IN THE HIGH COURT OF SINDH AT KARACHI

IInd Appeal No.62 of 2023

[Sultan Salahuddin Ahmed and another v. Saeed Ahmed (Deceased through LRs) and another]

Date of hearing	:	12.08.2025
Date of decision	:	14.10.2025
Appellants	:	Hafiz Ziauddin Sultan (Appellant No.2) in person
Respondent No.1(a), (e) & (f)	:	Through Mr. Umer Sikandar, Advocate
Respondent No.1(b), (c) & (d)	:	Through Mr. Muhammad Arif Shaikh, Advocate
Respondent No.2	:	Through M.A Isani, Advocate

JUDGMENT

Muhammad Osman Ali Hadi, J: The Appellants have impugned the Judgment dated 16.02.2023 (**"the Impugned Judgment**") passed by the learned District and Sessions Judge Malir, Karachi in Civil Appeal No.99 of 2020, which overturned the Judgment and Decree of the Trial Court dated 20.11.2020 ("**the Decree**").

2. The succinct facts are that the Appellants claimed to have entered into a Sale Agreement dated 19.02.2007 with Respondent No.1, for purchase of land being Plot No. E-103 (Chemical Area) admeasuring 1 acre, situated in PQA-EIZ, Port Qasim Authority - Karachi ("**the Property"**).

3. The Appellants filed Civil Suit No. 136 of 2019 before IVth Civil Judge Malir - Karachi, *inter alia* for specific performance of the Sale Agreement dated 19.02.2007, in which the Decree dated 20.11.2020 was

passed in their favour, whereby learned Trial Judge directed that the Property be transferred by the Respondents to the Appellants.

4. Against the said Decree, the Respondent No. 1 filed Civil Appeal No. 99 of 2020 (**"1st Appeal"**), in which they argued that the said Decree was erroneous, as the Suit itself was barred under limitation; as well as the alleged Sale Agreement could not be performed since Respondent No. 2 did not allow sub-division of any plot on their premises (which is where the Property is situated). Furthermore, it was argued that the Sale Agreement itself was also *void,* as the prior permission of Respondent No. 2 was required before any transfer of property could take place, and the same was never obtained by the Appellants. The Impugned Judgement was passed and the 1st Appeal was allowed, overturning the Decree passed by the Trial Court, against which this instant *2nd Appeal* has been filed by the Appellants.

5. The Appellants[1] mainly argued that the Impugned Judgment erroneously held that notices were not issued to the Respondent No. 2 at the time of the Trial, and that the Impugned Judgement (allegedly) incorrectly held that the Property could not be sub-divided. In this regard, they referred to Para No. 14 of the Impugned Judgment, as well as Para No. 17, in which they submit that an alleged Board Resolution filed by the Respondent No. 2 dated 21.01.2021[2] which prohibited sub-division of plots under 1 acre, was relied upon in the Impugned Judgement, but the same could not be considered as it was not pleaded earlier by the Respondents. They submit it is only at the 1st appellate

[1] Appellant No. 2 appeared in person and submitted his contentions, which have been recorded collectively as the contention of the Appellants.
[2] Available at page 189 of the File.

stage that such argument was raised, but the 1st Appellate Court made this a basis for their reasoning in the Impugned Judgement. As per the Appellants, this is impermissible under law.[3] Counsel further contended the said Board Resolution did not exist at the time the Suit was filed, and that it could not have retrospective effect.[4]

6. The Appellants then averred that this was not the case of sub-division, but they simply sought 50% ownership share in the Property.

7. They then referred to the concluding Para of the Impugned Judgement (i.e. Para No. 20) which rescinded the Decree. They stated that the findings in the said Para by the 1st Appellate Court were incorrect in nature, and the Decree should be reinstated.

