

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT  
LARKANA**

Civil Revision No. 03 of 2015  
[Dr. Rajkumar alias Gul versus Anand Ram and others]

Date of hearing : 01.03.2019

Applicant : Dr. Rajkumar alias Gul through Mr. Vinod Kumar G. Jesrani, Advocate.

Respondents 1&2 : Anand Ram and another through Mr. Ghulam Dastagir A. Shahani, Advocate.

Respondents 3-5 : Sub-Registrar, Larkana & others through Mr. Naimatullah Bhurgri, AAG.

**ORDER**

**Adnan Iqbal Chaudhry J.** - The plaint of the Applicant's suit was rejected and the rejection was maintained in appeal; hence this Civil Revision.

2. The Applicant filed suit against the Respondents before the IV-Senior Civil Judge, Larkana with the following prayer:

- i) *To declare that the plaintiff is also co-owner and co-sharer to the extent of 2/3 share i.e (0-66) paisa share in the suit property i.e a House bearing C.S No. 1405 (143) Sq. yards Ward "C" Nawatak Mohalla, Larkana, the defendant No.2 is not sole owner of the suit property and is only co-sharer to the extent of 1/3 i.e (0-33) paisa;*
- ii) *To declare that the Registered Sale Deed dated 30.7.2012 in the name of defendant No.2 only, being illegal, malafide, arbitrary false and forged confers no little or right upon the defendant No.2 solely and in alternative order the defendant No.2 to submit the original Registered Sale Deed dated 30.7.2012 before this court then order for its cancellation accordingly;*
- iii) *Issue perpetual injunction against the defendants No.1 and 2 restraining them from doing any kind of business activity at the suit property, themselves and through any body else, its alienation and from forcible dispossession of the plaintiff from the part of the suit property in his possession;*
- iv) *Award costs ..... ;*

v) *Any other equitable relief .....* ;

3. Per the plaint, the Applicant had entered into an oral contract to purchase the suit house from with the owners/sellers; that under such oral contract, the sale deed of the suit house was to be executed by the sellers in favour of the Applicant and the Respondent No.1 as joint purchasers inasmuch as there was another oral contract between the Applicant and the Respondent No.1 to purchase the suit house jointly; that behind the back of the Applicant, the Respondent No.1 asked the sellers to execute the sale deed in favour of the Respondent No.2 who was the nephew of the Respondent No.1, but the sellers refused and informed the Applicant of such attempt made by the Respondent No.1; that the Respondent No.1 explained that the sale deed with stamp duty had been prepared by mistake in the name of the Respondent No.2, and he convinced the Applicant to go along with such sale deed, assuring him that he (the Respondent No.1) would not deprive the Applicant of his share in the suit house; that given that they were closely related, the Applicant trusted the Respondent No.1, and then both requested the sellers to execute the sale deed in the name of the Respondent No.2, which the sellers did vide a registered instrument dated 30-07-2012; that after obtaining possession of the suit house from the sellers, the Applicant demanded from the Respondent No.1 that documents be executed for the division of the suit house amongst the Applicant and the Respondent No.1 as agreed, but the Respondent No.1 refused; that thereafter, during settlement negotiations between the parties, the suit house was privately sub-divided by them and the Applicant constructed a dividing wall to bifurcate the suit house; that subsequently negotiations broke down, the Respondent No.1 demolished the dividing wall and the Applicant filed suit. It was also pleaded by the Applicant that he was the one who had paid the major part of the sale consideration to the sellers and that his case was supported by an affidavit signed by one of the sellers.

4. The Suit was not admitted by the Senior Civil Judge and the Applicant's counsel was put on notice to satisfy the Court of its maintainability. After hearing the Applicant's counsel, the Senior Civil Judge rejected the plaint under Order VII Rule 11 CPC for the reason that since the Applicant was unable to show any document to demonstrate the agreement between himself and the Respondent No.1, he had no cause of action, and therefore even if the suit was admitted, the Applicant would not be entitled to the relief prayed for.

On appeal, the learned District Judge held that assuming there was an oral contract between the Applicant and the sellers, then it was the sellers who had committed breach of contract by conveying the suit house to the Respondent No.2, and therefore the remedy of the Applicant was to sue the sellers for specific performance of the oral contract and to sue the Respondent No.2 for cancellation of the registered sale deed. For the said reason, the learned District Judge concluded that the Suit was without a cause of action, it was 'fruitless litigation' and he dismissed the Applicant's appeal.

