

Order Sheet
IN THE HIGH COURT OF SINDH, KARACHI

IInd Appeal No.352 of 2025

Appellant	Through Mr. Muhammad Yousuf, Advocate
Respondent No.1 &2	Through Syed Salman Ali, Advocate.
Respondent No.3	Ms. Deeba Ali Jaffri , AAG Sindh
Respondent No.4	In person
Date of Hg:& Order	26.02.2026

ARSHAD HUSSAIN KHAN, J.- Through the instant Second Appeal, the Appellant has challenged the Judgment and Decree dated 26.08.2025, passed by learned Additional District Judge-VII, Karachi East, in Civil Appeal Nos.226 of 2024, whereby learned first appellate court dismissed the appeal and maintained the judgment and decree dated 02.05.2024, passed by the learned Senior Civil Judge-X, Karachi, East, in consolidated suits, through which the suit No. 2733 of 2022 filed by the appellant/plaintiff was dismissed and the suit No. 400 of 2023, filed by the Respondents was decreed.

2. Precisely, the facts giving rise to the present Second Appeal are that the appellant/plaintiff filed Civil Suit No. 2733 of 2022 seeking declaration, specific performance and permanent injunction in respect of House No. 580-L, Sector 48-C, Korangi, Karachi (*subject property*). It was averred that he had purchased the suit property from respondents No.1 and 2 through an agreement to sell dated 10.05.2022 for a consideration of Rs.40,00,000/-, which was fully paid in cash, and that possession of the property was delivered to him. According to the appellant, the respondents had also undertaken to transfer the property in his name, failing which they would pay mesne profits at the rate of Rs.1,000/- per day. However, despite receipt of the consideration, the respondents allegedly refused to complete the transfer and retained the original title documents, thereby committing fraud. Respondents No.1 and 2, in their written statement, denied the claim and contended that no such agreement was executed and that the alleged agreement relied upon by the appellant was forged. They asserted that they had purchased the suit property through a registered sale deed dated 28.06.2021 from the appellant's father, Saifuddin Khalid (respondent No.4), and that the appellant along with his family was unlawfully occupying the property

while the original title documents were in their lawful possession. Respondents No.3 and 4 failed to file written statements and were debarred, vide order dated 10.07.2023.

The respondents also instituted Civil Suit No.400 of 2023 seeking declaration, possession, mesne profits and permanent injunction regarding the same property. As both suits involved the same controversy, they were consolidated by the learned Trial Court. After framing issues and recording evidence, the learned Trial Court dismissed the appellant's suit and decreed the respondents' suit. The appellant's Civil Appeal No.226 of 2024 was also dismissed by the learned Lower Appellate Court, whereafter the appellant filed the present Second Appeal.

3. Learned counsel for the appellant contended that the impugned judgments and decrees are illegal, based on misreading and non-reading of evidence, and unsustainable in law; hence, the same are liable to be set aside. It is contended that the learned trial court as well as the lower appellate court have failed to properly appreciate the factual material available on the record, including the contents of the plaint, Iqarnama, and the sale agreement. It is further urged that the courts below overlooked the material aspect that respondents No.1 and 2 did not specifically deny their signatures on the agreement dated 10.05.2022. Learned counsel further submits that the said respondents remained silent until the institution of Suit No.2733/2022; and if, as alleged, the full and final consideration had been paid to defendant No.1 in Suit No.400/2023, there was no plausible explanation for such silence. According to the appellant, such conduct itself reflects that the entire sale consideration was not paid. It is thus contended that the learned courts below, without properly appreciating the evidence and material on record, decreed the suit in favour of respondents No.1 and 2, thereby rendering the impugned judgments and decrees liable to be set aside. It is further urged that respondents No.1 and 2 failed to produce any cogent or reliable evidence in support of their claim; therefore, the appellant is entitled to a decree in his favour.

4. Learned counsel for Respondent No.1 supported the concurrent findings of the courts below, contending that they are based on proper appreciation of evidence and involve no jurisdictional error or perversity.

He argued that no substantial question of law arises in this appeal; that the appellant failed to discharge his burden of proof and also failed to produce confidence-inspiring evidence in support of his stance, rendering his stance and claim unreliable. Lastly he contended that the present appeal, being devoid of merit is liable to be dismissed with costs.