8. The Appellants lastly concluded by submitting that the Property[5] had been illegally transferred in the name of one Mr. Muhammad Tabish Khursheed (**"the Purchaser"**), who was the alleged purchaser of the Property in the year 2018. The Appellants claimed the said transfer of the Property to Mr. Khursheed was illegal and should be voided.

9. Learned counsel for Respondents No. 1(b, c and d) argued next, and submitted that despite the Sale Agreement dated 19.02.2007, a Legal Notice was sent in the year 2012 by the Appellants to Respondent No. 2, in which they (i.e. Appellants) sought half-portion of the Property[6]. He stated the Appellants never bothered to pursue the matter

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[3] The Appellants placed reliance upon PLD 2021 SC 715.
[4] The Appellants placed reliance upon 2008 SCMR 773.
[5] Available at page 187 of the File.
[6] Available at page 111 of the File.

thereafter, and did not show any serious interest in the Property. Counsel then referred to Page 141 of the File in which the Respondent No.1's Written Statement demonstrates that Appellant No. 2 was married to Respondent No.1(d), and submits that it is only because the marriage had broken down that the Appellants are creating these problems in a vengeful manner. He stated that additionally, due to lapse of time, the Appellants do not hold any claim over the Property.

10. Counsel then referred to Page 191 of the File, which shows an application under Section 12(2) read with Section 151 CPC, filed by the Purchaser, i.e. Mr. Muhammad Tabish Khursheed, in Execution No. 3 of 2021 against the Decree, which remains pending adjudication. Mr Khursheed was stated to have purchased the Property from the Respondents on 05.08.2018, which was prior to the Appellants filing their Suit. Counsel claims that this shows *mala fide* on part of the Appellants, since the Property was already sold prior in time, and therefore could not have been given to the Appellants (as was directed in the Decree) through specific performance. Furthermore, counsel submitted Respondent No. 2 had also recorded transfer of the Property to Mr. Muhammad Tabish Khursheed in their records. Counsel informed that the said application of Mr. Khursheed under section 12(2) CPC remains pending before the Executing Court, and the Appellants can make their submissions/objections before the Executing Court. He concluded by stating this *2nd Appeal* was not maintainable.

11. Learned counsel for Respondent No. 2 then initiated his arguments by submitting that permission is required from Respondent No. 2 before any property (within their jurisdiction) can be

purchased/transferred. He stated Respondent No. 2 is an entity created under the statute, within the the remit of the Federal Government, and is accordingly governed as such. In this regard, learned counsel has referred to their reply to a Show Cause Notice dated 05.04.2021[7], which he states clarifies that the Respondent No.2/PQA never granted any permission for transfer of the Property to the Appellants. He further stated even if the Appellants received the Decree directing them to transfer the Property, the same was not tenable under law, since no prior permission was granted by PQA, and the Impugned Judgement had correctly overturned the Decree. Counsel then mentioned letter dated 18.12.2006 sent by PQA to Respondent No.1,[8] specifically referring to *'clause no xxiv'*, in which it was unequivocally stated that any transfer, whether whole or partial, without permission of Respondent No.2/PQA shall be *void*. Counsel concluded by referring to section 65 of the *Port Qasim Authority Act 1973*, which provided that any suit against Respondent No.2/PQA would have to be brought within six months from accrual of the cause of action, which was not done, and therefore, in this regard as well the said suit was barred by limitation. He overall supported the arguments put forth by Respondents No. 1.

12. Learned counsel for Respondents No. 1(a, e and f) then submitted his arguments. He referred to Pages 109 and 111 of the File, which were part of the Legal Notice dated 13.08.2012 sent by the Appellants to Respondent No.2, regarding the Property.[9] Learned counsel submitted that after 2012, the Appellants did not pursue the matter any further, and as such when they filed the suit in the year 2019,

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[7] Available at page 171 of the File.
[8] Available at page 91 of the File.
[9] Already mentioned *ibid.*

the same was hopelessly time barred. Learned counsel then referred to Para 20 of the Impugned Judgment in which he submitted that the matter was properly decided by the 1st Appellate Court in accordance with law, and no infirmity has been shown in the Impugned Judgment.

