

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

R.A No.123 of 2019

[Muhammad Shahid Khan & another
versus
Mst. Sofia Bano & Ors]

Applicants : Through Mr. Aqeel Ahmed Siddiqui advocate
Respondents 1&2 : Through Ms. Tahreem Jawahry advocate
Respondents 3to6 : Through Mr. Rafique Ahmed Dahri A.A.G
Date of hearing : 08.05.2023
Date of decision : 26.5.2023

JUDGMENT

ADNAN-UL-KARIM MEMON, J.- Captioned revision application has been directed the against concurrent findings of two Courts below. Applicants / plaintiffs filed F.C Suit No.422 of 2013 [Re: Muhammad Shahid Khan & another v. Mst. Sofia Banu & Ors] for Declaration, Permanent Injunction, Possession & Cancellation of Revenue entries in respect of property bearing House No.G/909, consisting upon three godowns and one room total admeasuring 360 sq.ft situated at Kareemi Gali, Gul Shah Road Hyderabad (**Suit Property**); the plaint was rejected under Order VII Rule 11 CPC by 1st Senior Civil Judge, Hyderabad (**trial court**) vide Order dated 30.08.2014 and Civil Appeal No.70 of 2014 preferred there-against was also dismissed vide impugned judgment and decree both dated 04.07.2019.

2. Brief facts of the case are that the applicants filed the above suit claiming that they had purchased the suit property from one Mst. Hamida on 18.01.2003 through registered Sale Deed No.246; that in the year 2008 on account of some need applicants / plaintiffs approached the respondent No.1/ defendant No.1 for sale of suit property, such agreement dated 25.06.2008 was executed between them in respect of suit property against total sale consideration of Rs.6,50,000/-, out of which an amount of Rs.4,00,000/- was paid at the time of agreement and for remaining amount Rs.2,50,000/- it was

agreed that the same will be paid on 30.12.2008 and after clearance of remaining amount the registry will be executed and possession will be handedover to defendant No.1 and in case the balance amount is not paid on due date then period will be extended. It is also claimed in the plaint of suit that the balance amount was not paid to date, but the defendant malafidely managed the registry in respect of suit property and got her name included in the record of rights, so also forcibly had taken over possession of one godown admeasuring 160 sq. ft out of suit property.

3. After issuance of notice, defendant No.1 filed written statement along with an application under Order VII Rule 11 CPC, which was allowed vide Order dated 30.08.2014 and consequently plaint was rejected. An excerpt of the order is reproduced as under:-

“From perusal of entire record, and proceedings it appears that there is no dispute over the sale of suit property but plaintiff alleged that he did not receive the full sale consideration of Rs.6,50,000/- but received only Rs.4,00,000/- and defendant No.1 fraudulently got registered sale deed and mutation in the record of rights. Further, the content of registered sale deed dated 30.7.2008 shows that plaintiff No.1 and 2 sold the suit property under registered sale deed before Sub-Registrar City Hyderabad to defendant No.1 Mst. Sofia Banu and the entire sale consideration was paid and acknowledged by the Vendors and they transferred the suit property. At that time plaintiff No.2 Shahzad was alive later on defendant got mutation in her favour on 19.8.2008 which is not denied by the plaintiff. The instant suit has been filed after about 5 years of registered sale deed and mutation in the record of rights. Now the vendors and plaintiff have come for cancellation of registered sale deed so also mutation with inordinate delay. Therefore, the prayer of cancellation of registered sale deed is beyond the limitation period and plaintiffs have failed to show any malafide act of the defendants. If plaintiffs have any dispute regarding the non payment of balance sale consideration they can file suit for recovery of amount in the court having jurisdiction, if permissible under the law.

In existence of undisputed registered sale deed when sale consideration is shown to have been fully paid, signed and admitted by the parties, can not be cancelled in the suit in hand. Plaintiffs have no cause of action to file the instant suit for the prayers they claimed. As a result plaint is rejected under order 7 rule 11 (a) C.P.C. There is no order as to costs.”

4. Applicant being aggrieved by and dissatisfied with the order dated 30.08.2014 filed Civil Appeal No.70 of 2014 before VIth Additional District Judge Hyderabad, however, the same was also dismissed vide judgment and decree dated 04.07.2019. An excerpt of the judgment is reproduced as under:-

“Point No.I

9. The case of the appellants/plaintiffs is that the suit property consisting upon three Godowns and one room, total admeasuring 360 square feet situated in Karimi Gali Gulshah Road, Hyderabad was owned by appellants/plaintiffs. IN the year 2008 they having in need of money for their business for which respondents/defendants approached the appellants/plaintiffs and requested them that they would help them and thus an agreement bearing No.5939 dated 25.6.2008 was executed by which the appellants/plaintiffs sold out the suit property to the respondents/defendants against the sale consideration of Rs.650,000/-. At the time of execution of agreement to sale Rs.400,000/- were paid by the respondent/defendant No.1 and for payment of remaining amount of Rs.2,50,000/- a date viz: 30.12.2008 was fixed but the same amount was not paid. The plea taken by the respondents/defendants is that whole the amount was paid to appellants/plaintiffs and even sale deed was executed and registered and the name of respondent/defendant No.1 mutated in the record.

