

2. Brief facts of the two Revision Applications are that the parties have a dispute over house No.931 situated in Street No.31, Mahmoodabad, Karachi admeasuring 218 sq.ds (suit property). The applicants claim ownership rights in the suit property through sale agreement and respondents claim ownership by inheritance. The suit property was owned by one Din Muhammad, who was father-in-law of applicant No.1 and father of all the respondents and applicant No.2. The Applicants filed suit No.960/1980 (New No.1400/86) for possession of 90 square yards portion of the suit property and mesne profit against the respondents claiming that applicant No.1 had purchased the suit property on or about **25.5.1974** from Deen Muhammad father of her husband-the applicant No.2 and the Respondents for a consideration of Rs.5000/- and she spend Rs.15000/- on the construction work and consequently the said plot was leased out to her by KMC on **19.6.1975**. It was further averred in the plaint that after the death of Din Muhammad on **8.12.1974**, the Respondents have illegally and forcibly without lawful authority occupied the said portion of the suit property and inspite of repeated protests they have refused to vacate the same. Therefore, the applicants filed suit for possession and mesne profit.

3. The respondents filed written statement wherein they have denied the allegations of Applicant Mst. Bano Begum. The case of the respondents is that the agreement of sale is forged one and that Mst. Bano Begum got the lease of the suit property from KMC on the basis of forged documents. They have further taken the plea that Mst. Bano Begum obtained forged PT-1 from the office of Excise and Taxation Department Karachi and on the representation by the respondents the PT-1 issued by the Excise and Taxation Department in favour of Mst. Bano Begum was cancelled and consequently Excise and Taxation Department wrote a letter to KMC for cancellation of her lease and KMC also issued a letter to applicant Mst. Bano Begum for cancellation of the lease. They have

further taken the plea that they are in physical possession of the premises prior to the death of their father and that the suit is liable to be dismissed.

4. The Respondents have also filed a counter suit No.1518/1980 (New No.1401/1986) against Mst. Bano Begum and her husband namely Muhammad Ramzan who also happened to be their brother. KMC and Excise and Taxation Department were also impleaded. They have alleged in the plaint that their brother Muhammad Ramzan alias Munna with the help of his wife Mst. Bano Begum, the applicants herein have chalked out a plan against all the brothers and sisters to usurp their right of inheritance in the suit property left by the deceased Deen Muhammad and the applicants have managed forged and bogus sale agreement followed by illegally obtained PT-I and fraudulently got the lease of the suit property from KMC. They prayed that agreement dated **25.5.1974** between applicant No.1 and deceased Din Muhammad and lease deed dated **19.6.1975** between KMC and Mst. Bano Begum be cancelled and be ordered to be delivered up and the title of the applicant be declared defective and inoperative against the heirs of late Din Muhammad. At the same time KMC and Excise and Taxation Department be directed to make entry of the heirs of the deceased in their record.

5. Both the applicant Mst. Bano Begum and her husband, filed written statement wherein they have denied all the allegations of the Respondent. KMC also filed written statement wherein it was pleaded that Mst. Bano Begum on **27.11.1974** applied to the KMC for regularization and grant of lease of the suit property on the basis of PT-1 and sale agreement dated **25.5.1974** whereupon the lease was granted to her on **19.6.1975**. They have further taken the plea that as soon as it was brought to their knowledge that applicant No.1 had obtained bogus PT-1 from Excise and Taxation Department, she was asked to explain her position and that she has been asked to surrender the lease deed for its cancellation as the same appears to have been issued on misrepresentation of facts.

6. The trial court from the pleadings of the parties has framed the following issues.

1. Whether Plaintiff is bonafide purchase of property in dispute?
2. Whether the Plaintiff raised construction at her own expenses?
3. Whether the Defendants have illegally occupied the premises in dispute?
4. Whether the Plaintiff is entitled to mesne profit?
5. Whether the Plaintiff is entitled to possession of the house in dispute?
6. Whether the Plaintiff in suit No.1518/1980 are entitled to the relief claimed?
7. What should the decree be?