5. Mr. Vinod Kumar, learned counsel for the Applicant submitted that both the Courts below had mis-read the case of the Applicant who had pleaded that there was also an oral contract between the Applicant and the Respondent No.1 that the Applicant's share of the suit house would be transferred to him; that the Respondent No.1 managed to get the sale deed executed in favor of the Respondent No.2 by playing fraud upon the Applicant; that even if the prayer for declaration was not maintainable, the Applicant had also prayed for cancellation of the registered sale deed and therefore the plaint could not have been rejected; that in any case, while assessing the plaint for rejection or otherwise, only the averments in the plaint had to be seen and the plaint could not be rejected on the assumption that the Applicant/plaintiff would not ultimately succeed.

6. Mr. Ghulam Dastagir Shahani, learned counsel for the Respondents 1 and 2 while supporting the impugned orders submitted that the question of fraud does not arise when the sale

deed was executed in favor of the Respondent No.2 with the knowledge and consent of the Applicant. He submitted further that the Applicant had never pleaded any oral contract with the Respondent No.2 in whose favour the sale deed was registered, and therefore even going by the plaint, the remedy of the Applicant was a suit for specific performance against the Respondent No.1.

7. Heard the learned counsel and perused the record.

The observation of the trial court that the Applicant was unable to show any document to demonstrate the agreement between himself and the Respondent No.1, was a non-reading of the plaint. It was never the case of the Applicant that there was a written contract between him and the Respondent No.1, but that there was an oral contract between them.

8. While the Appellate Court did notice that the Applicant had pleaded an oral contract, but the Appellate Court mis-read the plaint in observing that the oral contract, if any, was between the Applicant and the sellers, and therefore the Applicant ought to have sued the sellers for specific performance of the oral contract. Though the plaint may have lacked clarity, a careful perusal thereof would have shown that the Applicant had pleaded three oral contracts. The first oral contract was said to be between the Applicant and the Respondent No.1 to buy the suit house jointly. The second oral contract was said to be between the Applicant and the sellers to sell/transfer the suit house jointly to the Applicant and the Respondent No.1. And the third oral contract was again said to be between the Applicant and the Respondent No.1 whereby the Respondent No.1 had agreed to cause his nephew, the Respondent No.2, to convey a part of the suit house to the Applicant if the Applicant gave his consent to the execution of the sale deed in favor of the Respondent No.2. The Appellate Court failed to notice that when the Applicant had acknowledged in the plaint that he had initially consented to the execution of the sale deed in favor of the Respondent No.2, his grievance was not against the sellers, but his case was that he had

been defrauded by the Respondent No.1 into giving consent to the execution of the sale deed in favor of the Respondent No.2.

9. While it is true that the Applicant had not prayed for specific performance of his last oral contract with the Respondent No.1, he had nevertheless prayed for cancellation of the sale deed registered in favor of the Respondent No.2. A perusal of the plaint shows that the prayer for cancellation under section 39 of the Specific Relief Act, 1877 was not sought as consequential or ancillary relief, but as an independent relief. Therefore, even if the relief for declaration was not maintainable, and even if no relief had been sought for specific performance of the third oral contract with the Respondent No.1, the plaint could still not be rejected. Whether the Applicant would have ultimately succeeded on his prayer under section 39 of the Specific Relief Act, was another matter. It is settled law that for rejection of the plaint, it is primarily the averments in the plaint that have to be looked at. Therefore, the observation of both the Courts below that that the Suit will not succeed and was 'fruitless litigation', was beyond the scope of scrutiny under Order VII Rule 11 CPC.

10. For the foregoing reasons, this Civil Revision is allowed. The impugned orders dated 07-04-2014 and 01-10-2014 passed respectively by the IV-Senior Civil Judge, Larkana in F.C. Suit No. Nil/2014 and the District Judge, Larkana in Civil Appeal No. 12/2014 are set aside, and the application for rejection of the plaint is dismissed. The trial court shall proceed further with the said Suit. Accordingly, this Revision is disposed of along with the pending application.

**J U D G E**

**Dated: 19-08-2019**