

Judgment Sheet**IN THE HIGH COURT OF SINDH CIRCUIT COURT @ LARKANA****Civil Revision No.S-91 of 2021**

Applicant : Sukhio Khan s/o Qurban Ali Gadahi
through Mr. Waqar Ahmed A.
Chandio, Advocate

Respondents: 1) Ali Nawaz s/o Muhammad
Chuttal Dahar
2) Muhammad Bux s/o Muhammad
Chuttal Dahar
through Mr. Abdul Rehman A.
Bhutto, Advocate

Respondents: 3) Mukhtiarkar, Taluka Dokri
4) SHO P.S Veehar
5) Government of Sindh through
Secretary Revenue Department
Karachi
through Mr. Abdul Waris Bhutto,
Assistant Advocate General

Date of hearing: 26.5.2023

Date of Decision: 10.8.2023

J U D G M E N T

ARBAB ALI HAKRO, J:- Through this Revision Application under Section 115, The Code of Civil Procedure 1908 ("**the Code**"), the applicant has called in question the Judgment and Decree dated 17.8.2021, passed by the Court of III-Additional District Judge (MCAC), Larkana ("**the appellate Court**") whereby, an appeal preferred by the applicant was dismissed, consequently the Order dated 30.3.2021, passed in F.C Suit No.36/2019 by IV-Senior Civil Judge, Larkana ("**the trial Court**") rejecting the plaint u/Order VII R 11 of the Code was maintained.

2. In brief facts, the applicant/plaintiff filed a suit for Declaration, Specific Performance of Contract and Permanent Injunction, claiming that the respondents/defendants Nos. 1 & 2 collectively own agricultural land bearing Survey Nos. 217, 408, 226/3, 408, 336/3, 290 and 216/2, spanning across 14 Jarebs situated in Deh Khacharpur, Tapa Veehar Taluka

Dokri ("**the suit land**"). These respondents sold the suit land to the applicant through a Sale Agreement executed on 05.12.2018. The purchase price was agreed upon as Rs. 40,00,000/-. As a partial fulfilment of the contractual obligations, the applicant paid an amount of Rs. 25,00,000/- to respondents No. 1 and 2 in the presence of witnesses. The remaining sum was intended to be paid through subsequent instalments; upon successfully harvesting the wheat crop, the respondents shall be obligated to execute the registered sale deed per the stipulations outlined in the contract. Subsequently, possession of the suit land was duly transferred to the applicant. The agreement in question was officially documented in written form in the presence of witnesses on 05.12.2018. From that point forward, the applicant has maintained uninterrupted possession and utilisation of the suit land without encountering any objections or conflicts from any party involved. The applicant further contends in the plaint that under the terms of the agreement, they harvested a wheat crop in May 2019. Following this, the applicant approached respondents No.1 & 2 on multiple occasions. However, the respondents/defendants intentionally misled the applicant with false promises and attempted to sell the suit land to a third party. As a result, the applicant filed suit claiming the following reliefs: -

- a) That this Honourable Court may be pleased to declare that Act of defendants Nos.1 and 2 of refusing to execute the registered sale deed is illegal, null, void and without lawful justification.
- b) That this Honourable Court may be pleased to direct defendants No.1 and 2 to execute the agreement to sell dated 05.12.20218 in part performance of contract by executing register sale deed; in case of refusal, this Court may order for specific performance of agreement and direct the Nazir of this Honourable Court to execute the register sale deed in favour of plaintiff. The plaintiff is ready to deposit the remaining balance amount of Rs.1500000 (fifteen lac rupees only).
- c) To direct defendants Nos.1, 2 and 3 not to further register any document and mutate the record of

right of suit property creating third party interest and further direct the defendants Nos.1 and 2 not to interfere in the suit property and issue threats to plaintiff for his dispossession from suit property, till decision of this suit.

d) Costs of the suit.

e) Any other relief deems fit any proper awarded to the plaintiff.

