

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

IInd Appeal No.89 of 2012

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

Appellant : Muhammad Abbas
Through Mr. Muhammad Saleem, advocate.

Versus

Respondent No.1 : Administrator, Karachi Municipal Corp.
Respondent No.2 : Director Land Management (KDA Wing)
Respondent No.3 : Assistant Director (NKT & LM KDA Wing, KMC Big Plots).
Respondent No.4 : The Director, Information Technology Dept.
Respondent No.5 : The Assistant Director (NKT) M.P.D. (KDA Wing) KMC.
Respondent No.6 : Executive Engineer North Karachi Division.
Respondent No.7 : Syed Adeel Ahmed.
None present for Respondents No.1 to 7.
Respondent No.8 : Assistant Director North Karachi DMC (Central) through Mr. Abdul Khalil, advocate.
Respondent No.9 : The Ist Senior Civil Judge (Central) Karachi.
Respondent No.10: IV-Addl: District Judge, (Central) Karachi.

Date of hearing : **22.11.2018**
Date of Judgment : **22.11.2018**

JUDGEMENT

NAZAR AKBAR, J. This IInd Appeal is arising out of judgment and decree dated **08.4.2011** and **16.04.2011** respectively passed in Civil Suit No.459/2009 by Ist Senior Civil Judge, Central Karachi, whereby the suit filed by the Appellant was dismissed and IV-Additional District Judge, Central Karachi by judgment dated

23.05.2012 passed in Civil Appeal No.104/2011 maintained the said judgment and decree of trial Court.

2. Briefly stated the facts of the case are that the appellant filed suit No.459/2009 for Declaration, Cancellation of Documents, Direction and Permanent Injunction against the Respondents wherein he stated that he purchased an open Plot No.A-283/2, measuring 200 Sq, yards, situated in Sector 11-A, North Karachi Township, Karachi, (subject plot) from Mr. Khalil Ahmed S/o Bando Mian. It was further averred that originally Plot No/A-811, Sector-11-B, North Karachi Township was allotted to Mrs. Shamim Akhter W/o Khalil Ahmed from Chief Minister's Quota vide allotment Order No.1115 dated **22.10.1975**. The appellant further stated that Respondent No.2, District Officer, Land Management-I KDA Wing issued double allotment of the said plot of Mr. Khalil Ahmed, therefore, he applied for alternate allotment of plot and as per Governing Body of KDA the Committee approved alternate plot (subject plot) vide resolution No.106 dated **22.11.1997**. It was further averred that the appellant desired to purchase the subject plot and given publication in Daily Aman dated **29.03.2007** calling objection, if any, from public in respect of subject plot. On **20.4.2007** Mr. Khalil Ahmed executed a Sale Agreement in favour of the appellant after receiving payment of full and final sale consideration and on the same day the appellant filed Transfer Application Form No.1 of said plot under Diary No.261/F dated **20.4.2007** to Respondent No.3 and he approached Respondent No.3 for transfer order of subject plot where he came to know that the record file of subject plot is not traceable, therefore, Respondent No.3 sent a letter dated **25.4.2007** to ADO (W&S), North Karachi Township Division-I,

KDA Wing, CDGK, Karachi for physical possession order issuance status of subject plot. Therefore, the appellant filed the suit.

3. Despite service upon the Respondents, they failed to file their written statement before the trial Court, therefore, they were debarred from filing the same on **20.01.2010** and the case was proceeded exparte. Therefore, on **28.7.2010** appellant filed his affidavit-in-exparte proof. However, after hearing the learned counsel for the appellant, the trial Court dismissed the suit filed by the Appellant irrespective of the fact that the suit was proceeded exparte. The learned IV-Additional District Judge, Central Karachi also dismissed Civil Appeal No.104/2011 by judgment dated **23.05.2012**.

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

5. Learned counsel for the appellant has failed to advance a single contention that there has been any substantial error in the judgments of the two Courts below as provided by the Code of Civil Procedure in passing the judgments impugned in this second appeal. After reading the judgment of the appellate Court wherein the appellate Court has observed in conformity with the findings of the trial Court as under:-

So it is established that the appellant has not proved the said sale agreement in terms of Article 79 of the Qanun-e-Shahadat Order 1984. Beside that it is substantiate law that the Section 54 of the Transfer of Property Act, 1882 enforced upon that mere agreement to sale would not confer any right, title and ownership in any transaction of sale in respect of immovable property worth of Rs.100/- or upward as per law it is required to be compulsory registered in terms of Section 17 and 49 of the Registration Act, 1908. So considering the all facts and circumstances combined together I came on conclusion that the judgment and decree dated 08.04.2011 and 16.04.2011 do not require any interference, hence the same are upheld, appeal of

the appellant is dismissed, with no order as to costs.

The impugned orders are neither contrary to law nor the two Courts have failed to determine any material issue involved in the case.

6. In view of the above facts, the findings on the pure question of law and evidence the appellant has miserably failed to prove the very existence of sale agreement, therefore, the two Courts below have rightly dismissed the suit and appeal, consequently this IInd Appeal is dismissed alongwith pending application(s) having no merit.

JUDGE

Ayaz Gul/P.A