

Order Sheet

IN THE HIGH COURT OF SINDH, KARACHI

IInd Appeal No. 237 of 2021

[Gul Rauf v. The City District Government Karahi & others]

Appellants	Through M/s. Uzma Abbas and Sharfeen, advocates
Respondent No.5	Through Mr. Waqar Ahmed, Advocate
Respondents 1-4	Through Syed Ale-Maqbool Rizvi and Ahmed Khan Khaskheli, AAG Sindh
Date of Hearing & Order	27.10.2025

ARSHAD HUSSAIN KHAN, J. The appellant through instant second appeal has challenged the concurrent findings of the two courts below and sought the relief as follows:

“It is therefore most respectfully prayed on behalf of the appellant that this Hon’ble Court may kindly be pleased to admit this appeal and call R&P of civil appeal No.213/2019 and civil suit No.1495/2015 from the concerned Courts and may kindly be pleased to set-aside the impugned judgments dated 03.05.2019 and 07.09.2021 bearing Suit No.1495/2015 and Appeal No.213/2019 respectively passed by the learned Trial Court i.e. XIth Senior Civil Judge East and learned VIIth Additional District and Sessions Judge, Karachi East with direction to consider the proper evidence and decide the matter on merit in the prime interest of justice.”

2. The brief facts of the case are that the appellant/plaintiff was initially allotted Plot No.175-R, measuring about 120 square yards, situated in Block-G, Bhattai Colony, Karachi [**Earlier Plot**], by the official respondents. However, a dispute arose between the parties regarding the said plot, and possession of Plot No.175-R was not handed over to the appellant. Consequently, the appellant lodged a complaint before the Provincial Ombudsman, whereupon he was allotted an alternate plot bearing Plot No.190-R, ad measuring 120 square yards, situated in Block-G, Bhattai Colony, Karachi [**subject plot**]. It is further asserted that possession of subject Plot was also not delivered to the appellant. The appellant again approached the Ombudsman, but his grievance remained unresolved. Eventually, the appellant instituted *Suit No.1495 of 2015* before the Court of XIth Senior Civil Judge, Karachi-East, seeking *specific*

performance of contract, possession, and damages, with the following prayers:-

- a) *To pass judgment and decree for the possession of Plot No.190/R, Block "G" measuring 120 sq. yards situated in Shah Abdul Latif Bhittai Colony, Karachi.*
- b) *Pass judgment and decree in the sum of Rs.30,000,00/- (Rupees Thirty Lac only) against the defendants, in case the defenants fail to execute the Lease Deed in favour of the plaintiff and to provide the suit Plot No.190/R, Block "G" measuring 120 sq. yards situated in Shah Abdul Latif Bhittai Colony, Karachi to the plaintiff.*
- c) *To pass judgment and decree in the sum of Rs.50,50,000/- as general and special damages in favour of the plaintiff and against the defendants severally and jointly.*
- d) *Cost of the suit.*
- e) *Any other relief or relief(s) which this Hon'able Court think fit and proper under the circumstances of this case.*

The record further reflects that service of notices was duly effected upon all the respondents/defendants. However, except for respondent No.1/defendant No.3 (the Cantonment Executive Officer, Cantonment Board, Korangi Creek, Karachi), none of the remaining respondents/defendants entered appearance before the Trial Court. Subsequently, the name of defendant No.3 was deleted by consent of the parties vide order dated 04.04.2014, whereas the other defendants, having failed to contest the suit despite service, were proceeded against ex parte through order dated 07.04.2014.

At the trial, the appellant/plaintiff recorded his ex-parte deposition by filing his affidavit-in-evidence and produced certain relevant documents in support of his claim, whereafter his side was closed. Upon hearing the learned counsel for the plaintiff and examining the record, the learned Trial Court dismissed the suit, with no order as to costs. However, the defendants were directed to refund the amount deposited by the plaintiff, as reflected in the challans (Exh. P-5 and Exh. P-6) and receipt (Exh. P-7), together with a ten percent annual increase, from the date of filing of the suit until realization, vide judgment dated **03.05.2019** and decree dated **10.05.2019**. The said judgment and decree were assailed before the learned VIIth Additional District Judge, Karachi-East, in Civil Appeal No.213 of 2019, which was dismissed, thereby maintaining the

findings of the Trial Court through judgment and decree dated **07.09.2021**. The appellant has now challenged these concurrent findings through the present Second Appeal.

3. From the record, it further appears that, pursuant to an intervenor's application filed by respondent No.5, who claims to be the owner in possession of the subject property, he was impleaded as a party in the present Second Appeal.

4. Learned counsel for the appellant, *inter alia*, contends that the impugned judgments and decrees are unsustainable in law, having been passed on the basis of misreading and non-reading of evidence, and without proper application of judicial mind. It is argued that both Courts below failed to correctly appreciate the facts and circumstances of the case and proceeded to decide the matter in undue haste. The learned counsel submits that the Trial Court did not consider the documentary evidence produced by the appellant, which remained unchallenged, and unrebutted by the respondents throughout the proceedings. She further submits that when possession of the initially allotted plot was not handed over, the appellant approached the Provincial Ombudsman, who, upon examining the matter, directed allotment of an alternate plot, the present subject plot. However, this material aspect of the case, including the Ombudsman's findings and the alternate allotment, was neither appreciated nor considered by the Courts below. It is lastly contended that the impugned judgments and decrees have been passed in violation of the principles of natural justice, without meaningful examination of the record, and by erroneous exercise of discretion, rendering them arbitrary, capricious, and unwarranted by law. Learned counsel, therefore, argues that the concurrent findings are liable to be set aside.

