

Order Sheet
IN THE HIGH COURT OF SINDH, KARACHI

IIInd Appeal No.24 of 2022

[Imtiaz Alam Nasim vs. Noor Muhammad Khanzada and others]

Appellant	Through M/s. M. Rafi and Naheed Akhtar Advocates
Respondents	Nemo
Date of Hearing	04.03.2026
Date of Order	04.03.2026

ARSHAD HUSSAIN KHAN, J.- This Second Appeal under Section 100 of the Code of Civil Procedure, 1908, is directed against the Judgment dated 28.09.2021 and Decree dated 04.10.2021, passed by the learned District Judge, Malir, Karachi, in Civil Appeal No.111 of 2019, which was dismissed and the Judgment and Decree dated 01.08.2019, passed by the learned Senior Civil Judge, Malir, Karachi, in Civil Suit No.250 of 2012 were maintained. Through the instant appeal, the appellant seeks setting aside of the aforesaid judgments and decrees and remand of the suit to the learned trial court for decision afresh on merits.

2. In a nutshell, the facts of the case are that the appellant/plaintiff, Imtiaz Alam Nasim, through his attorney, filed Civil Suit No.250 of 2012, claiming to be the lawful owner of Flat No. E-111, 1st Floor, Sara Avenue, Sub-Plot No. FIL-2/E-1, KDA Scheme No.33, Karachi, and sought declaration, possession, permanent injunction, and other consequential reliefs against the respondent/ defendant, alleging that respondent No.1 was occupying the flat without lawful title. Upon notice, respondent No.1 filed a written statement claiming ownership on the basis of an alleged sale agreement and general power of attorney. The trial court framed the issues regarding ownership, entitlement to relief, and maintainability of the suit; however, the suit was ultimately dismissed as neither the appellant/plaintiff nor the respondent/defendant led evidence. The appellant thereafter filed Civil Appeal No.111 of 2019, which was also dismissed by the learned District Judge, Malir, Karachi. Hence, the present Second Appeal.

3. Learned counsel for the appellant has argued that the learned courts below failed to properly appreciate the appellant's lawful ownership of the suit flat and dismissed the suit without affording him an adequate opportunity to lead evidence. It is contended that the trial court erroneously closed the appellant's side on 28.10.2017 and thereafter wrongly dismissed the applications seeking recall of the said order as well as amendment of the plaint under Order VI Rule 17 read with Section 151 C.P.C. Learned counsel has further contended that the learned lower appellate court failed to address these material aspects. Accordingly, it is prayed that the impugned judgments and decrees be set aside and the matter be remanded with directions to allow the proposed amendment and record evidence afresh.

4. In the present Second Appeal, it is observed that despite service of notice through all available modes, the respondents have not appeared and have chosen to remain absent, and the service against them was held to be good, vide order dated 29.11.2024. Consequently, the matter is being considered on the basis of the record and the submissions of the learned counsel for the appellant.

5. Heard learned counsel for the appellant and perused the material available on the record.

Upon careful examination, it is observed that the learned trial court, vide judgment dated 01.08.2019, dismissed Civil Suit No.250 of 2012 mainly on the ground that the plaintiff/appellant, Imtiaz Alam Nasim, through his attorney, failed to produce evidence despite repeated opportunities. The findings of the trial court were thus primarily based on procedural non-compliance rather than on the merits of the case.

6. The learned lower appellate court, vide judgment dated 28.09.2021, while concurring with the findings of the trial court, observed that the appellant had failed to avail the opportunities granted to lead evidence and that the applications filed under Order VI Rule 17 C.P.C. and Order XVIII Rules 2 and 17 C.P.C. were rightly dismissed. However, the lower appellate court did not comprehensively examine the substantive entitlement of the parties to the relief claimed. The findings of both courts thus remained largely confined to the procedural lapses on the part of the appellant, without adequately addressing the defendant's

claim of possession, the alleged sale agreement and power of attorney, or the appellant's asserted rights as pleaded in the plaint.

7. Notwithstanding the concurrent findings of the learned trial court and the lower appellate court regarding the procedural lapses on the part of the appellant, it is observed that the substantive rights of the parties, including ownership, possession, and execution of the relevant documents, were not fully examined. Ordinarily, a Second Appeal under Section 100 C.P.C. does not permit interference with concurrent findings of fact; however, in the present case, firstly there are no findings on the merits of the controversy, and secondly, a substantial question of law arises as to whether the appellant was deprived of an opportunity to have the dispute adjudicated on its merits.

8. In view of the foregoing, the judgments impugned in the present proceedings are set aside and the matter is remanded to the learned trial court with a direction to decide the case afresh, strictly in accordance with law, preferably within six (06) months from the date of receipt of this order.

The remand is intended to ensure that justice is done between the parties, to rectify the procedural lapses in the earlier proceedings, and to ensure that neither party is deprived of an opportunity to have its claim and defence adjudicated in accordance with law. The learned trial court shall afford both parties full and fair opportunity to lead evidence on all material issues and shall decide the suit on its merits, in accordance with the law of evidence, without being influenced by earlier procedural defaults.

The instant Second Appeal stands disposed of along with all pending applications.

JUDGE