3. Upon service of summons, respondents No.1 & 2 contested the suit and filed their Written Statement, wherein they denied entering into a sale agreement with the applicant. Furthermore, the defendants have posited legal contentions asserting that the suit lacks maintainability, is time-barred, and the applicant has no cause of action. They also submitted an application under Order VII Rule 11 of the Code r/w Section 151 of the Code ("**earlier application**"), contending that the suit is barred by law and the plaint does not show a cause of action. On 24.9.2019, the applicant submitted preliminary objections to the aforementioned application. After deliberating upon the arguments presented by the parties, the trial court granted the previous application and dismissed the applicant's claim through an Order dated 15.10.2019. Subsequently, the applicant preferred Civil Appeal No. 128/2019, which was subsequently allowed by the appellate Court through its Judgment and Decree dated 29.11.2019; as a result, the suit was remanded back to the trial Court for further proceedings, with explicit instructions to adjudicate the case in accordance with legal norms.

4. Thereafter, from the divergent pleadings of the parties, the trial Court formulated the following issues: -

- i. Whether the suit is not maintainable?
- ii. Whether defendants No.1 and 2 entered into sale agreement dated 05.12.2018 for sale of suit property to plaintiff in the sum of Rs.40,00,000/-, received Rs.25,00,000/- and delivered him possession but refused to go for

registration after taking wheat crop, as agreed? (OPP)

- iii. Whether the plaintiff is entitled to the relief claimed? (OPP)
- iv. Result?

5. After framing of above issues, the trial Court fixed the case for the presentation of evidence. However, respondents No. 1 & 2 have requested to make amendments/additions to their written statement by filing an application under Order VI Rule 17 of the Code. When the applicant received notice, he submitted his objections to the abovementioned application. After considering the arguments presented by both parties, the trial court dismissed the application on 07.12.2020. Respondents 1 & 2 challenged this decision through Civil Revision Application No. 51 of 2020. The Additional District Judge-III (MCAC) Larkana heard Civil Revision and, on 25.01.2021, allowed the revision with direction to respondents No. 1 & 2 to make amendments to their written statement in the appropriate place. The applicant claims that respondents No. 1 & 2 did not amend their written statement as per Order but instead submitted a completely new amended written statement along with an application under Order VII Rule 11 of the Code ("**subsequent application**"). in order to facilitate ease of reference, the grounds mentioned in the abovementioned application for rejection of the plaint are replicated below: -

- i. *That, from averments of the plaint, a suit is barred by law and not maintainable, not filed with clean hands.*
- ii. *That, from averments of the plaint, a present suit cannot be entertained and is liable to be dismissed, including on the ground of suppression of facts and misstatement knowingly.*
- iii. *That, the plaintiff has not produced any title documents, as the plaintiffs have filed the present suit based on forged and managed documents which cannot create their right and title or locus-standi.*
- iv. *, it is a settled principle of law that for the Declaration and Injunction suit, the plaintiff must establish a legal character to maintain the suit for Declaration and injunction. However, in the present plaint, the plaintiffs failed to show any legal character; therefore, in the absence of these things in favour*

of the plaintiffs, all the relief claimed by the plaintiff in the present suit is not maintainable according to the abovementioned law.

- v. , the prime object of Order VII Rule 11 CPC is primarily to save the parties from frivolous litigation. If the Court come to the precise conclusion that even if all the allegations made in the plaint are proved, the plaintiff would not be entitled to the relief claimed, then the Honourable Court would be justified to reject the plaint in the exercise of the power available under Order VII Rule 11 CPC, same is the position in this plaint, even the prayer by plaintiffs cannot be granted by this Honourable Court.*

6. The trial Court vide its Order and Decree dated 30.3.2021, allowed the application and rejected the plaint under Order VII Rule 11 of the Code. The applicant assailed the aforesaid Order and Decree in an appeal which was dismissed on 17.8.2021 by the appellate Court, and the Order and Decree under appeal were maintained.

