

**ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD**

2nd Appeal No.05 of 2014
2nd Appeal No.06 of 2014
2nd Appeal No.07 of 2014

DATE	ORDER WITH SIGNATURE OF JUDGE
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03.02.2020

Mr. Luqman-ul-Haq Farooqui, Advocate for appellants in 2nd Appeals No.5 and 6 of 2014.

Mr. Muhammad Sulleman Unar, Advocate for appellant in 2nd Appeal No.7 of 2014.

Mr. Kamaluddin, Advocate for respondent No.1.

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These connected matters are arising out of a common judgments passed by the trial court and appellate court. Respondent No.1 claimed title of the property in question through a registered instrument. Based on the registered instrument a Suit bearing No.13/2002, for possession, mesne profit and injunction was filed by respondent No.1 against Iqbal Hussain Respondent No.2. In the aforesaid suit filed by respondent No.1, the present appellants were made party in response to an application u/o 1 Rule 10 CPC as contended. Subsequently, a suit was filed by the appellant as F.C.Suit No.28/2009. Record shows that evidence was recorded in earlier suit and by relying on such evidence both suits were disposed off by trial court on 26.05.2011. Suits were consolidated by consent on 04.05.2010 by an order of trial court hence it is nobody's case that evidence of one case was read in another. The following common issues were decided by the trial court:

1. Whether the deceased Ghulam Ali was illiterate and unsound mind?
2. Whether the defendant No.2 Ghulam Ali mortgaged the suit land with possession to defendant No.1 in sum of Rs.50,000/- (fifty thousand)?
3. Whether deceased Ghulam Ali had executed sale deed No.580, dated 04.06.1988 in favour of plaintiff and received consideration and put the plaintiff in possession of suit land?

4. Whether deceased Ghulam Ali has agreed to sale the suit land in favor of defendant No.1?
5. Whether deceased Ghulam Ali has executed power of attorney in favor of his son Muhammad Yousuf?
6. Whether Predecessor-in-title of FC suit No.28/2009 had executed sale deed dated 04.06.1988 in favour of Qaimkhani Welfare Society against payment of consideration and delivered possession to said Society?
7. Whether plaintiff is suit No.28/2009 are entitled to the relief claimed?
8. What should the decree be?

Additional issues:

9. Whether both the suits are not maintainable under the law?
10. Whether both the suits are barred by Limitation Act?"

The prime issues which require consideration are issues No.1, 3, 4, 5 and 9 as to whether appellants' predecessor Ghulam Ali was a person of an unsound mind and illiterate and that whether he executed a sale deed No.580 dated 04.06.1988 in faovur of respondent No.1 .i.e. Qaimkhani Welfare Society Registered and got the sale deed registered. The appellants have thrown a challenge to the authenticity of the sale deed. The instrument was registered with the concerned Sub-Registrar and is available at page 215 of the leading 2nd Appeal No.05/2014. There is no denial that it was a registered instrument, however, learned counsel for the appellants submits that since he was an illiterate person, therefore, contents should have been read over to him in his native language and he must have understood the same. He further submits that he was a person of unsound mind as the contents of sale deed itself are clear to demonstrate this fact. He further relied upon the provisions of Section 12 of the Contract Act which not only describe as to who the persons of unsound mind are but also curtail the powers and authority of such persons to enter into an unlawful transaction. Counsel submits that entire payment was made in cash and it was not believable that such amount would have been received by the predecessor of the appellants. Learned counsel further submits that appellant's predecessor expired a year later. Counsel also submits that the suit was not maintainable on the count that it was not only filed by an unauthorized person but also the evidence was led

by a party who was only entitled to contest the case and not to record the evidence. Hence, counsel concludes that since the very suit was not maintainable, it ought to have been dismissed on these counts alone.

Mr. Kamaluddin appearing for respondent No.1 has taken me to Ex.71-P/A to 71-P/AQ available alongwith record and proceedings. He demonstrates them to be Minutes of the Meeting. Counsel submits that at the relevant time Nawabuddin was the president and the minutes empowered him to initiate legal proceedings and to engage counsel till the court of ultimate jurisdiction. He further submits that at the time the evidence was recorded Shoukat Ali, who was earlier General Secretary then became President and was further authorized by the Minutes of the Meeting to contest the suit and hence it cannot be believed that the suit was filed by an unauthorized person or that the evidence was recorded by an unauthorized person. Counsel further submits that the originally the suit was not against the appellants. It was only filed for possession against respondent No.2 and the appellants intervened and court impleaded them as party, subsequently. The sale deed disclosed that the possession was delivered / handed over by the predecessor of the appellants, however, the suit for possession was filed only against respondent No.2 by respondent No.1 and hence the question of limitation would not arise for appellant, although counsel for appellant earlier has already conceded to the issue of limitation since it was not against them and it was nowhere disclosed by him as to when such cause was triggered and that too against respondent No.2, to file a suit for possession.