5. On the other hand, learned counsel for respondent No.5 argued that respondent No.5 is the lawful and absolute owner of the subject plot, which was never allotted or transferred in the name of the appellant. He submits that respondent No.5 purchased the said plot from Pawan Kumar, and that both possession of the property and all original title documents are with respondent No.5. Learned counsel further contends that the appellant has approached this Court with unclean hands, as he has no title or lawful claim over the subject property. It is argued that the appellant failed to establish his ownership before the Courts below, and therefore

both the Trial Court and the Appellate Court rightly dismissed the suit as well as the appeal. He lastly prayed that the present Second Appeal is devoid of merit and is liable to be dismissed.

6. Learned AAG, while supporting the judgments and decrees passed by the Courts below, submits that the appellant has failed to establish his case either before the Courts below or before this Court; therefore, the present appeal is liable to be dismissed with costs.

7. Heard learned counsel for the parties and perused the material available on the record.

8. A perusal of the record reveals that the appellant was initially allotted Plot No.175-R, measuring 120 square yards, situated in Block-G, Bhittai Colony, Karachi, by the official respondents. However, due to certain controversies that subsequently arose, primarily on account of the claim of a prior allottee, the said allotment in favour of the appellant was cancelled, and consequently, despite the payments already made by him, physical possession of the plot was never delivered to the appellant. Confronted with this situation, the appellant approached the Provincial Ombudsman, Sindh, who decided the matter in his favour and directed the concerned authorities to allot him an alternative plot. In compliance with the Ombudsman's directives, the official respondents allotted Plot No.190-R, Block-G, admeasuring 120 square yards, Shah Abdul Latif Bhittai Colony, Karachi, in lieu of the earlier allotment. This alternate plot is the subject matter of the present proceedings. However, it is an admitted position that possession of the subject plot was never handed over to the appellant. More importantly, the appellant has miserably failed to establish any title or lawful claim over the said plot.

9. The record further shows that, pursuant to the directions of this Court, the Mukhtiarkar, Sub-Division Korangi, submitted a verification report dated 29.05.2025, which clearly reflects that Plot No.190-R, Block-G, measuring 120.00 square yards, Bhittai Colony, Korangi Crossing, was originally allotted to Mr. Abdul Rasheed s/o Ghulam Muhammad vide allotment order No.8(240)86-Rev.463 dated 29.03.1987. Thereafter, the allotment was transferred in favour of Mst. Aisha Bibi w/o Muhammad Miskeen through transfer order No.AC/BC/52/94 dated 25.05.1994. Subsequently, Mst. Aisha Bibi sold the said plot to Mst. Anjum Naz w/o

Muhammad Yaseen through a registered sale deed, and the entry was duly incorporated in the Record of Rights and the Property Register of Bhattai Colony in the name of Mst. Anjum Naz. An NOC for sale was thereafter issued on 31.07.2013 in favour of Mr. Pawan Kumar s/o Khaim Chand, who was the General Attorney of Mst. Anjum Naz.

The aforementioned report, which was never objected by the appellant, does not reflect the appellant's name at any stage, neither in the original allotment nor in the subsequent chain of transfers up to the last recorded transaction. Conversely, respondent No.5, through his application (CMA No.1687/2024), has produced documents demonstrating that he purchased the subject plot from Pawan Kumar, obtained possession, and holds the original title documents, thereby further negating the appellant's asserted claim or right over the subject plot.

10. From a perusal of the judgments impugned in the present proceedings, it appears that both the Courts below thoroughly examined the evidence led by the appellant and reached a concurrent conclusion that the appellant had miserably failed to establish his case by producing any positive or cogent evidence. The Courts further held that, having never obtained possession of the suit property, the appellant lacked locus standi and had no enforceable right or title to maintain the suit against the respondents. Consequently, the suit as well as the appeal were dismissed.

11. This is a Second Appeal, which has been filed under Section 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. However, in the instant matter, none of the aforesaid grounds is involved. Besides above, on this point, the Hon'ble Supreme Court of Pakistan in the case of *Zafar Iqbal and others v. Naseer Ahmed and others* [2022 SCMR 2006] while interpreting the scope and ambit of section 100 of the CPC has observed as follows :

“The scope of second appeal is thus restricted and limited to these grounds, as section 101 expressly mandates that no second appeal shall lie except on the grounds mentioned in section 100. But we have noticed that notwithstanding such clear provisions on the scope of second appeal, sometimes the High Courts deal with and decide second appeals as if those were first appeals; they thus assume and exercise a jurisdiction which the High Courts do not possess, and thereby also contribute for unjustified prolongation of litigation process which is already choked with high pendency of cases”.

12. It is also well settled law that concurrent findings of facts by the courts below cannot be disturbed by the High Court in the second appeal, unless the courts below while recording the findings of fact have either misread the evidence or have ignored the material piece of evidence¹. Besides, the concurrent findings of fact recorded by the two courts below are entitled to deference and cannot be interfered with in the absence of any legal infirmity, jurisdictional error, or misreading of evidence. Learned counsel for the appellant has failed to point out any such material irregularity.

Accordingly, in view of the above discussion, this second appeal is dismissed being devoid of any merit.

JUDGE

Naveed PA

¹ *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).