

ORDER SHEET
THE HIGH COURT OF SINDH, KARACHI
IInd Appeal No. 101 of 2023

Dated: Order with signature of Judge(s)

1. For orders on CMA NO. 3237 of 2023
2. For hearing of Main Case.

Date of Hearing : 29.05.2023.

Petitioner : In Person

Respondents : Shahab Khan and others.

MOHAMMAD ABDUR RAHMAN, J. - This is a Second Appeal that has been maintained under Section 100 of the Code of Civil Procedure, 1908 against the Judgment dated 15 March 2023 passed by VIIIth Additional Sessions Judge Malir Karachi in Civil Appeal No.134 of 2021, upholding the Order dated 12 July 2021 passed by IIIrd Senior Civil Judge Malir Karachi, whereby the Plaint of F.C Suit No.996 of 2019 was rejected under the provisions of Order VII Rule 11 of Code of Civil Procedure, 1908.

2. The Appellant claims to be owner of Plot No.C-11, Block-A Pakistan Homes, Malir Cantt Road, Gulistan-e-Johar Karachi admeasuring 200 sq. yards (hereinafter referred to as the "Said Property") which she states she had purchased on 8 November 2016 by an Agreement to Sell from one Mohammad Farhan Nabi for good consideration. She says that the Respondent No. 1 was attempting to dispossess her and therefore she has maintained F.C Suit No.996 of 2019 before the by IIIrd Senior Civil Judge Malir, Karachi praying for the following reliefs:

" ... a. To declare that the plaintiff is legal,, lawful and bonafide owner of the suit property and the defendant has caused it loss and damage illegally and unlawfully.

b. To declare that the act of defendant is illegal and unlawfully, ab initio.

c. To pass orders by nullifying/cancelling the counterfeited documents, which has been prepared by the defendant, illegally and unlawfully.

d. To direct the defendant to handover all the articles i.e Iron, Cement, 15 Doors, 4 windows, office articles etc from the plot or its alternative to pay Rs.7,00,000/- [Seven Lacs] to the plaintiff."

3. The IIIrd Senior Civil Judge Karachi Malir on an application under Order VII Rule 11 CPC filed by the Respondent No. 1 was pleased to allow the said application and rejected the plaint of F.C Suit No.996 of 2019 on the following grounds:

- (i) the claim of the plaintiff was based on a void agreement and barred under Section 7 of Transfer of Property Act;
- (ii) The claim of declaration as to ownership of the Said Property was on the basis of An Agreement to Sell and which could not be granted under section 42 of Specific Relief Act;

4. Being aggrieved with and dissatisfied by the Order dated 12 July 2021 passed by IIIrd Senior Civil Judge Malir Karachi in F.C Suit No.996 of 2019, the Appellant preferred Civil Appeal No.134 of 2021 before the VIIIth Additional Sessions Judge Malir, Karachi, who after hearing the Appellant and the Respondent was pleased to uphold the Order dated 12 July 2021 passed by IIIrd Senior Civil Judge Malir Karachi in F.C Suit No.996 of 2019 and dismissed the appeal by holding that:

- (i) the Appellant's claim to the Said Property was on the basis of an Agreement to Sell, and which could not be a base for maintaining a suit for declaration under Section 42 of the Specific Relief Act, 1877

5. The Appellant has appeared before this Court and submits that the VIIIth Additional District Judge Malir Karachi by the Judgment dated 15 March 2023 passed in Civil Appeal No.134 of 2021 has erred while upholding the Order dated 12 July 2021 passed by IIIrd Senior Civil Judge Malir Karachi in F.C Suit No.996 of 2019, as the Appellant had acquired good title to the Said Property on the basis of an Agreement to Sell as executed between herself and one Mohammad Farhan Nabi. She further contended that both the VIIIth Additional District Judge Malir Karachi by the Judgment dated 15 March 2023 passed in Civil Appeal No.134 of 2021 and the IIIrd Senior Civil Judge Malir Karachi in its Order dated 12 July 2021 passed in F.C Suit No.996 of 2019, had failed to appreciate that the Respondent No.1 had illegally dispossessed the appellant from the Said Property on 26 October 2019 and as such the Plaint could not be rejected without recording evidence on this issue. She did not rely on any case law in support of her arguments.

