



2. Precisely the facts of the case are that the applicants filed Civil Suit No.319/2013 for declaration and permanent injunction against the Respondents stating therein that father of applicant No.1 in the year 1986 had established an Ice Factory on Plot No.42 Old No.M-II-E-1202 admeasuring 200 sq. yards and Plot No.47 Old No.M-II-E-1202/A admeasuring 100 sq. yards, Block C, Sher Shah Colony, Karachi (the suit property), situated in Katchi Abadi. It was further averred that father of applicant No.1 died on **22.01.2003** and his mother also died on **14.05.2008** leaving behind 11 legal heirs and out of them one legal heir namely Mst. Asifa had also died in the year 2013. Due to death of father of applicant No.1 the factory went into crises and the Electricity was disconnected due to outstanding bills, which were subsequently paid by applicant No.1 when he had started Ice Factory. In the lifetime of mother of applicant No.1 it was decided by all the legal heirs to sell out the suit property in **Rs.50,00,000/-**. Applicant No.1 offered to purchase the same and after borrowing amount from his brothers-in-law Syed Shahid Hussain Naqvi and Raza Hussain Naqvi and paid shares to all legal heirs according to Muslim Law and Iqrarnamas/relinquishment deeds were executed by them. Thereafter, with the consent of legal heirs applicant No.1 got lease of plot No.42 in his name, whereas plot No.47 in the name of Respondent No.1/ Defendant No.1 was purchased by brother of applicant No.2 namely Raza Hussain Naqvi in the sum of Rs.10,00,000/- and gifted the same to applicant No.2 and, therefore, its lease was also executed in her favour. It is also averred in the plaint that after receiving share, all the legal heirs have left the suit property and started their business but after some time Respondent No.1/ Defendant No.1 due to loss in business came to applicant No.1 and got job in the Ice Factory. It was further averred that during the

job Respondent No.1 has stolen documents of suit property and harassed the applicants, therefore, the applicants have filed Civil Suit No.419/2013.

3. After service of notices/summons, Respondent No.1/Defendant No.1 filed his written statement wherein he stated that initially plot No.42, Old No.M-II-E 1202, Block-C was in the name of their deceased father and Plot No.47, Old No.M-II-E 1202/A, Block-C was in his name and the Ice Factory was run by him and their deceased father. He averred that the applicants have forcibly captured the business. He further contended that he is real owner of plot No.47, Old No.M-II-E 1202/A, Block-C and the other plot bearing No.42, Old No.M-ii-E 12-2, Block-C was owned by their father. He further contended that an amount of Rs.10,00,000/- was received by him from applicant No.1 to purchase a flat in the year 2006 which was to be deducted from the profit of the factory for next two years. He further contended that he has not executed any Iqarnama in favour of applicant No.1 nor executed any agreement and all the bills of factory were paid from the account of the factory. He also contended that he has no knowledge about the consent of other legal heirs to receive their shares.

4. Respondent No.2/Defendant No.2 has failed to file his written statement, therefore, he was debarred from filing written statement and case was proceeded exparte against him.

5. Respondent No.1 has also filed Civil Suit No.439/2013 for Declaration, Permanent Injunction, Cancellation of Documents and Settlement of Accounts against the applicants and official Respondents No.3 to 5 and SHO, Sher Shah Police Station in respect

of the same property on almost the same facts as were averred by him in his written statement filed in Civil Suit No.419/2013. The applicants have filed their written statement in the said suit and denied the allegations leveled against them.

6. The trial Court consolidated both the suits and from pleadings of the parties has framed the following consolidated issues:-

1. *Whether the suit as framed is maintainable?*
2. *Whether suit No.419/2013 is hit by the provision of Specific Relief Act, 1877, Transfer of Property Act 1882, Contract Act 1872 and Succession Act/Katchi Abadi Laws?*
3. *Whether the suit property was purchased by the plaintiff (in suit No.419/2013) from legal heirs including defendants (Plaintiff in suit No.439/2013)?*
4. *Whether the lease deed of factory's plot New No.42 and 47 measuring 300 sq. yards obtained by plaintiffs (in suit No.419/2013) fraudulently in their name with the collusion of defendants Nos.3 and 4 (in suit No.439/2013)?*
5. *Whether the plaintiff (Muhammad Raees Siddiqui & others (in suit No.419/2013) are entitled for the relief as claimed?*
6. *Whether defendants Nos.1 and 2 (Muhammad Javed Siddiqui and others plaintiff in suit No.439/2013) are entitled for the relief as claimed?*
7. *What should the decree be?*

The applicant No.1 examined himself and produced documents as Ex.P-1/A to P-1/Q and also examined two witnesses namely Adnan and Taqi as Ex.P-2 and P-3. In the meanwhile Defendant No.1 has died and his legal heirs were brought on record. Defendant No.2 was examined as Attorney of legal heirs of Defendant No.1 and plaintiff of suit No.439/2013. He also produced various documents as Ex.D-1/A to D-1/N. All the witnesses were cross-examined by either side.

