

IN THE HIGH COURT OF SINDH, KARACHI

C.P No.D-2417 of 2017

Present:

1. **Mr. Justice Syed Hassan Azhar Rizvi**
2. **Justice Mrs. Kausar Sultana Hussain**

Mansoor Akbar attorney of Mst. Noorus Sabah ...Vs...Jalal Akbar and two others

Date of hearing : 20.09.2019

For the Petitioner : Mr. Ibbadul Husnain, Advocate.

Nemo for respondents.

J U D G M E N T

KAUSAR SULTANA HUSSAIN, J:- The petitioner/applicant filed present Constitution Petition No.D-2417/2017 being aggrieved and dissatisfied with the impugned order dated 14.3.2017, passed by the learned IXth Additional District Judge Karachi-East in Civil Revision No.11 of 2017, whereby the same was dismissed with no order as to costs and impugned order dated 11.11.2016 passed by the learned IVth Senior Civil Judge, Karachi-East in Suit No.860/2016 was maintained and direct the Nazir of the Court to cause mutation affected with the concerned authority in terms of the compromise decree passed by the learned trial Court vide order dated 04.7.2016.

2. Facts of the case requisite for disposal of this constitution petition are that the petitioner/plaintiff filed a suit for specific performance, declaration, injunction and damages against the respondent No.1/defendant for subject matter of the suit viz; plot No.222-D-1, Block-2, PECHS, Karachi. Subject property was initially leased in the name of one Sajjad Haider and the same was transferred in the name of concerned persons by different modes and transactions. According to the petitioner/plaintiff, in 1997, one Fahimuddin transacted the suit property with the respondent No.1/defendant for sum of Rs.42,00000/- (Fourty Two Lacs only) through his son Iqbal Akbar and consequently in pursuance of sale

agreement dated 25.10.1997, the respondent No.1/defendant became owner of suit property. The copy of registered power of attorney coupled with sale agreement whereby indemnity bound was executed by Fahimudin alongwith an affidavit and written receipt proof shows that the respondent No.1/defendant became sole and absolute owner of suit property, as such publication dated 07.11.1997, in daily "Jasarat" newspaper was made. Subsequently, the respondent No.1/defendant offered the sale of suit property, which was accepted by the petitioner/plaintiff and they entered into transaction whereby double sale consideration was agreed at the rate of Rs.Ten Million, as such, sale agreement was executed between the parties. Later on, the dispute arose between the parties, resultantly; the petitioner/plaintiff through her attorney has filed the suit accordingly. During the pendency of the suit, the parties (petitioner/plaintiff & respondent No.1/defendant) have patched up the matter with each other and they filed compromise application alongwith supporting affidavits of parties (petitioner/plaintiff & respondent No.1/defendant), which was allowed by the Court of learned IVth Senior Civil Judge, Karachi-East, vide order dated 04.7.2016 and compromise decree has been passed accordingly.

3. We have heard the learned counsel for the petitioner and also have perused the entire record of the file. It is pertinent to mention here that the learned counsel for the respondents has not advanced his arguments inspite of auto fixation of this case.

4. The learned counsel for the petitioner has argued that the impugned orders passed by the two courts below are bad in law; that the judgment of the superior courts were binding upon the learned trial Courts, but they have ignored the judgments relied upon by him before them; that the judgment and decree passed by the learned trial Court itself need no further documents in their support

and in view of the judgment sufficiently passed the title upon the petitioner; that the decree itself is a title document in favour of the petitioner after passing of the decree no further title document is required and the learned trial Court has erred in giving the sale deed precedents over the decree of the court which was passed by itself; that Nazir is bound to act strictly in accordance with terms and conditions of the decree but he has failed to discharge his professional obligations and the mandate of the decree; that the decree holder has right to get the property mutated in her name after the decree, which has been grossly affected on account of the impugned order; that the required documents are also appended alongwith the memo of petition, thereby complying with the statutory mandatory provision of CPC, therefore, he prayed for allowing the instant petition as prayed. The learned counsel for the petitioner/plaintiff while advancing his arguments before this Court has relied upon the following judgment:-

a) **1996 CLC 686 (Lahore).**

As per facts it was pre-emption suit, Decree-holder deposited decretal amount within time, therefore, direct compliance of the decree was due against Revenue authorities to change entries.

b) **2008 SCMR 905.**

Suit for declaration of ownership was decreed by the learned Civil Judge. In this suit parties were LRs of deceased. Two points have been involved in this matter i.e. (i) Title cannot be decided on the basis of mutation got recorded on the basis of judgment/decreed & (ii) Limitation does not run against co-sharer.

c) **1992 CLC 1329 (Lahore).**

Suit for declaration was filed by the petitioner, who claimed to be a bona-fide purchaser of land in question-Directing the respondents to make entries in the Register Haqdaran with regard to the transfer in favour of the original allottee and its subsequent sale in favour of the petitioner. Suit was decreed ex-parte. The title of the petitioner was stand established by a decree of the Civil Courts. The respondent acted on the basis that the transfer in favour of the original allottee was fraudulent, therefore, the petitioner had no title to the property. Respondent ignored the decree of the Civil Court and

did not take any action to have it set aside. In these circumstances, while the mutation was sanctioned on the basis of the decree, it was clearly not open to the Collector to review it and thereby nullify the effect of the decree passed in favour of the petitioner.

5. After hearing arguments of the learned counsel for the petitioner and having gone through the impugned order dated 14.3.2017 passed by learned IXth Additional District & Sessions Judge, Karachi-East as well as the order dated 11.11.2016 passed by the learned IVth Senior Civil Judge, Karachi-East, we are of the view that the contention of the learned counsel for the petitioner first of all does not base on any law, which supports the contention of the learned counsel for the petitioner/plaintiff that the decree is itself a title and by all means is Sale Deed, therefore, there is no need for execution of Sale Deed of suit property. It is settled law that a decree for specific performance of a contract / sale agreement to sell property merely declares the right of the decree holder to have transfer of the property executed in his favour, such decree by itself does not transfer title. Hence, so long as the Sale Deed is not executed in favour of the successful party; either by the defendant himself or by the Court, the title to property continues, where it was before the passing of such a decree. A Sale Deed executed through the Court and registered has effect only from the date of execution and the title of the vendee does not relate back to the date of the original contract of Sale, which has resulted in a decree of the Court.

6. In the light of our observations in the matter, we are of the clear view that both the Courts below have rightly considered the matter according to the law provided for the specific performance of the contract, hence we do not find any reason to set aside the said impugned orders passed by the learned IVth Senior Civil Judge, Karachi-East and learned IXth Additional District Judge, Karachi-East, vide orders dated 11.11.2016 and 14.3.2017 respectively,

hence present petition is hereby dismissed having no merits. The learned trial Court is directed to execute the instant decree as provided in law. There shall be no order as to cost.

7. Reliances placed by the learned counsel for the petitioner before this Court do not have any relevancy with the facts of the instant case.

JUDGE

JUDGE

Faheem/PA