

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

IInd Appeal No. S- 107 of 2022

[Muhammad Siddique v. Muhammad Ali through L.Rs & Ors]

Appellant : through Mr. Fida Hussain Babbar, Advocate
Respondents : Nemo
Date of hearing :
& Decision : 19.05.2023

J U D G M E N T

ADNAN-UL-KARIM MEMON J, - Captioned appeal has been directed against the concurrent findings recorded by the two Courts below.

2. Brief facts of the case as set out by the appellant in the plaint are that, agricultural land bearing block / Survey No. 132 of acres No. 1, 3,4, 5, 6, 9, 10, 11, 12, 13, 14, 15, 16 and 00-28 ghunta out of Acre No.2 total area 13-28 acres, out of which as per private partition the defendant No.1 was share holder of 46 paisa situated in Deh 23-Jamrao, Tapo Talehabad, Taluka Sinjhoru, District Sanghar "Suit Land". The said land was mutated in revenue record in favour of defendant No.1 vide entry No. 461, dated 29.1.2003 V.F VII-B. The defendant No.1 during his life time sold out his full share of 46 paisa i.e. 13-28 acres to plaintiff against sale consideration of Rs. 1,50,000/- per acre and total sale consideration was fixed at Rs.2,055,000/-. It is averred that the defendant No. 1 in presence of witnesses through sale agreement dated 05.01.2014 received first installment (shape of advance) of Rs. 10,00,000/- and delivered physical possession to plaintiff who constructed pacca residential house upon the suit land. As per sale agreement the 2nd installment of Rs. 6,55,000/- was received by defendant No.1 on 14.03.2016 before witnesses and also issued payment receipts. Per pleadings the defendant at the time of execution of agreement delivered the possession of suit land to plaintiff and he enjoys possession of suit land paying the government revenue taxes also paying abyana; that on 10.11.2018 plaintiff arranged remaining amount of Rs. 40,0000/- and went to the house of L.Rs of defendant No.1, where he came to know that defendant No.1 had died on 14.08.2016 leaving behind defendant Nos.1(a) to 1(e) as his surviving legal heirs, the plaintiff requested them to receive remaining sale consideration of Rs. 4,00,000/- and to execute final registered sale deed, upon which they asked the plaintiff for waiting till Foti Khata Badal and also removal

of mortgage of suit land; that subsequently several times the plaintiff approached the defendant No.1(a) to 1(e) for receiving remaining sale consideration and execution of final registered sale deed in his favour, but they kept him on false hopes and subsequently when the plaintiff came to know that the legal heirs of defendant No.1 as intending to sale the suit land to the strangers on higher rate; therefore, he filed the suit with following prayer:-

- a) That, this Honourable Court may be pleased to direct the L.Rs of defendant No. 1 to execute final registered sale deed before Sub-Registrar Sinjhoru, in respect of suit land in favour of plaintiff or

ALTERNATIVELY

In case of failure of L.Rs of defendant No. 1 not executing final registered sale deed in favour of plaintiff, the Nazir of this Honourable Court may be directed to execute the final registered sale deed in respect of suit land on behalf of L.Rs of defendant No. 1 in favour of the plaintiff after receiving remaining amount of Rs. 400000/- as balance amount.

- b) That, this Honourable Court may be pleased to issue permanent injunction restraining the defendant No. 2 to 5 not to issue sale certificate or to accept any register sale deed, except of plaintiff and this Hon'ble Court may further be pleased to restrain the L.Rs of defendants No. 1 from interfering with the peaceful possession of the plaintiff over the suit land by themselves, or through their agents, associates servant, helpers, friends attorneys in any manner whatsoever.
- c) Costs of the suit are borne by the L.Rs of defendant No. 1.
- d) Any other relief, which this Hon'ble Court deems fit and proper, may be awarded to plaintiff.

3. It appears from the record that the suit was admitted and upon receiving summons defendant No. 1(a) to 1(e) filed written statement while official defendants 2 to 5 opted not to file written statement and they were proceeded Ex-parte vide order dated 14.10.2021.

4. As per record the defendant No. 1(a) in their written statement raised preliminary objection that plaintiff has no cause of action to file the suit, that plaintiff has concealed the actual facts with his malafide intention and has approached the court with unclean hands; that the case of plaintiff is based upon no evidence and the same has been filed just to blackmail and usurp the propriety right of defendants. The defendant No.1(a) in his parawise reply denied entry No.461 dated 29.01.2003 in V.F VII-B in the name of defendant; that mutation entry No.60 in V.F VII-Alif of Deh 23 Jamrao, Taluka Sinjhoru, and District Sanghar is maintained in the name of defendant No.1; that the father of answering defendant No.1(a) to 1(e) during his life time in the year 2014 orally leased out his agricultural land to plaintiff at the rate of Rs. 20,000/-

per acre for a period of 5 years i.e, 2014 to 2019; that their father expired due to natural death in the month of august 2016 and after his death plaintiff also paid the lease amount to them till January 2019, thereafter, last year when the lease was completed then in the first week of January 2020, the defendant No.1(a) approached the plaintiff and requested him to vacate the suit land as they themselves intend to cultivate the suit land, whereupon the plaintiff kept him on false hopes and did not vacate the suit land, upon which the defendant also approached the nekwards but the plaintiff did not agree and meanwhile plaintiff filed the instant suit by managing false, fabricated, bogus and manipulated sale agreement No. 370 dated 5.1.2014; that the alleged sale agreement is manipulated documents as late Muhammad Ali never executed the sale agreement with the plaintiff; that the defendant got verified the above sale agreement and came to know that it was allegedly written on stamp paper of Rs. 200/- which was purchased by plaintiff from one stamp vendor of Shahdadpur namely Afsar Ali Memon on 05.01.2014 having serial No. DO-78574; that issuance Register of Afsar Ali Stamp Vendor pertains to year 2014, indicates issuance number 370, two stamp papers worth of Rs. 100/- each were sold to one Bhag Chand S/o Chaman Das R/o Shahdadpur on 20.11.2014 and District Account Office also shows that stamp papers having serial number DO-7840 to DO-78500 amounting to Rs.200/- were issued to one Rana Muhammad on 17.12.2020 while serial Number DO-78501 an onwards amounting to Rs. 200/- were issued to Afsar Ali Memon in the year 2020. He prayed that plaintiff was / is not entitled for any relief and suit was / is liable to be dismissed.

