

Order Sheet
**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

1st Appeal No. 03 of 2000

Mir Kashif Ali & others
and others

v. Syed Muzaffar Hussain
and another

Appellants

Mir Kashif Ali and others through
Mr. Muhammad SullemanUnar, Advocate.

Respondents

Syed Muzaffar Hussain Shah, Advocate for
respondents.

Date of hearing

29.10.2021

Date of decision

19.11.2021

J U D G M E N T

ADNAN-UL-KARIM MEMON, J:- The appellants/defendants through this 1st Appeal have called in question the judgment and decree dated 30.11.1999 & 06.12.1999 passed by learned IInd Senior Civil Judge, Mirpurkhas in F.C. Suit No. 14 of 1998 whereby the learned Judge decreed the suit in favour of plaintiff No.1/respondent No.1 while dismissed the same to the extent of plaintiff No.2/respondent No2.

2. Brief facts of the case are that on 30.05.1998, respondents filed F.C. Suit No.14 of 1998 against the appellants for Specific Performance of Contract and Injunction. In the plaint it was asserted that suit land consists of 113-32 acres situated in Deh-281, Jiskani, Tapo Gorchani, Taluka Kot Ghulam Muhammad district Mirpurkhas. The case of the respondents was that appellant No.1 by himself and appellant 2 & 3 through their father and natural guardian i.e. appellant No.4 vide agreement dated 16.03.1998 agreed to sell out suit land to respondents in equal shares at the rate of Rs. 40,000 per acre for total sale consideration of Rs. 45,52,000/-; that at the time of execution of sale agreement they paid an amount of Rs. 2,00,000/- to appellants as earnest money, receipt whereof was acknowledged in

the sale agreement; that an amount of Rs. 10,00,000/- was to be paid to the appellants on 10.4.1998 and a balance of Rs. 33,52,000/- was settled to be paid within one year of the sale agreement i.e. on or before 15.03.1999; that the execution and registration of sale deed was agreed to be made on/after payment of full sale consideration; that along with sale, the appellants also agreed to lease out the suit land to the respondents for one year for total consideration of Rs. 250,000/- and on receiving the lease amount appellants put the respondents in vacant possession of the suit land on the same day i.e. 16.3.1998; that the lease was for two crops only commencing from 16.3.1998 up to 15.3.1999; that after taking over possession of the suit land they spent huge amount over the development of suit land and raised cotton crops in 40 acres and cultivated other crops in 4 acres, so also prepared further few acres of suit land for cultivation; that it was agreed that appellant No.4 would initiate legal proceedings for his appointment/declaration as Guardian of the property of minor appellants 2 and 3 followed by permission for sale regarding the lands of minor appellants 2 and 3 forming part of sale agreement; that such proceedings were to be commenced soon after the execution of sale agreement and in all cases much before 10.4.1997 when an amount of Rs. 10 Lacs was agreed to be paid by the respondents to the appellant; that appellant No.4 failed to perform his contractual obligation regarding appointment of Guardian of minor respondents and permission for sale of same. On the contrary, as pleaded by the respondents the appellant No.4 assured them that he would initiate required legal proceedings before 10.4.1998 and would receive the agreed amount of Rs. 10 Lacs thereafter; that appellant No.4 thereafter did not take any step for initiating proceedings as stated above but obtained another payment of Rs. 5 lacs from the respondents on 20.4.1998, who always showed their readiness to pay the balance amount; that subsequently on seeing the flourishing cotton and other crops, the appellant No.4 became dishonest and illegally demanded Rs. 500,000 and on refusal of respondents, he extended threats for cancellation of agreement and take forcible possession of suit land; that respondent No.1 received a notice on 25.7.1998 sent by appellant No.4 whereby he was informed that the sale agreement dated 16.3.1998 stood canceled and an amount earlier paid stood forfeited on account of his failure to perform contractual obligations in addition to non-payment of Rs.500,000 within the stipulated time; that appellant No.4 wrongly

canceled the sale agreement dated 16.3.1998 as he had no right to cancel the same and forfeit the amount particularly when they failed to initiate legal proceedings essential for execution of sale deed, and respondents had offered the payment of entire sale price before the due date; that respondents were prepared to perform their part of contract by depositing balance sale consideration before the court; that they approached the defendant No.4 offering him not only the payment of Rs.500,000 but also the remaining sale consideration on his obtaining permission from the competent court, but he appellant No.4 refused and demanded an additional amount of Rs.5 Lacs and threatened that in case of failure to meet his demand, he would occupy the suit land forcibly; that on 30.8.1999 appellants along with private persons duly armed with firearms weapons, trespassed the suit land forcibly occupied it, took Rs. 28,000 from the pocket of Syed Lal Shah, forcibly removed away cotton pads and other articles valuing Rs. 2,500,000, hence are liable to pay the said amount to the respondents with interest at the rate of 15% per annum; that the appellants along with his companions took away their Hari namely Muneer, his wife Mst. Kalsoom and three children along with their cots, beds, and other household articles, hence the case was registered on 7.9.1998 under Section 17 (3) H.O 114 and 504 PPC. They lastly asserted that since they have raised cultivation over the suit land, hence are entitled to possession as they were dispossessed during pendency of the suit.

