

IN THE HIGH COURT OF SINDH AT KARACHI

IIInd Appeal No. 46 of 2013

[Zubair Ahmed Qureshiv..... Tasawar Abbas & others]

Date of Hearing : 08.03.2023
Appellant through : Mr. G.M. Bhutto, Advocate.
Respondents through : Respondent No.1 is present in person.

J U D G M E N T

Zulfiqar Ahmad Khan, J:- This Second Appeal moved under Section 100 of the Code of Civil Procedure, 1908 is directed against the Judgment dated 22.03.2013 & Decree dated 28.03.2013 passed by the learned First Appellate Court (1st Additional District Judge Malir Karachi) in Civil Appeal No.75 of 2011 (“Civil Appeal”), whereby, the appeal was allowed.

2. Precise facts of the case are that the respondent No.1 filed a suit for Declaration, Cancellation, Possession and Permanent Injunction before the learned 1st Senior Civil Judge Malir, Karachi which was dismissed vide Judgment & Decree dated 01.10.2011, however, the respondent No.1 impugned the said Judgment & Decree of the learned trial Court by filing Civil Appeal No. 75 of 2011. On the appeal filed by the respondent No.1, the Appellate Court reversed the findings of the learned trial Court and set aside the Judgment and Decree recorded by the learned Trial Court.

4. Mr. G.M. Bhutto, Advocated the case of the appellant stating that learned Trial Court is the fact finding authority where all issues have been adjudicated upon and having examined the material the trial Court dismissed the suit filed by the respondent No.1 and such findings are according to law as well as based upon proper

appreciation of the evidence. Mr. Bhutto, premised his case on the argument that the report of concerned Mukhtiarkar unequivocally stipulates that the appellant is the owner of the said plot as the appellant purchased the said plot from legal heirs of Mehboob Hussain who purchased the said plot from Muhammad Siddique. The subject report (available at page 49 of the R&Ps) also suggests that after demise of Mehboob Hussain the foti khata was effected in the record of rights in the name of respondent No.2 to 4 (legal heirs of Mehboob Hussain). He further contended that the learned trial Court having examined the admission of the respondent No.1 dismissed his suit as he admitted that the name of Mst. Jannat Bibi from whom he purchased the said plot never exist in the record of rights. Mr. Bhutto emphatically contended that the respondent No.1 based his claim that he purchased the said plot from Mst. Jannat Bibi but on the other hand went on to admit that the name of said Mst. Jannat Bibi never exist in the record of rights, therefore, the claim of the respondent No.1 is nothing but a false one as held by the learned trial Court. While concluding his submissions, Mr. Bhutto, contended that it is a case of non-reading of evidence and record, therefore, the Impugned Judgment of the learned First Appellate Court be set aside and the Judgment & Decree passed by learned 1st Senior Civil Judge Malir, Karachi be restored.

5. In contrast, respondent No.1 submitted that he purchased the plot No.607, measuring 120 sq. yards. Bhattai Colony, Korangi Crossing, Karachi from its real allottee Mst. Jannat Begum through a sale agreement dated 15.08.2003. He further submitted that having fulfilled all legal as well as procedural formalities including

publication in the newspaper dated 20.05.2003, a sale deed was also executed in his favour on 11.09.2003. He further submitted that the sale deed on the basis of which the appellant is relying his title is fake and got executed in connivance with the concerned staff of the registering authority as the appellant belongs to a group of land grabber and that the learned First Appellate Court having examined the pros and cons reversed the findings of the learned trial Court. While concluding his submission, he submitted that he is in possession of the said plot as well as residing in it on the basis of a valid title soon after its purchase.

6. I have heard the respective learned counsel and have also considered the record to which my surveillance was solicited. It is considered pertinent to initiate this deliberation by referring to the settled law in such regard. To start with, it is common knowledge that right to file Second Appeal provided under section 100 of CPC, which can be set into motion only when the decision is contrary to law; failure to determine some material issue of law, and substantial error or defect in the procedure provided by the Code or law. In the case of **Madan Gopal vs. Maran Bepari (PLD 1969 SC 617)**, the Hon'ble Supreme Court held that if the finding of fact reached by the first Appellate Court is at variance with that of Trial Court, such a finding by the lower Appellate Court will be immune from interference in second appeal only if it is found to be substantiated by evidence on the record and is supported by logical reasoning, duly taking note of the reasons adduced by the first Appellate Court.

7. The basic documents for both the contesting parties (appellant and respondent No.1) are first allotment letters, first was issued to

Jannat Bibi from appellant the respondent No.1 acquired title. The allotment letter No.8(286)/83-REV. 2516 Karachi dated 29.12.1983 (Exh. P/21 available at page 189 of the R&Ps) issued and signed by Commissioner, Karachi granting lease to Jannat Bibi for 99 years. The second allotment letter for the said plot is No.8(232)/86-Rev. (1096B) dated 20.08.1986 (available at page 247 of R&Ps) issued to one Muhammad Siddique from whom the appellant derived title. It is astonishing that the same Commissioner once granted lease to Jannat Bibi for 99 years in 1983 and on the other hand the same commissioner issued lease to Muhammad Siddique for 99 years in 1986 which appears to be a duplicate and grant upon grant. In existence of 1st allotment for 99 years how the same Commissioner just after three years granted 99 years of lease to someone else for the said plot. Learned counsel for the appellant focused his submission on the report of Mukhtiarkar (Revenue) Korangi Town, Karachi, however, the said Mukhtiarkar during course of examination in chief before the learned trial Court failed to adduce a single word regarding first allotment by the same Commissioner to Jannat Bibi in 1983. The said Mukhtiarkar was asked about the first allotment letter issued in the name of Jannat Bibi from whom the respondent No.1 derived title but he remained silent and could not reply which allotment letter was much prior to the allotment letter issued to Muhammad Siddique from whom the appellant derived title.

