IN THE HIGH COURT OF SINDH AT KARACHI

HCA No. 113 of 2018

[Mohammed Fahad Faruqui & another V. Pakistan Battery Manufacturing Company Pvt. Ltd. & others]

Present:
Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Muhammad Osman Ali Hadi

Date of hearing	:	17.04.2025
Date of decision	:	17.04.2025
Appellant	:	Through M/s. Obaid-ur-Rehman, Sabih Ahmed Zuberi & M. Mudasir Abbasi, Advocates.
Respondents No. 1 & 2	:	Through Mr. Zubair Ahmed Abro, Advocate.
Respondent No.3	:	Through Mr. Iqbal Khurram, Advocate.

JUDGMENT

Muhammad Osman Ali Hadi, J: The instant Appeal arises out of the Judgment dated 09.03.2018 and Decree dated 17.03.2018 (referred collectively as the **"Impugned Judgment"**). The matter stems from Suit No.1142/2003 (along with Suit No.1318/2007) which was filed by Respondents No. 1 & 2 (Plaintiffs in the Suit) against the Appellants and Respondent No. 3 (Defendants in the Suit). In the said Suit, Respondents No. 1 & 2 sought specific performance of a Memorandum of Understanding / Agreement (**"MOU"**) dated 01.10.2000[1] regarding Suit Property being SF Unit No. 4, SITE, Karachi (**"the Property"**).

2. The said Suit was decreed (vide the Impugned Judgment) in favour of Respondent Nos. 1 & 2, whereby it is held that the Agreement was to be performed, and the Property was to be transferred to Respondents No. 1 & 2 after according all formalities.

3. The learned Single Judge in the Impugned Judgment[2] has deliberated the matter exhaustively, and arrived at a detailed conclusion, against which the Appellants have preferred this instant Appeal.

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[1] At pg. 53 of the File
[2] At pg. 83 of the File

4. Learned Counsel for the Appellants opened arguments by referring to the Impugned Judgment, stating (with due respect) that the learned Single Judge did not consider all the various factors whilst passing the Impugned Judgement. The first point taken by the learned Counsel for the Appellants was that he stated the Property belonged to Appellant No. 2, and therefore a sale agreement / MOU of the Property could not have been enforced against Appellant No. 1. He claims Appellant No. 1 was only a conduit, who had been authorized by Appellant No. 2 (his mother, and as per learned Counsel for the Appellants also the true owner of the Property) to deal with S.I.T.E. / Respondent No. 3 on her behalf. He states it is by virtue of this position that he entered into License Agreement dated 01.03.1992[3] with S.I.T.E. on behalf of Respondent No. 3 making him only the superficial owner of the Property (as per the Appellants).

5. He further contends that the License Agreement is dated 01.03.1992, after which he referred to the CNIC of Appellant No. 1[4] and stated that in the year 1992, Appellant No.1 was under the age of 18 and could not have legally contracted.[5]

6. Learned Counsel next referred to the MOU / Agreement signed between Appellant No. 1 and Respondents No. 1 & 2[6], in which he submits that the said Property was not his, but in fact he holds the same on behalf of his mother, being Appellant No.2, whom he submits is the true legal owner.

7. When learned Counsel was confronted as to why the License Agreement of the Property was put by Appellant No. 2 in the name of her son Appellant No. 1 and not in her own name, learned Counsel stated that there was some other complications between his mother and S.I.T.E. at the time, and hence she could not enter into a lease or license agreement with S.I.T.E. directly herself. He submitted that she wanted to keep the Property as it was hers, and hence as a temporary measure had it put in her son's (Appellant No. 1) name. He further submitted that when the issues between his mother and S.I.T.E were resolved, they entered into a new agreement to license dated 19.02.2004.[7]

8. Learned Counsel for the Appellants next referred to Para No. 24 of the Impugned Judgment (at page 109 of the File), and stated that in the said Para testimony of the father of Respondent No. 2 was discussed (pertaining to a

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[3] At pg. 33 of the File
[4] At pg. 123 of the File
[5] Presumption for this argument is placed on sections 10 & 11 of the Contract Act, 1872
[6] At pg. 53 of the File
[7] At pg. 25 of the File

separate rent case between the parties) and the same illustrated that the MOU was not a sale agreement, and that Appellant No. 1 was not mentioned as owner of the Property (in those proceedings). Counsel contends the same ought to have been heavily weighed in favour of the Appellants, but was wrongly not given due weightage, and even on this ground the Impugned Judgement has erred.

