

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

IIInd Appeal No.145 of 2024

Order with signature of Judge(s)

Present:
Mr. Justice Muhammad Osman Ali Hadi

Priority

1. For hearing of MA No.4852/2012
2. For hearing of main case

03.09.2025

Mr. Muhammad Arif Khan, Advocate for the Appellant
Mr. Ayaz Ali, Advocate for the Respondent alongwith
Mirza Waqas Muneer, Advocate

Learned counsel for the Appellant submits that the Appellant is owner of House No.480-B, Bhangoria Goth, Azizabad, F.B Area, Karachi (“**the Property**”). Learned counsel submits that the Appellant had paid a sale consideration amount of Rs.1,700,000/- on 21.10.2016, for which he has referred to Sale Agreement at Page 109 of the file. Learned counsel has stated that he had purchased the Property, but the Respondent, who is younger sister of the Appellant has also claimed ownership of the said Property.

Both the Appellant and the Respondent had filed respective civil suits for Declaration, Possession and Injunction having Nos. 1339 & 1123 of 2021 before the Court of Vth Senior Civil Judge Karachi, seeking declaration regarding ownership title of the said Property. However, both suits were dismissed by a common Impugned Judgment and Decree dated 04.01.2023 (“**Impugned Judgement**”) passed by the Vth Senior Civil Judge, Karachi Central. Against the said Impugned Judgment the Appellant and the Respondent both filed Civil Appeal Nos.19 and 34 of 2023 respectively, which both Appeals were dismissed vide Impugned Order dated 16.04.2024 (“**Impugned Order**”) passed by the learned Additional District Judge-IV, Karachi Central. The Appellant has filed the instant Appeal against the Impugned Order and Impugned Judgment (below). He has primarily urged that at the time of hearing, his evidence regarding ownership of the Property was not considered properly by the learned Trial Judge.

I have asked the learned counsel to show documentation of title, to which he has referred to the alleged Sale Agreement at Pages 109 to

113 of the File. I had asked him to produce any registered document showing title, but he remained unable to do so. When learned counsel for the Appellant was faced with the query that an unregistered document purporting to be a sale agreement would not confer title, he has been unable to show any law to the contrary, nor was he able to show any law or precedent in support of his contentions. Apart from this, learned counsel for the Appellant has not submitted any further arguments or grounds showing any legality or requirement for interference with the Impugned Judgment.

It is trite law that a simple sale agreement (especially in the instant matter the same not being registered, but merely a document typed on a ONE HUNDRED RUPEES STAMP PAPER) could not confer title of property. In this regard, reference can be made to the recent judgement furnished by a 3 Member Bench of the Apex Court in *Rao Abdul Rehman (deceased) v Muhammad Afzal (deceased)*¹ which clearly held that:

“6. It is clear from the chronology of the case that in order to effectively implement or execute the agreements dated 30.11.1993 and 17.01.1994, the petitioner filed the suit for declaration and in alternate decree for specific performance on 19.03.2008, at which point Muhammad Feroz (vendor) had already died. Neither any legal proceedings were initiated by the petitioner during the life time of Muhammad Feroz for properly transferring the title of the property pursuant to the alleged sale agreements, nor did he offer any plausible reason which may justify his act or omission of not approaching a court of law for the implementation of the agreements at the relevant time. According to section 54 of the Transfer of Property Act 1882, "sale" means the transfer of ownership in exchange for a price paid or promised or part paid and part promised which is made in the case of tangible immovable property of the value of one hundred rupees and upwards or in the case of a reversion or other intangible thing, can be made only by a registered instrument with further rider that a contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties but it does not, of itself, create any interest in or charge on such property. Whereas under Section 42 of the Specific Relief Act, 1877, a person entitled to any legal character or to right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief, but according to the attached proviso, no Court shall make any such declaration where the plaintiff, being able to seek further relief than mere declaration of title, omits to do so. The expression "legal character" has been understood to be synonymous with the expression status. A suit for mere declaration is not permissible except in the circumstances mentioned in section 42 of the Specific Relief Act. The claim of mere declaration as to alleged title does not suffice. It is clear that in the present lis, the petitioner was claiming the title merely on the strength of the agreement to sell by one co-owner

¹ 2023 SCMR 815

while the other co-owner never signed any such agreement so it is quite strange that the learned Trial Court, though it dismissed the suit for specific performance on the ground that agreements to sell were not proved, but concomitantly decreed the suit to the extent of declaration which is on the face of it a glaring and patent legal and factual error that was rightly corrected by the learned Appellate Court. On the basis of a sale agreement, no legal character or right can be established to prove the title of the property unless the title is transferred pursuant to such agreement to sell, but in case of denial or refusal by the vendor to specifically perform the agreement despite the readiness and willingness of the vendee, a suit for specific performance may be instituted in the court, but suit for declaration on the basis of a mere sale agreement is not the solution for appropriate relief. This Court in the case of Muhammad Yousaf v. Munawar Hussain and others (2000 SCMR 204), held that the agreement to sell by itself cannot confer any title on the vendee because the same is not a title deed and such agreement does not confer any proprietary right, and thus, it is obvious that the declaratory decree as envisaged by section 42 of the Specific Relief Act cannot be awarded because declaration can only be given in respect of a legal right or character. The only right arising out of an agreement to sell is to seek its specific performance.”

The initial Civil Suit filed by the Appellant² was for, *inter alia*, a Declaration (and not for specific performance), and therefore even in this regard was rightly dismissed. The Appellant has also failed to show any legal document of transfer of the Property in his favour. Moreover, admittedly, the possession of the Property is not with the Appellant (but is with the Respondent). These factors do not find favour with the Appellant’s contentions, and as such the Appellant remains unsuccessful in supporting his assertions.

Additionally, the Appellant has failed to highlight any misreading or ignorance of evidence by the Forums below, nor have they raised any substantial question of law. The confines of a second appeal under section 100 Code of Civil Procedure 1908, are limited in nature, and in the absence of some glaringly blatant violation of law or due process, generally speaking, no interference is required with concurrent findings below. In the case of *Faqir Syed Anwar Uddin*³ the August Supreme Court held:

“4.....The defendants had assailed the concurrent findings of two courts by filing a regular second appeal before the High Court under section 100 of the C.P.C. It is settled law that concurrent findings are not interfered with under section 100 of the C.P.C. unless the lower courts have misread the evidence on record, or may have ignored a material piece of evidence on record through perverse appreciation of evidence. It is also settled law that reappraisal of evidence on record by the second appellate court is not permissible while exercising jurisdiction under section 100 of the C.P.C.3. The High Court had rightly dismissed the regular

² Available at Pg. 89 of the File

³ PLD 2025 SC 31

second appeals filed by the defendants on the touchstone of the aforementioned principles.

5. We have not been able to persuade ourselves that the concurrent findings by the competent courts suffer from any legal infirmity requiring interference by this Court. No substantial question of law has been raised by the learned counsel for the defendants requiring interference by this Court. The defendant in the connected petition (C.P. 5181 of 2023) could not establish the factum of being a bona fide purchaser and the concurrent findings to this extent are also not assailable.

In light of the foregoing, the Appellant has failed to establish any grounds for allowing this instant Second Appeal. Accordingly, this 2nd Appeal is hereby dismissed.

JUDGE

B-K Soomro