

IN THE HIGH COURT OF SINDH,

CIRCUIT COURT, HYDERABAD

Ind Appeal No. 19 of 2011

Appellant No.1 : Muhammad Amin Hasham through
Mr. Ravi Panjani, Advocate
Appellants 2 & 3. : Mr. Imran Qureshi, Advocate for appellants 2 & 3.
Respondent : Mr. Arbab Ali Hakro, Advocate for respondent No1.
Mr. Aamir Ali Memon, Advocate for respondent No.1
Date of hearing and Order : 22.08.2022

ORDER

This Ind Appeal has been filed against the order dated 14.2.2011 passed by VIIth Additional District Judge Hyderabad dismissing C.A. No. 272 of 2009 and maintaining the judgment and decree dated 20.11.2009.

2. At the outset, I asked learned counsel representing appellants 2 & 3 as to how the application under order 23 rule 1 CPC bearing CMA No.1759 of 2021 is entertainable at this stage, in terms of the ratio of the order dated 14.9.2012 passed by this Court, whereby the instant second appeal was adjourned sine die on the premise that F.C. Suit No. 17/2012 was/is required to be decided first and still the status of this appeal is the same since 2012.

3. Mr. Imran Qureshi replied to the query and submitted that the appellants 2 & 3 intend to withdraw the subject appeal and prayed for allowing the application on the premise that the Appellant's father Late Col Hasham Ali Khan was allotted a plot No. 23, Survey No.142, measuring 1528 squads situated in Defence Officers Colony, Hyderabad. He further submitted that after the death of Appellant's father, the said plot was inherited by the Appellants; that on 14.12.1998 Appellant No.1 (late Muhammad Ameen Hashim) for self and as the attorney for Appellants No.2 & 3 entered into a sale agreement of Plot No. 23, Survey No.142, measuring 1528 sq.yds situated in Defence Officers Colony, Hyderabad with one Muhammad Nadeem for a sale consideration amount of Rs. 10,500,000/- (One Crore & Five Lacs only). The final date of specific performance of contract/sale agreement was fixed on or before 28.02.1999. After the amount of Rs.10,500,000/- (One Crore & Five Lacs Only) was received by Appellants, Muhammad Nadeem (the purchaser) requested, Muhammad Ameen Hashim to have the plot bifurcated and mentioned that for this he recommended an irrevocable Sub General Power of Attorney in favor of one Moosa son of Haji Qasim be given to have the plot bifurcated. In good faith and to help the purchaser Muhammad Ameen Hashim agreed. This was executed on 22.04.1999 Irrevocable Sub-General Power of Attorney of Moosa. He further added that the purchaser Muhammad Nadeem and Moosa moved an application to the concerned authority surprisingly after a lapse of over nine years, on 10.06.2008 for bifurcation of the plot. Accordingly, the said plot was bifurcated on 17.11.2008 and