10. Admittedly, copies of agreement of sale dated 25.06.2008 and so also Iqarnama dated 06.10.2008 in respect of the suit property are annexed with the plaint. The very agreement to sell dated 25.06.2008 mentions certain conditions as it mentions at condition No.3 that period fixed for payment of remaining amount as 30.12.2008 would be extendable, at condition No.4 it mentions that in case of non-payment of balance amount by given date, the advance payment earlier made would stand forfeited and date fixed would be extendable whereas condition No.5 mentions somewhat different that if appellants/plaintiffs failed to hand over possession of the property till 30.12.2008, period would be extended or the appellants/plaintiffs would pay double of sale advance money to the vendee. The above all conditions mentioned in the agreement to sale depict the fact that the time was the essence of the contract and if it is so; the appellant/plaintiffs were to file suit within three years from 30.12.2008. The arguments of learned counsel for the appellants/plaintiffs that the suit is governed by Article 91 *ibid* provides three years for the suit and thus his like argument is devoid of substance. So far Article 120 of Limitation Act, 1908 is concerned, it provides that where no period of limitation is provide delsewhere in this schedule the suit to be filed within six years when right to sue accrued but present is the case in which not only period of limitation was provided but right to sue allegedly accrued to appellants/plaintiffs when balance amount was not paid in due date. Further, if it is assumed to be correct that respondents/defendants through were approached by the appellants/plaintiffs time and again to make remaining amount of sale consideration but they refused to perform their part of contract, it was a case for performance of statutory obligation and function and in that case he could have been granted declaration in respect of the suit property even if the decree for performance could not be passed in his favour.

11. The plaint of suit, in view of above discussion, is barred by law. The order passed by learned trial court U/O VII R.11 CPC to my humble opinion, is passed in accordance with material available on record, therefore, it does not call interference by this Court. The arguments advanced by learned counsel for appellants/plaintiffs are devoid of substance and the case laws (*supra*) relied upon by him, to my humble view, are distinguishable from the facts and circumstances of the case in hand. Thus, the point under discussion is answered in the negative.

Point No.II

12. In the light of the discussion aforesaid, instant appeal stands dismissed and the order passed by learned trial court shall hold the field. The parties to bear their own costs. Let certified true copy of order be transmitted to learned trial court alongwith R&Ps.

5. It is, inter-alia, argued by Mr. Aqeel Ahmed Siddiqui counsel for applicants that the sale agreement is not denied; however, it was agreed in the agreement followed by an Iqarnama that if the balance amount is not paid on extended period, then amount already paid will be forfeited; that defendant No.1 failed to pay balance amount till date, however, she had forcibly taken over possession of one godown admeasuring 160 sq. ft and also got managed a false registry, so also got her name included in the record of rights; that the trial Court has rejected the plaint without recording evidence, which is necessary for reaching just conclusion of the matter; that law always favour decision on merits rather on technicalities; that both the courts below have not appreciated that portion of suit property is still in possession of applicants/plaintiffs; that both the Courts below have not given findings as to registered Sale Deed; that the matter is to be decided after recording of evidence. He lastly prayed that the impugned judgment and decree as well as order may be set aside and the matter may be remanded to the trial Court with direction to decide the same after framing of issues and recording evidence of both the parties.

6. On the other hand Ms. Tahreem Jawahry counsel for private respondents supported the decisions of the Courts below. Learned counsel argued that the balance amount had also been received by the applicants and as such registry was executed by them and possession of the ground floor was handed over to the respondent No.1 and for possession of upper portion they promised that the same will also be handed over after arranging new residence; that now the applicants malafidely are demanding further amount; that even otherwise the suit is barred by law, hence the plaint has rightly been rejected by the trial Court and the view of the trial court was concurred by the appeallate Court, which requires no interference. Learned counsel lastly prayed for dismissal of insant Civil Revision Application.

7. Learned A.A.G also supported the impugned judgment and decree of appellate court as well as Order passed by the trial court and prayed for dismissal of the revision application.

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

9. In order to see as to whether the plaint is liable to be rejected or not, the contents of plaint, particularly the averments and allegations made therein by the plaintiff have been carefully examined by me.

10. The case of the plaintiff as averred in the plaint is that, the suit property consisting upon three godowns and one room total admeasuring 360 square ft situated in Karimi Gali Gulshah Road, Hyderabad was owned by the appellants / plaintiffs. In the year 2008 they having in need of money for their business for which respondents/defendants approached the appellants/ plaintiffs and requested them that they would help them and thus an agreement dated 25.6.2008 was executed by which the appellants / plaintiffs sold out the suit property to the respondents/defendants against sale consideration of Rs.650,000/-. At the time of execution of sale agreement an amount of Rs.400,000/- was paid by the respondent/defendant No.1 and for payment of remaining amount of Rs.2,50,000/- a date viz. 30.12.2008 was fixed but the same amount was not paid. The plea taken by the respondents/defendants is that the whole amount was paid to appellants/ plaintiffs and even sale deed was executed and registered and the name of respondent/defendant No.1 was mutated in the record.

