

IN THE HIGH COURT OF SINDH, KARACHI

Ind Appeal No. 24 of 2009
[Mst. Rashida Khatoon vs. Mst. Parveen Shabbir & others]

Appellant	Through Mr. Thamasp Rasheed Rizvi, Advocate
Respondents-1	Through Mr. Usman Farooq, Advocate
Respondents 2-4	Through Mr. Muhammad Aqil Zaidi, Advocate along with Mr. Shahryar Kazi, AAG.
Date of Hearing	17.02.2026
Date of Judgment:	19.03.2026

J U D G M E N T

ARSHAD HUSSAIN KHAN, J. The instant Second Appeal under Section 100 of the Code of Civil Procedure, 1908, is directed against the judgment dated 07.03.2009 and decree dated 14.03.2009, passed by the learned Vth Additional District Judge, Central, Karachi in Civil Appeal No.34 of 2008, which was allowed and the judgment and decree dated 25.03.2008 and 27.03.2008, respectively passed by the learned 4th Senior Civil Judge, Central, Karachi, in Suit No.712 of 2004 [Mst. Rashida Khatoon v. Mst. Perveen Shabbir & others] were set aside, and consequently the suit of the Appellant/plaintiff was dismissed. Through the instant appeal, the appellant has prayed that the impugned judgment and decree passed by the lower appellate court be set aside and the judgment and decree of the trial court be restored.

2. Briefly stated, the dispute relates to commercial plot No. LS-7 (ST-21), Sector 5-J, measuring 106.66 square yards, situated in KDA Scheme, North Karachi (**suit plot**). The said plot was initially purchased by respondent/defendant No.1, Mst. Parveen Shabbir, in a public auction held on 27.07.1992, whereafter installments were paid to KDA/CDGK from time to time. Subsequently, respondent No.1 executed a registered General Power of Attorney in favour of Muhammad Ahmed, who in turn granted a Sub-Power of Attorney to Nawab Baig with full powers, including the authority to sell the plot.

On 30.10.2003, the appellant/plaintiff entered into an Agreement to Sell with the said Sub-Attorney for purchase of the suit plot along with construction thereon, comprising six shops at the front and a small

residential portion at the rear, for a total consideration of Rs.500,000/-. The plaintiff paid Rs.100,000/- as token money, Rs.155,000/- as further payment, and also deposited KDA/CDGK dues amounting to Rs.268,027/- on behalf of respondent/defendant No.1, thus paying a total sum of Rs.416,027/- towards the sale consideration. At the time of the transaction, the Sub-Attorney handed over the original documents along with partial possession of the property to the plaintiff. It was alleged that despite receiving substantial consideration and delivering possession, respondent/defendant No.1, through her Sub-Attorney, started creating obstacles in the transfer of the property by filing objections before the authorities. Although some objections were subsequently withdrawn, further objections were again raised with mala fide intent to harass the plaintiff and delay the transfer process. It was further alleged that on 25.09.2004 the Sub-Attorney attempted to forcibly break open the locks of three shops of the suit property, whereupon the police were called and a complaint was lodged. Apprehending further interference, the appellant/plaintiff thereafter instituted Suit No.712 of 2004 against respondent No.1 and others for declaration, specific performance/transfer of the property, injunction, and damages.

The trial court, in the aforesaid suit, on the basis of the divergent pleadings of the parties, framed necessary issues and recorded evidence of the parties, who examined their respective witnesses and produced documentary evidence in support of their claims. After hearing the learned counsel and evaluating the material available on the record, the learned trial court decreed the suit in favour of the appellant/plaintiff to the extent of specific performance of contract and related reliefs, while declining the claim of damages and rent. Being aggrieved by the said judgment and decree, the respondent/defendant preferred Civil Appeal No.34 of 2008 before the learned Vth Additional District Judge, Central, Karachi, who vide judgment dated 07.03.2009 allowed the appeal, set aside the judgment and decree passed by the trial court and consequently dismissed the suit. Hence, the present second appeal.

3. Learned counsel for the appellant contended that the impugned judgment and decree, passed by the lower appellate court are contrary to law and the evidence available on the record. It was submitted that the trial court had rightly decreed the suit after proper appreciation of the oral and documentary evidence, however, the lower appellate court set

aside the same without recording proper findings on the issues framed by the trial court and instead framed new points, which were not in accordance with the pleadings of the parties. It was further argued that the execution of the agreement between the parties was never in dispute and the only controversy related to the sale consideration, therefore, the lower appellate court erred in reopening the question of the agreement itself. Learned counsel also submitted that the appellate court misread the evidence while holding that the appellant had incurred expenditure on construction over the suit property, although such fact remained unproved. It was thus prayed that the impugned judgment and decree be set aside and the judgment and decree passed by the trial court be restored.

4. Learned counsel for respondent No.1, Mst. Parveen, while supporting the impugned judgment argued that the appellant had filed Civil Suit No.712 of 2004 despite the property having been transferred to Nawab Baig on 20.03.2004, and no cancellation under Section 39 of the Specific Relief Act was sought, making any such claim barred by limitation. It was argued that respondent No.1 had only received partial payment and handed over partial possession along with the original file, but the payments did not constitute full discharge of the agreed sale consideration, while certain documents relied upon by the appellant, including the alleged review agreement, were disputed.