5. From the pleading of the parties following issues were framed:-

1. Whether, the suit of plaintiff is not maintainable at law?
2. Whether, the defendants No. 1 during his life time executed agreement to sell No. 370 dated: 05.01.2014 of suit land in favour of plaintiff for total sale consideration amount of Rs. 2055,000/- in presence of witnesses and plaintiff paid him an amount Rs. 100,000/- as token money and possession of suit land was handed over to plaintiff?
3. Whether, plaintiff paid 2nd installment of consideration amount to defendant No. 1 on 14.03.2016 in presence of witnesses and on 10.11.2018 the L.Rs of defendant No. 1 refused to receive the remaining amount of sale consideration and to execute the registered sale deed in favour of plaintiff?
4. Whether, agreement to sell No. 370 dated: 05.01.2014 is forged and false documents?
5. Whether, the plaintiff is entitled for relief as claimed?
6. What should the judgment and decree be?

6. The trial court after framing of above issues, recorded the evidence of the parties and dismissed the suit vide judgment dated 25.2.2022 and decree dated 3.3.2022. The plaintiff being aggrieved by and dissatisfied with the aforesaid judgment and decree, preferred Civil Appeal No. 26 of 2022 before District Judge Sanghar; however, the same was also dismissed vide judgment and Decree dated 01.10.2022.

7. Mr. Fida Hussain Babar counsel for appellant has argued that both the courts below have failed to consider various important points involved in the matter; that both the courts below have failed to evaluate the case of appellant / plaintiff in the light of basic legal principles; that the impugned judgment is not well reasoned; that the findings of trial Court on issues are erroneous and illegal; that the trial Court has illegally avoided to decide issues on merits rather decided on technical grounds; hence the requirement of substantial justice has been altered over technicalities; that in the impugned judgment and decree various important aspects of the case remained un-discussed by both the courts below; that both the courts below have passed the impugned judgment in disregard of the settled principles of law and justice; that the plaintiff discharged his burden to prove by examining attesting witnesses; that since the plaintiff has discharged his burden as required under Article 17 and 79 of Qanoon-e-Shahadat Order by producing relevant witnesses, the burden to disprove the agreements automatically shifted upon the defendant / respondent, but no such concrete evidence has been produced to rebut the oral and documentary testimony produced by the respondent/defendant; that both the courts below have failed to appreciate that the appellant has performed his part in part performance of sale agreements and paid sale consideration, therefore the appellant is entitled to seek specific performance of agreement; that the consideration so paid by the appellant to the respondents has not been properly rebutted even in cross examination or as well as in Chief Examination, hence both the courts below have committed gross material illegality; that both the courts below have decided the case of appellant in slipshod manner, and erroneously dismissed the suit on the basis of illogical stand and in the same way the appellate Court failed to consider the important aspect of the case as discussed supra; that the appellant has made out a case but both the courts below have decided the entire case only on technicalities and has failed to appreciate the evidence brought on record in favour of the appellant; that both the courts below have committed illegality by misreading and non reading of evidence while passing the impugned judgment and decree dated 1.10.2022. He lastly prayed for allowing the instant appeal.

8. I have heard the arguments of counsel for the parties and perused the record with their assistance.

9. It appears from the record, that the trial court dismissed the suit of appellant with special compensatory cost of Rs.25,000/- to be deposited with the Nazir of the court and to be paid to defendant No.1(a) to 1(e) as the plaintiff unnecessarily dragged them in false and vexious litigation without any rhyme or reason, which caused them unnecessary financial loss, mental torture and agony which cannot be compensated. The appellate court vide Judgment and Decree both dated 01.10.2022 maintained the judgment dated 25.02.2022 and decree dated 03.03.2022 passed by 2nd Senior Civil Judge, Sanghar in F. C. Suit No.91 of 2021.

10. The reasoning of both the courts below on the maintainability of the suit as well as to the question whether the defendant No.1 during his lifetime executed sale agreement dated 05.01.2014 in favor of plaintiff for sale consideration of Rs.20,55,000/- and plaintiff paid him an amount of Rs.10,00,000/- as token money and possession was handed over to him and whether the plaintiff paid second installment on 14.03.2016 and 10.11.2018 and whether the agreement to sell was forged and false document.

11. Record reflects that evidence was recorded and after completion of evidence, the trial court dismissed the suit with costs. Record shows that the appellant failed to prove execution of sale agreement during trial and on his failure, no decree could be passed in his favor which relief has rightly been refused by the courts below.

12. In the light of above, the reasoning of two courts below, I do not find any illegality or infirmity in the impugned judgment and decree of the courts below.

13. The scope of second Appeal is limited as this Court is not supposed to reappraise the evidence which has already been set at knot by the courts below. No further appraisal is required at second appellate stage.

14. For the aforesaid reasons this Appeal was dismissed vide short order dated 19.05.2023.

J U D G E