

## IN THE HIGH COURT OF SINDH AT KARACHI

Present:  
Mr. Justice Muhammad Shafi Siddiqui  
Mr. Justice Omar Sial

High Court Appeal No.107 of 2021

Javed Iqbal  
Versus  
Abdul Rasheed Tagr & others

Date of Hearing: 16.04.2024  
Appellant: Through Mr. Raj Ali Wahid Kunwar Advocate  
Respondents No.1 & 2: None present.  
Respondents No.3 to 6: Through Mr. Abdul Jaleel Zubedi, Assistant Advocate General.

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

Muhammad Shafi Siddiqui, J.- A suit, which was meant to seek a declaration, permanent injunction and specific performance in respect of a property identified in the prayer clause (a), was disposed of by virtue of a compromise application bearing CMA No.2739/2021. Learned Single Judge while disposing of the application considered it appropriate to have decreed the suit in terms of paragraph 1 of the compromise application only whereas rest of the paragraphs of compromise application were not considered as found beyond scope of the suit, apparently in terms of prayer clauses. Aggrieved of it the appellant, being plaintiff in the suit, filed this appeal on the ground that rest of the contents of the compromise application ought to have been considered and a cumulative decree by allowing entire/all terms of application should have been passed.

2. We have heard learned counsel appearing for appellant as well as learned Assistant Advocate General who is appearing for official

respondents whereas no one has turned up on behalf of private respondents No.1 and 2, as is obvious.

3. The scope of the suit is limited to the extent of one property described in the prayer clause (a) as a land bearing Survey Nos.9, 11, 12, 13, 14 and 19 measuring 2-1 Acres in Deh Safoora, Tappo Malilr, Taluqa and District Airport, Malir, Karachi. There was nothing in the prayer clauses which could have described and/or point out any other property and/or any contingent event of any proposed allotment. The specific performance agreement itself may have been contingent upon events that relate to the happening of an event when the defendant/respondent No.1 may have been allotted another piece of land from Government of Sindh/Board of Revenue in lieu of suit land or otherwise but that is not the precise relief claimed in the suit in the prayer clauses. Suit was for specific property and not for performance of entire agreement.

4. The prayer clauses, insofar as the events described in paragraphs No.3 and 4 of the compromise application are concerned, are totally silent. These paragraphs talk about some alternate land in lieu of the suit land, which alternate land/property till date is non-existent. A decree could have either been passed in respect of a property mentioned in the prayer clause (a) or the relief could have been declined but in no way a property, which is yet to be identified, could also form part of the decree. The agreement/compromise application may have been contingent upon some future events but the decree to be passed in this regard would be a futile attempt and/or would not be fruitful for either of the parties entered into a compromise. A contingent agreement may form a valid contract but the specific performance is sought only in respect of an identified property.

5. Execution of such agreement may be lawful and may have been entered into and/or taken place between the parties but its lawfulness and the performance is to be determined on the touchstone of facts and law applicable thereon hence it cannot be preconceived (as is not even prayed in the prayer) that on the happening of such events, the appellant/plaintiff would have automatically seek fruits of such agreement by virtue of the purported decree which they (parties) claim by virtue of a compromise application.

6. Precisely the scope of the suit and frame of decree which could have been passed, is a land mentioned in prayer clause (a) and nothing else could have been done insofar as the future events and/or a property which is still not in existence. The order dated 03.04.2021 impugned before us is thus found to be lawful and the discretion as exercised by the learned Single Judge cannot be interfered or replaced by another discretion by this Court. Appeal as such is dismissed along with pending applications.

**J U D G E**

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