

IN THE HIGH COURT OF SINDH, KARACHI

IInd Appeal No. 226 & 227 of 2023

Date	Order with signature of Judge
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Appellant:	Abdul Razzaq in both Appeals Through Mr. Shoukat Ali Rajput, Advocate.
Respondent No.1:	Sohail Ahmed Through Mr. Iftikhar Javaid Qazi, Advocate.
Respondents No. 2 to 4:	Nemo.
Date of hearing:	19.10.2023
Date of Order:	19.10.2023

ORDER

Muhammad Junaid Ghaffar, J: Through these 2nd Appeals, the Appellant has impugned judgment dated 29.08.2023 & Decree dated 04.09.2023 passed by the Vth Additional District Judge, Karachi West, in Civil Appeal No. 93 & 94 of 2022, whereby, while dismissing the Appeals, the Judgment and Decree dated 28.01.2022 passed by the IInd Senior Civil Judge, Karachi West, has been maintained, through which Civil Suit No. 1972 of 2015 of the Appellant was dismissed while Civil Suit No. 14 of 2016 of present Respondent No.1 was decreed.

2. Heard Counsel for the parties and perused the record. It appears that the Appellant had filed Suit bearing No. 1972 of 2015 seeking specific performance of an agreement dated 20.05.2013; whereas, Respondent No.1 had filed Suit in respect of the same property claiming to be its true and lawful and so also possession from the present Appellant. Both the Suits were consolidated; whereas, the Appellant's Suit was the leading Suit and though various issues were settled by the trial Court; however, for the present purposes, it is only Issue Nos. 3 & 6, which appear to be relevant as in case these issues were decided in favour of the Appellant, then the remaining relief(s) / issues would be consequential. The said issues read as under:

3. Whether plaintiff of Civil Suit No.172/2015 is lawful owner / purchaser of the Suit property i.e. Plot No.L-051, Sector Z-A, Gulshan-e-Maymar, Karachi measuring 80 Sq.Yards?
6. Whether plaintiff of Civil Suit No. 1972/2015 / defendant of Civil Suit No. 14/2016 is entitled to get transfer and mutation the suit property in his name according to law and defendant of Civil Suit No. 1972/2015/Civil Suit No. 14/2016 is liable to perform his part of performance of Sale agreement dated 20.05.2013?”

3. Both these issues were answered in negative and conclusion drawn reads as under: -

18. **“ISSUE NO.6** In view of discussions of issue No.3 Mr. Abdul Razzak, plaintiff in Suit No. 1972/2015 / defendant No.4 in Civil Suit No. 14/2016 is not entitled for transfer of the suit property in his name. Hence this issue is answered in negative.

“13. **ISSUE NO.3** Burden of this issue lies upon plaintiff of Civil Suit No.1972/2015. Plaintiff has pleaded that he has purchased the suit property from defendant (Sohail Ahmed) vide sale agreement dated 20.05.2013 against total sale consideration of Rs.23,00,000/-. Defendant handed over the possession to the plaintiff but after receiving full and final sale consideration but failed to transfer the suit property in the name of plaintiff. Defendant (Sohail Ahmed) has denied such plea of plaintiff by saying that the alleged sale agreement and receipts are forged. Plaintiff in order to prove his plea examined himself and reiterated the facts mentioned in the plaint. He produced original sale agreement alongwith copy of CNIC of defendant (Sohail Ahmed), four receipts at Exh-P-1/B to P-1/F. Plaintiff further examined his witnesses Fazal Rehman at Exh-P/2, Muhammad Bilal and Muhammad Javed at Exh-P/3 and P/4. They all supported the version of plaintiff. Plaintiff and his witnesses were duly cross examined by learned counsel for Defendant (Sohail Ahmed). In rebuttal Defendant (Sohail Ahmed) examined himself at Exh-D/1. He reiterated the facts mentioned in the written statement. He produced the documents as mentioned in Para-6.

14. Claim of plaintiff Abdul Razzak is based on sale agreement and receipts Exh- P/1-B to P/1-F. Execution which has been denied by the Defendant (Sohail Ahmed). Plaintiff has produced the evidence of Muhammad Javed and Muhammad Bilal who are shown as marginal witnesses of the agreement. They both have stated that defendant (Sohail Ahmed) sold out the suit property to plaintiff Abdul Razzak vide sale agreement in their presence and they are witnesses of that agreement. Though plaintiff has produced the evidence of these two witnesses who claims to be attesting witnesses but perusal of the agreement shows that it is alleged to have been made on 26.05.2013 and attested by Gulshan-e-Batool, Advocate / Notary Public, City Court Karachi. Along with agreement copy of CNIC Sohail Ahmed (Defendant) is also annexed which is also shown to have been attested by the same Notary Public with her seal. In copy of CNIC date of its issuance is clearly mentioned as 05.11.2014. It is beyond imagination that if

