

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

2nd Appeal No.S-02 of 2023.

Present:-

Mr. Justice Muhammad Osman Ali Hadi.

Appellant : Through Mr. Irfan Ahmed Qureshi, Advocate.

Respondent : Nemo

Date of hearing : 23.06.2025.

Date of Decision : 23.06.2025.

J U D G M E N T

Muhammad Osman Ali Hadi, J:- Through this second Appeal, the appellant has impugned the Judgment & Decree delivered on 20.12.2022 by the learned 8th Additional District Judge Hyderabad in Civil Appeal No.304 of 2021, whereby the said appeal filed by the Appellant was dismissed and the Judgment and Decree of the learned Trial Court (against him) was upheld.

2. Learned Counsel appearing on behalf of the Appellant stated that he has tried his level best to send the notice of the proceedings to the Respondent, through the Court as well as through private courier (receipt attached). It appears that the Respondents' address as stated is incorrect, and even the private courier was unable to get the notice served.

3. Be that as it may, I have gone through the contents of this instant 2nd Appeal, and have heard the exhaustive arguments of the learned Counsel for the Appellant. The learned Counsel for the Appellant stated that both the Trial Court and first Appellate Court were incorrect in their findings

by holding that the Appellant could not bring his suit for specific performance, as the said suit was against an 'affidavit' which does not come within the definition of '*contract*', as per the Contract Act 1872. Learned Counsel stated the Forums below had premised their entire reasoning on the fact that the Appellant is basing his claim on an affidavit submitted by the Respondent, for which concurrent findings below have held the Appellant does not have requisite legal standing¹.

4. Learned Counsel has further stated that simply because the affidavit was only signed by the Respondent (and not the Appellant), would not invalidate the document itself. He submits he has grounds to bring a suit forward in the same manner as enforcement of a contract i.e. under sections 42 & 12 of the Specific Relief Act 1877. In support of his contentions, he has relied upon two Judgments of the Honourable Supreme Court of Pakistan being 2020 SCMR 832 & 2017 SCMR 98.

5. It appears that the entire claim of the Appellant is based on an affidavit which was executed by the Respondent on 20.12.2006, in which the Respondent has stated that he had borrowed a sum of twelve thousand U.S. Dollars and one hundred tola of pure gold biscuits from the Appellant, and in case the Respondent was to default in repayment within three years from such date, the Respondent would give the Appellant his (i.e. the Respondent's) share in House No.286C, Block "D", Unit #6 Shah Latifabad, Hyderabad ("**the property**"). It is relevant to mention the said property belonged to the late father of the Appellant and the Respondent ².

6. Having perused the File and orders, I have found that there is no error in the Impugned Judgments below. The said affidavit on which the Appellant has based his entire claim, is an unsubstantiated and un-registered document, which was allegedly executed at such time when the said property was not even in the Respondent's name, and as such when execution of the affidavit occurred, the Respondent did not hold any legal status in the property. Therefore, at such time the Respondent could not have made a statement to repay his debts, in lieu of which he would surrender the property (since it did not belong to him). The second aspect,

¹ Copy of the affidavit is available at page No.105 of the file.

² The Appellant and Respondent are brothers.

which in my opinion has been properly addressed in the Impugned Judgment, is that there was an issue of limitation. The said affidavit (upon which the Appellant has relied) was executed in the year 2006, after which three years' time is granted for repayment. This means the last date for repayment would have been 19.12.2009, from which date calculation for limitation would have begun. Whereas the plaintiff first instituted the suit for recovery before the 6th Senior Civil Judge, Hyderabad ³ on 22.06.2021. Under the law of limitation,⁴ the Suit would in any event be hopelessly time barred, which has been correctly noted in the Judgments below, details of which need not be reiterated here.

7. Furthermore, the said affidavit on which the Appellant based reliance cannot be considered to be a contract. The affidavit (which in itself has not been substantiated) is a unilateral alleged statement, which does not give rise to a cause of action under section 12 of the Specific Relief Act 1877, as was claimed by the Appellant.

8. An affidavit is sole statement and declaration of fact, and not a contract or agreement between the parties. In particular, in the instant matter, there is no consideration that has been shown to have been exchanged between the parties, and it appears that the monies and valuables mentioned were already given to the Respondent by the Appellant prior in time, i.e., before the affidavit was signed.

9. Additionally, the affidavit was not registered. Section 17 of the Registration Act 1908 compulsorily requires registration for any documents relating to transfer of property. As this was also not complied, on this ground as well, a suit for enforcement of transfer of the immovable property would also fail.

10. In light of the forgoing reasons, I do not find any error in the Judgments below, and as such this Appeal is accordingly **dismissed** with no order as to costs.

11. However, it is hereby clarified this Judgement shall not act as a bar if the Appellant is able to locate the Respondent's actual address and any

³ Available at page No.69 of the File.

⁴ In particular under sections 113 and 120 Limitation Act 1908

further correspondence / interaction occurs between them. In such instance, the Appellant shall be at liberty to approach a relevant court having appropriate jurisdiction to make his claim, in light of any such new interaction / correspondence.

JUDGE

Ali.