

the sale consideration of Rs.60,000/- from Respondent No.1. He averred that Respondent No.1 has executed registered irrevocable General Power of Attorney and handed over all the original documents of the suit Plot i.e.challan of payment dated 21.7.1990, allotment order, copy of allottee possession order and site plan of plot in question. The applicant has further asserted that on 25.1.2007 he came to know that transfer and lease of the suit plot in the name of Respondent No.2 by Respondent No.3 on 12.8.1998 was illegal and without any lawful authority. Therefore, the applicant approached Respondent No.3 and requested to cancel the lease execute in favour of Respondent No.2 and deliver the possession of the suit plot to the applicant but Respondent No.3 had refused to do the same, therefore the applicant filed suit and sought the following relief(s).

- i. To declare that the Plaintiff is a bonafide purchaser and exclusive owner of plot of land bearing No.L-50/11, Block-12, admeasuring 80 sq.yds, which is situated at Gulistan-e-Jauhar, Karachi, vide sale agreement dated 12.09.1990 and General Power of Attorney vide registered No.1416, Block-IV and M.F. Roll No.203, B-IV dated 23.09.1990.
- ii. To cancel the so-called lease dated 29.08.1998 executed by the Defendant No.3 in favour of Defendant No.2.
- iii. To handover the physical possession of the plot No.L-50/11, Block-12, Gulistan-e-Jauhar, Scheme N.36, Karachi to the Plaintiff.
- iv. To restrain the Defendants, their servants, agents, employees working under them from transfer, mortgage and gifted away the property in question i.e. Plot of land bearing No.L-50/11, Block-12, Gulistan-e-Jauhar, Scheme No.36, Karachi, admeasuring 80 square yards in any manner whatsoever may be.
- v. To grant cost of the suit;
- iv. Any other relief(s)

3. All the Respondents were served with the summons issued by the learned trial court through bailiff and publication but they did not bother to appear before the trial Court. The applicant filed his affidavit-in-exparte proof and on 25.02.2008 he was examined by the learned trial Court and also produced various documents in support of his case. Then after hearing the learned counsel for the applicant, the trial Court dismissed the suit by judgment dated 20.8.2008. The appeal preferred by the applicant has also been dismissed and therefore the applicant has preferred the instant revision against the concurrent finding of facts.

I have heard learned counsel for the applicant and perused the record.

Learned counsel for the applicant third time attempted to assert that this being an uncontested case, revision may be allowed. None from the private respondents has appeared. Despite my repeated request learned counsel has not referred to piece of evidence which could be considered as misreading or non-reading of evidence by the trial Court and Appellate Court. The documents filed by the applicant/Plaintiff have been thoroughly examined by the Court while dismissing the suit and appeal. Both the Courts are of the view that inaction on the part of the applicant since 1990 when he allegedly acquired the property under agreement of sale till date of filing of suit in 2007 was enough to dismiss the suit as time barred. Both the Court discussed the agreement of sale and the receipt of payment of sale consideration relied upon by the applicant. The contents of these documents and execution thereof were not legally proved since the attesting witnesses of agreement and receipts have not come forward to confirm execution of these documents. The appellate court also noted that

as per contents of these documents the possession of suit plot was handed over to the applicant. This is contradiction when the possession was handed over to the applicant then why there is prayer for possession. The very fact that in the agreement of sale the date handing over of possession to the applicant by the Respondent is prior to the date of possession of the suit property by the respondent himself is more than enough to disbelieve the document.

The other important aspect of the case is that the applicant has relied on the agreement of sale to seek declaration of ownership. He was supposed to file suit for specific performance of the contract, if any, on the basis of agreement of sale instead of seeking declaration of ownership on the basis of agreement of sale. It is settled law that agreement of sale does not confer any right and title on the buyer, therefor the suit should have been dismissed on this ground alone.

This revision was dismissed by short order dated 19.9.2016 and these are reasons for the same.

JUDGE

Karachi
Dated:31.10.2016