

IN THE HIGH COURT OF SINDH, KARACHI
High Court Appeal No.515 of 2024
[M/s. Siddique Construction Company & others v. Shanker Lal Ochani & another]

Present:
Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Muhammad Osman Ali Hadi

- 1.For orders on office objections a/w reply at A
- 2.For hg of main case
- 3.For hg of CMA No.22/2025

02.05.2025.

Mr. Muhammad Salman Noor, advocate for Appellants.
Mr. Hamza Hidyatullah, advocate for respondents.

J U D G M E N T

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MUHAMMAD IQBAL KALHORO J: Respondents entered into a sale agreement dated 13.08.1983 with appellants in respect of a Flat No.6-A, Second Floor in building known as Siddique Court, constructed on a sub-plot of Plot No.3-A in Gulshan-e-Faisal Co-operative Housing Society situated in Bath Island, Karachi. Respondent Shankar Lal paid Rs.100,000/- as earnest money, whereas, balance sale consideration was agreed to be paid in three equal installments per year. It was also agreed that after final payment the title would be transferred to respondent Shankar Lal. With the agreement, possession of the flat was handed over to respondent Shankar Lal.

2. In the course of time, respondent Shankar Lal paid remaining sale consideration of Rs.300,000/- in different installments, however, the title was not transferred to him. On 22.1.2020 he transferred and assigned his rights in the apartment to his brother Veer Kumar, upon the terms and conditions contained in Sale, Transfer and Assignment Agreement executed between them. Subsequently, both the brothers filed suit for specific performance of contract and permanent injunction

against respondents when they did not transfer the title of the flat to them.

3. The suit was contested by the appellants mainly on the grounds, among others, that respondents were tenants, the suit was barred by limitation as well as under Section 42 of the Specific Relief Act, 1877. The appellants further claimed that respondents have not paid the sale consideration. On the pleading of the parties, following issues were framed:-

- (i) Whether the plaintiffs are entitled to the performance for the sale agreement dated 13.08.1983 and sale, transfer, and assignment agreement dated 22.01.2020 in respect of Apartment No. 6-A, Block-A, Second Floor, Siddique Court, Gulshan-e-Faisal Co-operative Housing Society, Bath Island, Karachi?
- (ii) What should the decree be?

4. On the said issues, the respondents examined three witnesses, plaintiff No. 2 here respondent No. 2 Veer Kumar, handwriting expert and one witness to the sale agreement between the parties. On the other hand, appellants examined one Saeed Ahmed a son of Haji Muhammad Siddique as the latter had meanwhile expired.

5. After hearing the parties, learned single Judge of this Court decreed the suit vide impugned judgment dated 14.11.2024 and decree dated 27.11.2024. hence this appeal.

6. Learned counsel for appellants has argued that the learned single Judge has not appreciated evidence in its true context; that the suit was barred by limitation; that there is no evidence that remaining sale consideration was paid by the respondents; that the evidence of

appellants has been ignored by learned single Judge; that the receipts produced by the respondents in support of their claim of payment of sale consideration are without any date; hence not reliable. He also submits that only one issue was framed although there were multiply issues involved in the case that needed to be replied. He has relied upon **PLD 1964 SC 106, 2013 SCMR 1570, 2019 SCMR 880, 2001 CLC 946 and 2002 CLC 1165** to support his case.

7. On the other hand, learned counsel for respondents has supported impugned judgment stating that although issue of limitation was not framed specifically but the learned single Judge in para. 13 of the judgment has discussed the same in detail. Moreover, since possession of the apartment was given to the respondents at the time of sale agreement and they have remained in possession since then, benefit of Section 53-A of the Transfer of Property Act is extendable to them. He has relied upon **2017 SCMR 316 and PLD 2023 SC 506** to support his contentions.

