

IN THE HIGH COURT OF SINDH, KARACHI

IInd Appeal No. 80 of 2025

[Syed Atif Manzoor Al-Mobarak v.Ms. Sameen Anis and another]

Appellant Through M/s Imtiaz Ali Effendi, Javed Malik and Ghazi Khan Advocates.

Date of Hearing & Order 06.03.2025

ARSHAD HUSSAIN KHAN, J. The appellant through instant second appeal has challenged the concurrent findings of the court below and sought relief as follows:

“It is most humbly and respectfully prayed on behalf of appellant that this Hon'ble Court may graciously and in the best administration of justice be pleased to set aside the Impugned Judgment and Decree dated 06.01.2025 passed by XIIth Additional District Judge, Karachi (South), dismissing Civil Appeal No.257/2024 (impugned judgment of Appellate Court) and judgment dated 31.08.2024 and Decree dated 31.08.2024 passed by learned VIII-Senior Civil Judge, Karachi (South), in Suit No.1143/2021 (impugned judgment of trial court) as being illegal and without appreciation of law and facts null and void relating to claim of appellant for Recovery of Family Gold Ornaments, Personal Belongings & Rs.200,000/-, (details mentioned in Paras No 2, 4 and 9 of plaint) under their traditional custom known as "Baree", against respondent No. 1 and to call R&P of (1) Civil Appeal No.257/2024 before XIIth Additional District Judge, Karachi (South); (2) Suit No. 1143/2021 before VIII-Senior Civil Judge Karachi (South) and to pass Judgment and Decree of claim of appellant as prayed in the plaint of Suit No.1143/2021 against Respondent No.1 and 2.

2. From perusal of the record, it reveals that the appellant/ plaintiff Syed Atif Manzoor Al-Mobarak filed civil suit No.1143/2021, before VIIIth Sr. Civil Judge Karachi [South] for **recovery of family gold ornaments, personal belongings and Rs.2,00,000/-**, with the following prayers:

- “A. Grant the Judgment and Decree in favour of the plaintiff for recovery of Family Heirlooms & Gold Ornaments (more so fully described in Para No.2) or in alternate value of the Family Heirlooms & Gold Ornaments as per present market rate.
- B. Grant the Judgment and Decree for recovery of amount of Rs.200,000/- (Rupees Two Lac Only) mentioned against 02 dishonored cheques bearing No.23209363 dated 27.08.2019 & No.23209366 dated 21.09.2020.

- C. Direct the Defendant No.01 to return the personal belongings (more so fully described in Para No.9) of plaintiff or in alternate value of the personal belongings as per present market rate.
- D. Direct the defendant No.2, to produce the complete record of the locker No.183 or any other locker number for which the plaintiff was given mandate by defendant No.01, before this Honourable Court.
- E. Award of cost of the suit.
- F. Grant of any other relief which this Honourable Court may deem appropriate”.

The aforesaid suit was dismissed to the extent of prayer clause a, b, d, e, and f, while it was decreed to the extent of prayer **clause c only**, [which pertains to personal belongs of the plaintiff] and the defendant was directed to return the personal belongings of the plaintiff mentioned in para-9 of the plaint of the suit within 30 days, vide judgment and decree of the trial court dated **31.08.2024**. The aforesaid judgment and decree of the trial court were appealed against before the XII Additional District Judge Karachi [South] in Civil Appeal No.257 of 2024, which was dismissed and the judgment and decree of the trial court were maintained, vide order of the appellate court dated **06.01.2025**. The above said judgments and decrees are impugned in the present second appeal.

3. Learned counsel for the appellant, inter alia, has contended that the impugned judgments and decrees passed by both the learned courts below are against the facts and law. He has contended that the appellate court while giving findings had committed material irregularities of misreading, non-reading and ignoring the evidence on record which resulted in miscarriage of justice on the following sequential observations made under paras 16 to 19 of the impugned judgment of appellate court. He has argued that the appellate court miserably failed to evaluate the matter in its true perspective but instead relied and depended on the findings of the trial court by ignoring the case of the appellant. Per learned counsel, the impugned judgments and decrees are illegal, full of infirmities and material irregularities and contrary to the fact and law both. Lastly, he has contended that the judgments and decrees passed by the courts below

in a mechanical manner without application of judicial mind as such the same are not sustainable under the law and liable to be set aside.

4. I have heard the arguments advanced by learned counsel for the appellant and have also perused the record.

This Second Appeal has been filed under Section 100, CPC. It would be imperative to refer the Sections 100 and 101, C.P.C. and for the sake of ready reference same are reproduced as under:-

"100. Second Appeal.--Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by a Court subordinate to a High Court on any of the following grounds, namely:

- (a) the decision being contrary to law or usage having the force of law;
- (b) the decision having failed to determine some material issue of law or usage having the force of law;
- (c) a substantial error or defect in the procedure provided by this Code or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon the merits.

101. Second appeal on no other grounds.---No second appeal shall lie except on the ground mentioned in section 100."

5. It is ex-facie clear from bare reading of sections 100 and 101, C.P.C. that a second appeal is maintainable only on a question of law. The grounds raised in the instant appeal were raised before the trial court as well as before the first appellate court, which after framing proper issues and recording of oral as well as documentary evidence gave exhaustive judgments. Both the learned courts below have unanimously held that the Appellant could not prove his case.

6. It may be observed that the High Court while exercising jurisdiction under section 100, C.P.C. cannot interfere the findings of the court below unless such findings have been arrived at by the courts below either by misreading of evidence on record, by ignoring a material piece of evidence on record and or through perverse appreciation of evidence.

7. It is also well settled law that concurrent findings of facts by the courts below cannot be disturbed by the High Court in second appeal, unless the courts below while recording the findings of fact have either misread the evidence or have ignored the material piece of evidence¹.

8. Learned counsel for the appellant could not point out any substantial error and or any illegality, infirmity or jurisdictional error in the impugned judgments and decrees before this Court. Hence, it is found that instant appeal does not fall within any of the grounds provided under section 100, C.P.C. In the circumstances, in my view, the impugned judgments & decrees are well reasoned and based on the evidence on record, therefore, the same do not call for any interference by this Court. Consequently, instant Appeal being devoid of any force is dismissed in limine.

JUDGE

*Jamil**

¹ *Keramat Ali and another v. Muhammad Yunus Haji and another* (PLD 1963 SC 191), *Phatana v. Mst. Wasai and another* (PLD 1965 SC 134) and *Haji Muhammad Din v. Malik Muhammad Abdullah* (PLD 1994 SC 291).