by consent it was ordered that C.M.A. No. 2561 of 1983, should be fixed for hearing on 30-1-1984, and the operation of the ad interim order passed on 5-1-1984, was extended till 30-0-1984, he submitted that the respondents then have also violated this order too. But this submission is also not correct for the ad interim order passed on 5-1-1984 was extended upto 23-2-1984, by the order dated 30-1-1984, 8-2-1984 and 13-2-1984, and thereafter, it was not extended. He, however submitted that the interim order under Order XXXIX, rules 1 and 2, C.P.C. lasts till the end of the proceedings or till it is varied, discharged or set side by the Court on an application made under Order XXXIX, Rule 4, C.P.C. But this argument ignores the fact that order passed on 5-1-1984, was passed in exercise of the powers under rule 3 of the Order XXXIX, C.P.C., without notice to the respondents and was in the nature of an ad interim order and that it was passed for a limited time and unless it was again extended on 23-2.1984 it stood vacated by afflux of time on that date.”

A similar finding has been given by a Learned Single Judge of this Court in the decision reported as **Nazir Ahmed vs. Mst. Sher Bano**² wherein it was held that:

“ ... 13. Admittedly, status quo order was granted on 8-12-2006 up to next date of hearing viz. 21-12-2006. Subsequently, it was extended up to 21-2-2007 and on the next date i.e. 10,-3-2007 it was not extended then on the subsequent dates sometimes it was extended and sometimes it was not extended while firstly it was not Court amounts to overlooking this legal position. If the allegations of respondent No.1 may be believed in toto that he was dispossessed by the applicant then it will not come within the definition of sections 3 and 4 of Contempt of Court Act as at the time of dispossession in the year 2009 there was no status quo order. Maintaining the order of the trial court by the appellate court itself

¹ 1985 CLC 1995

² 2011 MLD 1498

amounts to overlooking the legal and factual position, therefore, I am of the view that order passed by the trial court maintained by the appellate courts was of mis-leading and overlooking the legal position. Consequently, this Civil Revision Application is allowed. Order of the appellate court and of the trial Court are hereby set aside."

10. I have heard Ms. Sabira Qasier, Mr. Abdul Wajid Wyne and Mr. Khalid Jawed and have perused the record.

11. I must admit that the manner in which the Plaintiff has conducted this Suit leaves a lot to be desired. After having obtained an ex-parte ad interim injunction on 9 February 2016, there have been at least eleven dates whereby no one entered appearance on behalf of the Plaintiff and during which period the interim order was not continued. Mr. Khalid Javed has correctly relied on the decision reported as **Muzzafar Ali Khan vs. Sind Co-operative Housing Authority and 2 others**³ and **Nazir Ahmed vs. Mst. Sher Bano**⁴ and which forward the proposition that unless an interim order is continued on each date it lapses and during which period the interim order is not binding on the parties to the *lis*. I must admit I may have been inclined to consider the argument that the interim order once passed would last "*till the end of the proceedings or till it is varied, discharged or set aside by the Court*" but as the argument was specifically rejected by a Division Bench of this Court in **Muzzafar Ali Khan vs. Sind Co-operative Housing Authority and 2 others**⁵ I am bound to follow that order. As such, the interim order that had been passed on 9 February 2016 having not been continued after 13 December 2018 as such, on 4 November 2019 when the Deed of Conveyance was registered, no injunctive orders were operating to restrain the execution and registration of that document. The Contempt Applications therefore are misconceived.

12. Having come to the conclusion that the interim order passed on 9 February 2016 had not been continued after 13 December 2018 as such, the Conveyance Deed that was executed on 4 November 2019 by the Defendant No. 3 in favour of the Intervenor was prima facie not registered in violation of any injunctive orders that had been passed by this Court to restrain the execution and registration of that document. The Intervenor having derived his title from the Defendant No. 1 and whose status as the real owner of the Said Property is to be decided in this *lis*, the Intervenor clearly is a necessary party in this suit. The Intervenor Application therefore must be allowed.

³ *Ibid.*

⁴ *Ibid.*

⁵ *Ibid.*

13. For the foregoing reasons, the Contempt Applications maintained by Plaintiff bearing CMA NO. 12860 of 2019, CMA No. 3564 of 2020 and CMA NO. 6991 of 2022 are misconceived and are dismissed and CMA No. 11427 of 2023 maintained by the intervenor is allowed. The Plaintiff is directed to implead the Intervenor as the Defendant No. 7 in the Said Suit and is permitted to file an Amended Plaint within a period of three weeks to include any claim that the Plaintiff may wish to maintain as against the newly added Defendant and where after written statements may be filed as per procedure.

Order Accordingly.

JUDGE

Karachi dated 9 March 2023