8. We have considered submissions of the parties and perused material available on record. We have seen that in the evidence respondents have submitted the relevant receipts of payments of sale consideration to the appellants. These receipts and their fallout has been discussed in detail by learned single Judge in para. 8 and 9 of the impugned judgment. All these receipts are on the letterhead of Siddique Construction Company being run by the appellants and signed by its proprietor late Haji Muhammad Siddique on behalf of the company, he is the same person who had signed the sale agreement.

9. Insofar the signature of Haji Muhammad Siddique on these respects is concerned, the respondents have examined handwriting expert in terms of Article 84 of the Qanun-Shahdat Order, 1984. He has

deposed positively establishing that the receipts contain signatures of the said person i.e. Haji Muhammad Siddique who had signed the sale agreement. These receipts are in bulk amounts and cannot be considered mere payments of rent by respondents. The only ground taken by appellants to defeat validity of these receipts is that they do not bear any date. Mere non-mention of date on the receipts would not make them invalidate or redundant in the eyes of law when otherwise the contents thereof are established and the payments made through them have not been specifically rebutted or refuted by the other side except that they were made in respect of rent regarding which no evidence has been put forth.

10. On the point of limitation, learned counsel for respondents is right in arguing that the benefit of section 53-A of the Transfer of Property Act is due to respondents as they were put in possession at the time of sale agreement. The learned single Judge while dilating upon the said provision of law has stated that to take advantage of the provision of Section 53-A, the four conditions are to be fulfilled:

- (i) The contract must be in writing, signed by or on behalf of the transferor;
- (ii) the transferee should be in possession of the immovable property covered by the contract;
- (iii) the transferee had done some act in furtherance of the contract; and
- (iv) the transferee had either performed his part of the contract or was willing to perform his part of the contract.

11. All these conditions, learned single Judge, has opined are present in the case and we have not seen any material to suggest that the four conditions highlighted above are not met in the present case. The contract is in writing and in terms thereof possession was handed over to the respondents. There is evidence that in performance of the contract they have paid remaining sale consideration to the appellants, which has

been duly established not only by the receipts but by the supporting evidence of the forensic expert examined by the respondents.

12. Insofar as issue of limitation is concerned, learned single Judge in detail has dilating upon Article 113 of the Limitation Act. He has observed that said Article stipulates that a suit for specific performance of a contract should be filed within three years from the performance date or if no such date is specified, when the plaintiff has notice that the performance was refused. Learned counsel for appellants has highlighted in arguments that the suit was filed in the year 2020, whereas, the sale agreement was of the year 1983. When we put a question to show us the refusal by the appellants to perform the agreement, he has not come up with any specific reply. He submits that appellants have been refusing performance of the contract due to non-payment and treating the respondents as tenants. Nonetheless, he could not produce any tenancy agreement or the receipts of the rent allegedly paid by the respondents to the appellants. Learned counsel has not produced any document either to show that the performance was refused by the appellants in black and white ever since the time of agreement and handing over of possession of the property to the respondents.

13. Learned counsel for respondents has taken us to the relevant piece of evidence where it has been admitted by the appellants that with the written statement no document has been filed to show that performance of contract was specifically declined by them. Further, learned counsel despite a request to show any illegality or error in the impugned judgment has not pointed out any substance to show that the judgment is based on either misreading, non-reading or mis-appreciation of evidence. Learned single Judge while decreeing the suit has taken into consideration all pieces of evidence adduced by the parties,

implication of relevant laws in the case, such as, Article 113 of Limitation Act and Section 53-A of the Transfer of Property Act, and has concluded, duly supported by the reasons in favour of the respondents. We see no justification to reverse the same, not the least when no evidence is available that the appellants ever refused to abide the terms of agreement and since then the respondents have been enjoying possession. Hence, we do not find any illegality or error in the impugned judgment to justify its reversal in this appeal. Consequently, we find this appeal to be without any merit, and accordingly dismiss it along with pending application.

The appeal is disposed of.

JUDGE

JUDGE

HANIF