

*Order Sheet***IN THE HIGH COURT OF SINDH, KARACHI****IInd Appeal No. 87 of 2025***[ Muhammad Sajjad v. Parvaiz Khan and others ]*

Appellant Through Mr. Muhammad Riaz, Advocate.

Date of Hearing &amp; Order 05.03.2025

**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 therefore prayed that this Honourable Court may be pleased to set aside the impugned order dated 15.01.2025 passed by the learned appellate court/respondent and remand back and decide the suit on merits”.*

2. From perusal of the record, it reveals that the appellant/ plaintiff-Muhammad Sajjad filed civil suit No.2787/2022, before IInd Sr. Civil Judge Karachi [West] for **Declaration, Specific Performance & Permanent Injunction**, with the following prayers:

- a) To declare that the plaintiff is lawful owner and possessor of Suit Property viz bearing No.J-26, New Labour Colony, Site, Karachi.
- b) To direct the Defendant No.3 to issue the Fresh Allotment Order in the name of Plaintiff.
- c) To restrain the defendant No.1 and 2 or through their attorney(s), friend(s), Agent(s), relative(s), administrator(s) & others etc not to dispossess the plaintiff from the Suit Property further till final disposal of this suit;
- d) Any other relief or reliefs, which this Honourable Court may deem, fit and property in accordance with circumstances of the suit;
- e) Cost of the suit be also awarded.

The Plaint of the aforesaid suit was rejected under order VII rule 11 CPC with no order as to costs, vide order of the trial court dated **01.02.2024**. The said order of the trial court was appealed against before the IX Additional District Judge Karachi [ West] in Civil Appeal No.61 of 2024, which was dismissed and the order of the trial court was maintained, vide order of the appellate court dated **15.01.2025**, which is impugned in the present appeal.

3. Learned counsel for the appellant, inter alia, has contended that the orders of the courts below are bad in law and facts and the same are liable to be set-aside. He has argued that the courts below have failed to consider the facts; and the issues which are involved in the matter cannot be resolved without recording evidence. The plaint of the suit of the appellant/plaintiff was rejected and the appeal was dismissed without consideration of the facts and recording of the evidence in the matter. It is also contended that the learned courts below did not apply their judicial mind while passing the impugned orders, which are quite illegal and are liable to be set aside. Lastly, he has contended that the matter requires evidence and it should be decided on merits, therefore, the same may be remanded back to the learned trial court.

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

From the record it appears that the appellant in the instant matter filed civil suit seeking declaration of his ownership in respect of the property on the basis of some oral agreement without seeking any specific performance of the contract. He, however, failed to disclose the sale consideration amount against which he had purchased the suit property, how much amount out of total sale consideration had been paid by him. Besides, he has also failed to disclose the terms and conditions of the alleged sale agreement and the names of witnesses in whose presence the deal was made. The learned trial court after hearing the counsel for the parties while holding that the plaintiff has no cause of action rejected the Plaint, which was subsequently upheld by the first appellate court.

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 in the present appeal. Learned counsel for the appellant has also failed to point out any illegality or infirmity and/or anything contrary to

law or to some usage having the force of law in the orders of the two courts below.

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>.

In the circumstances, in my view, the impugned orders do not call for any interference by this Court. Consequently, instant Appeal being devoid of any force 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).