5. Heard learned counsel for the parties and perused the material available on the record as well as relevant laws.

From the record, it appears that the learned trial court, vide judgment dated 02.05.2024, held that the appellant failed to prove the execution of the alleged sale agreement dated 10.05.2022 and, consequently, was not entitled to any of the reliefs claimed in the suit; thus, the suit of the appellant was dismissed. Conversely, respondents No.1 and 2 were found to have produced sufficient and reliable material during trial to establish their ownership of the subject property on the basis of registered documents. Accordingly, they were held entitled to recovery of possession of the property along with mesne profits quantified at Rs.10,000/- per month, as against their claim of Rs.30,000/- per month, and their suit was decreed. The learned lower appellate court, vide judgment dated 26.08.2025, dismissed the civil appeal and upheld the findings and conclusions recorded by the learned trial court.

6. A careful perusal of the impugned judgments reflects that both the courts below have concurrently recorded findings of fact after proper appreciation of oral and documentary evidence available on the record. It is also well settled law that concurrent findings of facts by the courts below cannot be disturbed by the High Court in second appeal, unless the courts below while recording the findings of fact have either misread the evidence or have ignored material piece of evidence¹.

7. Upon independent examination of the record, this Court finds that it is an admitted position that the subject property originally belonged to Saifuddin Khalid, the father of the appellant (arrayed as defendant No.4 in the suit filed by the appellant, defendant No.1 in the suit filed by the respondents, and presently respondent No.4). It is also an admitted position that the registered sale deed dated 28.06.2021 (Exh. D-1/3),

¹ *Keramat Ali and another v. Muhammad Yunus Haji and another* (PLD 1963 SC 191), *Phatana v. Mst. Wasai and another* (PLD 1965 SC 134) and *Haji Muhammad Din v. Malik Muhammad Abdullah* (PLD 1994 SC 291).

allegedly executed in favour of the respondents, was not disputed by respondent No.4.

8. Insofar as the alleged agreement to sell dated 10.05.2022 (Exh.P/2) is concerned, the appellant has failed to substantiate the payment of sale consideration through reliable and confidence-inspiring evidence. In support thereof, only one marginal witness, namely Muhammad Kashif, was examined; however, his testimony does not inspire confidence. The second marginal witness, Muhammad Rizwan, though initially appeared and recorded his examination-in-chief, but failed to present himself for cross-examination and was subsequently withdrawn by the appellant. Significantly, the said witness is the real brother of the appellant, which further diminishes the evidentiary worth of his testimony.

9. Moreover, respondent No.4, being a material and necessary witness, neither participated in the proceedings nor entered the witness box to support the appellant's case. It has also come on record that both the appellant and respondent No.4 were already residing in the subject property prior to the alleged execution of the agreement dated 10.05.2022.

10. The cumulative effect of the evidence discussed above leads to the inescapable conclusion that the appellant has failed to discharge the burden of proof with regard to the execution of the alleged agreement dated 10.05.2022 as well as the payment of the sale consideration. The evidence produced is neither reliable nor confidence-inspiring, and the non-production of material witnesses further undermines the appellant's case. Consequently, the claim of the appellant is devoid of merit and is not sustainable in law and has rightly been dismissed by the courts below.

11. The present Second Appeal has been filed under Section 100, C.P.C., which restricts the jurisdiction of this Court to cases involving a substantial question of law, a material question of law having been left undetermined, or a substantial procedural error resulting in miscarriage of justice. No second appeal lies on any other ground. In the instant case, the concurrent findings of the courts below are based on proper appreciation of evidence and correct application of law. These findings are essentially factual and do not give rise to any substantial question of

law warranting interference. The grounds urged in the present appeal merely seek reappraisal of factual issues already examined by the courts below, which is beyond the limited scope of Section 100, C.P.C.

12. Learned counsel for the appellant was unable to point out any substantial error, illegality, infirmity, or jurisdictional defect in the impugned judgments and decrees. Conversely, the impugned judgments and decrees are well-reasoned and supported by the evidence on the record and thus call for no interference. Accordingly, the present second appeal, being devoid of merit, is hereby dismissed.

JUDGE

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