

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
R.A No.112 of 2006

DATE	ORDER WITH SIGNATURE(S) OF JUDGE(S)
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Present: Mr. Justice Nazar Akbar

Applicants	:	Ahmed & others through Mr.Suresh Kumar, advocate.
Respondent No.1.	:	Province of Sindh None present
Respondent No.2.	:	The Land Revenue and Estate Officer, None present
Respondent No.3.	:	The Sub-Registrar, Sujawal None present
Respondent No.4.	:	Tapedar Gul Bahar None present
Respondent No.5.	:	Ghulam Rasool None present
Respondent No.6.	:	Muhammad Achar through Mr. Moula Bux Khoso, Advocate.

Date of hearing : 24.08.2016

Date of Announcement: 07.09.2016

JUDGMENT

NAZAR AKBAR, J:- This revision application is directed against the judgment and decree dated **09.05.2006** & **12.05.2006** whereby Ist Additional District Judge, Thatta dismissed Civil Appeal **No.23/2004**, filed by the applicant and maintained the judgment and decree dated **07.5.2004** passed by the Sr. Civil Judge Sujawal, decreeing F.C Suit **No.89 of 1997** filed by Respondent No.6.

2. Briefly stated, the facts of this case are that on **29.12.1988** Respondent No.6 entered into an agreement of sale with Respondent No.5 in respect of agriculture land measuring 30-12-1/2 acres situated in deh

Abad pancho Taluka Sujawal District Thatta, (the suit land) on consideration of Rs.1,40,000/-. Respondent No.5 received Rs.18000/- on execution of agreement handed over possession of the suit land to Respondent No.6 and the remaining amount was paid to Respondent No.5 in three installments of Rs.22000/- dated **29.12.1989**, Rs.72000/- dated **13.01.1989** and Rs.28,117/- on **28.12.1989**. Respondent No.6 subsequently came to know that Respondent No.5 in collusion with Respondent No.1 to 4 was trying to sell the suit land to the applicant (Ahmed). Respondent No.6, therefore, filed suit for specific performance of contract and injunction, cancellation of entries and documents, declaration and possession against Respondent No.5 and the applicant herein who was impleaded as Defendant No.6 before the court of learned Senior Civil Judge, Sujawal.

3. The applicant (Ahmed) filed his written statement disclosing therein that Respondent No.5 (Ghulam Rasool) sold out the suit land to him by registered sale deed dated **24.10.1997** on consideration of Rs.1,50,000/- alongwith survey No.42 and 43 admeasuring 0-14 acres and the entries into the record of rights were mutated in his favour. Even the applicant (Ahmed) during pendency of the suit sold out 15-31-1/2 acres to two other persons namely Mubarik and Gul and as such they were joined as Defendants No.7 and 8. The said Defendants are applicant No.2 & 3. Applicant No.1 has further claimed that he was in possession of the suit land, since its purchase and was cultivating the same and paying the land revenue. Applicants No.2 & 3 namely Mubarik and Gul Muhammad in their written statement disclosed that they have purchased 00-25 paisa share each of the suit land from Applicant No.1 (Ahmed) admeasuring 15-13-1/4 acres under registered sale deed and such entries in respect of their share had been made in record of rights vide entry No.394/393/383 dated **30.4.1998**. They have further claimed that the possession of the land so purchased by them was delivered to them at the time of execution of sale

deed by the applicant Ahmed and they were in cultivating possession of the same and were paying the land revenue to the government. The applicants have denied sale of suit land by Respondent No.5 (Ghulam Rasool) to Respondent No.6 / the Plaintiff (Muhammad Achar).

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

- i. Whether sale of suit land by Defendant No.5 to Defendant No.6 illegal?
- ii. Whether register sale deed transferring the suit land by Defendant No.5 to Defendant No.6 and transfer of suit land by Defendant No.6 to Defendants No.7 & 8 are illegal and liable to be cancelled?
- iii. Whether Plaintiff has already paid sale money to Defendant No.5 and Defendant No.5 is bound to execute register sale deed as per terms and conditions of agreement of sale?
- iv. Whether during the pendency of suit Defendant No.6 illegally and forcibly tress-passed over half of the survey number 265 illegally and the Plaintiffs entitle for the possession?
- v. Whether no cause of action accrued to the Plaintiff and the suit is not maintainable under the law?
- vi. Whether the suit is undervalued and Plaintiff not paid proper court fee?
- vii. Whether the Plaintiff is entitled for the relief?
- viii. What should the decree be?

The Plaintiff/Respondent No.6 examined himself PW-1 as Ex.118 and he produced the following documents.