13. I have heard all the learned counsel and have gone through the File, and found as under:

14. The basic considerations in this *2nd Appeal* are twofold:

i. Whether (as per assertions of the Appellants) the learned 1st Appellate Court has committed any error under law whilst passing the Impugned Judgment?

AND

ii. Whether the threshold for filing a *2nd Appeal* has been established by the Appellants?

15. The Impugned Judgment has recorded its findings between Paragraph Nos. 12 to 20. The primary basis settled by the learned 1st Appellate Judge was that there has been a 'mistake of fact' between the parties, as it was necessary condition that Respondent No. 2 must first approve transfer of the Property, before the same can be executed. As such, there was no approval for transfer of the Property given by Respondent No. 2, and hence the alleged transfer was deemed void.

16. A perusal of Letter dated 18.12.2006 issued by Respondent No.2/PQA to Respondent No. 1[10] also stipulates in **'clause xxiv'** that no transfer can be recognized without prior permission of PQA. **'clause xxiv'** is hereby reproduced:

[10] Available at Page 91 of the File.

> "**xxiv**. That the transfer of interest in any form whether wholly or partially without permission of PORT QASIM AUTHORITY will not be recognized. In case of transfer of interest if allowed by the Authority, the allottee shall arrange for notifying the intended transfer of interest in (03) three dailies of repute i. e. English, Urdu & Sindhi to raise objections, if any within (15) fifteen days of publications of notice and submit the same to PQA for further proceeding in the matter." (*emphasis supplied*)

17. Even a perusal of clause no. 2 of the Sale Agreement clearly provides that first permission from Respondent No.2/PQA must be obtained prior to the Property being transferred. Furthermore, clause no. 5 of the said Sale Agreement specifically states that the terms and conditions of Respondent No. 2 must be fulfilled, the same being the essence of the said Sale Agreement. At least one such condition (of not obtaining prior permission for transfer of the Property) remained unfulfilled. Therefore, both these essential terms of the Sale Agreement, i.e. clauses no. 2 & 5 were admittedly never complied. Therefore, in this regard, I find that the Impugned Judgment has correctly identified and addressed this said issue by holding that since no approval was obtained from Respondent No. 2 / PQA for any transfer and/or sub-division, therefore this mandatory condition remained unsatisfied, and this claim of the Appellants stood negated.[11]

18. The learned 1st Appellate Judge has also premised her deliberations on the fact that since the Agreement itself stood *void*, there could not be any performance of the same. The learned 1st Appellate Judge has relied on Section 20 of the Contract Act 1872, as well as certain case laws, stating that there has been a mistake in fact between the parties, as sub-division of the Property cannot be done, since it is against Respondent No.2's own land policy scheme. In this regard, the

[11] Reference to Para(s) 12 & 13 of the Impugned Judgement.

Impugned Judgment has referred to 205th Board Meeting of Respondent No.2 in which it was stated that no sub-division of any plot shall be less than 1 acre[12].

19. The argument put forth by the Appellants that they have not sought any division of the said plot, but have simply sought 50% transfer in their name, also does not seem to inspire confidence. The reason being that in their plaint of the initial Suit,[13] the Appellants have specifically prayed that the Property be transferred and handed over in a "longitudally half-portion". This would appear to imply that they had sought division of the Property, which is directly contrary to Respondent No. 2's scheme policy. Respondent No. 2 on record has affirmed that any such sub-division would be directly in derogation to the policies settled by the Board of Respondent No. 2, as plots measuring less than once acre within the Port Qasim Authority-EIZ, cannot be sub-divided.

20. Even in the Decree passed by the Trial Court there has been a direction sought to deliver 50% of the Property to the Appellants, which would automatically also hold an implication of trying to create a sub-division, which, as already stated above, is impermissible.