9. Learned Counsel for the Appellants concluded by stating there has been misreading of the evidence by the learned Single Judge in the Impugned Judgment, and that in addition to not having properly considered the evidence produced by the Appellants and evidence in other proceedings between the Parties (which as per learned Counsel heavily supports the stance of the Appellants), the Impugned Judgment is also incorrect in misplacing reliance on the evidence produced by the Respondents.

10. Learned Counsel for Respondents No. 1 & 2 vehemently controverted the submissions made by the learned Counsel for the Appellants and stated that the Impugned Judgment was exhaustive, and the learned Single Judge has considered each and every detail, after which the Impugned Judgment was passed.

11. Learned Counsel for Respondents No. 1 & 2 stated that the pleas being taken at the appellate stage by the learned Counsel for the Appellants were not taken at the initial stage, and therefore cannot now be considered. In this regard, learned Counsel for Respondents No. 1 & 2 has referred to Para No. 6 of the Impugned Judgment[8] which shows issues that were framed, on which the evidence was led, in which he states the above line of the arguments being put forth by the learned Counsel for the Appellants was not a part thereof. He has referred further to a Letter dated 19.05.1991 (at page 183 of the File), which he states shows Appellant No. 3 acknowledging Appellant No. 1 as owner of the Property. This was controverted by the Counsel for the Appellants, who have referred to a Letter of the same date, almost identical in nature, but which contains a handwritten alteration by Appellant No. 3, stating Appellant No. 1 was acting on her behalf (at page 185 of the File). Learned Counsel for the Respondent No. 1 stated that this issue was thoroughly discussed in Para Nos. 16 & 17 of the Impugned Judgment[9] and was held to be in favour of the Respondents. He concluded by stating that the Appellants have failed to make out the case and instant Appeal is liable to be dismissed.

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[8] At pg. 89 of the File
[9] At pgs. 97-99 of the File

12. We have heard the learned Counsels and form our opinion that while the Appellants have perhaps stated certain grounds which could have required consideration, those grounds were not part of the issues nor were they taken at the trial stage, despite the fact that all material supporting the new lines of argument put forth by the Appellant were available at the time when the Suit was filed. To raise such grounds at this Appellate stage would be contrary to settled law and principles. It is trite law that parties can only follow what is part of their pleadings. In the case of *Muhammad Ibrahim*[10] the Hon'ble Supreme Court held that evidence was to be led according to the pleadings of the parties. In the case of *Muhammad Yaqoob v Mst. Sardaran Bibi*[11] the Apex Court held that a party could not improve its case beyond what was set up in their pleadings. This view was also strongly previously discussed by the Apex Court in *Sardar Muhammad Naseem's*[12] case, which elaborated that even evidence led which was beyond the pleadings should be discarded.

13. While we acknowledge the legal creativity of the learned Counsel for the Appellants, we are of the opinion the Appellants have been unable to substantiate any serious infirmity in the Impugned Judgment, and have instead relied upon new grounds raised for the first time in this Appeal, which cannot be permitted. We find that for the reasons aforementioned, there are no grounds for interference with the Impugned Judgement. Accordingly, this Appeal stands dismissed.

The above are the reasons of our short order dated 17.04.2025.

JUDGE

JUDGE

M. Khan

[10] 2020 SCMR 2033 relevant Para 6
[11] PLD 2020 SC 338
[12] 2015 SCMR 1698