Learned counsel further submitted that the actual agreement dated 30.10.2003 stipulated a sale consideration of Rs.10,00,000/-, of which only partial payment was made, while the remaining amount was never paid. It was contended that the plaintiff obtained the original file under the pretext of clearing outstanding dues and thereafter relied upon disputed documents to support her claim. Learned counsel argued that the trial court misread the evidence on the record by overlooking the fact that only partial payment had been made. He further submitted that Respondent No.1 had purchased the plot at a higher price and had also incurred substantial expenses on construction, making it highly improbable that the property would have been sold for Rs.5,00,000/- as alleged by the plaintiff. According to the learned counsel, the learned lower appellate court has rightly set aside the judgment and decree of the trial court and dismissed the suit. Lastly, he prayed that the present appeal, being devoid of merit, be dismissed with costs.

5. Learned counsel appearing on behalf of respondents No.2 to 4 submitted that the said respondents are merely formal parties in the present proceedings, as the dispute essentially pertains to the alleged sale transaction between the appellant and respondent No.1. It was submitted that according to the official record, the commercial plot bearing No. LS-7 (ST-21), Sector 5-J, North Karachi Township, was originally purchased by Mst. Parveen Shabbir through public auction and, after payment of the requisite dues, the allotment order was issued in her favour. It was further submitted that the department has no concern with the private agreements allegedly executed between the contesting parties, and no relief has been claimed against respondents No.2 to 4. Lastly, he has submitted that the matter may be decided strictly in accordance with law.

6. I have heard learned counsel for the parties and carefully perused the material available on the record.

Under Section 100 CPC, interference in a second appeal is limited to cases involving a substantial question of law. Mere conflicting findings of fact do not warrant interference; however, if such findings result from misapplication of law, misreading of evidence, or improper exercise of jurisdiction, a substantial question of law arises, enabling this Court to correct any patent illegality in the lower courts' judgments. In the present case, it is manifest that the impugned judgment and decree passed by the learned first appellate court suffer from misapplication of law, misreading of the record, and improper exercise of appellate jurisdiction, thereby giving rise to substantial questions of law within the meaning of Section 100, C.P.C., and this Court is competent to rectify the errors apparent on the face of the record.

7. From the perusal of the record, it appears that the execution of the sale agreement is not disputed by either party; however, both parties rely upon separate sale agreements of the same date containing different amounts of sale consideration.

The stance of the appellant is that on 30.10.2003 she and the Sub-Attorney of respondent No.1, Nawab Baig son of Shahzad Baig, executed an Agreement of Sale [Exh.P/3] in respect of the suit plot with construction thereon for a lump sum consideration of Rs.500,000/-. At the time of the agreement, the appellant paid Rs.100,000/- as token

money [Exh.P/4], leaving the balance payable within four months. Subsequently, on 07.02.2004, a further payment of Rs.155,000/- was made [Exh.P/5]. The Sub-Attorney also executed a Special Power of Attorney [Exh.P/8] in favour of the appellant's husband to pursue formalities before KDA/CDGK. The Sub-Attorney represented that only Rs.107,000/- were outstanding towards KDA dues, which the appellant paid through pay order dated 27.01.2004. Later, upon disclosure that an additional sum of Rs.161,027/- was payable, a Review Agreement dated 10.02.2004 [Exh.P/7] was executed whereby the said amount was to be adjusted from the remaining sale consideration. The appellant thereafter deposited Rs.161,027/- with KDA/CDGK through pay orders [Exh. P/9 to P/11]. At the time of the Review Agreement, the Sub-Attorney handed over the original documents and partial possession of the property to the appellant, including vacant possession of three shops, while three shops remained with the tenants and the rear portion remained with the Sub-Attorney. Thus, by 19.02.2004, the appellant had paid a total sum of Rs.416,027/- towards the sale consideration. Subsequently, on 20.07.2004, KDA issued the allotment order in the name of respondent No.1. Thereafter, the appellant published a public notice regarding the transfer of the suit plot in her favour, and a final sale agreement [Exh.P/12] was executed wherein the Sub-Attorney acknowledged delivery of possession and documents and executed indemnity bonds [Exh.P/14 & P/15] for submission before KDA.

Whereas, the specific stance of respondent No.1, as set out in the written statement, is that the actual agreement to sell dated 30.10.2003 (Annexure "B" to the written statement) was executed between the parties in respect of the suit plot, whereby the sale consideration was settled at Rs.1,000,000/-. According to respondent No.1, out of the said amount, the appellant/plaintiff paid a sum of Rs.50,000/- through cheque and further, on behalf of respondent No.1, deposited an amount of Rs.268,027/- with the CDGK towards the outstanding dues of the suit property. Thus, according to respondent No.1, the appellant/plaintiff paid an aggregate amount of Rs.318,027/- out of the total sale consideration of Rs.1,000,000/-, while the remaining amount of Rs.681,973/- was never paid. In the written statement, respondent No.1 admitted execution of the Special Power of Attorney; however, she denied execution of the alleged agreement and the payment receipts relied upon by the

appellant/plaintiff. It is further the case of respondent No.1 that, as per the receipt issued by CDGK, the cost of the plot itself was Rs.588,081/-, and that he had additionally incurred an amount of Rs.400,000/- towards construction thereon; therefore, according to him, the question of sale of the suit plot for a total consideration of Rs.500,000/- does not arise.