11. It is well-settled that for deciding the question of rejection of plaint, only the plaint and its accompaniments be examined.

12. It is now well-settled law that if there is some other material before the Court apart from the plaint which is admitted by the plaintiff, the same can also be looked into and taken into consideration by the Court while rejecting the plaint under Order VII Rule 11 CPC.

13. The sale agreement and Iqarnama and token receipt are admitted documents as the same have been filed by the plaintiffs along with the plaint, and the admissions noted above were made in the pleadings, however, execution of sale deed has been disputed though signature of the plaintiffs have not been denied. The question is what prompted the plaintiffs to file suit for cancellation of sale deed when alladged transaction took place mutually by and between the parties before the Sub Registrar concerned who registered the instrument by obtaining their signature and thumb impression on the sale deed.

14. The respondent No.1 also claimed that the suit was time barred as the alladged sale deed was excuted by and between the parties in the year 2008 and they were put in possession to certain portion of the suit property and the applicants/plaintiffs were to file suit within three years from the date of execution of sale deed i.e. 30.12.2008, therefore, the same piece of pleadings and law point raised on the subject issue could be looked into and taken into consideration while deciding the case under Order VII Rule II CPC. As this is pure question of law requires no evidence as portrayed by the counsel for the pliantiffs.

15. The period of limitation for filing suit for cancellation of sale deed is three years as provided under Article 113 and Article 91 of the First Schedule of the Limitation Act, 1908. Primarily, the limitation period will be considered with respect to substantive relief of cancellation of sale deed, which would be three years from the date of knowledge of sale deed sought to be canceled. In the present case, the applicants filed suit in the year 2013 whereas the alleged cause of action accrued to them just after lapse of three years from the date of execution of sale deed, however the applicants opted to show the first cause of action accrued to them when respondent No.1 refused to give due amount of plaintiff on 30.12.2008 when the period was expired and secondly when defendant occupied one godown.

16. I do not agree with the proposition so put forward by the counsel for applicants for the simple reason that under Section 42 of Specific Relief Act, 1877, a person entitled to any legal character or to right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief, but according to the attached proviso, no Court shall make any such declaration where the plaintiff, being able to seek further relief than mere declaration of title, omits to do so. The Suit is also barred under Section 42 of Specific Relief Act, 1877, as the plaintiffs never acquired any right, title or interest in the suit property after execution of sale deed, and as such they do not have any legal character or right therein. Moreover, from the averments made in the plaint and in view of the admitted material on record and the admissions made in the pleadings by the plaintiffs, I have come to the conclusion that the facts averred and the allegations made in the plaint do not disclose any cause of action after executing the sale deed. The Supreme Court in the case

of Abdul Nasir and another V/s Haji Saeed Akbar, 2010 SCMR 1770, was pleased to maintain the order of rejection of plaint by holding that no cause of action had arisen in favour of the plaintiff when the Suit was filed.

17. Rule 11 of Order VII CPC provides that the plaint “shall” be rejected in any of the four eventualities mentioned therein, including where from the statements made in the plaint the Suit appears to be barred by any law, and where the plaint does not disclose any cause of action. In Raja Ali Shan V/s Messrs Essem Hotel Limited and others, 2007 SCMR 741, the Supreme Court was pleased to hold that it is the duty of Court to reject the plaint if on perusal thereof, it appears that the Suit is incompetent; and, the Court is not only empowered but also under an obligation to reject the plaint, even without any application from a party, if the same is hit by any of the clauses mentioned under Rule 11 of Order VII CPC. In Pakistan Agricultural Storage and Services Corporation Ltd. V/s Mian Abdul Latif and others, PLD 2008 Supreme Court 371, it was held by the Supreme Court that the object of Rule 11 of Order VII CPC is primarily to save the parties from rigors of frivolous litigation at the very inception of the proceedings, and if the Court on the basis of averments made in the plaint and documents available, comes to the conclusion that even if all the allegations made in the plaint are proved, the plaintiff would not be entitled to the relief claimed, the Court would be justified in rejecting the plaint in exercise of powers available under Rule 11 of Order VII CPC.

18. The counsel for applicants has not been able to satisfy this court that on the basis of material available on record as well as legal point involved in the matter and in the facts and circumstances of the case, relief of cancellation of sale deed could be granted to the applicants or the findings arrived at by the two courts below were suffering from any perversity or there was any other legal defect in the impugned order/judgment calling for interference of this Court at revisional stage which has limited scope under Section 115 CPC.

19. In the instant case, neither can the main reliefs of declaration, cancellation and possession, nor can the consequential reliefs be granted to the plaintiffs against respondent No.1 in respect of the suit property and the plaint was rightly rejected. Consequently, this Revision Application is also dismissed.

JUDGE