ORDER SHEET IN THE HIGH COURT OF SINDH AT KARACHI

R.A No.199/2010

Date Order with signature of Judge

Present: Mr. Justice Nazar Akbar

Applicant : Maqbool Ahmed Chisti

through Mr. Sami Ahsan, advocate.

Respondent No.1: Muhammad Saleem

(None present)

Respondent No.2: Mst. Mah Jabeen

(None present)

Respondent No.3: Director of Directorate of Land

Managmeent Scheme No.36, (Defunct

KDA),

through Mr. S. Ishtiaq Ahmed, advocate

Respondent No.4: Province of Sindh

(None present)

Date of hearing : 19.09.2016

JUDGMENT

NAZAR AKBAR, J:- This revision is directed against the judgment & decree dated 24.8.2010 & 30.8.2010 passed by Ist Additional District Session Judge, Karachi, East whereby Civil Appeal No.110 of 2008, filed by the applicant was dismissed and the judgment & decree dated 20.08.2008 and 23.8.2008 passed by the IXth Senior Civil Judge, Karachi-East, in Suit No.633/2007, in favour of Respondent was maintained.

2. Brief facts of the case are that Applicant filed suit for declaration, cancellation, possession and injunction against the respondents stating therein that he has purchased a plot of land bearing No.L-50/11, admesruign 80 sq.yds situated in Block No.12, Scheme No36, Gulistan-e-Jauhar, Karachi, (the suit plot) vide sale agreement dated 12.09.1990 against

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 allotee 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 trail 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

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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