

Judgment Sheet
IN THE HIGH COURT OF SINDH, KARACHI
IIInd Appeal No. 299 of 2024
[Nawab Zada v. Muhammad Younis and others]

Appellant	Through M/s. M.S. Bukhari and Babar Ali, Advocates.
Respondent No.1	Through M/s. Abdul Samad Bhutto, Muhammad Khan Lakho and Riaz Ahmed, Advocates.
Respondents No.2-4	Through Mr. Matloob Qureshi, Advocate.
Date of Hearing & Order	28.10.2025

ARSHAD HUSSAIN KHAN, J.- The appellant, through the instant Second Appeal, has challenged the concurrent findings of the courts below and seeks to set aside (i) the judgment dated **27.11.2023** passed by the trial court in Suit No.201/2023, and (ii) the judgment dated **31.08.2024**, passed by the learned appellate court in Appeal No.25/2024. Both these decisions shall hereinafter be referred to as the impugned judgments.

2. Concisely, respondent/ the plaintiff-Muhammad Younis filed civil suit No.201/2023, before Sr. Civil Judge-IV Karachi [East] for Declaration, Possession, Mesne Profit, Cancellation of documents & Permanent Injunction, with the following prayers:

- a) To declare that the plaintiff is lawfully entitled to hold and possess suit property bearing i.e Plot No. 376/10, admeasuring 80 Square Yards, Ground plus, Double-Storey constructed, situated at Lasbella Chowk, Street Islam Ganj, Garden West, Karachi, purchased through registered sale deed dated 28.01.2021 registered at Sub- Registrar Jamshed Town-II, Karachi bearing Registration No. 554, Book No. 1.
- b) Declare that forcibly dispossession of the plaintiff from the subject property is illegal and to restore the possession of the subject property in favor of plaintiff against defendant No. 4.
- c) Direct the defendant No. 4 to hand over vacant and peaceful possession of the suit property to the plaintiff immediately.
- d) Direct the defendant No. 4 to pay mesne profit to the plaintiff at the rate of Rs.80,000/- per month from September, 2020 till disposal of this case (detail mentioned in Para 19).
- e) Declare that the Sale Agreement dated 15.05.2019 in respect of suit property is forged, fabricated and manipulated null and void, ab-initio, as the Sale Agreement is liable to be cancelled.
- f) To grant permanent injunction restraining the defendants, their agents, representatives, attorneys, employees, servants, subordinates, henchmen and/or anyone acting on their behalf from transferring, selling, mortgaging, alienating the above referred suit property in the name of any person and restrain

them from creating any third party interest in any manner(s) till the disposal of the instant suit.

- g) Award costs of the suit.
- h) Grant any other/further/additional relief or reliefs as this Hon'ble Court may deem fit and proper under the circumstances of the case.

3. At the trial, summons were issued to all defendants; however, only defendant No.1, Altaf Gul, and defendant No.4/appellant, Nawabzada, appeared, while the remaining defendants were proceeded ex-parte. Defendant No.1 did not contest the matter, and the appellant/defendant No.4 failed to file a written statement despite opportunity, resulting in ex-parte proceedings against him as well. The suit was accordingly decreed as prayed, except for mesne profits, which were assessed at Rs.50,000/- per month from January 2021 until vacation of the property. The judgment dated **27.11.2023**, passed by the trial court was upheld by the appellate court in Civil Appeal No.25/2024 through judgment dated **31.08.2024**, both of which have been impugned through the present Second Appeal.

4. Learned counsel for the appellant contends that the impugned judgments are illegal, arbitrary, and in violation of natural justice. He submits that the appellate court erroneously upheld the trial court's finding that the appellant's son was a tenant, despite dismissal of Rent Case No.51/2022 and FRA No.932/2023. The appellant had entered into a sale agreement dated 15.05.2019 with Respondents No.2-4 for Rs.1,50,00,000/-, supported by receipts, cheques, and thumb impressions, which were disregarded without verification. Both courts also wrongly treated documents in Civil Suit No.1804/2021 as "fake," though the suit was subsequently restored in his favour. The appellant's advocate was engaged elsewhere when the trial court proceeded ex-parte, denied adjournment, and barred from filing of a written statement or cross-examination, violating *audi alteram partem*. He, therefore, prays that both judgments be set aside and the matter be remanded for a fresh adjudication.

5. Learned counsel for Respondent No.1 contends that the appeal is misconceived and without merit. The appellant's alleged sale agreement, receipts, and Power of Attorney were never executed by Respondents No.2-4. Respondent No.1 lawfully acquired the property through registered sale deeds dated 28-06-2019 and 24-09-2020, and possession was delivered. The appellant's son remained a lawful tenant under the agreement dated 16-01-2019. Despite repeated opportunities, the appellant did not file a written statement, and also failed to cross-examine witnesses, or argue the case. The trial and appellate courts have correctly decreed the matter in favour of

Respondent No.1. Learned counsel has finally prayed for dismissal of the appeal.

