

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Civil Revision Application No.3-105 of 1998

[Muhammad Saleem Vs. Syed Bashir Ahmed Shah through legal heirs]

Applicant: Muhammad Saleem,

Nemo

Respondents: Mr. Sundar Das Advocate.

Date of hearing& order: 31.10.2022.

ORDER

ADNAN-UL-KARIM MEMON, J. Through instant revision application, the applicant has called in question the legality of judgment dated 26.05.1998 passed by learned IInd Additional District Judge, Nawabshah in Civil Appeal No. 06 of 1998, whereby the learned Judge while allowing Appeal set-aside the Judgment and Decree dated 15.01.1998 and 21.01.1998 passed by the trial Court in F.C. Suit No. 200 of 1992. The applicant has now filed the instant Civil Revision Application under Section 115 CPC.

2. Brief facts of the case, in nutshell, are that respondent/plaintiff filed Suit for pre-emption, possession, and injunction mainly against applicants/defendants stating therein that he is owner of double-storey building constructed over C.S. No.A/128, whereas the property bearing C.S. No.A/129, admeasuring 56-3 years situated at Sakrand Road Nawabshah consisting of one shop on the ground floor and a residential house on the first floor was owned and possessed by Noorullah Dahraj; that plaintiff being adjacent owner of property is '*Shafi-i-Jar*' however the suit property was sold by said Noorullah Dahraj to defendant Syed Bashir Ahmed Shah on 01.10.1992 by way of registered sale deed dated 01.10.1992 in sale consideration of Rs.100,000/-, as soon as, respondent/plaintiff acquired knowledge about the sale of subject property, he declared his intention by asserting his right of pre-emption over it and performed first demand of Talab-i-Muwasibat in presence of witnesses with all conditions and immediately went to suit property along-with said witnesses where he met with defendant Syed Bashir Ahmed Shah and performed his second demand of Talab-i-Ishhad by making specific reference to the first demand and asked him to re-convey the Suit property to him for the same amount in which he purchased from Noorullah Dahraj in satisfaction of his right of pre-emption but he refused; that the defendant was bent upon reconstructing the suit property and was in negotiation to sell out

the same in bigger amount to frustrate his demands and is active to change the shape of suit property, hence he filed Suit for pre-emption, possession, and Injunction.

3. Upon notice defendant filed written statement, admitting that C.S. No.A/129 is a shop with a 'Mari' over it but he denied specifically that there exist residential premises on the first floor and further submitted that three shops namely Shop No.IA-128 purchased by plaintiff, shop No.129/A, purchased by defendant, and shop No.130 purchased belonged to Noorullah Dahraj and there was only residential unit lying in a dilapidated condition and for a long time, three shops were used by different tenants for business.

4. On the pleadings of the parties, learned Trial Court framed four issues and after recording evidence of the parties, decreed the suit vide Judgment and decree dated 15.01.1998 & 21.01.1998. The said Judgment was assailed in Civil Appeal No.06 of 1998 whereby the learned IInd Additional District Judge, Nawabshah allowed the appeal and set aside the Judgment and Decree of Trial Court on the analogy that evidence was contradictory to the pleadings of plaintiff hence cause of action against defendant to file a suit in terms of clause 21 of Specific Relief Act was lacking.

This revision application is dismissed on account of non-prosecution.

JUDGE