

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

IInd Appeal No. 54 of 2013

 Date: Order with signature of Judge

1. For orders on CMA No. 1415/2014
2. For hearing of CMA No. 3111/2013
3. For hearing of main case

23.09.2026

Khawaja Naveed Ahmed, Advocate for the Applicant.
 Syed Hussain Shah, AAG.

ORDER

SAMAN RAFAT IMTIAZ, J.- This Second Appeal is directed against the common judgment dated 04.02.2013 (impugned judgment) passed by the learned IIIrd Additional District Judge, Karachi East in Civil Appeal No. 112 of 2010 (Mrs. Kubra Bibi v. M/s Misha Developers) and Civil Appeal No. 129 of 2010 (M/s Misha Developers v. Mrs. Kubra Bibi), disposing of both appeals arising out of Suit No. 570 of 2006.

2. The Respondent [Misha Developers] filed Suit No.570 of 2006 against the Appellant [Kubra Bibi] for possession, injunction and recovery of Rs. 217,500/- with mesne profits in respect of Flat No.303, Block A, Classic View, Gulistan-e-Jauhar, Karachi, booked for Rs.432,500/-. The Respondent claimed that the Appellant had paid Rs. 215,000/- and unlawfully occupied the flat in breach of Clause 12 of the booking terms. The Appellant admitted the booking but claimed to have paid Rs. 275,000, pleaded limitation and asserted that possession was delivered by the Respondent's employees with the intervention of a councillor and police. By judgment dated 15.03.2010, the Trial Court decreed Suit No. 570/2006 for recovery of Rs. 217,500/- with bank rate interest from November 2002 while dismissing the remaining prayers. Both parties filed appeals. By common impugned judgment the learned Appellate Court declared the Appellant's possession as unauthorized. Aggrieved, the Appellant filed the instant Second Appeal, primarily contending that the suit was time barred as possession had been delivered in December 2002 and the matter was reported to the police on 14.12.2002 whereas the suit was filed in May 2006.

3. Heard the learned counsel for the Appellant and perused the entire record with his assistance.

4. The learned counsel for the Appellant pointed out that vide order dated 24.04.2017 it was noted by this Court that possession of the subject flat has been taken over from the appellant during pendency of the appeal but it was admitted that interim order of this Court was vacated due to non-compliance with the court order due to which writ of possession was issued by the Executing Court, however, since the appeal was admittedly pending and partly heard by that time, the Respondent was directed to handover the possession of the subject flat to the Nazir of this Court, which shall remain in his possession till further orders. He has read the impugned judgment through which it transpires that the Respondent filed a suit for possession, injunction and recovery of Rs. 217,500/- with mesne profit against the Appellant on the ground that she had booked a Flat No. 303, Block 'A', Classic View, situated on Plot No. NC-118, Block-19, Gulistan-e-Johar, Karachi in consideration of Rs. 432,500/- but only paid a sum of Rs. 215,000/- by 07.02.2000 leaving balance of Rs. 217,500/- which she was refusing to pay despite demands. The learned Trial Court vide judgment dated 15.03.2010 decided that the suit was not time barred as alleged by the Appellant and that evidence has established that remaining amount of sale consideration of Rs. 217,500/- has not been paid by the Appellant. With regard to mesne profits, the learned Trial Court came to the conclusion that the Respondent failed to prove that the Appellant has remained in possession illegally, therefore, it was not found to be entitled to mesne profit and matter was decreed for Rs. 217,500/- with interest at the bank rate from November 2002 till its realization. On appeal filed by the Appellant, the learned Appellate Court found that the learned Trial Court had erred in finding that the possession was legal, and therefore the Trial Court's judgment was modified in view of the fact that the Respondent/plaintiff had claimed alternate relief for recovery of remaining amount and as such the Respondent/plaintiff was found entitled to the amount outstanding as granted by the learned Trial Court or to receive possession.

5. The learned counsel has been unable to identify any illegality, misreading or non-reading of evidence, which therefore establishes that outstanding sale consideration has not been paid by the Appellant. In such circumstances the impugned order does not suffer from any infirmity whereby the respondent has been held entitled to either balance sale consideration or possession of the subject flat.

6. In view of the foregoing, there is no merit in the instant appeal and the same is as such dismissed.

J U D G E

Imran