

# IN THE HIGH COURT OF SINDH AT KARACHI

IIInd Appeal No. 60 of 2020

[Muhammad Aminuddin .....v.....Muhammad Azizuddin & others]

Date of Hearing : 20.02.2023  
Appellant through : Sohail Amin, legal heir of appellant is present in person.  
Respondents through : *Nemo.*

## 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 assails concurrent findings of the learned trial Court dated 11.02.2019 as well as those of the first Appellate Court dated 17.12.2019 which are against the appellant.

2. Pithily the facts of the case at hand is that the appellant respondents herein filed a suit for Partition & Permanent Injunction against the appellant in respect of four properties which are more particularly described in para-3 (page-9) of the appeal, left by deceased Muhammad Ziauddin (father of the appellant as well as respondents). It is alleged that the said suit was decreed in terms of compromise, however, the appellant impugned the said findings on the ground that he could not receive his proper shares by filing Civil Appeal No.87/2019 which was dismissed vide impugned Judgment dated 17.12.2019, hence this second appeal against the concurrent findings.

3. Sohail Amin one of the legal heirs of the appellant appeared and submitted that his deceased father had already received his shares, however, the respondents have sold out the inherited properties in a very exorbitant rates, therefore, his father (appellant)

is entitled for the shares in the sale proceeds received by the respondents after selling out the inherited properties.

4. None present for the respondents. 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.

5. Reverting to the issue at hand, the share of the appellant was calculated to the tune of Rs.18,80,000/- at the time of settling the matter before the learned Trial Court between the litigating parties, however, at the request of appellant the same amount was enhanced from 18,80,000/- to Rs.24,78,000/- and the said amount was also received by the legal heirs of the appellant present in Court today. The learned First Appellate Court discussed the issue at hand in para-10 of the impugned Judgment and it is considered pertinent to reproduce the relevant excerpt which is delineated hereunder:-

“10. Through applicants dated 25.09.2017, 11.10.2017, 28.10.2017, 06.12.2017, 13.09.2018 and 20.11.2018, the very claim of the appellant/defendant is that the respondent No.1 has misled and infact it was agreed that the respondents/plaintiffs did not want to sell the said three inherited properties, but he has entered into agreements to sell the same on higher price but has not paid his due share accordingly, even such condition was not incorporated in the orders dated 19.09.2017 and 23.09.2017 by the learned trial Court mistakenly despite the fact that he has moved referred applications. **It is noted that in the order dated 23.09.2017, the learned trial Court has specifically observed that the appellant has accepted the share in the said three inherited properties as against the amount of Rs.24,78,000/-, after receipt of such**

amount he has got no justification to claim any further amount. Even otherwise, the plea of the appellant so raised in the applications, referred to above, found with no substance as in the order dated 19.09.2017, the learned trial Court also mentioned that the appellant moved an application for enhancement of his share Rs.26,38,000/- instead of Rs.24,78,000/- but later on he not pressed the same and accepted the offer of Rs.24,78,000/-. Moreover, it is quite strange to note that on one hand the appellant applied for rectification of alleged non-mentioning of agreed terms in the orders dated 19.09.2017 and 23.09.2017, on the contrary also receipt the amount as mentioned in the said orders. Had the appellant not satisfied with the offered amount so also with the orders passed by the learned trial Court, he ought not to have received the amount. Acceptance and receipt of the amount clearly defies the further claim of the appellant as alleged. In view of this fact, the pleas of the appellant so raised in the referred applications, appears to be unjustified.

[emphasis added]

6. It is gleaned from appraisal of the foregoing that initially the share of the appellant was calculated at Rs.18,80,000/-, however, on his application moved by him for enhancement which was mutually allowed by the learned Executing Court and his share was enhanced from Rs.18,80,000/- to Rs.24,78,000/- and such amount was also received by him. It is also crystal clear from the above reproduction that the appellant soonafter mutually agreed terms of shares of Rs.24,78,000/- also moved an application for again enhancement of his share from Rs.24,78,000/- to Rs.26,38,000/- but lateron the said application was not pressed by the appellant himself. It is admitted position that the lis had already been settled between the litigating parties before the learned trial Court and the shares in the inherited properties had already been accepted by the appellant. The learned First Appellate Court had rightly observed in the impugned Judgment that the appellant ought not to accept his share if it was deficit according to him which act of the appellant clearly defies the further

claim of enhancement of share which had already been enhanced from Rs.18,80,000/- to Rs.24,78,000/-.

7. To me, the concurrent findings are based upon the correct appreciation of law as well as on fact. When the findings are based on mis-reading or non-reading of evidence, and in case the order of the lower fora is found to be arbitrary, perverse, or in violation of law or evidence, this Court while exercising jurisdiction under Section 100 C.P.C. can exercise its jurisdiction as a corrective measure. If the error is so glaring and patent that it may not be acceptable, then in such an eventuality the High Court can interfere when the finding is based on insufficient evidence, misreading of evidence, non-consideration of material evidence, erroneous assumption of fact, patent errors of law, consideration of inadmissible evidence, excess or abuse of jurisdiction, arbitrary exercise of power and where an unreasonable view on evidence has been taken. No such avenues are open in this case as both the judgments are well jacketed in law. It has been held time and again by the Apex Court that findings concurrently recorded by the courts below cannot be disturbed until and unless a case of non-reading or misreading of evidence is made out or gross illegality is shown to have been committed.<sup>1</sup>

8. It is witnessed that on the basis of this Second Appeal none else but the present individual has created a Business Model of forcing the earlier purchasers of these properties and compelling them to sell these properties at less than market rates and he has moved umpteen number of applications to achieve such an illegitimate and scandalous desire. He has even courage to state that one of such person is forced

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<sup>1</sup> Farhan Farooq v. Salma Mahmood (2022 YLR 638), Muhammad Lehrasab Khan v. Mst. Aqeel un Nisa (2001 SCMR 338), Mrs. Samina Zaheer Abbas v. Hassan S. Akhtar (2014 YLR 2331), Syed Shariq Zafar v. Federation of Pakistan & others (2016 PLC (C.S) 1069).

to sell the plot and he has taken possession of some other property on the strength of this Second Appeal. How all these illegal designs could be satisfied in a pending Second Appeal, is a serious mind troubling query. Thus by dismissing all such applications, let the appellant pursue any such claims through independent civil actions at his own cost and peril.

9. In light of the above discussion, the instant IInd Appeal is dismissed alongwith all of the pending applications.

Karachi  
Dated:20.02.2023

JUDGE

Aadil Arab