

IN THE HIGH COURT OF SINDH AT KARACHI

Second Appeal No. 68 of 2020

[Nisar Ahmed v. Shamas-ur-Rehman and others]

Appellant : Through Mr. Abdul Wajid Wyne,
Advocate

Respondents : None Present

Date of Hearing : 05.10.2026

J U D G M E N T

SAMAN RAFAT IMTIAZ, J.- By this judgment I intend to dispose of the instant second appeal under Section 100 CPC filed by the Appellant [Nisar Ahmed] challenging the judgment and decree dated 30.03.2019 passed by the learned 1st Senior Civil Judge, Karachi West (**"Impugned Judgment and Decree No. 1"**), dismissing the Civil Suit No. 945 of 2018, and judgment and decree dated 27.11.2019 passed by the learned IXth Additional District Judge, Karachi West (**"Impugned Judgment and Decree No. 2"**), dismissing the Civil Appeal No. 129 of 2019, filed by the Appellant was dismissed.

2. The brief facts of the case as stated in the memo of appeal are that the Appellant filed Civil Suit No. 945 of 2018 seeking declaration, cancellation of sale deed and permanent & mandatory injunctions regarding Plot No. 353, measuring 966 square yards at Shershah, Karachi. He claimed that after acquiring the property through registered documents and obtaining mutation in his name he mortgaged it with J.S. Bank for a loan. Due to financial difficulties, Respondent No.1 [Shamas-ur-Rehman], a friend of the Appellant, agreed to clear the outstanding loan and have the property transferred in his name on paper so that he could obtain a further loan and establish a joint business with the Appellant. Pursuant to a written agreement executed in January 2016 the Appellant executed a registered sale deed dated 18.04.2016 in favour of Respondent No.1. The Appellant alleged that the sale was only a paper transaction, no consideration or possession was transferred and Respondent No.1 was bound to transfer the property to a proposed company in agreed shares. Respondent No.1 allegedly failed to fulfil the agreement, obtained a loan against the property for his own business and later attempted to take possession through police.

3. The Trial Court ordered status quo on 21.07.2018 and issued notices to all Respondents. Respondents No. 2 & 3 [The Sub-Registrar, Keamari Town and SHO of P.S Pak Colony] filed replies while Respondent No. 1 remained absent despite publication and was proceeded *exparte*. The Appellant examined himself and three witnesses and produced documents. After hearing

arguments, the Trial Court dismissed the suit vide judgment and decree dated 30.03.2019.

4. Being aggrieved, the Appellant filed Civil Appeal No.129 of 2019 before the learned District Judge, Karachi West, which was transferred on administrative ground to the learned IXth Additional District Judge, Karachi West. Along with the appeal, the Appellant filed an application for site inspection, which was allowed by the Appellate Court, and the SHO of Police Station Pak Colony was directed to inspect the said property and submit his report with regard to its possession. Respondent No.1 also appeared before the Appellate Court through his counsel. The SHO submitted his report, wherein the possession of the said property was affirmed to be with the Appellant. The Appellant then moved an application under section 107, CPC praying that the suit be remanded to the Trial Court, but the Appellate Court, instead of deciding that application, passed the judgment and decree dated 27.11.2019, whereby the appeal of the Appellant was dismissed. Hence, the present second appeal was filed seeking setting aside of both judgments and decreeing of the suit.

5. The learned counsel for the Appellant submitted that the impugned judgments are based on presumptions. Despite application no inspection was conducted to ascertain the possession and that possession is with the Appellant. He submitted that he produced witnesses who testified that the sale deed was executed only till such time the loan is satisfied but that has not been taken into consideration by the lower Courts.

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

7. Admittedly, witnesses purportedly produced by the Appellant were not witnesses of the sale deed. Nowhere does the sale deed say it was only for loan or that the Respondent No. 1 was liable to transfer it back to the Appellant. Thus, the Appellant failed to substantiate its allegations. Possession of the suit property with the Appellant does not establish anything in favour of the Appellant in view of the registered sale deed executed by the Appellant in favour of the Respondent No. 1. No misreading or non-reading of evidence could be pointed out by the Appellant or other infirmity in the concurrent findings contained in the concurrent judgments of the lower courts.

8. In view of the foregoing, the instant appeal is devoid of merit and is as such dismissed.

**[SAMAN RAFAT IMTIAZ]
JUDGE**