CNIC of Defendant (Sohail Ahmed) copy of which is annexed with sale agreement was issued by the Authority on 05.11.2014 then how it can be annexed and attested with sale agreement alleged to be made on 20.05.2013. Defendant (Sohail Ahmed) filed an application for comparison of his signature with sale agreement and receipt. Such application was allowed. Subsequently, court of revision ordered that comparison be sought from the Punjab Forensic Science Laboratory. Documents were sent to there who initially submitted their report that no conclusion can be drawn and requested for sending more documents. Subsequently, the other documents viz. original CNIC of Defendant (Sohail Ahmed), his original nikahanama and specimen of his signatures were sent to Punjab Forensic Science Laboratory who thereafter submitted their report dated 18.10.2021 that after careful examination and comparison of questioned signatures of Defendant (Sohail Ahmed) on item No.1 to 5 (Agreement of Sale and receipts) with routine signatures of Sohail Ahmed on item No.7 to 9 (photocopy of Passport, original CNIC and Original Nikahnama) and with dictated signatures exemplars of Defendant (Sohail Ahmed) item No. 10 it is concluded that questioned signatures on item No.1 to 5 are not written by Defendant (Sohail Ahmed), therefore, Defendant (Sohail Ahmed) is not author of the questioned signatures.

15. In the light of copy of CNIC of Defendant (Sohail Ahmed) annexed with the sale agreement and so also opinion of Handwriting Expert as discussed above I am of considered view that plaintiff has failed to prove the genuineness of sale agreement and receipts on which basis he is claiming to be owner/ purchaser. Hence this issue is answered in negative.”

4. It appears that being aggrieved; the Appellant filed Civil Appeal, which also stands dismissed by maintaining order of the trial Court. From perusal of the aforesaid finding of the Trial Court, it reflects that while producing the purported agreement dated 20.05.2013 as an Exhibit, the Appellant with his Affidavit-in-Evidence by himself annexed copy of CNIC of Respondent No.1, which was issued on 05.11.2014 i.e. subsequent to the date of the agreement. The learned Trial Court came to the conclusion that, notwithstanding examination of two marginal witnesses, this creates doubts on the veracity of the agreement in question and today also the Appellant’s Counsel while confronted, has been unable to give any satisfactory reply in this regard. It further appears that even the signatures of Respondent No.1 were sent for comparison to Punjab Forensic Sciences Laboratory, and such report also came against the Appellant. Though the learned Counsel for the Appellant has contended that the

report of the Forensic Laboratory was not produced in evidence, and therefore, same cannot be taken into consideration; however, to that it may be observed that the trial Court had taken upon itself this exercise by referring the matter for Forensic Tests, and once the report was called by the Court on its own, it can be taken into consideration when other circumstances so warrant. It is also relevant to observe that this entire exercise was carried out during the trial and was never challenged by the present appellant; hence, at this stage it is not appropriate to agitate it any further. It further appears that in his cross examination the Appellant's witness has made certain admissions, which are as under;

Witness No.1 for Plaintiff Abdul Razzak deposed as under:-

“.....It is correct to say that I have not produced Bank Statement of Rs.23,00,000/- before this court. Vol Say; I can produce the same. It is correct to say that no transaction of Rs.23,00,000/- was shown in F.B.R. Record. It is correct to say that I have not paid Income Tax. I have no knowledge that suit plot was initially allotted to one Shafaat by Gulshan-e-Maymar Housing Services Pvt. Ltd. It is correct to say that Gulshan-e-Maymar Housing Services transferred the suit plot in the name of Shafaat on 31.05.2007.

It is correct to say that Suit property was not open plot on 20.05.2013 and it was constructed house on 20.05.2013. It is correct to say that constructed house is not mentioned in agreement of sale as Ex.P/1-B and only plot is mentioned.”

5. The above deposition all along goes against the very stance of the present Appellant. It has been stated in the plaint as well as in the agreement in question that the sale was in respect of an open plot, whereas, in the evidence it is admitted that on 20.5.2013 i.e. the date of signing of the agreement, a house was already constructed on the said plot. This stance is contradictory; hence, per settled law, liable to be discarded. Not only this, even if some agreement has been established or proved, the relief of specific performance of an agreement was purely discretionary in nature and the court was not bound to grant such relief merely on the basis that it was lawful to do so, as it is dependent on the peculiar facts and circumstances of each case, particularly, the terms of the agreement between

the parties, its language, their subsequent conduct and other surrounding circumstances, which would enable the Court to decide whether the discretion in terms of S.22 of Specific Relief Act, 1877 ought to be exercised or not¹.

6. In view of the above, it appears that the Court(s) below have come to a just and fair conclusion in holding that the Appellant has failed to prove the execution of the agreement as required in law; hence specific performance of the agreement cannot be granted. Therefore, no case for indulgence was made out and by means of a short order dated 19.10.2023, both these Appeals were **dismissed** and these are the reasons thereof.

J U D G E

Ayaz

¹ Liaqat Ali Khan and others v. Falak Sher and others (PLD 2014 SC 506)