

HIGH COURT OF SINDH KARACHI

IInd Appeal No.93 of 2022

[Mst. Zaibunnisa through her legal heirs versus Muhammad Jameel & Ors.]

Appellant : Through Ms. Khadija Kulsoom advocate
Respondent No.1 : Through M/s Qutubuddin Qureshi and Jamila Siraj advocates
Respondents No.2to5: None present
Date of hearing : 20.12.2023
Date of decision : 24.04.2024

JUDGMENT

KAUSAR SULTANA HUSSAIN J.- This second appeal has been directed against the concurrent findings recorded by two Courts below. Respondent No.1/plaintiff had instituted Civil Suit No.1145 of 2015 [*Re: Muhammad Jameel versus Mst. Zaibunnisa & Ors.*] for Specific Performance, Declaration and Permanent Injunction against appellant (*through legal heirs*) and others before learned XIth Senior Civil Judge Karachi Central (**Trial Court**) in respect immovable property being House No.2/22 admeasuring 80 square yards situated at A-area Liaquatabad Karachi (**Suit Property**). The said suit was decreed on merit vide Judgment & Decree both dated 26.10.2019, against which legal heirs of appellant preferred Civil Appeal No.180 of 2018 [*Re: Mst. Mairaj & Ors. versus Muhammad Jameel & Ors.*] before learned IVth Additional District Judge Karachi Central (**Appellate Court**), but same was dismissed vide Judgment & Decree both dated 02.04.2022. For the sake of reference the Judgments and Decrees passed by trial Court as well as appellate Court are hereinafter referred to as impugned Judgments and Decrees.

2. Respondent No.1/plaintiff had filed the aforesaid suit, claiming therein that he had purchased the suit property from deceased appellant/defendant No.1 against total sale consideration of Rs.36,50,000/-, out of which he had made part payment of Rs.14,00,000/- and for remaining amount of Rs.22,50,000/- it was agreed between them that same is to be paid within 180 days (six months) of the date of signing of agreement, however, the said time was extended for further two months on his request and an affidavit to that effect was executed by the deceased appellant/defendant on 08.12.2014, which was again extended vide affidavit dated 14.03.2015; that it was also agreed that remaining amount of sale consideration will be paid on clearance of all utility bills by the deceased appellant/defendant, however despite repeated demands the appellant/defendant had failed to clear utility bills and performance her part of contract, which compelled the respondent

No.1/plaintiff to file aforesaid suit, which was decreed upto the Appellate Court, hence this second appeal.

3. Learned counsel for the appellant contended that trial Court did not appreciate the material facts at the time of deciding the suit; that trial Court had erred in law and failed to appreciate the fact that respondent No.1/plaintiff had failed to abide by the terms and conditions of Sale Agreement dated 18.06.2014, as he had failed to pay the amount within 180 days; that trial Court had decided the matter in hurried manner without considering all the four corners; that contents of alleged affidavits regarding extension of time were categorically denied by the deceased appellant during her life time and same is duly mentioned in Written Statement; that respondent No.1/plaintiff had not produced marginal witness to support affidavit with regard to part payment; that one witness of alleged affidavits had died on 10.10.2017, but the respondent No.1/plaintiff had failed to produce another witness Mst. Rubina Tarique for authentication and confirmation of execution of affidavit, as such the said affidavit has neither any values in the eyes of law nor admissible at all. He also reiterated the contents of grounds taken in this appeal and prayed for setting aside the impugned Judgments and Decrees.

4. Despite notice no one effected appearance on behalf of respondent No.2, however counsel for respondent No.1/plaintiff, who is contesting party, argued that appeal in resent form is not maintainable as in compliance of the impugned judgments and decrees followed by orders passed in execution application the suit property has been transferred in favour of the respondent No.1/plaintiff subject to payment of remaining sale consideration and respondent No.1/plaintiff has been put in possession of the suit property; that concurrent findings are available in favour of respondent No.1/plaintiff which do not require any interference by this Court, hence appeal is liable to be dismissed.

5. I have heard the learned counsel for the parties and have perused the material available on record.

6. Perusal of record shows that sale of suit property against total sale consideration of Rs.36,50,000/- by the predecessor-in-interest of legal heirs (appellants) in favour of respondent No.1/plaintiff is an admitted position. It appears that respondent No.1/plaintiff claimed that he had made part payment of Rs.14,00,000/-, however appellant(s) (successors-in-interest) only admitted receiving of Rs.13,50,000/- as part payment.

7. The appellant(s) (successors-in-interest) have only disputed the part payment of Rs.50,000/- as well as extension in time through affidavits dated 08.12.2014 and 14.03.2015. However, in order to prove his claim the respondent No.1/plaintiff had produced halfnamas/affidavits dated 08.12.2014 and

14.03.2015 respectively and also examined marginal witness Yasin Khan and despite lengthy cross-examination the evidence of respondent No.1/plaintiff and his witness remained un-shaken.

8. Record also reflects that affidavits with regard to extension in time were executed by the original owner deceased Zaibunnisa during her life time and on one hand the appellants (successors-in-interest) are claiming that the said affidavits are forged and managed, however, on the other hand in para-5 of the Written Statement they alleged that said affidavits were obtained by the respondent No.1/plaintiff in absence of any other family member of deceased Zaibunnisa (original owner). This admission in Written Statement on part of appellants (successors-in-interest) is sufficient to prove that time was mutually extended, therefore, the interest of respondent No.1/plaintiff cannot be defeated on the ground that he had failed to clear entire amount of sale consideration within 180 days (six months) as agreed upon in initial Sale Agreement.

9. Besides perusal of initial Sale Agreement shows that the deceased appellant (original owner) was required to clear all the utility bills in respect of suit property, however, copies of bills attached with counter affidavit, show that still various utility bills are unpaid, meaning thereby deceased appellant (original owner) had failed to perform her part of contract, whereas the respondent No.1/plaintiff at the time of filing subject suit deposited remaining amount of sale consideration with the Nazir of trial Court, which proves his bonafide intention.

10. Perusal of impugned judgments and decrees shows that both Courts below had taken into consideration the whole evidence on file and had discussed it in detail. The decisions arrived at by both the lower Courts are neither contrary to law nor had failed to determine any material issue. There is also no substantial error or defect in the procedure followed by them and under the circumstances their judgments and decrees are not open to appeal under Section 100 CPC. Reliance in this regard is place on the case reported in 1977 SCMR 280.

11. In view of the above discussion captioned appeal is dismissed having no merits.

JUDGE

Faheem/PA