

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

2nd Appeal No.108 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on CMA 2735/2023
2. For hearing of main case

30.10.2023

Mr. Muhammad Idrees Khan advocate for appellants.

F.C. Suit No.191 of 2018 was filed before the Court of Senior Civil Judge Tando Adam asserting rights in respect of immovable property. The said suit was decreed in favour of the plaintiffs and against the present appellants vide Judgment dated 30.08.2022. The operative part of the Judgment is reproduced herein below:

8/- *The burden of instant issue lies upon the plaintiff to prove his ownership of an area of 2889 sqYds out of plot bearing C.S No. 571. The plaintiff in his plaint as well as examination in chief has stated to purchase the above mentioned plot from Ghulam Rasool through conveyance deed and which was mutated in record of City Surveyor Office. The plaintiff has produced such conveyance deed at Ex.19/A, and got produced such ruled card at Ex.14/A from City Surveyor Officer, which seconded the version of plaintiff. The conveyance deed in respect of plot in favour of plaintiff is based upon the title of Ghulam Rasool (vendor), which was allotted to Ghulam Rasool through claim by the Deputy Settlement Commissioner Nawabshah and such PTD is also got produced at Ex.17/A. The plaintiff has produced/got produced chain of documents which prima facie transpire the title of plaintiff, hence instant issue is answered in affirmative.*

9/- *This court would like to discuss issue No. 4 than issue No. 3 at first instant. The defendant No. 1 to 3 claimed the ownership of suit plot but they have not produced any title document in respect of suit plot. The defendant No. 1 in his examination in chief stated that in 1999 namely Bachu Khan Mari came to them and obtained money from them but defendant No. 1 has not filed any suit till today for obtaining of ownership of suit plot against Bachu Khan Mari even failed to produce any title document over the name of Bachu Khan Mari in respect of suit plot, hence instant issue is answered in negative.*

10/- *The issue No. 3 and 5 are in respect of illegal occupation by the defendant No 1 to 3 and entitlement of possession of plaintiff in respect of suit plot which are interconnected with each other, hence both are hereby being decided jointly. The plaintiff has prayed for possession of suit plot under the occupation of defendant No. 1 to 3 and stated that on 30.12.2017 the defendant No. 1 to 3 came at plot and issued him threats and restrained him from coming over suit plot again and they have illegally occupied suit plot. In rebut the defendant No. 1 to 3 claimed purchasing of suit plot from Bachu Khan Mari but failed to prove their stand as discussed under issue No. 4. It is held in case law reported in **2003 MLD 497** that when plaintiff has proved his title, is always entitled to fall back upon his title and there is no bar under any law against the grant of decree of possession in favour of person who proves title against a person who has no title to the suit land, hence both issues are answered in affirmative.*

11/- *In view of above discussion and reasons given under issue No. 2, 3 & 5 the suit of plaintiff is hereby decreed to the extent of prayer clause "A" to "C" respectively. The defendant No:1 to 3 are directed to handed over the possession of suit plot to the plaintiff within 30 days. Let the decree be prepared.*

Subsequently, Civil Appeal No.80 of 2022 was filed impugning the Trial Court Judgment and the same was dismissed vide Judgment dated 04.07.2023. Operative part of the Judgment is reproduced herein below:

15. *On the perusal of R & Ps Civil Suit No.191 of 2018, it appears respondent No.1 claimed to have purchased suit property measuring 2889 Sq. yards, out of C.S No.571, and in order to prove his claim, he examined himself and produced registered conveyance deed at Ex.19/A, executed by previous owner Ghulam Rasool in his favour. The claim of plaintiff/respondent No.1, finds further support by official record maintained by concerned departments. PW.2 Abdullah, the Incharge E.P Branch/Assistant in Deputy Commissioner Office brought original registered of PTDs and produced I.F in respect of C.No.571 (D) at page No.184 of register at Ex.17/A showing the transfer of suit property in favour of Mr. Ghulam Rasool, who subsequently sold out it through registered conveyance deed (Ex.19/A) to plaintiff. PW Suhail Ahmed Clerk of City Survey Office produced Ruled Card entry showing the mutation of suit property in favour of plaintiff/respondent No.1 on the basis of registered conveyance deed. Admittedly, the claim of plaintiff/respondent No.1 over suit property is based upon registered conveyance deed. It is settled law that registered document has sanctity to it, and stranger evidence is required to cast a aspersion on its genuineness. There is presumption that a registered document is validly executed, hence the onus to prove that it was not validly executed was on appellant, but they failed to lead any evidence to rebut the above presumption. The claim of appellants was that they had purchased suit land from one Bachu Khan Mari, but they failed to produce any title documents in the name Bachu Khan Mari in respect of suit property. It also an admitted position that neither the appellants challenged the validity of conveyance deed and mutation entries in favour of appellants before any forum, nor filed suit getting them declared to be owner of suit property.*

16. In view of above facts and circumstances, I am of the humble opinion that learned Trial Court has rightly decreed the suit to the extent of prayer clause "A to C", I do not find any substance to interfere in the impugned Judgment and Decree, consequently the point under discussion is answered in negative.

17. In view of above discussion on point No.01, I am of the view that the impugned Judgment and Decree dated 30.08.2022 passed by the learned Trial Court is proper and legal in accordance with law. The learned Trial Court did not commit any illegality or irregularity as such the same does not requires any interference of this Court, hence the impugned Judgment and Decree dated 30.08.2022 are hereby maintained. Resultantly, the appeal in hand stands dismissed with no order as to costs. Let such Decree be prepared accordingly.

Learned Counsel submits that the concurrent judgments there against have failed to appreciate the evidence in its proper perspective, hence, re appreciation of evidence is merited herein. The prayer clause does not only seek for the impugned judgmentsto be set aside but more importantlyrequires that the appellants be declared by this Court as the owners of the property.

Heard and perused. The learned counsel was confronted with the findings of the trial Court as particularized supra, and asked as to whether they were commensurate with the facts and he replied in the affirmative. Learned counsel was then asked to demonstrate any infirmity in the appellate order meriting interference under Section 100 of the Code of Civil Procedure, however, he remained unable to do so.

It is settled law that a second appeal may only lie if a decision is demonstrated to be contrary to the law; a decision having been failed to determine some material issues; and / or a substantial error in the procedure is pointed out. It is categorically observed that none of the aforesaid ingredients have been identified by the learned counsel. In such regard it is also important to advert to section 101 of CPC, which provides that no appeal shall lie except on the grounds mentioned in the Section 100 of CPC. While this Court is cognizant of Order 41 Rule 31 CPC, yet at this stage no case has been set forthwith to entertain the present appeal in view of the reasoning stated above. As a consequence hereof this appeal is hereby dismissed *in limine* along with pending application.

Judge