8. From the record it appears that the learned trial court, after recording the evidence of the parties and examining the documentary material produced on record, returned a categorical finding that the agreement produced by the plaintiff as Exh-P/3, reflecting the consideration amount of Rs.500,000/- along with the liability of Rs.107,000/- towards dues of the authority, represented the genuine transaction between the parties.

9. The learned trial court further examined the evidence led by the respondent/defendant and found material inconsistencies between the contents of the written statement and the oral testimony of the defendant's attorney. While the written statement acknowledged that certain substantial payments had been made by the plaintiff, the subsequent evidence attempted to minimize such payments without providing any satisfactory explanation, which further weakened the defence version. The trial court therefore concluded that the defence version did not inspire confidence and that the documentary evidence produced by the plaintiff, including the agreement of sale, payment receipts and related documents, stood corroborated by the surrounding circumstances.

10. It was also noticed by the learned trial court that the signatures appearing on the receipts and the agreement of sale corresponded with the admitted signatures of the respondent's attorney, and that the preparation of the special power of attorney as well as the serial numbers of stamp papers used for the review agreement and the power of attorney lent further support to the appellant/plaintiff's version. The trial court, on the basis of such material, held that the relevant documents were genuine and had been executed between the parties in the ordinary course of the transaction.

11. Another circumstance which weighed with the learned trial court was the admitted fact that part possession of the suit property along with certain original documents had been handed over to the appellant. The

trial court rightly observed that such conduct would not ordinarily take place in the absence of a subsisting transaction between the parties and was inconsistent with the defence plea that only a nominal amount had been paid by the appellant/plaintiff.

12. Upon appreciation of the entire material available on the record, the learned trial court reached the conclusion that the agreed sale consideration was Rs.500,000/- and that the appellant/plaintiff had substantially discharged the obligation arising under the agreement, leaving only a minor balance amount payable to the defendant. The trial court, therefore, decreed the suit to the extent of specific performance of the contract while declining the ancillary claims of damages and rent.

13. The learned lower appellate court, however, reversed the well-reasoned findings of the trial court primarily on the assumption that the value of the property and the alleged construction raised thereon rendered the agreed consideration improbable. In doing so, the lower appellate court overlooked the documentary evidence relied upon by the appellant/plaintiff and did not assign convincing reasons for discarding the findings recorded by the trial court after detailed appreciation of evidence.

14. It is a settled principle of law that a lower appellate court, while exercising powers of re-appraisal of evidence, is required to independently evaluate the material on record and assign cogent reasons if it intends to reverse findings of fact recorded by the trial court. In the present case, the lower appellate court appears to have proceeded on conjectures regarding the value of the property and alleged construction expenses without there being any reliable documentary evidence on the record to substantiate such assertions.

15. Insofar as the stance of respondent No.1 regarding the alleged cost of the suit plot and the expenses incurred towards construction thereon is concerned, it may be observed, firstly, that from the record it appears that the attorney of respondent No.1, while appearing in evidence, failed to produce any documentary material to substantiate such claim. The said assertion, therefore, remained a mere statement without evidentiary support. Secondly, there is no legal embargo upon a seller to dispose of his property at a price lower than its purchase price, market value, or the amount allegedly spent on construction. The mere

assertion that the plot and construction allegedly cost more than the agreed sale consideration cannot, by itself, invalidate the transaction or negate the appellant's claim. Consequently, the stance taken by respondent No.1 in this regard is of no legal consequence insofar as the validity of the agreement or the appellant's entitlement to relief is concerned. The learned lower appellate court, however, appears to have treated the said stance of respondent No.1 as a determinative factor, thereby overlooking the dominant features of the transaction as well as the documentary evidence placed on the record in support of the appellant's case.

16. In view of the above discussion, it becomes evident that the findings recorded by the learned lower appellate court are the result of misreading and non-reading of material evidence available on record. The well-reasoned findings of the learned trial court, which were based on proper appreciation of both oral and documentary evidence, did not warrant interference in the Civil Appeal.

17. Accordingly, the present appeal under Section 100 of the Code of Civil Procedure, 1908 is allowed. The impugned judgment dated **07.03.2009** and decree dated **14.03.2009** passed by the learned Vth Additional District Judge, Central, Karachi in Civil Appeal No.34 of 2008 are set aside, and the judgment dated **25.03.2008** and decree dated **27.03.2008** passed by the learned 4th Senior Civil Judge, Central, Karachi in Suit No.712 of 2004 are restored.

JUDGE