6. I have heard the appellant and perused the record.

7. The Supreme Court of Pakistan in the decision reported as **Dr. Muhammad Javaid Shafi v. Syed Rashid Arshad**¹ has held that where a Plaintiff seeks multiple reliefs in a suit, the test to determine as to whether a suit is maintainable is to see from the reliefs that have been claimed by a Plaintiff in a prayer clause as to which of such prayers is the main relief and which of the reliefs are only ancillary, dependent or consequential. Once identified if it is found that the main relief is barred, then the ancillary, dependent or consequential relief should also be denied. It was held that:

“ ... *In the instant case, the contents of the plaint, especially prayer part thereof which has been reproduced in one of the preceding paragraphs of this opinion clearly and undoubtedly envisages that the respondent is challenging the documents as being invalid against him the on the*

¹ PLD 2015 SC 212

grounds of fraud, forgery, misrepresentation etc., and as a consequential relief (per prayer clause (d)] he unambiguously is seeking a decree for possession of the plot in dispute by further asking for the demolition of the superstructure existing thereupon. This part of the relief upon proper construction of the plaint and the frame of the suit is merely ancillary, incidental, consequential and dependent upon the primary relief of cancellation of the documents which is the basic and the foundation relief being sought (emphasis supplied). If the main relief is time barred and the bar is not surmounted by the respondent, the incidental relief has to go away along with it and the suit is liable to be dismissed on account of being time barred."

13. I am of the opinion that the main prayer that the Appellant is seeking in F.C Suit No.996 of 2019 is in the nature of declaratory relief as to her title to the Said Property on the basis of an Agreement to Sell. All the other relief that has been claimed by the Appellant in F.C Suit No.996 of 2019 are ancillary to the declaratory relief being claimed or are incidental consequential or dependent thereto. I am therefore of the opinion that in the event that the Appellant was not entitled to the declaratory relief as claimed by her in F.C Suit No.996 of 2019, the remaining reliefs being claimed by the Appellant being ancillary incidental, consequential or dependent on the main relief could not be granted.

14. Section 42 of the Specific Relief Act, 1877 reads as under:

" ... **42. Discretion of Court as to declaration of status or right. Bar to such declaration.**–

Any person entitled to any legal character, or to any 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:

Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so."

It has recently been held by the Supreme Court of Pakistan in the decision reported as **Rao Abdul Rehman (Deceased) vs. Muhammad Afzal (Deceased)**² that:

² 2023 SCMR 815

“ ... *On the basis of a sale agreement, no legal character or right can be established to prove the title of the property, unless the title is transferred pursuant to such agreement to sell, but in case of denial or refusal by the vendor to specifically perform the agreement despite the readiness and willingness of the vendee, a suit for specific performance may be instituted in the court, but suit for declaration on the basis of a mere sale agreement is not the solution for appropriate relief. This Court in the case of Muhammad Yousaf vs. Munawar Hussain others (2000 SCMR 204) held that the agreement to sell by itself cannot confer any title on the vendee because the same is not a title deed and such agreement does not confer any proprietary right and thus it is obvious that the declaratory decree as envisaged by section 42 of the Specific Relief Act cannot be awarded because declaration can only be given in respect of a legal right of character. The only right arising out of an agreement to sell is to seek its specific performance.”*

It is therefore settled that a Plaintiff cannot maintain a suit for declaration as to their title on the basis of an Agreement to Sell and in the event such a *lis* is maintained, declaratory relief, such as was prayed for by the Appellant in F.C Suit No.996 of 2019, could not be granted under Section 42 of the Specific Relief Act, 1877. I am clear that the Plaint in in F.C Suit No.996 of 2019 was correctly rejected under Order 7 Rule 11 of the Code of Civil Procedure, 1908 as the declaratory relief of title to the Said Property that was claimed by the Appellant in F.C Suit No.996 of 2019 could not have been granted to the Appellant under Section 42 of the Specific Relief Act, 1877 on the basis of an Agreement to Sell.

14. I am therefore am of the opinion that neither the Judgment dated 15 March 2023 passed by VIIIth Additional Sessions Judge Malir Karachi in Civil Appeal No.134 of 2021, nor the Order dated 12 July 2021 passed by IIIrd Senior Civil Judge Malir Karachi, whereby the plaint of F.C Suit No.996 of 2019 was rejected under the provisions of Order 7 Rule 11 of the Code of Civil Procedure, 1908, suffer from any material irregularity or can be considered to be either illegal or irregular and for which reason I have dismissed this application on 29 May 2023 as being misconceived and the foregoing are the reasons for that decision.

JUDGE

Dated: 24 July 2023