

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
IInd Appeal No.11 of 2006

Date	Order with signature of Judge
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Present: Mr. Justice Nazar Akbar

Appellants : **Muhamamd Nawaz through LR's through Mr. Abdul Wahid Kanjo, advocate.**

Respondent No.1: **Sultan Mahmood Tariq,**

Respondent No.2: **M/s. Allied Corporation through Mr. Z. U. Mujahid, Advocate.**

Date of hearing : **27.11.2018**

Date of Decision : **27.11.2018**

JUDGMENT

Nazar Akbar.J.- This IInd appeal is directed against the appellate judgment and decree dated **13.10.2005** & **18.10.2005** whereby the judgment and decree dated **16.4.2002** in Suit No.365/1995 in favour of present appellant/defendant No.1 was set aside and suit filed by Respondent No.1 was decreed by the appellate Court.

2. Brief facts of the case are that Respondent No.1 in November, 1978, booked two bedroom Flat on the 1st Floor, in K.D.A's Pilot Project on Plot No.F.C.7 situated at Golimar near Golimar Police Station Karachi. The project was built by Respondent No.2. Respondent No.1 paid the requisite amount as agreed by Respondent No.2 and on completion of construction, respondent No.2 in the beginning of 1983 started giving delivery of flats to the respective purchasers. According to amended plan Respondent No.2 changed flat number in the project and **Flat No.8-A** in place of Flat No.2 on the first floor of the building was handed over to respondent No.1 and Respondent No.2 executed a

sub-lease before the Sub-Registrar at Karachi bearing Registered No.1734 at pages No.43 to 48, Volume No.1072 of Book No.I Addl. Dated **28.5.1983** (hereinafter the suit flat). Respondent No.1 had proceeded for Dehran Saudia Arabia in connection with his job and left the suit flat under the supervision of the appellant. After sometime the appellant become dishonest. He in collusion with a partner of Respondent No.2 prepared forged documents and filed a suit No.84/1994 against Respondents No.1 & 2 for specific performance and injunction. And respondent No.1 filed the suit No.365/1994 for possession and mesne profit.

3. On service of summons / notice of the suit the appellant filed written statement and denied claim of Respondent No.1 and stated that he has purchased the suit flat from Respondent No.2 through agreement of sale dated 14.3.1988 and that documents of respondent No.1 are fake and fictitious. He prayed for dismissal of the suit with cost.

4. The trial Court from the pleadings of the parties settled the following issues.

- i. Whether the suit as framed is not maintainable under the law?
- ii. Whether the plaintiff is a legal and lawful owner of the suit property by virtue of sub-lease dated 28.5.1983?
- iii. Whether the sub-lease dated 28.5.1983 is legal and proper?
- iv. Whether the plaintiff permitted the defendant No.1 to look after his interest in the flat in question in his absence?
- v. Whether the defendant No.1 with the collusion of defendant No.2 has obtained the sale agreement dated 14.3.1988 other payment receipts in his name in respect of the suit property fraudulently?
- vi. Whether the defendant No.1 has rented out the suit flat to the tenant out the suit flat to the tenants illegally and unauthorisedly?

- vii. Whether the plaintiff is entitled to receive the rental amount collected by the defendant No.1 from the tenants of suit flat from April, 1992 and onwards?

5. Learned trial Court after recording of evidence and hearing parties dismissed the suit filed by Respondent No.1. Against the said dismissal of suit Respondent No.1 preferred appeal bearing Civil Appeal **No.84/2002** which was allowed by order dated **13.10.2015**. The appellant has filed instant IInd appeal against the said judgment in appeal.

6. I have heard learned counsel for the parties and perused the record.

7. Respondent No.1 / plaintiff has filed suit for declaration and permanent injunction, recovery of possession and mesne profit. It was contested by the appellant who in the written statement took the plea that he is in lawful possession of the suit property by virtue of sale agreement dated **14.3.1988** with Respondent No.2 and he has paid certain sale considerations. The appellant has also filed a **suit No.84/1994** against respondents No.1 & 2 for specific performance of the said contract of sale. The said suit filed by the appellant was initially decreed by trial Court but on **appeal No.38/2002** filed by Respondent No.1 it was dismissed and Suit No.84/1994 was remanded and on remand it was dismissed by judgment dated **23.7.2007** and the appeal filed by Respondent No.1 against dismissal of his suit No.365/1995 for possession was decreed by impugned order dated **13.10.2005**. The present appellant made another attempt to challenge the plaintiffs' title by filing another **civil suit No.212/1997** asking for the declaration and cancellation of the lease relied upon by Respondent No.1 in **suit No.365/1995** and also in Suit No.84/1994 filed by appellant.

Unfortunately appellant's 2nd suit for cancellation of registered sale deed was also dismissed for non-prosecution on **28.8.2001**. Then the appellant filed an application under **Order IX Rule 9 CPC** for restoration of suit NO.212/1997 and the said application was also dismissed by order dated **17.3.2005**.

8. The IInd appeal in hand is against the appellate decree arising out of suit No.365/1995 for declaration, possession and mesne profit. With the help of the learned counsel for appellant I have gone through the evidence and examined the record. No evidence has been brought by the appellant to establish that the lease deed executed by respondent No.2 in favour of Respondent No.1 claiming ownership for seeking possession of the suit property was not duly registered title document. The appellant has only an agreement of sale dated **14.3.1988** which was not executed in presence of witnesses therefore, it cannot be proved in terms of **Article 17 and 79** of the Qanoon-e-Shahdat Order, 1984. It is also five years subsequent to the transfer of suit property by a registered document in favour of respondent No.1 by Respondent No.2. The appellant should have obtained search certificate from the office of Registrar before entering into agreement of sale in 1988. Respondent No.2 has supported the execution of lease in favour of Respondent No.1. It is settled law that registered document cannot be defeated by mere sale agreement. Even if sale agreement is genuine it cannot be treated as title document over the title of a person who has acquired the suit property by a registered lease deed. The very fact that appellant's suit No.212/1997 for cancellation of lease was dismissed is more than enough to accept that there was nothing wrong in the execution of lease in favour of Respondent No1. Be that as it may, to be very precise none of the ground taken by the appellant attracts the

provision of **Section 100 of CPC**. The courts below have very extensively determined all material issues between the parties in different litigations filed by the appellant himself as well as in this very particular appeal. I do not find any irregularity in the procedure nor there was decision is contrary to law. Therefore, there was hardly anything for this IInd Appeal to survive for 12 years, the same was dismissed by short order on **27.11.2018** and these are the reasons for the same.

JUDGE

Karachi
Dated: 29.01.2019
SM