

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**  
**R. A. No. S – 40 of 1989**

Date of hearing	Order with signature of Judge
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**Hearing of case**  
For hearing of main case

**20-11-2020**

Mr. T. David Lawrence assisted by Mr. Muhammad Tahir Qureshi,  
Advocates for the applicants.  
Mr. Safdar Ali Bhatti, Advocate for legal heirs of respondent No.2.

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These revision proceedings arise from conflicting findings, wherein a suit titled for possession having been dismissed by the learned trial Court was decreed by the learned appellate Court to the extent of specific performance based upon the agreement of sale which was said to have also provided possession of the subject land. The said proceedings were opposed by the present applicants on the basis of a registered sale deed. Learned trial Court framed the following issues and concluding the same accordingly:

1. *Whether the suit is not maintainable according to law? (In affirmative)*
2. *Whether the suit is not in proper form? (As not pressed)*
3. *Whether the suit is bad for multifariousness? (As not pressed)*
4. *Whether the suit is time barred? (As not pressed)*
5. *Who is the owner of suit land? (As under)*
6. *Who is in possession of the suit land? (As under)*
7. *Whether the defendants No.1 executed the agreement of sale of suit land in favour of plaintiff through his attorney? (In Affirmative)*
8. *What is the effect of sale deed dated 26-7-67 to the defendants 2 to 9? (As under)*
9. *Whether the plaintiff made the amendments beyond the scope, therefore the plaint be rejected? (In negative)*
10. *Whether the plaintiff is entitled to the specific performance of the contract of sale of the suit land? (In negative)*
11. *What should the decree be? (The suit of the plaintiff is dismissed with no order as to costs.)*

Whereas, the learned appellate Court in the matter without reframing the same issues or without determining points of determination was pleased to refer to the issues as framed by the learned trial Court, however, came to its own findings, reversed the said findings and decreed the suit.

2. Learned counsel for the applicants contended that the proceeding were bad on account of non-joinder and mis-joinder of the parties. That the learned appellate Court had gone beyond the scope of pleadings. That the molding of relief as acted upon by the learned Appellate Court was not available as cancellation of the sale deed ordered in the matter was without considering the restraint of limitation present therein. That in the matter amendments were made in the pleadings beyond the allowance as given by the learned trial Court as such not available, and that the points of consideration as required under Order XLIII CPC have not made out.

3. Learned counsel for the respondents, however, contended that the actual owner Hamid Ali was a party to the proceeding, and as such no question of non-joinder or mis-joinder is present. That the amendments as made were not objected to and were rebutted in the matter.

4. Having heard the learned counsels and gone through the record, it may be observed that a non-joinder and mis-joinder of parties does not nullify the proceedings, however, the relief is only available against the parties who are present before the Courts. As to the other contentions of learned counsel for the applicants, the same are also found mostly technical on account of availability of the court to mold the relief and the consequential effect of a pronouncement which is always open to the matter of cancellation, whereas, matters of limitation or open questions of facts and law both to affect the registered document. As to the amendments, the provision of further impact of particulars is always available to the court of law. However, as to the points of consideration, the judgment having been reversed the discussion as to the issues to the

extent of reversing the judgment required further consideration, however, the discussion as to the issues is ever present which specifically have neither been disturbed nor can be said to be not bearing from the record.

5. The background of the matter being a claim of sale agreement dated 01-05-1967 against a total agreed payment of Rs.13,000/-, and a partial payment of Rs.500/- is present to a sale deed dated 26-07-1967 against full consideration of Rs.12,800/-. It is also bears from record that the claimants of sale agreement have never deposited the balance amount i.e. out pocket the same. Any relief at this stage to a party who has not made the payment for an agreement of the year 1967 i.e. at the rate of 1967 cannot be called justice by any stretch of imagination. Although the learned trial Court had primarily considered the matter on the technical side by keeping a restricted view, the learned appellate Court has leaned towards the purchaser without even framing points of consideration and stretching the matter of justice a bit to far as admittedly the subject sale agreement was cancelled by a simple notice and the possession was also not available to the purchaser. Technically both the judgments are not found in violation of law causing injustice but the result of understanding by their authors. At present, however, considering the matter of justice with the background as forgiven it is found fit to order that the purchaser having paid only 3.84% of the agreed amount, is entitled to the benefit of specific performance only in case he is willing to pay 96.16% of the present available value of the revenue authorities for the purpose of sale or may acquire the money value of 3.84% accordingly at their choice for which a money decree may also be obtained from the office. The said amount, if so desired, shall be available from respondent No.8 or in failure thereof by a proportional sale of the subject land.

The matter stands **disposed of** in the above terms.

J U D G E

Abdul Basit