7. At the very outset, the learned counsel for the applicant contended that both the Courts considered the suit for Declaration without perusing the prayers; in fact, the suit for Specific Performance was filed by the applicant; he argued that an earlier application was filed on the ground that the suit is barred by law. Plaint does not disclose a cause of action, and the trial Court rejected the plaint and said Order was challenged in Civil Appeal No.128/2019, which was finally allowed vide Judgement dated 29.11.2019. The case was finally remanded to the trial Court for disposal in accordance with law. Contends that respondents No.1 & 2 admitted the ownership of the suit land in their written statement, but afterwards amended written statement had been filed with leave of the Court through application under Order VI Rule 17 of the Code, wherein they have denied ownership in respect of Survey No.336/3 and filed the subsequent application on the same grounds, which is not maintainable under the law. He also drew attention to the fact that the trial Court had framed issues. The matter was fixed for plaintiff evidence, and the trial Court rejected the plaint without considering the objections filed on a subsequent

application. Finally, he concluded that the appellate Court had also not considered that aspect of the case and dismissed the appeal by maintaining the Order of the trial Court. In support of his contention, he relied upon **2022 SCMR 1898, 2020 CLD 1329, 2018 MLD 918, 2019 CLC 2083, 2016 MLD 1394, PLD 2009 Karachi 38, NLR 2004 Civil 657 and unreported Order dated 29.7.2020, passed by Apex Court in C.P No.1425-K of 2018 in the case of Sikandar Ali and others vs. Badaruddin and others.**

8. On the other hand, the learned counsel for the respondent No.1 & 2 contended that the plaint has rightly been rejected as it does not disclose a cause of action and the suit is barred under Section 12 of the Specific Relief Act as respondent No.1 & 2 were not the owner of Survey No.336/3 and no Sale Agreement had been executed between the parties. Applicants are land grabbers and intend to occupy the suit land through false, fabricated and bogus agreements. Contends that even otherwise, as condition No.2 of the alleged Sale Agreement suit for Specific Performance of Contract is not maintainable, and applicants should have sought relief by filing suit for recovery of the amount. Contends that both the Courts have rightly rejected the plaint, and there is no need to decide the matter on the basis of evidence as the suit at its inception is incompetent and not maintainable. Refuting the arguments of learned counsel for the applicant, he contends that subsequent application is maintainable if the ground of rejection is different or not identical. He finally concluded that the suit is barred by law and not maintainable and should be buried at its inception. He relied upon **2023 SCMR 344, PLD 1967 Dacca 190, 2004 A.C 863 and 2009 MLD 538 to support his contention.**

9. Learned Additional Advocate General for the official respondents supported the impugned Judgement and Order of both the Courts below. Additionally, he adopted the

arguments put forth by the counsel for respondent No.1 & 2 and prayed for the dismissal of this Revision Application.

10. The contentions have been fastidiously scrutinized, and the accessible record has been carefully assessed.

11. To ascertain whether an adequate and comprehensive dispensation of justice was achieved, it is imperative to analyse the findings concurrently documented by the Courts below. Admittedly, the trial Court permitted the earlier application, dated 27.8.2019, and rejected the plaint without fully considering the nearly identical grounds presented in the subsequent application dated 11.02.2020. However, in considering the appeal against the rejection of the plaintiff's plaint, the appellate Court opted to remand the case to the trial court to ensure proper adjudication of the suit and avoid any technicality. It is evident that the grounds for the subsequent application were not deliberated upon in the previous Order dated 15.10.2019, in which the trial Court rejected the plaint. However, once the case has been remanded back for proper procedural handling and issues have been framed, it is questionable how the trial Court could consider a second application and reject the plaint by clarifying factual disputes regarding the ownership of Survey No. 336/3, either it is included in the body of plaint and sale agreement dated 05.12.2018. I am of the opinion that once an application is made under Order VII Rule 11 of the Code in a suit, it becomes the responsibility of the Court to independently determine all relevant legal inquiries, including whether the suit is barred by law or if the plaint discloses a cause of action. Hence, it is imperative to highlight the inherent illegality in the existing scenario, wherein the Court rejected the plaint while considering a subsequent application under Order VII Rule 11 of the Code, contravening the prevailing legal provisions. In this context, I am fortified with the case of **Mcthammad Boot. A and another vs Moor Begum and 2 others** (PLD 2002 Supreme Court 74),

wherein Apex Court has held as under: -

"4. Learned counsel for the appellants argued that after rejection of the first application, the second application for the same relief was not competent, therefore, the High Court erred in law in accepting the second application without commenting on the maintainability of the said application. The learned counsel representing the respondents at this stage stood up and submitted that he concedes the above legal position and would not oppose the appeal on this count."