7. The trial Court after hearing the parties, by consolidated judgment dated **11.09.2018** dismissed Civil Suit No.419/2013 filed by the applicants and partly decreed Civil Suit No.439/2013 filed by Respondent No.1 to the extent of cancellation of lease of suit property in favour of applicants. The applicants filed Civil Appeal No.462/2018 against the said judgment, which was also dismissed by the IX-Additional District Judge, West, Karachi by judgment dated **30.10.2019** and the findings of the trial Court were maintained. The applicant preferred instant Revision Application against the said concurrent findings of the two Courts below.

8. I have heard learned counsel for the applicants and perused the record as well as written arguments filed by him.

9. The applicants have failed to produce cogent evidence in support of their lawful claim over the suit property and on account of their failure to produce sufficient evidence, the concurrent findings of facts have been recorded by the two Courts below. In the written arguments learned counsel for the applicants has only referred to the fact that the Iqarnama/affidavit sworn by legal heirs of Mohammad Rafi Siddiqui, original owner has been ignored by the two Courts below. Only two witnesses namely Muhammad Adnan and Muhammad Taqi appeared in support of the Iqarnamas, however, the contents of Iqarnamas belied the story of the applicants in the plaint. The applicant has set up a case in respect of one plot bearing plot No.42 through inheritance by payment of shares to all the legal heirs before getting the same transferred in his name from the KMC. There is no Iqarnama about such payment to Respondents No.1 and 2 who are also legal heirs of the actual owner Muhammad Rafi

Siddiqui. The averments in the plaint about acquiring the title of plot No.47 is contradicted by the contents of Iqrarnamas in which the executants have said that a sum of Rs.10,00,000/- were paid to Respondent No.1 namely Muhammad Javed Siddiqui by applicants, whereas, in the plaint the applicants have claimed that the said plot has been purchased by brother-in-law of applicant No.1 through a sale agreement from Respondent No.1 and subsequently the same was transferred by way of gift to applicant No.2. The execution of sale agreement has been denied by Respondent No.1 and the applicants have failed to even produce copy of agreement of sale. There is no proof of such sale and transaction of money in respect of plot No.47 between the applicant and Respondent No.1. It was a case of no evidence at all. Both the Courts below have very elaborately discussed the evidence and observed that the applicants have failed to prove lawful transfer of the suit property in their name. The applicants have admitted PT-I Form in which the properties prior to lease were shown as in the name of late Muhammad Rafi Siddiqui and Muhammad Javed Siddiqui respectively. Admittedly there is no record of any no objection filed by any of the legal heirs for transfer of said properties in the name of applicants No.1 and 2. Even in the Iqrarnamas it is not mentioned that any no objection was given by them at the time of execution of lease of said plots in favour of the applicants. In any case it is admitted position that two of the legal heirs of deceased Muhammad Rafi Siddiqui namely Respondents No.1 and 2 were co-owners of plot No.42 by inheritance on the death of their father and they have never executed any Iqrarnama or relinquishment deed. Likewise admitted owner of plot No.47 has denied its sale by him and burden was on the applicants to prove execution of sale. The applicants have failed to discharge the burden.

Therefore, the two Courts below have rightly concluded that there has been fraud and misrepresentation or connivance between the applicants and Respondents for execution of lease in respect of the suit property in favour of the applicants.

10. As discussed above it is apparent from the record that the findings of facts by the Courts below are in line with the evidence led by the parties and the learned counsel for the applicants both in his oral submissions as well as written arguments has failed to point out misreading and non-reading of evidence on the basis of which suit of the applicants has been dismissed.

11. In view of the above facts and discussion no case is made out for interference by this Court in the concurrent findings of the two Courts below in its revisional jurisdiction. Consequently the instant Revision Application is dismissed.

JUDGE

Karachi, Dated:18.05.2020

Ayaz Gul