3. In reply to the above, appellants filed written statement dated 18.5.1999 specifically denying the allegations leveled by the respondents. It was disclosed by the appellants that at the time of execution of sale agreement, the respondents paid Rs. 2 Lacs as part payment of earnest money out of the agreed money of Rs. 1,200,000 and the remaining amount of earnest money of Rs. 10 lacs was agreed to be paid on 10.4.1998; that possession of suit land was never handed over to the respondents and the same still lies with them and further the sentence regarding possession in favor of the respondents was written in the sale agreement in good faith to develop cordial relations between the parties; that no condition for initiating proceedings for appointment of Guardian of minors was existed/agreed in the sale agreement. The appellant No.4 was at liberty to fulfill obligations on his part as mentioned in the sale agreement up to the finalization of sale transaction but the

respondents even failed to pay the earnest money; that respondents were required to pay Rs. 10 Lacs towards Earnest money on 10.4.1998 but they miserably failed to make such payment and on the contrary, they put pressure and influence upon the appellants to accept another part payment of Rs. 5 lacs towards Earnest money which was accepted by the appellants on 20.4.1998 on the undertaking of respondents that the remaining amount will be paid upto 25.4.1998 but the respondents failed to make such payment, and sale agreement stood automatically terminated/canceled as per its terms and conditions. Consequently, the appellants informed the respondents about cancellation and forfeiture of earnest money through letter dated 25.5.1998; that the appellants in the written statement pointed out illegality and fraud committed by respondents by filing amended plaint as they incorporated certain lines in Para No.16-A of the plaint and that the entire para No.16-B and 16-C unauthorizedly without having any permission of learned trial court regarding such amendments. The appellants also questioned the maintainability of the suit on various legal grounds.;

4. On the pleadings of the parties learned trial court framed the following issues.

1. Whether the suit is not maintainable under the law?
2. Whether the defendants executed an agreement dated 16.3.1998 and agreed to sell the suit land to the plaintiff in equal shares at the rate of Rs. 40,000/- per acre?
3. Whether the plaintiffs paid an amount of Rs. 2,00,000/- at the time of sale agreement to defendants?
4. Whether on 30.8.1998 the Defendant No. 1 & 4 along with duly armed persons forcibly occupied the suit land and took out Rs. 28,000 from the pocket of Syed Lal Shah and removed away cotton pads and other articles valued about Ruby's 25, 00,000?
5. Whether the plaintiff No.1 is entitled for the relief of Specific Performance of Contract?
6. Whether the plaintiff is entitled for possession and mesne profits of Rs. 25, 00,000/- per year?
7. Whether the plaintiff is entitled for any relief?
8. Whether the suit is barred under the Specific Relief Act and Contract Act?
9. What should the decree be?

5. Learned trial court examined the plaintiffs' witnesses as well as defendants' witnesses. Learned Trial Court based on the pleadings of the parties and evidence on record decreed the suit of respondents

with costs and dismissed the suit of respondent/plaintiff No.2 with no order as to costs vide Judgment dated 30.11.1999, hence the instant appeal.

6. Learned counsel for the appellants mainly argued that while passing the impugned judgment the learned Judge has misread the pleadings and evidence of the parties on various issues; that learned trial court has not taken into consideration that the reason for filing the suit against the appellants was to avoid payment of penalty amounting to Rs.14,50,000/-; that learned trial court has not applied its judicial mind while deciding issue No.4 in favor of respondents and has neglected the fact that the burden to prove this issue was heavily upon the respondents who miserably failed to discharge their burden; that learned trial court while passing the impugned judgment has ignored the established principles of law that each party should prove its case and must not stand on the weakness of its adversary; that learned trial court has seriously erred in holding that the appellants have forcibly removed away articles of respondents worth Rs. 2,500,000/- as there was no such detail and particulars of the articles the worth of which comes to Rs.2,500,000/-; that learned trial court failed to consider that merely production of FIR is not sufficient for drawing inference that the allegations leveled are true and correct; that the impugned judgment is not speaking one as various issues have not been discussed properly and the findings of learned courts below are not convincing and are not based upon sound reasoning; that the impugned judgment and decree suffer from misreading and non-reading of evidence. They lastly prayed for allowing the instant appeal.

7. In my considered view, the order passed by learned appellate Court does not suffer from any misreading or non-reading of evidence nor any other illegality and or irregularity was committed justifying interference of this court.

8. This 1st Appeal found to be meritless and is dismissed accordingly.

JUDGE