12. The definitions pertaining to the terms of Sale Agreement, Contract, and enforceability of agreement are explained in Sections 2, 3, and 4 of the Contract Act, 1872. The following Sections are reprinted below for the sake of ease and convenience: -

"2. Interpretation clause. In this Act the following words and expressions are used in the following senses unless a contrary intention appears from the context:--

(a) when one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such Act or abstinence, he is said to make proposal.

(b) when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise;

(c) the person making the proposal is called the "promisor", and the person accepting the proposal is called the promisee";

(d) when, at the desire of the promisor, the promisee or any other person who has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such Act or abstinence or promise is called a consideration for the promise;

(e) every promise and every set of promises, forming the consideration for each other, is an agreement;

(f) promises which form the consideration or part of the consideration for each other called reciprocal promises;

(g) an agreement not enforceable by law is said to be void;

(h) an agreement enforceable by law a contract;

(i) an agreement which is enforceable by law at the opinion of one or more of the parties thereto, but not at the opinion of the other or others, is a voidable contract; and

(j) a contractor which ceases to be enforceable by law becomes void when it ceases to be enforceable.

3. Communication, acceptance and revocation of proposals. *The communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances, respectively, are deemed to be made by any Act or omission of the party proposing, accepting or revoking by which he intends to communicate such proposal, acceptance or revocation, or which has the effect of communicating it.*

4. Communication when complete. *The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.*

The communication of an acceptance is complete,--

as against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor;

as against the acceptor, when it comes to the knowledge of the proposer.

The communication of the revocation is complete,--

as against the person who makes it, when it is put into course of transmission (to the person to whom it is made, so as to be out of the power of the person who makes it;

as against the person to whom it is made when it comes to his knowledge."

13. The requisite elements that must be established by the parties to substantiate the Sale Agreement are offer acceptance, communication, and consideration. In this regard, Apex Court settled exposition of the law in the case of **Muhammad Sattar and others vs Tariq Javaid and others (2017 SCMR 98)**, wherein it has been observed as under: -

"13. The aforesaid would make it clear that it is now a well settled proposition of law that for a valid contract, the same can be oral or it may be through exchange of communication between the parties. Once an offer is communicated, the acceptance thereof can be expressed or implied. Such acceptance of the offer would include accepting the consideration accompanying the offer or acting upon the said bargain. There is no requirement of a formal signature of both or either of the parties. All that is required is an offer and acceptance and consideration between the parties."

14. Upon careful examination of the impugned Judgment and Order passed by the lower Courts, it becomes evident that the rejection of the plaint was carried out hastily without affording the parties the chance to substantiate their claims by submitting evidence. This hasty dismissal of the case was solely based on a preliminary examination of the terms and conditions outlined in the Sale Agreement. I have thoroughly examined the terms and conditions of the Sale Agreement dated 05.12.2018, in which it is explicitly stated that the applicant had an obligation to pay the remaining amount of Rs. 1500,000/-(fifteen lac) to the respondents upon the completion of the wheat crop harvest. Subsequently, the respondents would be legally obligated to execute the registered Sale Deed. However, the trial Court neglected to acknowledge this particular condition of the Sale Agreement and erroneously concluded that *"Had there been a condition in the agreement to sale then the vendee would have been entitled to file a suit for specific performance of agreement to sale. From terms and conditions it is crystal clear that the respondent, vendee was only entitled for receiving an amount double of the earnest money which was paid to the vendor."* These findings are deemed unlawful and result from misinterpretation and failure to thoroughly review the terms and conditions outlined in the Sale Agreement. Even otherwise, the Court is empowered to consider legal action for enforcing a contract through specific performance, as specified under Section 12 of the Specific Relief Act, 1877. In specific performance suits, the Court is empowered by Section 19 of the Specific Relief Act, 1877, to grant damages without the plaintiff specifically requesting them. The said Section is reproduced herein below:--

"19. Power to award compensation in certain cases.--
-Any person suing for the specific performance of a contract may also ask for compensation for its breach, either in addition to, or in substitution for, such performance.

