

IN THE HIGH COURT OF SINDH, KARACHI

IInd Appeal No.15 of 2019

Date	Order with Signature of Judge
<u>Before: Mr. Justice Nazar Akbar</u>	
Appellant	: Abdul Aziz Habib through Mr. Akbar Zameen Khattak, Advocate
<i>Versus</i>	
Respondent No.1	: Muhammad Saeedulalh, through Mr. Naeem Akhtar, advocate
Respondent No.2	: Sub Registrar-I, Gulshan-e-Iqbal Town, Karachi.
Date of hearing	: 27.02.2020
Decided on	: 18.05.2020

J U D G M E N T

NAZAR AKBAR, J-- The Appellant through this IInd Appeal has challenged the Judgment dated **11.04.2017** passed by the Vth Additional District & Sessions Judge, East Karachi, whereby Civil Appeal **No.167/2016** filed by the Appellant was dismissed and judgment & decree dated **30.07.2016** passed by the IXth Senior Civil Judge Karachi East dismissing his Civil Suit **No.1573/2012** was maintained.

2. Briefly the facts of the case are that the appellant filed suit for recovery of **Rs.95,00,000/-** for specific performance of sale agreement, declaration and permanent injunction, stating therein that the appellant entered into agreement dated **09.06.1992** with respondent No.1 according to which he handed over machinery and two Suzuki Pick-up worth **Rs.23,50,000/-** at monthly rent of **Rs.50,000/-** per month. It is averred that Respondent No.1 paid the

rent till December, 1994 and thereafter made default. Respondent No.1 made default in payment of rent from January, 1995 to August 2007 amounting to **Rs.76,00,000/-** therefore, it was agreed vide sale agreement dated **08.08.2007** that House No.R-6, Block-13, Gulshan-e-Iqbal, Karachi would be given to appellant against the amount of **Rs.36,00,000/-**, however the remaining amount of **Rs.40,00,000/-** would be paid to the appellant at the time of handing over the possession of said house i.e. June 2010. It is averred that Respondent No.1 failed to handover the possession of the suit property and also failed to pay the remaining amount of **Rs.40,00,000/-**.

3. On service of summons, Respondent No.1 filed written statement wherein he controverted allegations, assertions and accusations leveled in the plaint by the appellant. He further contended that suit is not maintainable as the plaintiff/appellant has no cause of action. He further averred that alleged sale agreement is forged and managed by the plaintiff/appellant for extortion of money and to usurp the property. Respondent No.1 denied the business agreement as well as the sale agreement and contended that both these documents are forged and fabricated and lastly prayed for the dismissal of the suit.

4. The trial Court after recording evidence and hearing the learned counsel for the parties dismissed the suit of the appellant / plaintiff. The Appellant against the said order of trial Court filed Civil Appeal **No.167/2016** before the appellate Court which was also dismissed by judgment dated **11.04.2017** and the findings of the trial Court were maintained. The appellant has impugned both the

orders/judgments of the trial Court and appellate Court herein this
IInd Appeal.

5. I have heard learned counsel for the parties and perused the record as well as written arguments filed by the counsel for appellant and Respondents No.1.

6. Learned counsel for the appellant while challenging the concurrent findings against dismissal of his suit for recovery of Rs.95,00,000/- and specific performance of sale agreement dated **08.8.2007** has relied only on the evidence of handwriting expert to claim that the suit ought to have been decreed by the two Courts below. In his written arguments learned counsel for the appellant has not referred to any misreading of evidence led by him in support of his contention that the parties have entered into two agreements as well as the amount of money was due and payable by Respondent No.1. The perusal of written arguments clearly indicates that even the assertion of the counsel for the appellant that the evidence of handwriting expert has been misread by the learned trial Court is misconceived and contrary to record. In para-26 of the written arguments the learned counsel for the appellant himself quoted evidence of handwriting expert in which the conclusion was not in favour of the appellant. It has been clearly stated by the handwriting expert that *“probably the questioned signatures are deceptive.”* The use of the word “probably” by an expert itself confirms that the signatures were not identical on the two agreements with the signature of Respondent No.1.

7. Learned counsel for Respondent No.1 in the written arguments has contended that the concurrent findings of the two Courts below

are not assailable in IInd Appeal. He has also referred to the evidence of the appellant himself which clearly shows that no convincing evidence of execution of two agreements has been produced by the appellant. He has specifically pointed out the following evidence of the appellant:-

*“It is correct to suggest that in Ex.P/1, the address of my factory is not mentioned. It is correct to suggest that I did not produce any proof in respect of Head Office mentioned in Ex.P/1. It is correct to suggest that I did not produce any Tenancy agreement in respect of Factory. It is correct to suggest that Registration Numbers are not mentioned in Ex.P/1. It is correct to suggest that I did not produce any proof of merchandise in Ex.P/1. It is correct to suggest that I did not produce any proof that Defendant No.1 paid rent to me from 1992 to 1994. It is correct to suggest that there is description of purchasing of machinery in Ex.P/1 but I did not produce any receipt of it.”-----
----- “It is correct to suggest that I did not produce any proof to show that the Defendant No.1 paid rent to me from 1992 to 1994.”*

8. In view of the above evidence and failure of appellant to prove his case before two Courts below there is hardly any misreading of evidence nor there is any justification for interfering in the concurrent findings of the two Courts below, therefore, this IInd Appeal is dismissed with no orders as to cost.

JUDGE

Karachi, Dated:18.05.2020

Ayaz Gul/SM