I have heard the learned counsel and perused material available on record.

Let us first discuss the issue of limitation though it was not pressed by appellants. It was not on the basis of the sale deed that the limitation would run under Article 136 of Limitation Act. Appellant's reliance on Article 136 is also misconceived as it relates to a situation when the vendor was out of possession at the date of sale. Sale deed disclosed that the possession was handed over to

respondent No.1. If the possession was handed over to respondent No.2 later or he himself took over possession, it would be triggered from such cause and not as disclosed in the relied article. The limitation would run when the possession was unlawfully acquired or deemed to have been acquired by respondent No.2 which is not disclosed either by appellants or respondent No.1. Hence on these counts, during the arguments the appellant himself has conceded however insisted on the question of maintainability.

Appellant's case is that proceedings were not initiated by authorized person and even the evidence was not recorded by a person who instituted plaint.

Minutes of the Meeting or authorization is not supposed to be an encyclopedia. The authorization only gives a gist of the intention of all those acts which are required to be performed for legal proceedings. Mentioning of the facts in the Minutes of the Meeting that one Shoukat Ali may contest the case on behalf of the Society is enough to include not only recording of evidence but also filing miscellaneous application or taking any other step that he may deem fit and proper for a proper contest. Thus, the contest of the case would include but not limited to recording of evidence. I do not consider this ground to be available either before the trial court or appellate court for dismissal of suit.

The next contention of the learned counsel for the appellants that the appellants' predecessor who executed the sale deed was not only an illiterate but a person of unsound mind. I have perused the sale deed available on record at page 215. At the second last page of the sale deed it is written as under:

“The contents of this sale deed have been read over and translated to the vendor in his mother language and he has put his signature in the presence of witnesses without any force and coercion”.

Since it is a registered instrument, the contents of this text and in fact every part of this registered instrument is deemed to be correct unless proved otherwise. Prima facie, it disclosed that the contents were read over to the vendor

in presence of witnesses. This act deemed to have been done by Sub-Registrar in presence of witnesses. Neither the Sub-Registrar nor the witnesses were summoned and examined who could have deposed if such contents were not read over to the vendor. Admittedly no such application was moved for summoning these witnesses. Similarly, being an illiterate does not mean that a person is not entitled to dispose of his or her property. An attempt was made by appellant's counsel to demonstrate that he is so illiterate that he couldn't have understood the transaction, is unbelievable as illiteracy is not synonym to unsoundness of mind. Illiteracy only shows that his educational qualification may not be up to the mark, however, it does not demonstrate that he is unable to conduct his business or daily affairs as required. If a person performs his daily business routine work he/she would not be regarded as a person of unsound mind for consideration of Section 12 of Contract Act. No such certificates were produced before the trial court or appellate court that he was a person of unsound mind and that he was not capable of understanding the transaction being conducted. Thus, section 12 of the Contract Act would not come to rescue appellants. The appellants in support of their case were unable to demonstrate that the subject sale deed was a fictitious, forged and fabricated. A registered instrument is deemed to be lawful unless proved otherwise which is not proved by the appellants.

Insofar as the connected 2nd Appeal No.7/2014 is concerned, the appellants' interest in an independent litigation has already been decided up to Supreme Court. The order passed in R.A No.05/2002 on 24.12.2004 by this Court was challenged by Iqbal Hussain in CPLA No.332/2005 decided on 06.02.2006 whereby leave was refused. Thus, the interest of the appellant in the connected appeal has already been decided and by these parallel proceedings against other litigants, they cannot enjoy a second round of litigation which actually initiated when suit for possession was filed against them. Under section 11 CPC, appellant such as Iqbal Hussain, thus, cannot enjoy the second round of litigation to present a defence which was earlier considered in above proceedings and present

proceedings are only for possession against him. Thus, in view of the above, these second appeals merit no consideration and as such are dismissed along with pending applications. The execution proceedings if pending be disposed of expeditiously in accordance with law.

JUDGE

Ali Haider