

IN THE HIGH COURT OF SINDH, KARACHI

IInd Appeal No. 193 of 2024

[Muhammad Ashraf Khan and others vs.Mst. Shumaila Abdul Aziz and others]

Mr. Muhammad Tariq Advocate for the Appellants.

Date of Hearing and Order 06.03.2026.

O R D E R

ARSHAD HUSSAIN KHAN, J. Through instant IInd Appeal, filed under Section 100 of the Code of Civil Procedure, 1908, the appellants challenge the judgment and decree dated 16-03-2024, passed by the learned VIth Additional District & Sessions Judge, Karachi (East), in Civil Appeal No. 306 of 2023, whereby the appeal preferred by the appellant was dismissed, maintaining the judgment and decree dated 18-08-2023, passed by the learned IVth Senior Civil Judge/Assistant Judge, Karachi (East), in Suit No. 1716 of 2020, whereby the suit of the appellant was dismissed. The appellants seek that the impugned judgments and decrees of both the courts below be set aside and the suit be decreed as prayed.

2. Briefly, the facts of the case are that the appellants/plaintiffs filed Suit No. 1716 of 2020 before the learned IVth Senior Civil Judge, Karachi (East), seeking declaration, cancellation, partition, and permanent injunction in respect of a portion of the house constructed on Plot No. 2/10, Area 2-A, Landhi No. 3½, Karachi, which they claimed to have inherited as legal heirs of the deceased Muhammad Mustaqeem Khan. It was averred that the father of the appellants, being co-owner of the suit property, had not sold the said portion to the deceased Azhar Imran, late husband of defendant No. 1, and that the so-called Sale Deed dated 27-11-2013 in favor of the deceased Azhar Imran was allegedly forged or fraudulently managed. The appellants/plaintiffs claimed that they had been in lawful possession of the property since birth and sought cancellation of the sale deed, partition of the property, and protection against dispossession.

Before the learned trial court the defendants/respondents denied the allegations and contended that the suit was filed with mala fide intentions. It was asserted that the sale deed in favor of the

deceased Azhar Imran was genuine, executed and registered in accordance with law, and that the appellants/plaintiffs had no share in the ground floor of the property. The respondents/defendants further claimed that the appellants/plaintiffs were attempting to dispossess them and wrongfully assert ownership over the portion of the property in dispute.

After framing of the issues, the trial court upon perusal of the evidence /pleadings, held that the plaintiffs had failed to establish that the sale deed was obtained fraudulently or that they had contributed to the construction of the property, and consequently dismissed the suit vide the impugned judgment dated 18.08.2023, passed by the learned trial court. The aforesaid judgment and decree were challenged before the appellate court through Civil Appeal No.306/2023, which was also dismissed by the learned VIth Additional District Judge Karachi, East, vide the impugned judgment and decree dated 16.03.2024. Hence, the present 2nd appeal.

3. Learned counsel for the appellants has contended that the learned Trial Court as well as the learned Appellate Court failed to appreciate the evidence and documents on the record in their true perspective. It was argued that the sale deed dated 27-11-2013 in favor of the deceased Azhar Imran was obtained by the respondents No. 1 and 2 through mala fide means and without lawful justification, and that the appellants had produced unchallenged and unrebutted evidence to establish their ownership and entitlement over the suit property. Learned counsel has further submitted that the courts below ignored the legal principle that the burden of proof lies on the party claiming benefit from the property, and failed to consider the non-production of any cogent evidence by the respondents to substantiate the sale deed. It was urged that the impugned judgments and decrees are based on misconstruction of facts and law, are arbitrary, and have resulted in a miscarriage of justice. He has prayed that this Court be pleased to examine the record afresh and set aside the judgments and decrees of the courts below.

4. I have given due consideration to the submissions advanced by learned counsel for the appellants and have carefully examined the

material available on record, including the judgments of both the courts below.

