ORDER SHEET IN THE HIGH COURT OF SINDH, KARACHI II-Appeal No. 113 of 2012.

Date Order with signature of Judge

For hearing of main case.

26th November 2020

Mr. Muhammad Sajjad Abbasi, advocate for appellant. Rana Muhammad Idrees, advocate for respondent Nos. 3 & 4.

Heard learned counsel for the appellant.

Paragraph No. 6 of the impugned judgment passed by the VIth Additional District Judge Karachi South is that: -

"6. I have given my anxious consideration, to the arguments advanced by the learned counsel for the respective parties and perused the case file minutely. Admittedly appellant/plaintiff filed suit for Specific Performance valued at Rs:1,53,450/= against the respondents/defendants who were served and filed written statement thereby denying the contention raised by the appellant/plaintiff in the memo of plaint. It is the first and foremost responsibility of the appellant/plaintiff to prove his case, rather then the weakness of rival party. The relief of specific performance of sale agreement between the parties on 23.07.1970 and 12.07.1978 alleged to have been executed by the respondent/defendant No.2 as attorney the respondent/defendant No.1 in favour the appellant/plaintiff in respect of the property in question bearing No.6, Street No.7, Shalimar Islamabad Old Plot No:267, Sector F. 8/3, Islamabad, admeasuring 1023 sq. yards, which is discretionary in nature; therefore, the appellant/plaintiff is under obligation to prove his case without any shadow of doubt and the litigation between the parties is very old one and on the directions of the apex courts the matter be sent to the District Court for its adjudication. Perusal of the record shows that the appellant/plaintiff sought amendment in his pleading as well as in para of cause of action being accrued to him on 03.03.1976 and when the property in question was declared as abandoned by the respondent/defendants No: 3&4. In this regard that after filing of the amended plaint by the appellant/plaintiff on the direction of the court of law which will introduced a new cause of action as well as completion and nature of the suit would be changed and the law demands the suit for the purposes of determining the rights or interest in the property being different to that of the suit in which the relief claimed does not relate to the rights in the immovable property in favour of the appellant/plaintiff who can be filed at the place at which the cause of action

across and I am of the considered view that the suit relating to the rights in the immovable property would lie before the court within the local limits of which the property is situated and if the property is situated outside the territorial jurisdiction of the court and the suit would not be maintainable before any court except the one within territorial jurisdiction of which property is situated. In the nutshell, if a suit involves dispute relating to the rights in the immovable property, such suit will be maintainable at the place where property is situated and if the relief does not relate to the rights and interest in the property and is confined only to the extent of an ancillary matter, can be filed at the place where the cause of action wholly or partly arose. Apparently the claim of the appellant/plaintiff is not supported with the material evidence rather, documentary evidence produced by the appellant/plaintiff is totally against his, therefore, he cannot deserve any discretionary relief of specific performance of the sale agreement in his favour and the case law cited by the learned counsel the appellant/plaintiff for distinguishable to the facts and circumstances of the case. Suffice it to say, the appellant/plaintiff has failed to prove his case on merits and the findings drawn by the learned trial court are outcome of the proper appraisal of the evidence and the same require no interference by this court, consequently I find no merits in the instant civil appeal which is hereby dismissed with no order as to costs."

Admittedly, in question property situated within the territorial jurisdiction at Islamabad and the suit is for specific performance of contract, hence, adjudication by the appellate Court is in accordance with law and there is no illegality or infirmity in the impugned judgment; however, with regard to jurisdiction, appellant would be competent to file fresh *lis* within the territorial jurisdiction and chosen of wrong forum is covered under Section 14 of limitation Act. Appeal is dismissed.