

*Order Sheet***IN THE HIGH COURT OF SINDH, KARACHI****Ind Appeal No. 59 of 2025***[Muhammad Saleem v. Zaibgul]*

Appellant Through Mr. Naeem Suleman Advocate.

Date of Hearing &amp; Order 11.03.2025

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

*“It is therefore humbly prayed that this Honourable Court may be pleased to admit this appeal for regular hearing and after hearing the parties may be pleased to set aside the judgment dated 08-09-2021 and 15-09-2021 passed by learned Vth Additional District Judge West at Karachi in Civil Appeal no. 511 of 2018 and impugned Judgment dated 26-09-2018 and decree dated 01-10-2018 passed in Suit No.53 of 2014 by Vth Senior Civil Judge West at Karachi and after hearing the parties may be pleased to allow the appeal and decree the suit of the appellant as prayed.”.*

2. From perusal of the record, it reveals that the appellant/ plaintiff- Muhammad Saleem filed civil suit No.53/2014, before Vth Sr. Civil Judge Karachi [West] for **Declaration, Possession, Mesne Profit, Permanent Injunction and Damages**, with the following prayers:

- a) It may be declared that since the booking of the defendant was cancelled as such the act of the defendant of taking over the possession of House No.R-01 in the Standard Homes, Sultanabad Society, Sector-4, Manghopir, Karachi, is illegal and void.
- b) The defendant, her employees, representatives, attorneys and / or anybody claiming through or under the defendant may be directed to handover physical, peaceful and vacant possession and on the failure on the part of the defendant, the Nazir of this court may be directed to hand over the physical, peaceful and vacant possession of the property i.e., House No.R-01 in the Standard Homes, Sultanabad Society, Sector-4, Manghopir, Karachi, to the plaintiff.
- c) The defendant may be directed to pay to the plaintiff Mesne Profit @Rs.25,000/- per month w.e.f. 10-01-2011 till the possession is handed over to the plaintiff.
- d) The defendant may be directed to pay a sum of Rs.25,00,000/- as damages to the plaintiff.

- e) To permanently restrain the defendant, her employees, representatives, attorneys and / or anybody claiming through or under the defendant from transferring, alienating, letting out and/or handing over possession and / or creating any third party interest in respect of a House No.R-01 in the Standard Homes, Sultanabad Society, Sector-4, Manghopir, Karachi.
- f) The cost of the suit may be granted.

Before the trial court, despite notices, the defendant-Mst. Zaibgul remained absent, therefore, she was debarred from filing written statement, vide order dated 31.03.2018, though a chance was given to her to file the same, and the matter was directed to be proceeded as ex-parte. The plaintiff during his evidence produced affidavit-in-exparte proof as Exh.P-1/A and other documents. The trial court after hearing the counsel for the plaintiff and examining the evidence brought on the record reached at the conclusion that the plaintiff has failed to prove his case through any supporting or corroborating evidence, therefore, the suit of the plaintiff was dismissed, **vide order of the trial court dated 26.09.2018**. The said order of the trial court was assailed before the Additional District Judge-V Karachi [West] in Civil Appeal No.511 of 2018, which was dismissed and the judgment of the trial court was maintained, vide judgment of the appellate court dated **08.09.2021**. The appellant has challenged the above concurrent findings in the present appeal.

3. Learned counsel for the appellant, inter alia, has contended that the appellate court did not give any reason while passing the judgment and did not frame the points for determination which is the mandatory requirement, therefore, on this sole ground the impugned judgment and decree are liable to be set aside. Learned counsel has further contended that the courts below while passing the impugned judgments have failed to consider the fact that the affidavit-in-exparte proof gone un rebutted and unchallenged thereby the burden of proof through evidence has been discharged by the plaintiff. It is also contended that the courts below have not appreciated the evidence led by the appellant and has not relied upon the documents produced by him, it is a fit case of non-reading and misreading of evidence, as such, the impugned judgments and decrees are not sustainable and are liable to be set aside. It is further contended that the impugned judgments suffer from serious

legal infirmities, misreading and non-reading of the material evidence and documents on the record which have rendered the impugned judgments as without jurisdiction. Lastly, he has contended that the courts below have failed to apply their judicial mind to the various aspects of the case, which resulted into miscarriage of justice, therefore, the impugned judgments are not sustainable both in law and facts of the case and the same are liable to be set aside.

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

Precisely, the claim of the appellant/plaintiff in the suit that he is the sole proprietor of Standard Builders and Developers who introduced a project under the name and style of Standard Homes, Sultanabad Society, Sector 4-A, Manghopir, Karachi. Whereas the respondent booked house No.R-01 of 120 Sq. Yds., in the said project for a total sale consideration of Rs.5,75,000/-. The respondent initially made payment of Rs.3,10,000/, however, subsequently without payment of balance amount she forcibly took-over possession of the said Unit. The matter, before the trial court though remained *exparte* yet the appellant/plaintiff had to prove his case through confidence inspiring evidence, however, he failed to produce sufficient and confidence inspiring documentary evidence to substantiate his stance in the case. Resultantly, the trial court after discussing the evidence on the record in detail dismissed the suit. The said findings of the fact was subsequently upheld by the appellate court in Appeal No.511 of 2018, vide judgment of the appellate court dated **08.09.2021**. The appellant through the second appeal re-agitated the same facts and grounds.

5. This Second Appeal has been filed under Sections 100 C.P.C. Under Section 100 of the Code of Civil Procedure 1908 CPC a second appeal to the High Court lies only on any of the following grounds: (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; and (c) a substantial error or defect in the procedure provided by CPC 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 merits. In the instant matter, none of the aforesaid grounds is attracted.

6. 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 evidence<sup>1</sup>.

7. Learned counsel for the appellant has not been able to point out any misreading or non-reading of evidence by the courts below, or any illegality or infirmity and/or anything contrary to law or to some usage having the force of law in the impugned judgments. Hence, after carefully examining the judgments of the two courts below, I am of the considered view that the same are based on proper appreciation of the evidence and sound reasoning. Consequently, the concurrent findings of both the courts below do not require any interference by this Court as such the present appeal is dismissed in limine.

JUDGE

*Jamil\**

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<sup>1</sup> *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).