- i. Ex.118/A, original pass book
- ii. Ex.118/B, original agreement
- iii. Ex.118/C&D, original receipts
- iv. Ex.118/E, Notice of Mukhtiarkar
- v. Ex.118/F, original receipt of A.D.B.P
- vi. Ex.118/G, original Sale certificate
- vii. Ex.118/H, original un-registered Sale deed
- viii. Ex.118/I to K, original bill and land revenue receipt

Respondent/Plaintiff also examined **PW.2** Allahditta as Ex.134, **P.W3** Saeed Khan as Ex.135, **PW-4** Haji Khammon as Ex.136, **P.W-5** Allahdino as Ex.137.

5. Since Applicant No.1 had died his son namely Sajjan who is applicant No.1(ii) had examined himself **DW-1** as Ex.148 and produced following documents:-

- i. Ex.148/1, agreement of sale
- ii. Ex.148/2, Village Form-VII
- iii. Ex.148/3 to 5, Land revenue receipts
- iv. Ex.148/6, copy of pass book

Applicant No.2 Mubarak was examined **DW-2** as Ex.150, he produced copy of "Feerfor" as Ex.150/1 and Land revenue receipts Ex.150/2 & 3.

6. I have heard learned counsel for the applicants, Mr. Suresh Kumar and counsel for respondent No.6, Mr. Moula Bux Khoso. Learned counsel for the applicant has contested the two concurrent findings only on the ground that the agreement executed by the Respondent No.5 with Respondent No.6 was not attested by two witnesses and therefore, it was not enforceable and / or proved in accordance with Qanun-e-Shahadat Order, 1984. He has further contended that as against such agreement applicant No.1 has registered sale deed in his favour. However, he has not been able to point out from the evidence on record that how the two findings of the courts below suffer from misreading and non-reading of evidence. The counsel for the Respondent in reply has contended that the Respondent No.6 has fully established the execution of the agreement of sale with the actual owner Respondent No.5 and has demonstrated full payment sale consideration to the owner through unrebutted evidence. The evidence of Respondent No.6 / Plaintiff and his four witnesses including attesting witnesses PW-4 and witness of payment of sale consideration and handing over possession of suit land to Respondent No.6 has gone unrebutted. He has further pointed out that the applicant had never been put in possession. The agreement of sale produced by him Ex-148/1 was not proved. It does not bear signature of applicant's father Ahmed Sajjan. Not even one of the two witnesses has appeared in witness box. None of the

executants of agreement have confirmed its execution. The applicant has not produced even photocopy of so-called sale-deed in Court.

7. I have also gone through the record and noticed that learned counsel for the applicant has not disputed the findings of the Court below regarding the execution of agreement in payment of Rs.18,000/- cash by Respondent No.6 to Respondent No.5 or taking over possession from the Respondent No.5. He has also not disputed that the amount of Rs.72,000/- were also received by the Respondent No.5 in presence of the *naikmard* and payment made by Respondent No.6 to Agriculture Development Bank on behalf of Respondent No.5. The original property documents and original receipts of payment as well as payment to Agricultural Development Bank were found in possession of the Plaintiff / Respondent No.6. This is also admitted position from the record that from day one Mukhtairkar and Sub-Registrar Sujawal were party to the suit and after filing of the suit, applicant No.1 has made further sale by so-called registered documents in favour of Respondents No.2 & 3 during pendency of the suit but neither the original sale deed nor subsequent sale-deeds were produced, nor witnesses of these transactions were produced by the applicants. The two sale agreements dated **29.12.1988** (Ex.118-B) in favour of Respondent No.6 and the other agreement dated **21.10.1997** (Ex.148/1) in favour of applicant No.1 were required to be proved by either party who derive benefit from it. The attesting witness of First Agreement (Ex.118-B) and the executant Ahmed Sajjan have appeared in Court and witnesses of sale consideration have also confirmed payment of sale consideration. Whereas perusal of subsequent agreement (Ex.148/1) shows that it does not bear signature of applicant's father the executant, himself and none of the attesting witness has come forward to testify its execution.

8. Beside above factual position, despite service official Respondents did not come forward to support the case of the applicant. Therefore, the

allegation of fraud and willful misrepresentation for making entries in the revenue record against the official respondents has been established and all this has been done as fraud. Respondent No.6 / the Plaintiff has produced several documents in original which have gone unrebutted, and his testimony has been corroborated by other witnesses. Whereas the applicants have not produced any witness to confirm the stay of applicants.

9. In view of the above undisputed facts which has been established before two courts below, the concurrent findings against the applicant cannot be interfered with by this Court. The applicants have miserably failed to point out misreading and non-reading of evidence, consequently, the revision application is dismissed with no order as to costs.

JUDGE

Karachi
Dated:07.09.2016

SM