

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

R.A. No. 153 of 2011

Applicants : *Mr. Farhad Ali Abro, advocate*

Respondents : *Nemo (despite service, vide order dated 11.09.2018)*

Date of hearing : *25.10.2021*

Date of Order : *19.11.2021*

ORDER

ADNAN-UL-KARIM MEMON, J.- Through this Civil Revision Application, the Applicant has called in question the judgment dated 17.2.2011 passed by learned Vth Additional District Judge, Hyderabad in Civil Appeal No. 245 of 2009 (*Re: Muhammad Amin versus Nizam ul Haq*), whereby the learned Judge while dismissing the appeal maintained the judgment and decree dated 22.8.2009 & 04.11.2009 respectively, passed by learned IIIrd Senior Civil Judge, Hyderabad in F.C. No.274 of 1982 filed by the applicant on the ground that there existed no sale agreement in respect of purported House bearing CS No. G/57/8 by and between the parties.

2. At the very outset I asked learned counsel for the applicant as to how this Revision Application is maintainable against the concurrent findings of facts and law, as both the fora below have non-suited him due to non-existence of purported sale agreement dated 25.10.1980?

3. Mr. Farhad Ali Abro learned counsel for the applicant in his abortive attempt, tried to convince this Court, *inter alia*, on the ground that both the impugned judgments and decrees passed by the courts below are against the facts and law, thus liable to be set aside; that learned courts below did not consider the Judgment dated 6.3.2008 passed in C.A. No. 210 of 2002 as such both the judgments are nullity in the eyes of law; that learned trial court failed to apply its judicial mind while passing the impugned Judgment dated 22.8.2009 on the premise that neither the proposed interveners were joined as party nor any notice was served upon them as well as

directions with regard to amendment in the plaint were not followed, as such the impugned judgments could not be relied upon to non-suit the applicant; that learned trial court failed to provide chance to amend the plaint as directed by learned appellate court vide Judgment dated 26.3.2008 and erroneously non-suited the proposed interveners/applicants; that learned trial court failed to appreciate the evidence came on record in favor of the applicant; that learned trial court erred in dismissing the suit and failed to comply with the Judgment dated 26.3.2008 passed in C.A. No. 210 of 2002 in earlier round of litigation. He lastly prayed for setting aside both the judgments passed by the lower courts.

4. Perusal of record reflects that the private respondent is not appearing in this case, therefore, vide order dated 29.8.2018 this Court ordered for substitute service and notices were issued by all modes of service including publication in daily 'JANG', but even then he did not put his appearance. Be that as it may, in such circumstances I have no option but to hear the counsel for applicant and decide the matter on merits.

5. I have gone through the judgment of trial court. Learned trial Court due to divergent views of the parties framed the following main issues: -

1. *Whether the defendant executed an agreement of sale of the house bearing C.S.No.G/57/8 and received Rs.15,000/- as earnest money?*
2. *In what capacity the plaintiff was residing in the house before the execution of the agreement of sale.*
3. *Whether the plaintiff spent Rs.4,000/- on repair charges of the house?*

6. The learned trial Court after recording evidence of the parties dismissed the suit of applicant. For convenience sake, an excerpt of the judgment dated 22.08.2009 is reproduced below:-

“Issue No.3.

Burden to prove the above issue lies upon the plaintiff. The plaintiff deposed during his evidence that he spend Rs.9,000/- on the repairs of the house with permission of the Rent Controller. The plaintiff himself failed to produce such permission granted by the Rent Controller, but on the contrary, the defendant produced such exparte order in R.A No.199/1976. The plaintiff was liable to prove incurred Rs.9,000/- after said permission. He has not produced any oral or documentary evidence. The only witness Gul Muhammad examined by the plaintiff has not deposed as single word that the

plaintiff incurred Rs.9000/- over repair of the suit house. Accordingly, issue NO.3 is answered in negative.

Issue No.4.

In view of the above discussion on issue No.1, the plaintiff's suit is dismissed, with cost."