was given numbers 23 and 23-A. He added that the Appellants after receipt of the entire sale consideration of the said plot had no interest in the said plot and all the proceedings in respect of bifurcation and others auxiliary things of the said plot were carried out by the purchaser Muhammad Nadeem and the sub attorney Moosa, appointed on the recommendation of the purchaser; that after the bifurcation of the plot some dispute arose between Muhammad Nadeem, the Purchaser / Vendee and the sub attorney Moosa; that Muhammad Nadeem, the Purchaser / Vendee of the said plot vide sale agreement dated 14.12.1998, filed suit for Specific Performance of Contract/Sale Agreement dated 14.12.1998 bearing F.C Suit No. 57/2009 in the Court of Vth Senior Civil Judge Hyderabad against the Appellants. He further submitted that Appellant No.1 (Late Muhammad Ameen Hashim) on 07.08.2009 appeared in person in FC Suit No.57/2009 and in his handwriting and signatures filed a categorical written statement in the Suit; that since there was a dispute between Moosa and the Muhammad Nadeem. Moosa taking sub-general power of attorney of the Appellants filed Civil Appeal No.272/2009 before the VII Additional District Judge Hyderabad, without the consent and knowledge of the Appellants. He added that Appellant No.2 (Late Muhammad Ameen Hashim) again appeared in person in the Civil Appeal No.272/2009 on 08.02.2011 and again filed a categorical Statement in his handwriting and duly signed by him; that before the cancellation of sub-power of attorney of Moosa by the Appellants, Moosa on 04.5.2009 entered into the sale agreement of Plot No.23 and bifurcated Plot No.23-A with one Abdul Malik Abbasi who had appeared as a witness from the side of purchaser Muhammad Nadeem, at the time of sale agreement. On 28.5.2009 Moosa also executed a registered sub-power of attorney in favor of Abdul Malik Abbasi; however, the said sub-power was canceled by the Appellants on 15.10.2011; that, during pendency of the above appeal Appellant No.1 passed away on 11th January 2016; that, Appellants No.1(1 to 4), 2 & 3 came to know about the case and present IInd Appeal No. 19/2011 when the Notice dated.26.01.2021 was issued for appearance of the Appellants on 25.2.2021 before this Court in CPD No. 137/2013. None of the surviving Appellants filed any Appeal nor appointed any attorney. The Vakalatnama of Appellant No. 03 Dr. Shamim Hasham is fake and bogus; he lastly submitted that the Appellants after receiving total sale consideration of Rs.10,500,000/- (One Crore & Five lacs only) of Plot No. 23, Survey No.142, measuring 1528 sq.yds situated in Defence Officers Colony, Hyderabad, have no right and interest in the said plot, therefore, the Appellants do not press the above IInd Appeal, and reserve their right to sue Muhammad Nadeem & Moosa, for damages, loss of reputation and agony.

4. Mr. Ravi Panjani learned counsel for appellant No.1 has refuted the stance of appellants 2 and 3 and referred to the order dated 14.9.2012 passed by this Court and submitted that learned trial court was directed to decide F.C. Suit No. 17/2012 within a period of six months from the date of the said order. He next submitted that it was specifically mentioned in the said order that the disposal of the suit

should not be delayed on account of delay in filing of written statements by any of the defendants, and time for filing written statements by the defendants was also mentioned in the said order. He further submitted that the suit has not been finally decided by the trial Court till this date, as such judicial propriety demands that the subject suit is liable to be decided at first; and, this Appeal may not be allowed to be withdrawn as suggested by the appellants No.2 and 3, which may prejudice the rights of the parties in the subject suit. He however admitted that status of the present appeal is the same in terms of ratio of the order discussed supra and till that status is not recalled, no further proceedings could take place as no decision can be made on the listed application, which is premature at this point in time.

5. Mr. Aamir Ali Memon, learned counsel for respondent No.1 has referred to the order dated 16.11.2021 passed by the learned Division Bench of this Court in C.P No.-D-137 of 2013 and submitted that the aforesaid petition stood dismissed as withdrawn and this appeal is liable to be allowed to be withdrawn as per the version of appellants 2 and 3.

6. Mr. Arbab Ali Hakro, Advocate for respondent No. 6 submits that the impugned order passed by the learned trial court need to be set aside so that F.C Suit No. 17 of 2012 filed by respondentNo.6, pending before learned trial may be decided on merits without prejudice to the rights of the parties therein.

7. Prima-facie, the reason assigned by learned counsel for appellant No.1 to adjourn the matter is justifiable; and the listed application seems to be premature to be taken up for orders, in terms of the ratio of the order dated 14.9.2012 passed by this Court, whereby the instant second appeal was adjourned sine die on the premise that F.C. Suit No. 17/2012 was/is required to be decided first and still the status of this appeal is the same since 2012.

Let a report from the trial court be called within two weeks. To come up after compliance the report is filed.

JUDGE