

IN THE HIGH COURT OF SINDH AT KARACHI

Present:  
Mr. Justice Muhammad Shafi Siddiqui  
Mr. Justice Jawad Akbar Sarwana

**Constitution Petition No.D-7408 of 2019**

Muhammad Ali  
Versus  
IInd Additional District & Session Judge (Malir), Karachi and others  
.-.-.-.-.

Date of hearing: 20.12.2023  
Date of Short order: 20.12.2023  
Date of Reasons: 09.01.2024

Mr. Arsalan Wahid, Advocates for the petitioner.

Mr. Jamshed Qazi, Advocate for Respondent No.2.  
.-.-.-.-.

**J U D G M E N T**

**Muhammad Shafi Siddiqui, J.-** A suit for declaration, injunction and for transfer and mutation of a property, described below, was filed as suit No.662/2017 against respondents No.2 and 3; respondent No.3 being a Police Department Employees Cooperative Housing Society Limited, whereas, respondent No.2 shown to be a seller of the property.

2. It is claimed that by virtue of an agreement dated 19.09.2016 respondent No.2 agreed to transfer the subject plot bearing No.R-254, measuring 120 square yards in Sector No.45/A situated at KDA Scheme No.33, File No.483, Registered Folio No.363, Police Department Employees Cooperative Housing Society Limited, Karachi in the name of the appellant/plaintiff. The suit was contested by respondent No.3 that is society and the following issues were framed:-

1. *Whether the suit is maintainable under the law?*
2. *Whether the plaintiff has purchased the suit property viz. Property bearing No.R-254, measuring 120 square*

*yards in Sector No.45/A situated at KDA Scheme No.33, File No.483, Registered Folio No.363, Police Department Employees Cooperative Housing Society Limited, Karachi from defendant No.1 by way of sale agreement dated 19.09.2016?*

3. *Whether the plaintiff is entitled for the relief claimed?*

4. *What should the decree be?*

3. In consideration of the pleadings, evidence and the material available on record, the respondent No.2 (seller) was directed to return to the plaintiff the amount of sale consideration paid plus 10% interest per annum to be calculated from 19.09.2016 that is the date of sale agreement till its realization. The declaration as claimed was not granted.

4. The judgment was passed on 26.07.2019 and the decree was also prepared accordingly on the same date. Aggrieved of it, a revision application bearing No.39/2019 was filed which was dismissed on the count that against the judgment and decree an appeal is a statutory remedy which was not availed and the revision was not held to be a supplement or alternate recourse, hence the revision was also dismissed. Aggrieved of it, this constitution petition was filed.

5. We have heard learned counsels and perused the material available on record.

6. At the very outset we have enquired as to how the revision was maintainable in view of the availability of a right of appeal against the judgment and decree which appellant felt to be against him; he submits that although an appeal is a remedy which was available, but if the trial court exceeds its jurisdiction or the jurisdiction so vested was not exercised, a revision could always be maintained. We are not impressed with this argument as this

could always be interfered by appellate court, if an appeal was preferred.

7. Notwithstanding above, learned counsel for the petitioner was not able to satisfy even remotely that the jurisdiction that was exercised by the court, was not conferred upon it by law. It is the appellant's own suit which he preferred and conveniently got it disposed of by virtue of a decree for a sum of Rs.400,000/-, which he paid as consideration, along with interest. It cannot be remotely considered that the trial court exceeds its jurisdiction or the jurisdiction was not exercised properly. Grant of performance is always a discretion to be exercised by court and it has not been established that such discretion was not exercised properly; even otherwise it could have been assailed in appeal not in revision.

8. We have seen the matter from another angle, if the revision could have been converted into an appeal so that a proper remedy of appeal could be made available, however, we realized that the judgment and decree was passed on 26.07.2019, whereas, the application to obtain certified copy was filed on 02.08.2019 and the copy was obtained on the same day on payment of cost. The revision before the District Judge was filed on 04.09.2019. Although in counting time, one day has to be excluded, that is 2<sup>nd</sup> August, 2019, on which date he applied and obtained copy. Even if we would convert revision into an appeal, this would have been time barred, which delay has neither been explained nor any application in this regard was filed. The revision was filed on 38<sup>th</sup> day, after passing of judgment & decree and 30 days' time required to file appeal, hence barred by time even if it was converted.

9. In view of the above, we see no reason to interfere in the concurrent findings of two courts below in a writ jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, having a limited scope, hence, the instant petition was dismissed by a short order dated 20.12.2023 and these are the reasons for the same.

Dated:- 09.01.2024

JUDGE

JUDGE

Ayaz Gul