If in any such suit the Court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant and that the plaintiff is entitled to compensation for that breach, it shall award him compensation accordingly.

If in any such suit the Court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.

Compensation awarded under this Section may be assessed in such manner as the Court may direct."

15. It is clear that the first part of Section 19 *ibid*, only enables the person suing for specific performance to ask for compensation for its breach. He may do so either in addition or in substitution for such performance. In the instant case, the appellant had not explicitly asked for compensation for the breach of any contract. The second part of Section 19 *ibid*, imposes a mandatory duty upon the Court to award compensation, whether it is asked for or not. The conditions that have to be satisfied before compensation is granted under the second part of Section 19 are that the Court must decide that specific performance ought not to be granted; there must be a contract between the parties which must have been broken by the defendant against whom the compensation is to be granted; and the plaintiff must have proved his right to the compensation to be awarded. It is obvious that this part of Section 19 comes into play only when there is a privity of contract between the plaintiff and the party against which an order for damages for breach of contract can be passed. In doing so, I draw inspiration from the legal precedents established in the following cases:

(i) In the case of **Nigar Pictures, Karachi v. United Brothers, Lahore (PLD 1970 Karachi 770)**, it was observed that section 19 of the Specific Relief Act, 1877, confers express power on the Court to award damages either in addition to

or in substitution of specific performance whenever the Court considers the award of damages to be just. Furthermore, it was held that it was settled law that damages for breach of contract can be awarded in a suit for specific performance even though the plaintiff had not claimed damages.

(ii) In the case of **Shushilendra Pal Singh v. Kailash Chand Bhargava (AIR 1945 Allahabad 395)**, Wali Ullah J. reiterated the law laid down in the case of Callianji Harjivan v. Narsi Tricum ((1895) 19 Bombay 764), that when the Court holds in its discretion that neither specific performance of the agreement nor an injunction against the defendant would be a proper remedy on the ground that pecuniary compensation is an adequate remedy it ought not to dismiss the suit but should either itself award damages or order an inquiry with regard to the same.

(iii) In the case of **Pratapchand v. Raghunath Rao (AIR 1937 Nagpur 243)**, it has been held that the word "compensation" used in section 19 of the Specific Relief Act, 1877, must be understood in the sense of damages contemplated in section 73 of the Contract Act, 1872, which has been held to apply to cases of breach of contract to sell immovable property.

16. Another facet of this case pertains to the omission of both the lower courts regarding their failure to acknowledge that it would not be justifiable to reject the plaint when the parties are at a variance of factual issues, especially considering that the case had been scheduled for the presentation of evidence. Once the issues were framed and the Court had entered upon a recording of evidence, the matter had to be taken on its logical end instead of summary disposal. Learned counsel representing the applicant urged that respondents have filed F.C Suit No.143 of 2021 for Declaration, Possession, Mesne Profit, Mandatory and Permanent Injunction against the applicant and others in respect of the suit land and trial Court stayed the proceedings of that suit under Section 10 of the Code till the decision of instant Revision Application vide Order dated 12.4.2023. Hence, it is advisable and appropriate to consolidate the

aforementioned suits and determine them through a unified judgment, considering that the parties present counterclaims against one another. Both the Courts below have arrived at the wrong conclusion that the suit of an applicant is incompetent and lacks a cause of action.

17. For the foregoing reasons, I have come to the conclusion that the applicant has been able to make out a prima facie case in his favour, and both the Courts below have committed material irregularity and illegality while rejecting the plaint of the applicant u/Order VII Rule 11 of the Code; thus, this civil revision application is allowed. Consequently, the impugned Judgment and Order passed by the Courts below are set aside. Case/ suit is remanded back to the trial Court with the direction to consolidate both the suits and, after framing consolidated issues arising out of divergent pleadings of the parties, conduct the trial in accordance with the law to avoid conflicting judgments and decide both the Suits on merits on the basis of the evidence at earliest. Parties are left to bear their costs.

J U D G E