

IN THE HIGH COURT OF SINDH AT KARACHI

IInd Appeal No.168 & 169 of 2023

Appellant : Through M/s. Rasheed
Ashraf Mughal and Khalid Nawaz
Marwat, Advocates

Respondents : Through Mr. Arif Raza Rizvi advocate
for respondent No.3

Mr.Zul Hasnain Shah,
Assistant Advocate General (Sindh)

Date of Hearing : 25.05.2026

Date of Decision : 25.05.2026

J U D G M E N T

Saman Rafat Imtiaz, J.: The appellant in both the appeals has challenged the consolidated Judgment dated 30.05.2023 passed by learned Additional District Judge-IV, Malir, Karachi, in Civil Appeal No.46 of 2021, whereby, vide consolidated Judgment dated 18.02.2021 and decree dated 19.02.2021, learned Senior Civil Judge-IV Malir Karachi has dismissed the Suit No.450/2018 filed by the appellant herein and decreed the Suit No.954/2017 filed by the respondent No.3 herein.

By way of an order dated 14.03.2024, service was effected on the respondents Nos.1 and 2 through all modes including publication. Thereafter, on 06.05.2024, service was held good on said respondents despite which none has entered appearance on behalf of the said respondents. As such the matter is proceeding ex-parte against them.

Learned counsel for the appellant has explained the case history before this Court that the respondent No.3 filed Suit

No.954/2017 for declaration and cancellation of registered Sale Deed dated 30.01.2015 against the appellant in respect of Plot No.B-18, admeasuring 400 Sq.yds., Sector 51-A KDA Scheme No.33, Gulshan-e-Ghaziyan, situated in Ex-Servicemen Cooperative Housing Society, Karachi, ("**Subject Property**"). Later the appellant also filed Suit No.450/2018 against the respondent No.3 for cancellation of said registered Sale Deed. Both suits were consolidated and vide impugned consolidated Judgment and decree, Suit No.954/2017 was decreed in favour of the respondent No.3 while Suit No.450/2018 filed by the appellant was dismissed.

Appeal No.168/2023 has been filed against the dismissal of Suit No.450/2018 while Appeal No.169/2023 was filed against decree of Suit No.954/2017.

Learned counsel for the appellant argued that learned trial Court has erred in not framing any issue regarding whether the respondent No. 3 was a bona fide purchase without notice. He argued that the respondent No.3 claimed that he purchased the subject property through registered Sale Deed dated 30.01.2015 and then left the country for Saudi Arabia. Upon his return, he found that the subject property was occupied by the appellant. He also highlighted that admittedly the respondent No.3 failed to intimate the respondent No.1 society about registered Sale Deed dated 30.01.2015 and as such he could not claim to be a bona fide purchaser without notice. To a query raised by the Court, learned counsel for the appellant concedes that he neither proposed any such issue nor requested for addition of any issue but relied upon Mst. Sughran Bibi and others versus Mst. Jameela Begum and others, 2001 SCMR 772, whereby, it was held that it was the duty of the Court to frame the issues correctly. He also submitted that the appellant has recorded evidence to show that the respondent No.3 is not a bona fide purchaser without notice. And as such the issue ought to be considered.

On the other hand learned counsel for the respondent No.3 submitted that an additional issue was framed as recorded in the impugned Judgment which has been fully addressed in the impugned Judgment. He further submits that his sale deed is admittedly prior in time. He pointed out that the appellant is not a bona fide purchaser without notice as he failed to exercise due diligence and no search certificate was obtained by him. Had the appellant obtained search certificate, he would have learnt about the respondent No.3's prior Sale Deed.

I have heard the arguments advanced by both the learned counsel and perused the record with their assistance.

It is an undisputed fact that the sale deed dated 30.01.2015 in favour of the respondent No.3 was registered prior in time. In view of the foregoing, there is no need to frame an additional issue as proposed and argued by learned counsel for the appellant as to whether the respondent No.3 was a bonafide purchaser without notice as admittedly the appellant had no right or title to the subject property at the time of registration of respondent No.3's Sale Deed. Therefore, there is no question of notice to the respondent No.3 about any claim of the appellant. No other ground has been raised by the appellant to show any misreading or non-reading of evidence or any infirmity in the impugned judgment.

In view of the foregoing, instant appeals are without merits and as such are dismissed.


JUDGE