

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT HYDERABAD

R.A. No.237 of 2014

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For Katcha Peshi
2. For hearing of MA 1570/2014.

09.09.2015.

Mr. Sunder Das Advocate for the applicant.
Mr. Aamir Ali Memon Advocate for respondent No.2
Ashfaque Nabi Qazi Assistant A.G

NAZAR AKBAR, J.- This Civil Revision Application is directed against Judgment and Decree dated 05.09.2014 whereby learned VIIth Additional District Judge, Hyderabad dismissed Civil Appeal No.182 of 2009 filed by applicant and maintained Judgment and Decree dated 08.08.2009 and 22.08.2009 passed by learned IIIrd Senior Civil Judge, Hyderabad in F.C. Suit No.509 of 2000 filed by the respondent No.2 for Declaration, cancellation, specific performance of contract and permanent injunction.

2. Succinctly facts leading to this Revision Application are that respondent No.2 filed suit before the trial court claiming that her father-in-law namely Noor Muhammad was allottee of House bearing No.177 Block E admeasuring 150 Sq. Yds situated in Unit No.9 Latifabad Hyderabad (the suit property) vide allotment order No.214 dated 27.11.1987 issued by Secretary, Administrative Committee, Shah Latifabad Hyderabad. He died on 29.05.1988 leaving behind husband of respondent No.2 as his surviving legal heir. Brother of husband of respondent No.2 had already expired during life time of her father in law and survived by his son (respondent No.1) Muhammad Zaheer @ Jawaaid, who sold out his share to the respondent

No.2/plaintiff for consideration of Rs.65,000/- through sale agreement dated 15.12.1997, followed by fresh sale agreement dated 16.09.1998. Respondent No.2 contended that she has paid entire sale consideration to respondent No.1 in presence of witnesses and respondent No.1 admitted receipt of sale consideration. As per agreement, respondent No.1 had to get the suit house vacated from his tenant and handover to respondent No.2 within one week. Respondent No.2 besides sale agreement, also executed registered General Power of Attorney dated 16.09.1998 in favour of respondent No.1/plaintiff in respect of the suit property. Respondent No.2/plaintiff after one week approached respondent No.1 to handover possession of the suit house to her but he kept her on false hopes, meanwhile the applicant/ defendant No.2 in collusion with the respondent No.1 illegally occupied the suit property and obtained General Power of Attorney dated 10.03.1998 and sale agreement dated 25.02.1998 from respondent No.1, which are false, fabricated and forged documents. The applicant/defendant No.2 is in illegal possession of suit property measuring 555 Sq. ft which belongs to respondent No.2/plaintiff. The applicant/ defendant No.2 had filed suit No.17/2000 against respondent No.2/plaintiff and her family members before learned IVth Extra Joint Civil Judge, Hyderabad, which was disposed of by order dated 10.11.2000. Respondent No.2 /plaintiff pleaded that she performed her part of contract, therefore, respondent No.1/defendant No.1 was liable to perform his part of contract, therefore she filed suit for cancellation of specific performance of contract.

3. Only the applicant/defendant No.2 contested the suit and filed his written statement while rest of the defendants were proceeded ex parte. In his written statement, the applicant/defendant No.2 stated that deceased father-in-law of respondent No.2/plaintiff namely Noor Muhammad had privately

partitioned the property between respondents No.1 & 2, however, respondent No.2/plaintiff managed to prepare sale agreement in her favour falsely. According to applicant/defendant No.2 he purchased the suit property from respondent No.1 under sale agreement dated 25.02.1998 for a consideration of Rs.80,000/-, who handed over possession of the same to the applicant/defendant No.2 and also executed General Power of Attorney in his favour on receipt of full sale consideration. Knowing about sale transaction between respondent No.1 and applicant, who was in possession of the suit house, respondent No.2/plaintiff attempted to dispossess the applicant, therefore, he filed Civil Suit No.17/2000. The applicant further pleaded that the documents produced by respondent No.2/plaintiff are false, fabricated and manipulated.

