

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

IInd Appeal No.92 of 2021

Date	Order with signature of the Judge
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Hearing / Priority.

1. For hearing of CMA No.2370 of 2021.
2. For hearing of main case.

13.04.2026

Syed Abid Ali Qadri, Advocate for the Appellant.
None present for the Respondents.

Despite publication and usual mode of service, the Respondent is not present, therefore, this Appeal is heard *ex-parte*, because service is held good.

2. The learned Counsel states that the question of law involved in the second Appeal is that both the learned Courts have not appraised the evidence correctly in a Suit for Specific Performance filed by the Appellant against the Respondent No.1 (*Mst. Shehla Israr*) in respect of the Office Premises bearing No.104 at PP-21/2 HMH Square, situated at Block No.12, Sir Shah Suleman Road, Gulshan-e-Iqbal, Karachi-the '**Subject Property**' in which the Appellant was tenant, but later purchased the same through the Sale Agreement dated 16.08.2005 (page-83) against a Sale Receipt, issued by the Respondent (at page-87) of the present **LIS** record. Sates that his Suit was not timed barred as held by both the learned Courts, because after receiving payment of Rs.20,000/- (*rupees twenty thousand only*) in the year 2008 (*Paragraph 7 of the Complaint*), the Legal Notice was issued on 08.08.2015 and the Suit was filed in the same year.

3. Arguments heard and Record perused.

4. The matter was contested by the Respondent No.1 by filing the Written Statement in which the transaction itself was denied with the plea that the signatures of Respondent No.1 are forged.

5. Following Issues were framed by the learned Trial Court and evidence was led_

“I) Whether the suit is not maintainable? OPD

II) Whether the plaintiff and defendant No.1 has ever entered into an agreement for sale of suit office bearing No.104, PP-21/2, H.M.H. Square, Block-12, Sir Shah Sulleman Road, Gulshan-e-Iqbal, Karachi? OPP

III) Whether the plaintiff paid any amount to the plaintiff on account of sale consideration? OPP

VI) Whether the plaintiff is entitled for the reliefs claimed?

V) What should the decree be?”

6. The learned Trial Court has discussed in detail the scope and effect of Article 113 of the Limitation Act, 1908, providing three years' limitation in filing the Suit for Specific Performance, either from the date mentioned in the Sale Agreement or refusal. The learned Trial Court has exhaustively discussed that since the Sale Agreement in question does not provide a timeframe, therefore, three years will be calculated from the date of refusal. According to the Appellant's pleadings, lastly, a sum of Rs.20,000/- (rupees twenty thousand only) was paid in the year 2008, therefore, filing the Suit in the year 2015 is not adversely affected by the Limitation Act, because few months back a legal notice was also sent (as stated in the foregoing Paragraph). The contention is incorrect and misconceived in nature. The findings of the learned Trial Court (*upheld in the Appellate Judgment*) is correct. The time of refusal on the part of the Respondent No.1 can be seen from the Paragraphs-6 and 8 of the Plaint itself, wherein it is stated, *inter*

alia, after receiving the above amount of Rs.20,000/- (*rupees twenty thousand only*), the Respondent No.1 remained silent despite several requests for execution of the Sale Deed. The Suit is admittedly filed in the year 2015, that is, after seven years, and no other undisputed development has taken place in the intervening period, which could be termed as a fresh or continuing cause of action.

Even if Section 53-A of the Transfer of Property Act, is invoked in the present matter, as the Appellant was in possession of the Subject Property, yet it will not aid the case of the Appellant because it is a settled rule with regard to the above provision that it can be only taken as a shield in an appropriate case, where the facts so demand, and not as a sword to deprive a lawful owner of his / her property. In this regard, a reported Judgment of the Hon'ble Supreme Court handed down in [*Syed Athar Hussain Shah versus Haji Muhammad Riaz and others*]-2022 SCMR 778, is relevant. **Secondly**, Section 53-A of the Transfer of Property Act, can be invoked in a *bona fide* sale transaction, when the purchaser is in possession of the property in pursuance of the Sale Agreement, but here, admittedly the present Appellant Company was in possession of the Subject Property, as a tenant and, therefore, to the facts of present case Section 53-A is not even applicable; **PLD 1990 Supreme Court 382** [*Mst. Azzemun Nisa Begum versus Ali Muhammad*].

7. The other issue with regard to the sale transaction itself is also decided on the basis of evidence led; one of the attesting witnesses of the Appellant's Company, namely, Muhammad Usman was unable to corroborate the evidence of the Appellant about the main elements of the sale agreement; *inter alia*, he admitted that owner of the property (Respondent No.1) was not available when the witness signed the

Agreement, nor he remembers whether the signatures of Shaikh Muhammad Furqan who was Representative of the Appellant Company was also available on the Agreement. He also deposed as under_

‘...I do not remember whether there was signature of Mst. Shehla available on receipt, when I had signed on it. I do not know witness Abid Suleman. I cannot say whether signature of defendant was forged on sale agreement and receipt...’

Whereas, the sole witness from the Respondents’ side, her son Kamran Israr Khan has specifically mentioned in his Affidavit-in-Evidence / Examination-in-chief that the sale agreement is a forged document and in cross-examination no specific questions were put to him regarding this material assertion, which also goes against the Appellant. The Appellant’s Counsel argued, that above Witness of Respondent-Lady, did not deny the signature of his Parents on the above Sale Receipt, which confirms the authenticity of the Sale Agreement, cannot be accepted; because, *firstly*, when the Sale Agreement is not proven in accordance with law, the Sale Receipt was in pursuance thereof cannot be accepted as a genuine document; *secondly*, the above defence witness (Attorney of Respondent No.1) was consistent in his cross-examination, when he stated that Rs.20,000/- (*rupees twenty thousand only*) was received by his Mother (Respondent No.1) as arrears of rent, which fact could not be further controverted by the Appellant. *Thirdly*, the second marginal witness Suleman was not examined at the relevant time, but a belated Application was given to examine him with the only ground that he was not in contact with the Appellant and the Application was correctly dismissed by the Court.

In the present case, when the Sale Agreement is seriously disputed, non-examining of the second marginal witness is fatal to the case of the Appellant, as ruled in number of judicial pronouncements, which are correctly considered in the impugned Judgment.

8. The Appellate Court while handing down its Judgment has considered all these aspects of the case and agreed with the findings recorded by the learned Trial Court.

9. Both the Courts have exercised their jurisdiction properly and not only appreciated the evidence, but applied the law correctly to the facts of the case. Both the Decisions are maintained. Consequently, this Appeal is dismissed along with pending application(s), if any.

JUDGE