Mst. Bano Begum was examined as Ex.1 (**PW1**) and she produced **Ex.2** Sale agreement dated 25.5.1974; **Ex.3** PT-I; **Ex.4** Lease deed; **Ex.5-6** Approved plan alongwith covering letter; **Ex.7** Copy of notice; **Ex.8 to 15** Acknowledgement and postal receipts; **Ex.17** Stamp paper. One Muhammad Shafi was also examined as Ex.18 (**PW2**). Islamuddin was also examined as Ex.19 (**PW-3**); and Muhammad Ramzan as Ex.20 (**PW-4**). On the other hand respondent Allah Din examined himself as Ex.21 (**DW-1**); he produced Power of Attorney as **Ex.22 & 23**; Heirship certificate as **Ex.24** and certified copy of Oder Excise & Taxation Department on Revision No.38/79 and Appeal No.297/78 as **Ex.25** and **26**.

7. The learned trial Court decreed the suit filed by applicants Bano Begum and her husband to the extent of handing over possession of 90 square yards consisting of two rooms to the applicants and dismissed the suit of respondents for cancellation of agreement to sell and lease-deed executed by KMC in respect of the suit property in favour of applicant. The respondents preferred two appeals; one against the dismissal of their suit and the other against the judgment and decree in favour of the

applicant. Learned 1st Appellate Court by judgment dated **16.3.1992** reversed findings after thoroughly examining evidence of the parties led before the trial Court. The applicants have preferred these revision applications against findings of the 1st Appellate Court.

8. I have heard learned counsel and perused the record. The main contention of learned counsel for the applicants was that the appellate Court while reversing the findings of the trial Court has failed to appreciate that the agreement of sale was established by producing two attesting witnesses who identified signature of deceased father-in-law of applicant No.1 namely Din Muhammad, on the said agreement. The counsel for respondents in reply has contended that very sale agreement, on basis of which the applicant was claiming ownership of the suit property was in-fact not an agreement of sale in respect of the suit property. He has further contended that even before filing of the suit for declaration and possession the very PT-1 was cancelled by the Excise & Taxation Department as the entry in the name of applicant was found to be fraudulent and an act of forgery. The applicant has preferred an appeal followed by Revision against the cancellation of entry in PT-1 and the Excise & Taxation department Karachi has cancelled it by **Ex.25** and **26**. The learned counsel has relied upon case of Muhammad Hafeez and another v. District Judge, Karachi East Karachi and another (**2008 SCMR 398**) and argued that findings of the facts by the appellate Court are not open to be interfered with by the revisional Court; the order of the appellate Court in case of conflicting decision of the Court below is always preferred and respected, unless it is shown from the record that such findings are not supported by evidence or the judgment of appellate Court suffers from mis-reading and non-reading of evidence.

9. On perusal of the evidence, I found that these facts have been admitted by the applicant herself, she conceded that PT-1 was cancelled

and even her appeal against cancellation of PT-1 was dismissed by the relevant authority. Regarding the so-called agreement of sale said to have been executed by deceased Din Muhammad in favour of applicant; suffice is it to say that the agreement was not in respect of sale of the suit property. The perusal of sale agreement shows that it was in respect of **Malba** lying on the plot against the consideration of Rs.5,000/-. I have also examined the so-called agreement of sale (Ex.2); it does not disclose particulars of the immovable property claimed to have been sold by the deceased Din Muhammad and purchased by the applicant. Neither the total area/measurement of the suit property is mentioned in the agreement of sale nor its mets and bounds are disclosed. By no stretch of imagination such an agreement could not be treated as agreement of sale of immovable property. Learned appellate Court has thoroughly discussed the evidence and the relevant law for transfer of immovable property. The appellate Court also discussed the contradictions in the statements of the witnesses of the applicants. Be that as it may, in-fact after going through the contents of so-called agreement of sale (Ex.2) the trial Court ought to have dismissed the suit of applicants since the applicants were relying on a document, which on face of it was not an agreement of sale in respect of the suit property.

10. In view of the above discussion, the findings of the learned appellate Court cannot be set aside in the revisional jurisdiction of this Court as the factual controversy has rightly been decided by the appellate Court is supported by evidence on record. These revision applications were dismissed with no order as to cost by a short order dated 10.3.2016 and these are the reasons for the same.

Dated: 09.6.2016.

JUDGE

