

7, Scheme-33, measuring 117.50 Sq. Yards, Super Highway, Gulzar-e-Hijri, Karachi (the suit property) for a total sale consideration of Rs.800,000/- out of which he has paid a cash Rs.500,000/- to her on the same date. It was agreed between the applicant/ plaintiff and Respondent/defendant (Mst. Sartaj Jehan) that the remaining balance amount of Rs.300.000/- will be paid within one year from the date of sale agreement at the time of execution and registration of proper conveyance deed in favour of the applicant/plaintiff and at the time of execution of agreement to sell the applicant/plaintiff will hand over peaceful and vacant physical possession of the suit property. Thereafter when the applicant/plaintiff approached Respondent/defendant for execution of conveyance deed, he came to know that Respondent/defendant (Mst. Sartaj Jehan) has expired. After some days, Respondent No.1 and his other companions came at the suit property and started making harassment to the applicant and issued threats of dire consequences and for vacation of the suit property, the applicant requested them that he is lawful purchaser of the suit property and has paid Rs.500,000/- to the deceased Respondent/defendant but Respondent No.1 did not listen his request, therefore, the applicant filed suit.

3. Respondents, after service of notice, filed an application under Order VII Rule 11 CPC for rejection of plaint on the ground that no cause of action has been accrued to the applicant/plaintiff to file the suit against them as they are owners of the suit property by way of inheritance in view of the order dated 27.5.2010 passed by this Court in SMA No.110/2010 and suit is also barred by Sections 42, 54 and 56(i)(j)(k) of the Specific Relief Act, 1908, Transfer of Properties Act 1882, Contract Act, Law of Waiver and Estoppels, Concealment and

suppressing of facts in respect of ownership of the suit property. They contended that the suit property was rented to one Dawood Khan and for his eviction a rent case No.11/2006 was filed by Mst. Sartaj Jehan which was allowed by order dated 31.08.2007 and FRA was filed by the said tenant against the said order which was also dismissed by the appellate Court by judgment dated **25.11.2009**. Respondents/ defendants further contended that during pendency of execution application No.20/2010 the tenant filed statement and handed over the possession of the suit property to Mst. Sartaj Jehan and on the other hand the said Dawood Khan (tenant) through the applicant/ plaintiff Muhammad Usman filed suit on the basis of forged documents.

4. The said application under Order VII Rule 11 CPC was contested by the applicant and ultimately, after hearing both the parties, the said application was allowed by the trial Court by Order dated **24.9.2011** and the plaint was rejected with observations that suit appears to be barred by Section 42 of the Specific Relief Act. Applicant preferred civil appeal No.73/2011 challenging the order of rejection of plaint before 1st Additional District Judge, Malir Karachi. His appeal was also dismissed by order dated **28.01.2013**. Therefore, the applicant has preferred the instant Revision Application against concurrent dismissal of his suit by the two Courts.

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

6. The record reveals and it is an admitted position that previously litigation before Rent Controller was held in between one Dawood Khan and deceased Respondent Mst. Sartaj Jehan in respect

of the suit property. This factual aspect of the case has also been discussed by both the Courts below in the impugned orders. In this context the observations of the appellate Court are reproduced as follows:-

I have heard both the sides and also gone through the record of the case. The litigation between Mst. Sartaj Jehan and Dawood tenant on the subject property is a judicial record within the domain of Sindh Rented Premises Ordinance. Dismissal of F.R.A, initiation of Execution proceedings and handing over possession by tenant Dawood to landlady in execution is also a judicial proceedings need not to be proved. Presentation of plaint in the instant case on the same day when possession by the tenant was handed over by judicial proceedings had taken place, cannot be denied. These all are judicial proceedings and record cannot be denied by anyone. Under these circumstances, filing of suit by basing claim on Rs.100/- stamp paper (sale agreement) unregistered and also claiming possession is rightly been dismissed by the learned trial Court under order 7 Rule 11 CPC, plea of possession is apparently a false plea.

7. In view of the above facts and circumstances, the decision of the two Courts dismissing the suit of the plaintiff does not call for any interference, therefore, the instant Revision Application was dismissed by short order dated **21.05.2019** and these are the reasons for the same.

JUDGE

Karachi, Dated: 25.05.2019

Ayaz Gul