

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Civil Revision Application No.09 of 2017

Date

Order with signature of Judge

Present: Mr. Justice Nazar Akbar

Applicant: Pervaiz Masood through
Mr. R. F. Virjee, advocate.

Respondent No.1: Mst. Sakina Khan
Respondent No.2: Mst. Masooda Begum
Respondent No.3: Mst. Azra Firdous
Respondent No.4: Aijaz Ahmed Siddiqui
Respondent No.5: Nisar Ahmed Siddiqui
Respondent No.6: Naseem Ahmed Siddiqui
Respondent No.7: Mst. Tasneem Jehan
Respondent No.8: Mst. Kausar Jehan
Respondent No.9: Irfan Ahmed Siddiqui
Respondent No.10: Mst. Riffat Jehan
Respondent No.11: Nadeem Ahmed Siddiqui

Date of hearing : 16.05.2018

Decided on : 12.06.2018

JUDGMENT

NAZAR AKBAR, J:- This revision is directed against the judgment dated **09.09.2016** whereby by District Judge, Karachi-Central dismissed Civil Appeal **No.53 of 2003**, filed by the applicant and maintained the judgment & decree dated **10.09.2012** in Suit **No.718/1997** passed by 2nd Senior Civil Judge, Karachi-Central, in favour of Respondent No.1.

2. Briefly stated the facts of the case are that the subject matter of the dispute is an immovable property bearing Flat No.2 on Plot No.SB-2, Block-F, North Nazimabad, Karachi (the Suit Flat). This property was previously owned by one Rasheed Ahmed Siddiqui and after his death the ownership devolved upon his legal heirs which included his widow, sons and daughters (Respondent No.2 to 11) Respondent No.1 (Mst.

Sakina Khan) widow of Amanullah Khan was tenant in the Suit Flat. In fact originally her husband Amanullah Khan had acquired the tenancy right in the Suit Flat from the owners as far back as in the year 1970 and on the death of said Amanullah Khan the tenancy rights were devolved upon his legal heirs i.e Mst. Sakina Khan. Subsequently Respondent Nos.2 to 11 entered into an agreement to sell the Suit Flat for total sale consideration of Rs.1,65,000/-. On 22.2.1984 she had paid a sum of Rs.70,000/- to Respondent NO.2 to 11 . Later on she paid a sum of Rs.40,000/- through pay order followed by another payment of a sum of Rs.30,000/- in cash towards sale consideration. She had paid a sum of Rs.1,40,000/- and the balance amount of Rs.25,000/- was payable at the time of registration of formal documents of transfer of the Suit Flat in her name. As soon as respondent No.1 came to know that respondent No.2 to 11 intend to sell the Suit Flat alongiwth other tenement of the building to the applicant, She on **16.10.1997** filed a suit for Specific Performance and injunction bearing Suit No.718/1997 before Sr. Civil Judge, Karachi-Central. She impleaded all the owners as defendants and the applicant was also impleaded as defendant No.11 in the said suit. It is further averred in the plaint that respondents avoided to complete the transaction of sale and the applicant herein had first started creating hindrances in the enjoyment of possession of her Flat and also started making unauthorizedly alterations in the building, therefore, earlier she was constrained to file a

suit bearing No.2528/85 for injunction against the Respondent (Mst. Masooda Begum and others).

3. All the defendants filed a joint written statement partially denying and partially admitting the facts mentioned in the plaint. It was admitted that there was an agreement of sale between the parties in respect of the Suit Flat for a consideration of sum of Rs.1,65,000/- although there was no formal written agreement. It was also alleged in the written statement that it was agreed that “the sale shall be completed within two months.” It was further contended in the written statement that only an amount of Rs.70,000/- had been paid and balance Rs.95,000 was to be paid.

4. The learned trial Court after recording evidence of the parties and hearing them decreed the suit of Respondent No.1 by judgment dated **09.9.2002**. Respondents No.2 to 11 who have received maximum sale consideration against the sale of the Suit Flat did not file any appeal. However, the applicant, Pervaiz Masood, who was stranger to the contract of sale preferred Appeal No.3/2003 against the judgment. The said appeal was allowed by District & Session Judge, Central, Karachi, by order **05.11.2003** holding that the suit was barred by limitation. But in Revision **No.46 of 2004**, preferred by Respondent No.1 before this Court, the appellate order was set aside by judgment dated **28.1.2009** and the judgment and decree of trial Court dated **9.9.2002** was restored. Then the applicant herein approached the Hon’ble Supreme Court in Civil

Appeal No.126/2009 and the Hon'ble Supreme Court by order dated **9.3.2010** remanded the case to High Court to decide Revision Application No.46/2004 afresh on merit. The Hon'ble Supreme Court while remanding the Revision to High Court has also held that the suit filed by Sakina Khan (Respondent No.1) was within time. On remand from Supreme Court by consent of both the parties the said Revision Application No.46/2004 was disposed of on **16.8.2016** and Appeal No.53/2003 was remanded to the District Judge Central Karachi to decide it on merit since in the earlier round, the said appeal has been allowed by the then District Judge, Central Karachi only on the question of limitation without touching the merit of impugned judgment of the trial Court. On remand the learned District Judge Central, Karachi by impugned judgment has dismissed the appeal on merit holding that there was no infirmity and / or defect in the judgment and decree of trial Court. The instant Revision is directed against the findings of the appellate court dated **9.9.2016**.

5. I have heard learned counsel for the applicant and perused the record. None appeared for the respondents, including respondent No.1.