6. Learned counsel for Respondents No.2 to 4 submits that the appellant's claims are wholly misconceived. He contends that the sale agreement dated 15.05.2019 pertained to a total consideration of Rs.1,50,00,000/-, out of which only Rs.75,00,000/- was paid, and the balance amount was subject to fulfillment of certain conditions. However, without completing the remaining payments or obtaining the respondents' consent, the appellant unilaterally executed the purported sale deed and relied on a forged agreement in an attempt to claim ownership of the entire property, including portions that were never in his possession. It is further submitted that the first and second floors had already been sold out separately to Respondent No.1. The respondents assert that they remained willing to transfer lawful ownership or possession only upon receipt of the remaining consideration and delivery of the original file. Learned counsel has lastly argued that in these circumstances the present appeal is devoid of merit and liable to be dismissed.

7. In essence, the case of the appellant is that he lawfully purchased the suit property through a sale agreement dated 15.05.2019 executed by Respondents No.2 to 4, supported by receipts and payments allegedly made towards the sale consideration. He maintains that neither he nor his son were ever tenants of Respondent No.1, and the findings of tenancy are based on misreading of record. It is further asserted that the ex-parte proceedings were conducted in violation of natural justice, depriving him of an opportunity to contest the claim. **Whereas**, the respondent/plaintiff claimed that he purchased the suit property measuring 80 sq. yards, part of Survey No.376, Garden West, Karachi, from defendant Nos.1-3 (respondent No. 2 to 4 herein) through a registered sale deed dated 28.01.2021. He alleged that the appellant [defendant No.4], occupying a portion via his son as tenant, unlawfully retained possession, made alterations, and later prepared a false sale agreement dated 15.05.2019. The trial court granted declaration of ownership, recovery of possession, cancellation of forged documents, and permanent injunction, which was upheld on appeal.

8. Upon examination of the record and submissions of the parties, it is evident that the appellant failed to meaningfully contest Respondent No.1's claim despite service of summons and repeated opportunities to file a written statement, cross-examine witnesses, or argue the case. His denial of tenancy is contradicted by prior rent proceedings. The alleged sale agreement dated 15-05-2019, which is not executed by Respondents No.2-4 and has no independent verification, along with related receipts, remains unproved. The

appellant's conduct, including preparation of unexecuted or forged documents and non-participation in trial proceedings, reflects an attempt to create a false narrative of ownership. In contrast, Respondent No.1's claims are supported by registered sale deeds, lawful delivery of possession, and a valid tenancy agreement for Shop No.2. On careful assessment, it appears that the trial court's findings are well-founded in law and fact, and has rightly been upheld by the appellate court, leaving no scope for interference in this second appeal.

9. Besides, it is a well-settled principle of law that concurrent findings of fact recorded by the courts below cannot be interfered with by the High Court in second appeal, unless it is demonstrated that such findings are vitiated by misreading of evidence, non-consideration of material evidence, or any other manifest illegality.¹ The concurrent findings rendered by the learned courts below are entitled to deference, and in the absence of any jurisdictional defect, legal infirmity, or misapprehension of evidence, which are obviously absent in the present case, such findings cannot be disturbed. The learned counsel for the appellant has also failed to point out any material irregularity in this regard.

10. Moreover, it is pertinent to note that the instant matter has been brought before this Court in the form of a second appeal under Section 100, Code of Civil Procedure, 1908. The scope of such jurisdiction is limited and can only be invoked on any of the following grounds:

- (a) Where the decision is contrary to law or a usage having the force of law;
- (b) Where the court below has failed to determine a material issue of law or a usage having the force of law; or
- (c) Where there is a substantial error or defect in the procedure prescribed by the CPC or any other law for the time being in force, which may have resulted in an erroneous or defective decision on the merits.

None of the aforesaid grounds is attracted in the present appeal. Learned counsel for the appellant has also failed to point out any illegality or infirmity and/or anything contrary to law or to some usage having the force of law in the orders of the two courts below.

11. Furthermore, the Supreme Court of Pakistan, in the case of *Zafar Iqbal and others v. Naseer Ahmed and others* [2022 SCMR 2006], has interpreted the scope and ambit of Section 100, CPC, observing that the High Court in a second appeal is restricted to questions of law and cannot re-examine findings of fact recorded by the courts below. It cannot assume the role of a first

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].

appellate court, nor substitute its own conclusions for those of the lower fora, unless the findings are erroneous, defective, or result in a miscarriage of justice. This principle has been reaffirmed in *Muzafar Iqbal vs. Mst. Riffat Parveen and others* [2023 SCMR 1652], emphasizing that while the appellate court under Section 96, CPC, may examine questions of fact, the High Court in second appeal under Section 100, CPC, must exercise caution and restraint, ensuring finality of litigation and preventing re-evaluation of facts in the form of a second appeal.

12. It may be observed that the Legislature, by limiting the scope of a second appeal under Section 100, C.P.C., intended to secure the finality of litigation and to discourage repeated challenges premised merely on questions of fact. Interference with concurrent findings of fact, in the absence of jurisdictional error or a substantial question of law, would not only transgress the statutory boundaries but also frustrate the very object of expeditious and effective dispensation of justice. This Court, while exercising its jurisdiction under Section 100 CPC is therefore required to exercise caution and restraint as it cannot assume the role of a fact-finding forum.

Accordingly, in view of the above discussion, this second appeal is **dismissed** being devoid of any merit.

JUDGE