4. Learned trial court from the pleadings of the parties framed following issues:-

- i. Whether the suit is not maintainable according to law?
- ii. Whether the defendant No.1 Muhammad Zaheer sold out his share in the suit land to the plaintiff through agreement of sale dated 15.12.1997 for consideration of amount of Rs.65000/ (Rupees Sixty five thousands) and received an advance of Rs.20,000/-?
- iii. Whether the plaintiff published a public notice in daily "Quomi" Akhbar dated 14.09.1998?
- iv. Whether a fresh agreement of sale dated 16.09.1998 was executed by defendant No.1 in favour of the plaintiff and received the sale consideration for the suit property?
- v. Whether the defendant No.1 in lieu of Sale Agreement had executed General Power of Attorney in favour of the plaintiff and the same was registered before Sub Registrar Hyderabad on 16.09.1998?
- vi. Whether the defendant No.2 in collusion with defendant No.1 occupied the suit property and got executed sale agreement and power of attorney from defendant No.1 in his favour with malafide intention? If so, its effect?
- vii. Whether the plaintiff is entitled for relief claimed?

viii. What should the decree be?

5. In order to prove her case, respondent No.2/plaintiff examined herself at Ex.77 and produced documents at Ex.78 to 82/1 to 4, and examined P.W. Muhammad Sharif at Ex.83, P.W.3 Hameed Khan at Ex.84 and closed her side.

6. The applicant/defendant No.2 examined DW.1 Muhammad Aslam Record Keeper at Ex.95, who produced documents at Ex.96 and 97, DW No.2 Muzaffar Ali at Ex.98, who produced documents at Ex.99 to 104 and closed his side.

7. Learned trial court after hearing the parties, decided the issues in favour of respondent No.2/plaintiff and decreed her suit as prayed with no order as to costs. The applicant/defendant No.2 being aggrieved by such Judgment and Decree of the trial court preferred appeal before the learned appellate court but the learned appellate court maintained the findings of the learned trial court. This Revision is filed against the concurrent findings of two courts below.

8. Heard learned counsel for the parties and perused the record.

9. Learned counsel for the applicant while contesting concurrent findings of the fact recorded by two courts below has mainly contended that the appellate court's order is not in consonance with the provisions of order XLI rule 31 CPC and the reasoning of the appellate court is almost similar to the reasoning given by the trial court decreeing the suit of the respondent No.2. He also contended that there has been some inconsistency between evidence of the plaintiff's witnesses and therefore, Judgment and Decree of the appellate court is based on misreading and non-reading of evidence and record, however, neither in the grounds of the Revision Application learned

counsel has pointed out any misreading or non-reading of the evidence nor at the bar he has referred to the evidence that the findings of the appellate court on any issue that the applicant who claims to have purchased the suit property from respondent No.1 through agreement of sale dated 25.02.1998 has proved the execution of said agreement in terms of Article 79 of Qanoon-e-Shahadat Order, 1984. Admittedly, the applicant has not produced attesting witnesses of the said agreement of sale. The executant respondent No.1 has not come forward to confirm the execution of sale agreement by him. The power of attorney and even the sale agreement were not produced by the applicant and relied only on the photostat copies, even in his own examination in chief instead of placing on record, original agreement of sale and power of attorney in his favour. He has admitted in cross examination that he filed F.C. suit No.404/2000 against the respondent No.1 which was dismissed and he preferred an appeal bearing Civil Appeal No.14/2003 against the respondent No.1, who has chosen to remain absent and has not disputed the averments of plaint that he had received total sale consideration from respondent NO.2/plaintiff at the time when a tenant was in possession of the suit premises. The record shows that the agreement of sale between respondent No.1 and respondent No.2 in respect of the suit property in writing was executed in presence of witnesses. The witnesses of such agreement were examined by the court as witnesses of respondent No.2 who fully corroborated not only the execution of document but payment of the sale consideration to respondent NO.1. Respondent No.1 has never denied receipt of sale consideration and execution of sale agreement and the applicant failed to shatter evidence of respondent No.2/plaintiff and her witnesses during cross examination, therefore, in absence of original sale agreement between the applicant and respondent No.1 which the applicant

ought to have produced since his case is based on said agreement and Registered Power of Attorney, the applicant has failed to discharge his burden.

9. In view of the above discussion, I do not see any misreading or non reading of the evidence or any material illegality or error in the proceedings of the courts below. Consequently, this court cannot interfere with the concurrent findings of the fact recorded by the courts below. This Revision Application was dismissed by short order dated 09.09.2015 and these are the reasons for the same.

JUDGE.

A.K