

IN THE HIGH COURT OF SINDH AT KARACHI

IInd Appeal No.17 of 2019

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

Before: Mr. Justice Nazar Akbar

Appellant : Mst. Yasmeen Pervaiz
through Mr. Javed Haleem, Advocate.

Versus

Respondent No.1 : Muhammad Asif Rasool (Nemo).

Respondent No.2 : Mst. Khursheed Jehan (Nemo).
through legal heirs

Date of hearing : **19.02.2020**

Date of Decision : **06.03.2020**

JUDGEMENT

NAZAR AKBAR, J. The appellant through this IInd Appeal has challenged the judgment dated **03.11.2018** passed by the IIIrd Additional District Judge, East Karachi in Civil Appeal **No.30/2016**, whereby, the appeal filed by the appellant was dismissed as the judgment dated **14.01.2016** passed by the IXth Senior Civil Judge, East Karachi dismissing his civil suit **No.1000/2015** was upheld/maintained.

2. Brief facts of the case are that the Appellant/Plaintiff filed civil suit No.1000/2015 against the Respondents/defendant for declaration, possession, mense profit and permanent injunction against the respondents/defendants. According to the plaintiff she had purchased the suit property bearing No.B-4, admeasuring 125.56 sq.yds, Qamar Plaza, 1/5th undivided share of Sub-Plot No.A-III, Plot No.SB-18, Block-3, Gulshan-e-Iqbal, Karachi, from one Muhammad Farrukh Zaki through sale agreement dated

11.10.2003. The appellant/plaintiff after getting possession rented out the said flat to Respondent No.1/defendant No.1 for 11 months against the monthly rent of Rs.10,000/-. It is averred that Respondent No.1/Defendant No.1 after passing one year stopped to pay the monthly rent of flat in question, though the plaintiff time and again demanded from Respondent No.1 but despite of that he failed to pay the same. The appellant/plaintiff further averred in her plaint that Respondent No.2/defendant No.2 with malafide intention and ulterior motives prepared bogus and fake agreement dated 24.7.2009 in respect of suit property and on the basis of said agreement filed civil Suit No.562/2011, but he plaint of the said suit was rejected U/O.VII Rule 11 CPC. The defendants/respondents are in physical possession of suit property but neither they are paying monthly rent nor vacating the same. Then the appellant/plaintiff filed suit bearing Civil Suit **No.1000/2015** for declaration, possession, mesne profit and permanent injunction against the respondents/defendants which was dismissed by IXth Sr. Civil Judge, East Karachi by judgment dated **14.01.2016**. Despite receiving notice/summons, the respondents/defendants failed to appear before the Court to contest the matter, hence they were debarred from filing the written statement vide order dated **28.10.2015**. Since the respondents/defendants were debarred the appellant/plaintiff filed affidavit-in-ex-parte proof, and evidence of the appellant/plaintiff had gone unchallenged.

3. The trial Court after recording evidence of the plaintiff/appellant and hearing the learned counsel for the

appellant/plaintiff dismissed the suit of the appellant / plaintiff in the following terms:-

*“The plaintiff is claiming possession on the basis of iqrarnama/sale agreement dated 11.10.2003 the execution of which the plaintiff failed to prove. It is held in 2005 MLD 592= 814 that *plaintiff in suit for recovery of possession under section 8 of Specific Relief Act is required to prove his title to property in possession of defendant through lawful/cogent evidence in absence of such proof, suit for recovery of possession cannot be decreed.**

In the light of whatever discussed above, I am of humble opinion that the plaintiff failed to make out a prima facie case, hence the suit stands dismissed with no order as to costs.

Against the said judgment, the appellant preferred Civil Appeal No.30/2016 before the appellate Court which was also dismissed by judgment dated **03.11.2018** and the judgment of the trial Court was upheld/maintained. The appellant has challenged the said judgment of appellate Court here in this IInd Appeal.

4. I have heard learned counsel for the appellant and perused the record as well as written arguments filed by the learned counsel for the appellant.

5. In the written arguments learned counsel for the appellant has not been able to show from the record and evidence that they have any title documents other than the so called Iqrarnama available at page 79 of the file. The burden was on the appellant that how on the basis of this mere agreement of sale she could be entitled to claim possessory right in the suit property unless and until the property is being lawfully transferred in her favour before the Registrar of properties. Beside this the appellant has taken the plea that Respondents were put in possession of the demised

premises as tenant. If that is the case, then proceedings against the tenant are even otherwise not possible through the Civil Court. The Appellant should have file ejectment proceedings before the relevant Controller of Rents for eviction of respondents. The tenant's right of possession of property is protected under tenancy laws and no Civil Court has jurisdiction to dispossess the tenant.

6. In view of the above, both the Courts below have rightly non-suited the appellant by dismissing her suit and appeal even in exparte proceedings. However, even if during the proceedings of the suit till date and even later on, if the appellant acquires title of suit property she would be entitled to seek possession from the respondents or whoever in possession but strictly in accordance with law.

7. In view of the above facts and law, this IInd appeal is dismissed with o order as to cost and the orders of the two Courts below are maintained.

JUDGE

Karachi
Dated:06.03.2020

SM