At the very outset, it may be noted that this is a Second Appeal under Section 100 of the Code of Civil Procedure, 1908. It is well-settled that a Second Appeal under Section 100 CPC cannot be used as a forum for re-appreciation of evidence or re-argument of factual disputes, and can only be entertained where a substantial question of law arises. It is also well settled that concurrent findings of fact recorded by the courts below cannot be interfered with unless it is demonstrated that such findings are the result of misreading or non-reading of material evidence, are perverse, arbitrary, or suffer from any legal infirmity of a substantial nature.

5. In the instant case, the primary controversy revolves around the appellants' claim that the sale deed dated 27.11.2013, executed in favour of the deceased Azhar Imran, was forged and fraudulent, and that they, as legal heirs of the deceased Muhammad Mustaqeem Khan, retained ownership and possession over the suit property. However, a careful examination of the record shows that both the learned trial court and the learned appellate court have concurrently held that the appellants failed to discharge the burden of proof cast upon them, having produced no independent or corroborative evidence, such as attesting witnesses, financial records, or official verification, to substantiate their allegations.

6. It is an admitted position that the appellants approached the court with the specific plea of fraud and forgery with regard to a registered sale deed. The law is settled that allegations of fraud must not only be specifically pleaded but also strictly proved through cogent, convincing, and reliable evidence. Mere assertions or bald allegations, without corroboration, are not sufficient to invalidate a registered instrument, which otherwise carries a presumption of correctness and legality. In the present matter, the appellants failed to produce any independent or corroborative evidence to establish that the sale deed in question was the result of fraud, misrepresentation, or manipulation. No attesting witness, scribe, or relevant official record was brought on the record to dislodge the authenticity of the registered document.

7. Conversely, the respondents relied upon a duly executed and registered sale deed, which, under the law, enjoys a presumption of validity unless rebutted through strong and unimpeachable evidence. In this regard, it is observed by this Court that the appellants neither initiated any criminal proceedings nor sought any forensic examination to substantiate their plea of forgery. In the absence of such evidence, the mere denial of execution or allegation of fraud is insufficient to invalidate a registered document.

8. Furthermore, the appellants' claim regarding their alleged possession of the suit property and contribution towards its construction was examined in detail by the learned trial court. The findings reveal that no reliable documentary evidence, such as proof of financial contribution, utility bills, or independent witness testimony, was produced to substantiate their claim. On this basis, the courts below have concurrently held that the appellants failed to establish either their possession as claimed or their entitlement to seek partition of the disputed portion.

9. It is also pertinent to observe that the learned appellate court, while exercising its jurisdiction, has carefully reappraised the entire evidence and independently concurred with the findings of the learned trial court. The appellate court addressed all material aspects of the case, including the validity of the sale deed, the appellants' plea of fraud, and their alleged possession, and recorded well-reasoned findings that do not suffer from any illegality, perversity, or misappreciation of evidence. This further confirms that the concurrent findings of fact by the courts below are fully justified.

10. The contention of the learned counsel for the appellants that the burden of proof was wrongly placed is also without substance. In a case where a party seeks declaration and cancellation of a registered document on the ground of fraud, the burden squarely lies upon such party to prove its assertions. The appellants, having failed to discharge this burden, cannot seek reversal of concurrent findings merely on the basis of re-argument of facts, which is not permissible in Second Appeal.

11. No material has been pointed out which may indicate that the courts below have misread or ignored any vital piece of evidence, or that their findings are based on conjectures or surmises. The impugned judgments reflect a proper and lawful exercise of jurisdiction, based on appreciation of evidence in accordance with settled principles of law.

12. In view of the foregoing discussion, it is evident that the present matter does not involve any substantial question of law requiring adjudication by this Court. The appeal is essentially an attempt to re-agitate factual controversies already settled by the concurrent findings of the courts below, which is not permissible within the limited scope of Section 100, C.P.C. Consequently, the instant IInd Appeal, being devoid of merit and not raising any substantial question of law, is hereby dismissed in *limine*, along with all pending applications, if any.

JUDGE