

Pakistan Steels and he has purchased House on plot No.1551, Sector 8-C-11, Type Design A-6, admeasuring 120 sq. yards in Gulshan-e-Hadeed, Karachi, Malir, (the demised house) Mr.Ziauddin passed away at Karachi and all of his legal heirs were residing at Lahore except eldest son who was residing at U.K. The LR's of deceased Ziauddin filed succession suit at Lahore for declaration that they are the legal heirs of deceased Ziauddin who had died at Karachi and obtained such Decree dated **03.01.2000** from the competent Court of Lahore. Respondent No.4 was appointed lawful General Attorney of the other Respondents who on inquiry found that one Azizullah has occupied the demised house illegally by breaking open of the lock and started living therein illegally. Therefore, Respondent No.4 reported the matter to General Manager, Development Department Head Office, Barraks No.5 Pakistan Steel Township Bin Qazim Karachi, and requested him to mutate the property in question in favour of all the legal heirs of Ziauddin. He could not get proper reply so he filed civil **suit No.275/2004** for declaration possession and mesne profit against the said illegal occupant and General Manager Pakistan Steel the custodian of record of title of the demised house.

3. On service Defendant No.1 filed his written statement and averred that he is tenant of appellant / Ghulam Fareed who claims to be the owner of the said house since the year 1996. Defendant No.2 Ghulam Fareed / the appellant on his application under Order 1 Rule 10 CPC was joined as party and with his written statement he filed a bogus maneuvered Sale Agreement dated **25.10.1993** allegedly executed by the late father of Respondents. Defendant No.2 / General Manager, Development Department, Pakistan Steels admitted the booking of said house in the name of late Ziauddin but he denied in his written statement filed in civil

suit the power of attorney, sub-power of attorney and inheritance of late Ziauddin for want of knowledge. He also denied to have agreed to mutate the house in question in the name of alleged legal heirs of late Ziauddin subject to deposit of House loan of Rs.65,000/-.

4. In the meanwhile the appellant also filed a counter suit for specific performance bearing civil **suit No.30/2005**. He averred that he had purchased the suit property from late Ziauddin in his life for a sum of Rs.1,50,000/- through Sale agreement dated **25.10.1993** and out of total sale consideration he has paid him **Rs.115,000/-** to him and remaining balance of **Rs.35,000/-** he was required to pay at the time of execution of registered sale deed in his favour. Both the suits one filed by Respondents and the other filed the appellant were consolidated by IInd Sr. Civil Judge Malir, Karachi. The following consolidated issues were framed.

- i. Whether the suit No.30 of 2005 is maintainable in view of Suit No.275/2004?
- ii. Whether the plaintiff in suit No.275/2004 are the owners of the suit property by virtue of being legal heirs of late Ziauddin on the basis of letter dated 27.08.1992 by the General Manager Al-Razzik Pvt. Limited?
- iii. Whether the defendant No.3 in suit No.275/2004 is entitled for the specific performance of sale agreement dated 25.10.1993?
- iv. Whether the defendant No.3 in suit No.275/2005 is in illegal occupation of the suit premises?
- v. Whether the plaintiffs are entitled for the mesne profit? If so at what rate and since when whether the plaintiffs are entitled for the damages against the defendants in Suit No.275/2004?
- vi. Whether the plaintiffs are entitled for the relief claim in suit No.275/2004 and No.30/2005?
- vii. What should the decree be?

5. After the settlement of above issues both the parties led evidence, their witnesses were cross examined by respective counsels. The learned trial Court after hearing the parties was pleased to decree the suit filed by the Respondents bearing Suit No.275/2004 and dismiss the suit filed by the appellant bearing Suit No.30/2005. Thereafter, appellant preferred civil Appeal No.13/2009 against the order of dismissal of his suit and Civil Appeal No.14/2009 against the judgment passed against him in Civil Suit No.275/2004. Leaned appellate Court dismissed both the appeals by order dated **21.01.2012**, hence the appellant has preferred these IInd Civil Appeals No.70/2012 & 71/2012.

6. Learned counsel for the appellant urged that appellant is lawful purchaser of the suit property which he has purchased from late Ziauddin through a valid sale agreement executed by late Ziauddin and late Ziauddin had handed over the actual physical possession of the property to the appellant. He contended that the learned trial Court instead of sending the Sale Agreement to handwriting expert himself compared the signatures of late Ziauddin appearing at the sale agreement with the signatures of Ziauddin on other documents. The findings given by the trial Court on dis-similar signatures of late Ziauddin at the sale agreement is illegal, the same is against the law and practice and the learned trial Court has not appreciated the material aspect of the case and also not appreciated the evidence available on record.

7. Learned counsel for the respondents have stated that late Ziauddin the husband of Respondent No.1 and father of Respondents No.2 to had never executed so called sale agreement in his life time in the year 1993 and the payment receipts are also fraudulently made. It is also fake and

bogus and has no value in the eye of law. The physical possession was also not given to the appellant in his life.

8. The burden was on the appellant to prove that he has entered into a valid agreement of sale and he was put in possession of the suit property by the deceased father of the respondents, who was an employee of Pakistan Still Mill. The evidence has come on the point of possession that even the Pakistan Still Mill, the employer who has allotted/sold the suit property has not handed over possession to the deceased and the possession was still with the Pakistan Still Mill and therefore, there was no question of handing over its possession by the deceased father / employee of Pakistan Still Mill to the appellant. The appellant has not been able to prove payment of sale consideration. His suit for specific performance even otherwise was hopelessly time barred. According to his own statement in the plaint he was entered into the so called agreement of sale with the deceased Ziauddin on **25.10.1993** and suit was filed after the death of said Ziauddin. Ziauddin was died on **04.2.1994** and during his lifetime of more than six years the appellant never attempted to seek specific performance of the contract against the deceased.

9. In view of the above legal and factual position, these IInd appeals were dismissed by short order dated **26.10.2018** and these are the reasons for the same.

JUDGE

Karachi
Dated: _____
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