

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
R. A. No. S – 81 of 2000

Date of hearing	Order with signature of Judge
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Hearing of case

1. For hearing of CMA No.433/2002 (151 CPC)
2. For hearing of main case

02-11-2020

Mr. Abdul Qadir Shaikh assisted by Mr. Abdul Basit Shaikh and Mr. Abdul Aziz Shaikh, Advocates for the applicants.
Mr. Kamran Mobeen Khan, Associate of Mr. A. M. Mobeen Khan, Advocate for the respondents.

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This revision application arises from concurrent findings of the learned Courts in the suit of specific performance, cancellation of sale deed, possession and permanent injunction.

2. That the learned trial Court framed the following issues and decided the same as given, whereas, the learned appellate Court was pleased to take up the same issues and after discussion with reference to the evidence re-affirmed the findings of the trial Court.

- 1) *Whether the suit is not maintainable at law? (In affirmative)*
- 2) *Whether the predecessor-in-interest of the defendants sold out suit property to plaintiff about 24 years back? (In negative)*
- 3) *Whether deceased Habibullah, the predecessor-in-interest of the defendants had handed over the possession of the portion of suit plot ad-measuring 316.3 sq. feet to plaintiff who has constructed shop over it on his own expenses? (In negative)*
- 4) *Whether late Habibullah the predecessor-in-interest of defendants has executed sale agreement dated 23.6.1993 in respect of suit property in favour of the plaintiff and received Rs.100000/- as part payment of the agreement? (In negative)*
- 5) *Whether suit plot was not sold out by deceased Habibullah the predecessor-in-interest of the defendants to plaintiff about 24 years back? (In negative)*

- 6) *Whether sale agreement dated 23.6.1996 is forged and false?*
(In negative)
- 7) *Whether deceased Habibullah the predecessor-in-interest of the defendants had given the possession of a shop on rent? (In negative)*
- 8) *Whether the plaintiff is entitled for the relief claimed?*
(Accordingly)
- 9) *Whether sale deed dated 17.3.1997 in respect of suit property executed by deceased Habibullah in favour of defendants No.2 to 7 is forged and false? (In negative)*
- 10) *Whether suit is time barred? (Affirmative)*
- 11) *What should the decree be? (The suit of the plaintiff is dismissed u/o 17 rule 2 C.P.C.)*

3. Learned counsel for the applicants only has been heard in this case, whereas, adjournment sought on part of learned counsel for the respondents on the ground that the concerned counsel is not available has not been entertained. A fixed date for today was given on the earlier date along with the option of filing of written synopsis, none having been availed nor any explanation coming found. In the circumstances, the matter was heard with the assistance as available.

4. Learned counsel for the applicants contended that the suit for specific performance filed on part of respondent No.1 was dismissed by the learned trial Court as well as the learned appellate Court on the ground that the agreement alleged in the matter was not proved. It is further contended that the alleged agreement having not been proved, the learned trial Court, without considering that the agreement was not proved, was pleased to grant an area of 316-3 sq. ft. by deciding the issues in that respect favouring the respondent was not available, and that the learned appellate Court upholding the said judgment was also not available as the conclusion of agreement not having been proved is contrary to the conclusion that the relief as observed was available to the

respondent. Learned counsel for the applicants in this regard further contended that Revision Application bearing No. S-97/2000 filed on part of respondent No.1 was dismissed by this Court on 19-04-2019, and in the circumstances, the findings in favour of respondent No.1 not been available, the rights of the applicants to the subject property of 316-3 sq. ft. was available and could not be denied. Learned counsel further contended that although the rent proceedings in the matter as filed by the present applicants were dismissed, their rights acquired by virtue of sale deed favouring the said applicants was intact and available and could have been exercised, had the learned trial Court as well as the learned appellate Court not given the findings in this regard. It is as such contended that the concurrent judgments are illegal and liable to be set aside.

5. Having gone through the record, it is observed that the learned trial Court as well as the learned appellate Court had decided the element of the sale agreement alleged in the matter to not having been proved, and as such entertained the claim of specific performance to the extent found available, whereas, the admitted element of possession as to the shop of specific are of 316.3 sq. ft. has not been disturbed.

6. The learned trial Court as well as the learned appellate Court found it favour to the respondent as available and irrespectively entertained. It may be observed that the courts are not restricted to the pleadings of the parties in dispensation of justice in accordance with law, and as such it cannot be said that in case a version is not proved, the whole claim should be thrown out as a portion of the claim may have basis for entertainment which may be taken up by the parties or may not be so, but in case the said element comes on record, the courts consider the same to favour the party who is legally entitled for the same.

7. It is also observed that the said right alleged by the present applicants as to the area of the shop was thoroughly barred or even at present cannot be claimed otherwise being barred by limitation for the proceedings in the matter started in the year 1997.

Having not found any merits, this revision application is **dismissed** with costs.

Abdul Basit

J U D G E