21. It is noteworthy to point that this above argument put forth by the Appellants is also self-contradictory. On the one hand the Appellants have argued in this instant *2nd Appeal* that they do not seek sub-division of the Property, but simply seek to have 50% ownership transferred to them. Yet on the other hand they have argued that the Minutes of the 205th Board Meeting of PQA, referred *ibid.*, which

[12] Available at Page 189 of the File.
[13] Page 129 of the File.

illustrates that no plot under 1 acre can be sub-divided, were passed on 21.01.2021, which was post the date of filing of the Suit (which was in the year 2019) and did not have retrospective effect on the case of the Appellants, and hence was inapplicable. In essence, the Appellants are attempting to take two bites of the cherry, as their stance is arguing two directly conflicting points, in the hope at least one proves fruitful.

22. In the first instance, the Appellants state they do not seek any sub-division of the Property (meaning they *accept* the Property cannot be sub-divided). Whereas in the second instance, they have stated the policy of banning sub-division of the Property occurred post-filing of the Suit and did not have retrospective effect, and was hence *not applicable* to the Appellants' case (meaning they do ***not*** accept the Property cannot be sub-divided, but simply state the directions for not allowing sub-division by PQA were post filing of the Suit).

23. The Appellants appear to be blowing both hot and cold, and their submissions in this regard remain untenable and without legal weightage. Therefore, these submissions by the Appellant do not require any impingement into the wisdom of the 1st Appellate Court's edict in the Impugned Judgement.

24. One more point for deliberation is that it is admitted by the Appellants that Mr. Tabish Khursheed had purchased the said Property in the year 2018, before the Appellants filed their Suit for Specific Performance (which was in February 2019). Accordingly, it appears, at least *prima facie*, that at the time the Suit was instituted, the Property had already exchanged hands. As such the enforcement of the Sale

Agreement would stand *void,* as the Subject Property was no longer in the possession/ownership of either party, and the Property could not have been given to the Appellants by the Trial Court. A similar proposition was discussed by the August Supreme Court in the case of *Inayatullah Khan v Shabbir Ahmad Khan*,[14] a relevant portion is reproduced below, which reads:

> *"11. For arguments sake, if it be presumed that the said document and the page can be read together and constituted a contract, then too such contract could not be specifically enforceable because the respondent had filed the suit after the said land had already been conveyed to the contesting petitioners. Moreover, the plaint did not state, nor was it established, that the sale to the contesting petitioners was fraudulent or collusive. Therefore, the sale to the contesting petitioners could not be defeated by placing reliance on section 52 of the Transfer of Property Act since transfer of property was not done when the suit was pending, but had already taken place."*

25. Even otherwise, the Appellants have only relied upon an (unregistered) Sale Agreement, which per settled law, cannot be considered a title document[15] to give them a claim over the Property ownership.

26. Specific performance is a very particular type of relief granted under specific conditions. The statute governing the same is the *Specific Relief Act 1877*, of which section 22 is relevant for the instant purposes (reproduced below):

> **"22.Discretion as to decreeing specific performance.** The jurisdiction to decree specific performance is discretionary, and the Court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the Court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a Court of appeal. (*emphasis supplied*)
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> The following are cases in which the Court may properly exercise a discretion not to decree specific performance:

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[14] 2021 SCMR 686.
[15] Reference is made to section 17 Registration Act 1908 and a 3 Member Bench in *Rao Abdul Rehman v Muhammad Afzal 2023 SCMR 815.*

I. Where the circumstances under which the contract is made are such as give the plaintiff an unfair advantage over the defendant, though there may be fraud or misrepresentation on the plaintiffs part.

II. Where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff.

III. Where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance."

27. Reading of the above section illustrates two basic points for the instant purposes: i) specific relief is discretionary; and ii) the said section has very specifically given the Court of Appeal (in the instant matter that would be the 1st Appellate Court i.e. District Judge, Malir, Karachi) the power of correction.