7. I have gone through the judgment of appellate court. The learned Judge after framing the point of determination whether sale agreement of disputed house was executed by the respondent in favor of the appellant/deceased dismissed the appeal under Order XLI Rule 31 CPC and gave the following reasons thereon: -

"It is an admitted fact on record that the case of the appellant is based on his evidence and that of his witness Dur Muhammad and the evidence of these two witnesses is contradictory to each other, as according to appellant the sale agreement was brought already written by the defendant while PW Dur Muhammad deposed that he does not know as to who was scribe of the agreement. According to PW Gul Muhammad, he had seen the defendant on that day only and prior to that respondent was not known to him. Thus the only attesting witness examined by the appellant failed to corroborate that the person who signed over the agreement of sale as Vendor was actually respondent or not. Furthermore, the report of handwriting expert is also against the appellant. It is well settled principle of law as per Article 79 of Qanoon-e-Shahadat that the two attesting witnesses must be called for the purpose of proving a document which in the present case has not done by the appellant as he has only examined one attesting witness of sale agreement and failed to furnish an explanation for not examining the second witness. Apart from the above the respondent has also produced on record the documentary evidence which clearly shows that apart from the respondent there are other co-owners of the said dispute property and there is no any document on record which suggests that that the respondent was authorized by the co-sharers to enter into a sale agreement with the appellant. It is a well-known principle of law the documentary evidence is to be given preference rather than to oral evidence. In this case admittedly the documentary evidence is totally neglect the claim of the appellant, as the very execution of sale agreement has not been proved by the appellant, therefore, I without any hesitation of the opinion that the learned trial Court has rightly dismissed the suit of the appellant as there is no existence of any sale agreement. Accordingly, I do not find any merit in this appeal, which stands dismissed with no order as to costs."

8. Primarily the applicant had filed suit for Specific Performance of Contract and Injunction for sale and purchase of a portion of house bearing C.S No.G/57/8 admeasuring 29 x 50 sq.ft situated at Liaquat Colony, Sakhi Pir Hyderabad for consideration of Rs.32,000/- as per sale agreement dated 25.10.1980. Per applicant, the respondent received Rs.15,000/- as earnest money whereas a balance of Rs.17,000/- was to be paid by the applicant to the respondent at the time of registration of sale agreement before Sub-Registrar. The applicant claimed to have in physical possession of the subject premises as tenant as purportedly spent more than Rs.7,000/- on general repairs and on raising the floor, which was much below the street level, and after the agreement, he also spent

an amount of Rs.2,000/- on improving the dilapidated condition of suit premises for making it worth living, such permission was obtained from the learned Rent Controller in the year 1978.

9. I have noticed that at no point in time the applicant attempted to deposit the balance sale consideration either before the trial Court, appellate court or before this Court to show his bonafide intention, hence he lost all remedies available to him under the law. The judgment and decree of learned trial Court has been affirmed by learned appellate Court with elaborate reasons, as the applicant failed to prove the existence of a basic document i.e. sale agreement dated 25.10.1980 under Article 27 of Qanoon-e-Shahadat Order.

10. So far as the challenge to the concurrent findings of the courts below in revisional jurisdiction of this Court is concerned, the Honorable Supreme Court has held in the case of Ahmad Nawaz Khan Vs. Muhammad Jaffar Khan and others (2010 SCMR 984), that High Court has very limited jurisdiction to interfere in the concurrent conclusions arrived at by the courts below while exercising power under section 115, C.P.C. A similar view was taken in the case of Sultan Muhammad and another. Vs. Muhammad Qasim and others (2010 SCMR 1630) that the concurrent findings of the courts below are not opened to question at revisional stage.

11. On the point of jurisdiction of this Court under Section 115 C.P.C, which primarily empowers this Court, at the first instance to satisfy and reassure itself, that the order of subordinate court is within its jurisdiction; the case is one in which the court ought to have exercised jurisdiction and in exercising jurisdiction, the court has not acted illegally or in breach of some provision of law or with material irregularity or by committing some error of procedure in the course of trial which affected the ultimate decision. If this Court is satisfied that aforesaid principles have not been unheeded or disregarded by the courts below, it has no power to interfere in the conclusion of the subordinate court upon questions of fact or law. In the case of Atiq-ur-Rehman Vs. Muhammad Amin (PLD 2006 SC 309), the Honorable Supreme Court has held that the scope of revisional jurisdiction is confined to the extent of misreading or non-reading of evidence, jurisdictional error, or illegality of the nature in the judgment which may have material effect on the result of the case or the conclusion drawn therein is perverse or contrary to law but the

interference for the mere fact that the appraisal of evidence may suggest another view of the matter is not possible in revisional jurisdiction.

12. In view of the above legal position of the case, I do not see any perversity and illegality in the impugned judgments passed by both the fora below, therefore, the same are maintained. Consequently, this Civil Revision Application is hereby dismissed with cost.

JUDGE

Hafiz Fahad