

IN THE HIGH COURT OF SINDH AT KARACHI

IInd Appeal No.60 of 2019

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

Before: Mr. Justice Nazar Akbar

Appellant : Qamar Ahmed Khan
Through Raja Aftab Ahmed Khan, advocate.

Respondent : Al-Hajj Ameen-ud-Din (since deceased)
through his legal heirs:-
1) Mst. Hameeda Bano
2) Moin-ud-Din
3) Mrs. Saira Salam.

Date of hearing : **29.04.2019**

Date of Judgment : **29.04.2019**

JUDGEMENT

NAZAR AKBAR, J. The appellant through this IInd Appeal has challenged the concurrent findings. The 3rd Senior Civil Judge, Central Karachi by order dated **25.10.2017** rejected the plaint of the suit No.NIL/2017 under Order VII Rule 11 of the CPC filed by the appellant and the IV-Additional District & Sessions Judge, Central Karachi by judgment dated **21.01.2019** passed in Civil Appeal No.264/2017 maintained the said findings of the trial Court.

2. To be very precise the facts of the case are that the appellant filed suit for Declaration, Cancellation of Documents and Permanent Injunction against the Respondents in respect of plot No.5/21, Commercial Area, Rauf Market, Liaquatabad, Karachi (the suit property) with the following prayer:-

- i. *To declare that defendants executed lease agreement/ lease deed of plot No.5/121, Commercial Area, Rauf Market Liaquatabad, Karachi, illegal void, ab-initio, having no legal effect, as such, deed/documents,*

registered, entries made in the record of rights in favour of defendants deceased father are also illegal.

- ii. To cancelation of illegal, fraudulent lease agreement of plot No.5/121, Commercial Area, Rauf Market Liaquatabad, Karachi, as has been illegal and void.*
- iii. To grant permanent injunction against the defendants, their agents, attorneys, representatives and any person or persons claiming on their behalf restraining defendants not to create any third party interest and alienating the property/ plot No.5/121, Commercial Area, Rauf Market Liaquatabad, Karachi, measuring 13.33 sq. yds, through him or by any other person in any manner whatsoever.*
- iv. Cost of the suit.*
- v. Any other or better relief or relieves which this Honourable Court may be deem fit and proper in circumstances of the case.*

The trial Court at the time of presentation of the plaint of the suit, after hearing learned counsel for the plaintiff, rejected the plaint under **Order VII Rule 11** of the CPC on the ground that that in para-9 of the plaint of the suit, the appellant/plaintiff himself admitted that the suit for specific performance filed by him has been withdrawn by him unconditionally, therefore, after withdrawal of the suit, the appellant/plaintiff has no right, title or interest in the suit property. It was further observed by the trial Court that the plaintiff has filed copy of rent application annexed with the plaint of the suit in which it was mentioned that father of the appellant/plaintiff had filed MRC No.381/1996 before the trial Court in which father of the appellant/ plaintiff had not disclosed himself as owner of the or purchaser of the suit property.

3. The appellant/plaintiff against the order of trial Court filed Civil Appeal No.264/2017 before the appellate Court which was also dismissed by judgment dated **21.01.2017** and the findings of the

trial Court were maintained. The appellant has impugned both the order/ judgment herein this IInd Appeal.

4. I have heard learned counsel for the appellant and perused the record.

5. The record shows that the appellant had earlier filed Civil Suit No.413/2016 which was withdrawn unconditionally and, therefore, the appellant/plaintiff was not competent to file another suit for Declaration, Cancellation of Documents and Permanent Injunction and in this contest the learned appellate Court in the impugned judgment has rightly observed as follows:-

I have carefully considered the arguments advanced by both the sides and perused the record. The record reflects that the learned trial Court had gone through the documents which were annexed by the appellant with his plaint. The perusal of the documents which shows that the primary document on which the appellant had based his case which is an agreement at annexure P and one Halfnama at annexure P/1. The appellant had earlier filed Civil Suit No.413/2016 which was withdrawn unconditionally and it is alleged that Al-Hajj Ameenuddin had promised to withdraw his rent case. It is admitted position of law that agreement to sale does not confer any title but it empowers the executants of the agreement to abide by the agreement and in case of non performance on part of one party the second party can enforce its performance through suit for Specific Performance of Contract. It is also reflected from the record that said Al-Hajj Ameenuddin at the time of alleged agreement of sale dated 24.01.1981 was not the title holder of the property in question as it is stated in the alleged agreement at annexure P of the plaint that the property was not leased and in such circumstances the said Al-Hajj Ameenuddin was not competent to enter into any sale agreement as he was not having any valid title in his favor. The appellant/plaintiff after withdrawal of his suit for Specific Performance had no locus standi to file the present suit for Declaration, Cancellation of Documents and Permanent Injunction. The appellant/plaintiff had claimed protection under Section 53-A of the Transfer and Property Act 1882 but the said protection was not available to him as the original

documents were not in the possession of the appellant/ plaintiff and as far as possessory rights are concerned it is found that the possession leid with the appellant on the account being tenant and such aspect is clearly established by filing the MRC No.381/1996 in which the father of the appellant had admitted to be tenant of the suit property at the monthly rent of Rs.350/- per month and so also rent case was filed bearing No.454/2015.

The above observations of the appellate Court clearly shows that the appellant has no locus-standi to file suit for Declaration, Cancellation of Documents and Permanent Injunction, therefore, both the impugned orders passed by the two Courts below does not call for any interference.

6. In view of the above, this IInd Appeal is dismissed in limini with no order as to cost.

JUDGE

Karachi
Dated: 29.04.2019

Ayaz Gul