6. Learned counsel for the applicant has reiterated that the respondent has filed the suit after delay of several years and the Appellate Court in the first round has rightly dismissed the suit as time bared. The suit suffers from latches, such contention of the learned counsel in view of the orders of Hon'ble Supreme Court in Civil Appeal No.126/2009 in this very case in the first

round has no force. The Hon'ble Supreme Court while remanding the case has categorically held by consent that the suit of respondent No.1 / plaintiff was within time. I reproduce the relevant findings from the judgment of the Hon'ble Supreme Court as follows:-

Learned counsel appearing for the parties, after having gone through the concluding para of the impugned judgment candidly have conceded for remand of the case to the learned High Court to deliver the judgment whether a case on merits has been made out or not because there is no decision in this behalf by the High Court. However, they have prayed that the judgment of the High Court to the extent that the suit filed by the respondent Mst. Sakian Bibi was within time be maintained and the case be remanded to the learned High Court for decision on merits, keeping in view the judgment of the Appellate as well as Trial Court dated 5th November 2003 and 9th September 2002, respectively.

7. The other contention raised by the counsel for the applicant is that the applicant is bonafide purchaser of the entire property but he is unable to utilize the same only because the frivolous suit filed by Respondent No.1 for specific performance in respect of the Suit Flat is pending though the entire building has been purchased by the applicant (para-5 of appeal). I have examined the documents on which the applicant's counsel has relied to claim ownership of the entire building. It is sale-deed dated **28.7.1996** filed by the applicant as annexure 'E' at page 61 of the File. This sale deed is in respect of only 17 shops on ground floor and Flat No.1 & 4 on 1st Floor. The sale deed does not mention transfer / sale of the Suit Flat namely Flat No.2 on Plot No.E-523 Block-F North

Nazimabad Karachi, to the applicant I quote two relevant recitals from the sale deed dated **28.7.1996** as follows:-

AND WHEREAS the Vendors claim to be seized, possessed of and otherwise sufficiently entitled to all that 17 shops i.e. shop No.1 to 17 with covered area of 3560 sq. feet on Ground Floor and Flat Nos.1 and 4 on First Floor with covered area of 977 sq. feet each making total covered area 1954 sq. feet constructed on situated at Plot No.SB-2, Block-F in KDA Scheme No.02, North Nazimabad, Karachi which is more fully described in the Schedule hereunder written and hereinafter referred to as the SAID PROPERTY with above said commitments / agreements / sub-leases.

SCHEDULE OF THE PROPERTY

ALL THAT 17 Shops i.e Shop No.1 to 17 with covered area of 3560 sq. feet on Ground Floor and Flat Nos.1 and 4 on First floor with covered area of 977.sq.feet each making total covered area 1954 sq. feet constructed on situated at Plot No.SB-2, Block-F in KDA Scheme No.2 North Nazimabad, Karachi, within the jurisdiction of Police Station Taimooria and the whole Plot is bounded as follows:-

ON THE NORTH BY :	20 feet lane
ON THE SOUTH BY :	Plot No.SB/1,
ON THE EAST BY :	50' Wide Road
ON THE WEST BY :	Open

8. The applicant has not acquired the title of the Suit Flat and therefore, it cannot be said that he has stepped into the shoes of Respondents No.2 to 11, who were admittedly owners of the Suit Flat, and against them suit for specific performance was filed by Respondent No.1 when she came to know that they were going to sell the Suit Flat alongwith the other tenements to

the applicant. It is also an admitted position from the evidence that out of total sale consideration of Rs.1,65,000/- Respondent No.1 had already paid a sum of Rs.1,40,000/- to Respondents No.2 to 11 and this assertion of Respondent No.1 has not been denied and disputed by any of Respondents No.2 to 11. None of them appeared in witness box to deny aforesaid payment of sale consideration in respect of the Suit Flat No.2 and the applicant being stranger to the transaction could not even otherwise prove that Respondent No.2 to 11 have not received more than 80% of the sale consideration from Respondent No.1.

9. Learned counsel has repeatedly referred to Section 12 & 22 of the Specific Relief Act, 1877 and insisted that the relief of Specific Relief is discretionary; the Court should have denied it to Respondent No.1. Learned counsel has referred to several case laws but with due respect in the given facts of the case none of the case law is relevant since in the case in hand there is no default or slackness on the part of Respondent No.1 in seeking specific performance of the contract. She was already in possession of the suit flat before entering in the agreement of sale and she has paid more than 80% of the sale consideration. In their written statement, Respondents No.2 to 11 have conceded that Respondent No.1 has become their licensee from the date of agreement to sell, therefore, she was not tenant. In para-13 of their written statement, Respondents No.2 to 11 have claimed that her license was revoked by them through legal notice and thereafter she has become trespasser. However, Respondents No.2 to 11 have never filed any suit for recovery of

possession against the alleged trespasser (Respondent No.1) nor they have transferred the ownership right in respect of the Suit Flat in favour of the applicant as may be appreciated from the recital of the relevant clauses of sale deed between the applicant and Respondents No.2 to 11 reproduced in para 7 above. The owners from whom Respondent No.1 has purchased the Suit Flat have not challenged the decree of Specific Performance against them. Respondent No.1 has already deposited the balance sale consideration for execution of judgment and decree in her favour. The Execution Application No.4/2009 is pending since 2009, when the judgment and decree of trial Court was restored by judgment 28.1.2009 in Civil Revision No.46/2004.

10. In view of the above, I do not find any justification for interfering in the findings of the First Appellate Court, therefore, this Revision Application is dismissed.

J U D G E

Karachi
Dated:12.06.2018

SM