8. The purpose of appellate jurisdiction is to reappraise and reevaluate the judgments and orders passed by the lower forum in order to examine whether any error has been committed by the lower court on the facts and/or law, and it also requires the appreciation of

evidence led by the parties for applying its weightage in the final verdict. It is the province of the Appellate Court to re-weigh the evidence or make an attempt to judge the credibility of witnesses. The learned First Appellate Court having examined the entire record and proceedings made available to it went on to dismiss the First Appeal filed by the appellant and held that appellant herein failed to establish the execution of the sale agreement and payments of the sale consideration. It is considered expedient to reproduce the pertinent excerpt of the impugned Judgment hereunder:-

“10. It is extremely astonishing that the same commissioner Karachi, once granted lease to Jannat Bibi for 99 years lease. It is duplicate grant or grant upon grant.

11. In existence of 1st allotment for 99 years lease how the same Commissioner Karachi Syed Sardar Ahmed, after three years granted 99 years lease to another for subject plot. The appellant had furnished certain other allotments letters not only before this Court, but also before the trial Court issued by same Commissioner on 20.08.1986 when allotment letter to Muhammad Siddique was issued. These all allotment letters are bearing one letter number i.e. B(232)/86-Rev.(1096 B) dated 20.08.1986 with the same letter number several letters to different persons for different properties on the same date were issued when overlapping lease to Muhammad Siddique for same subject property for 99 years was issued. The trial Court had not considered this aspect, otherwise it is a fit case to send for investigation before crime Investigation Agencies to unearth the fraud so that innocent purchaser may not be defrauded by the corrupt practices.

12. Moreover, the trial Court has termed the documents of the appellant/plaintiff as forged on very fanciful manner. There was no evidence which could prove that the plaintiff's documents are forged.

13. Beside this, main basic reason for dismissing the suit is derived from the report of Mukhtiarkar (Revenue), Korangi Town, C.D.G.K who reported that the subject plot was leased to Muhammad Siddiqui by Commissioner, Karachi. Thereafter, Muhammad Siddiqui allotted the subject plot to Mehboob Hussain and after his demise subject plot entered in the name of legal heirs of deceased (defendant No. 1 to 3) who

thereafter sold out the same to defendant No.7. This Mukhtiarkar did not speak a single word regarding first allotment by the same defunct Commissioner Krachi to Jannat Bibi in 1983, whether there is no record of letter No. 8(286)/83-REV. 2516 Karachi dated 29.12.1983, is available, it's a forged one or not. This Mukhtiarkar very cleverly just spoke about second allotment letter and opted to remain silent about the first one. Moreover, the trial Court also remained contented on the report without going into details to get exact answer whether grant to Jannat Bibi is true or first. This same Mukhtiarkar did not term lease to Jannat Bibi as false, however, he opted to remain silent and tried to validate grant upon grant and duplicate grant as available on record.

14. Therefore the basic foundation is illegal then, a rule super structure based thereon is liable to fall down. Further, all legal formalities are meant for advancement of justice not to perpetrate injustice.

15. Besides this, issue on "possession" is very wrongly decided by the learned trial Court by considering difference in one or two dates and on rigid grounds. The evidence of PW-1 Mukhtiar Ahmed not only considered but even not discussed by the learned trial Court, who has not been cross examined. The report of Assistant Mukhtiarkar, Korangi Town confirming possession of the appellant/ plaintiff plot were not considered besides, his application to SHO etc. by the appellant/plaintiff also not been considered.

9. Reverting to the merit of the case, there is no record available which shows that allotment letter No.8(286)/83-Rev. 2516 Karachi dated 29.12.1983 (Exh. P/21 available at page 189 of R&Ps) and lease deed in the name of allottee Jannat Bibi are forged or fictitious and on the basis of these documents, the respondent No.1 purchased the said plot which was later on mutated in his name in the record of rights by way of sale deed. According to Section 54 of the Transfer of Property Act 1882, "sale" means the transfer of ownership in exchange for a price paid or promised or part paid and part promised which is made in the case of tangible immovable property of the value of one hundred rupees and upwards or in the case of a

reversion or other intangible thing, can be made only by a registered instrument with further rider that a contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties but it does not, of itself, create any interest in or charge on such property. Whereas under Section 42 of the 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 expression "legal character" has been understood to be synonymous with the expression status.

10. To me, the findings of the learned First Appellate are based upon the correct appreciation of law as well as on fact. In the case of **Madan Gopal vs. Maran Bepari (PLD 1969 SC 617)**, the Hon'ble Supreme Court held that if the finding of fact reached by the first Appellate Court is at variance with that of Trial Court, such a finding by the lower Appellate Court will be immune from interference in second appeal only if it is found to be substantiated by evidence on the record and is supported by logical reasoning, duly taking note of the reasons adduced by the first Appellate Court.

11. In light of the above discussion, the instant IInd Appeal is dismissed along with pending applications upholding the Judgment

dated 22.03.2013 and Decree dated 28.03.2013 passed in Civil Appeal No.75/2011 by learned 1st Additional District Judge Malir, Karachi.

Karachi
Dated:08.03.2023

JUDGE

Aadil Arab