

IN THE HIGH COURT OF SINDH AT KARACHI

IInd Appeal No. 83 of 2016

Abdul Waheed Khan

Versus

Muhammad Sadiq & others

Date of hearing: 05.03.2018

Appellant: Through Mr. Muhammad Kamran Mirza
Advocate

Respondent: Through Mr. S. Shahid Hussain Advocate

J U D G M E N T

Muhammad Shafi Siddiqui, J.- This second appeal is against concurrent findings of two Courts below. Respondent filed a suit for possession, mesne profit and permanent injunction in January, 2011 which suit was decreed vide order dated 28.11.2013 followed by dismissal of appeal of the appellant. The two orders are now impugned here.

Plaintiff filed a suit on the strength of a lease executed by Municipal Corporation of Karachi and respondent No.1. The evidence of the parties were recorded. Following issues were framed:

- “1. Whether the suit is not maintainable according to law?
2. Whether the plaintiff is the lawful owner of the suit property bearing House situated at Plot No.3128, (Old No.AK-18/29-S/11), Street No.1 & 2, Hassan Lashkari Village, Siddique Wahab Road, Lyari Quarters Karachi?

3. Whether the plaintiff is in the capacity of lawful owner is entitled to get the physical possession of suit property to the defendants?
4. Whether the plaintiff is entitled to recover mesne profit as Rs.240,000/- for the period from 12.12.2006 till today?
5. Whether the plaintiff is entitled to relief as claimed by him?
6. What should the decree be?"

In consideration of the evidence recorded, the trial Court maintained the suit and declared respondent No.1 as being lawful owner of the property situated at Plot No.3128, (Old No.AK-18/29-S/11), Street No.1 & 2, Hassan Lashkari Village, Siddique Wahab Road, Lyari Quarters Karachi.

Learned Counsel for the appellant has pointed out the discrepancy in the address of the plot and submits that the identity of the plot was not ascertained. He has further argued that the suit was barred by limitation as it was filed belatedly. He argued that at one point of time the respondent considered the appellant as tenant and after decision of the Rent Controller and that of the appellate Court, the suit was instituted. He has further argued that in terms of Section 53 of the Specific Relief Act the sale agreement along with possession constitutes title. He has taken me to the contents of the lease and submits that respondent No.1 has failed to prove that he was ever in possession of the premises in question which is basic ingredients enabling Metropolitan Corporation to execute the lease. He further argued that Article 144 of the Limitation Act does not come to rescue respondent No.1 as the appellant is in possession of the subject premises since last several decades.

I have heard the learned Counsel and perused the material available on record.

Insofar as the question of limitation is concerned, apparently respondent No.1 initially filed a rent case for eviction of the appellant as he considered the appellant as his tenant however when the relationship was not established the only remedy available to the respondent No.1 to have possession of the premises is by filing a suit for possession which he did within the time prescribed under Article 144 of the Limitation Act. Issue No.2 which pertains to the entitlement of respondent as being its lawful owner was discussed in detail and the identity of the plot was also scrutinized. In the light of evidence of the parties as well as of the Deputy Director (Land), the trial Court reached to the conclusion that the subject property mentioned Plot No.3128, (Old No.AK-18/29-S/11), Street No.1 & 2 is one and the same and later description is only for the excise and taxation purpose. Deputy Director (Land) Lyari also identified two numbers of the subject property as one. In presence of a registered lease in favour of respondent, the appellant is saddled with heavy responsibility and burden to dislodge the claim of respondent No.1. Appellant's suit bearing No.599/1994 for cancellation of registered lease deed and form PT-1 was already dismissed wherein the same numbers were disclosed. The evidence was discussed in detail with application of mind while deciding issue No.2. Appellant's attempt by filing a suit for cancellation of sublease already met an unfortunate fate as their suit was dismissed. In the present case it was a heavy burden upon the appellant to disprove the execution of such lease or to prove a collusive execution of lease but failed in such attempt. In terms of Articles 70 and 72 of the Qanoon-e-Shahdat Order, 1984 the registered instrument must yield in favour of oral evidence. The registered instrument would always carry a presumption of truth and a very strong and exceptional evidence is needed to dislodge the inference of truthfulness and genuineness of such document. It may have been said by the Deputy Director Land, Lyari that

the issue can be resolved by summoning the officer from Excise & Taxation Department who may verify the number but it was not satisfactorily established by the appellant by summoning the witness.

In view of the concurrent findings of two Courts below who have discussed the matter at length and the findings were based on the evidence available on record, there is no room for interference by this Court. Consequently, this second appeal is dismissed along with pending applications.

Dated:___03.2018.

Judge