28. The 1st Appellate Court has exercised this power of correction and held that the Trial Court had wrongly considered granting such a discretionary relief to the Appellants.

29. The Appellants even during arguments stage, failed to show any legal grounds for intrusion with the Impugned Judgement. They have simply skirted around various alleged factual aspects, which cannot be considered sufficient to override findings in the Impugned Judgement.

30. The law sanctions powers for an appellate court to pass any order which ought to have been passed or that is required,[16] which was done by the 1st Appellate Court. The Appellants have not controverted any of these legal positions nor have they pinpointed illegalities committed in the Impugned Judgement.

[16] Order 41 Rule 33 Code of Civil Procedure 1908.

31. In light of the aforementioned, the first point of consideration is answered in *negative* against the Appellants, as no legal impropriety has been highlighted in the Impugned Judgement.

32. Now moving to the second point of deliberation. The Appellants have approached this Court by invoking a *2nd Appeal* under section 100 Code of Civil Procedure 1908 ("**CPC**"), the confines of which are strictly limited. Section 100 CPC reads:

> "**100. Second appeal.** (1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to a High Court, on any of the following grounds, namely:-
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> (a) the decision being contrary to law or to some usage having the force of law;
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> (b) the decision having failed to determine some material issue of law or usage having the force of law;
>
> (c) a substantial error or defect in the procedure provided by this Code 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 the merits."

33. In the case of *Gulzar Ahmad v Ammad Aslam*[17] a 3 Member Bench of the Apex Court held:

> *"7. Compliant with section 100, C.P.C., the second appeal only lies in the High Court on the grounds that the decision is being contrary to law; failure to determine some material issue of law, and substantial error or defect in the procedure provided by the Code or law for the time being in force which may possibly have emanated an error or slip-up in the determination or decisiveness of the case on merits. Meaning thereby, it does not lie to question the findings on facts. In the case of Madan Gopal v. Maran Bepari (PLD 1969 SC 617), this court held that if the finding of fact reached by the first appellate court is at variance with that of trial court, such a finding by the lower appellate court will be immune from interference in second appeal only if it is found to be substantiated by evidence on the record and is supported by logical reasoning, duly taking note of the reasons adduced by the first court which have been disfavored in the contrary finding. It was further held that interference would be justified if the decision of the lower courts is found to be contrary to law or some usage having the force of law has failed to determine some material issue of law. Whereas in another case reported as Amjad Ikram v. Mst. Asiya Kausar (2015 SCMR 1), the court held that in case of inconsistency between the trial court and the appellate court, the findings of the latter must be given preference in the*

[17] 2022 SCMR 1433.

> *absence of any cogent reason to the contrary as has been held by this court in the judgments reported, as Madan Gopal and 4 others v. Maran Bepari and 3 others (PLD 1969 SC 617) and Muhammad Nawaz through LRs. v. Haji Muhammad Baran Khan through LRs. and others (2013 SCMR 1300)".*

34. As already considered (*supra*) in great detail, the Appellants have not shown any part of the Impugned Judgement being contrary to law, nor have they exposed any substantial error / defect in the decision. The onus remained on the Appellants to do so, in which they remained unsuccessful. I am of the opinion the requisite threshold for invocation of section 100 CPC has not been met by them. Accordingly, the second point is also answered in the *negative* against the Appellants.

35. The 1st Appellate Court has observed and discussed the findings of the Trial Court, and have reached their conclusion that the Decree passed by the Trial Court was not in consonance with law. I am of the opinion the Appellants have failed to provide any legal justifications to the contrary, requiring interference with the Impugned Judgement. Based on the foregoing, and being bolstered and bound by law and precedent, I hereby dismiss this instant *2nd Appeal.*

36. Accordingly for reasons aforementioned this instant *2nd Appeal* stands *dismissed.*

JUDGE

B-K Soomro