

Judgment Sheet

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Civil Revision No. S – 49 of 2007

(Mohsin Jan vs. Abdul Razzak and others)

Date of hearing: 17-01-2022

Date of Judgment: 17-01-2022

Mr. Nishad Ali Shaikh associate of Mr. A.M Mobeen Khan,
Advocate for the Applicant
Mr. Raj Kumar D. Rajput, Advocate for the Respondents

JUDGMENT

Muhammad Junaid Ghaffar, J. – Through this Civil Revision, the Applicant has impugned judgment dated 24-04-2007 passed in Civil Appeal No.64 of 2004 by District Judge, Ghotki, whereby while dismissing the Appeal the judgment dated 19-10-2004 of Senior Civil Judge, Ubauro in F.C Suit No.359 of 1995 through which the Suit of the Applicant was dismissed, has been maintained.

2. Learned Counsel for the Applicant has filed written arguments, which have been perused, whereas, Respondents Counsel has been heard.

3. It appears that the Applicant filed a Suit for Specific Performance against the Respondents in respect of two different sale agreements entered into with different parties. On this an objection was raised as to maintainability of the Suit and the trial Court held that the Suit was competent, however, in appeal it has been held by the Appellate Court that the very Suit was incompetent and the finding of the trial Court to this effect has been set-aside. This Court is of the view that the learned Appellate Court was fully justified in holding that the Suit as framed is incompetent, inasmuch as the Specific Performance was sought in respect of two different agreements entered into with two different parties; hence, it was incumbent upon the Applicant to file separate Suits for Specific Performance of the two agreements in question. Both the agreements have no nexus with each other, and therefore, a joint Suit was incompetent. It is settled law that even otherwise the grant of relief of

Specific Performance is discretionary in nature and it is not possible for the Court to pass a decree where two separate agreements have been joined in one Suit against different parties, and therefore, the Appellate Court's findings is correct and otherwise in accordance with the law.

4. As to the merits of the case, it appears that the Applicant had failed in evidence to prove the very existence of the agreements, inasmuch as to one agreement they failed to seek Specific Performance in the lifetime of the person with whom purportedly an agreement was entered into by them. It was all along in their knowledge and even condition stipulated in agreement for execution of the sale deed had already been fulfilled; but no Suit was ever filed by the Applicant when the said person was alive and it is only after his death i.e. his legal-heirs have been joined as Defendants and Suit for Specific Performance was filed.

5. As to the two agreement(s) again they miserably failed to prove the same through cogent and confidence inspiring evidence, whereas, basic requirements of law including that of the Qanoon-e-Shahadat Order, 1984, were never fulfilled; hence, the two Courts were fully justified in holding that the same were not proved.

6. In view of hereinabove, facts and circumstances of this case, both the Courts below had arrived at a fair and just conclusion and have appreciated the evidence in accordance with the law, whereas, the concurrent findings of the two Courts below are against the Applicant, and no case for upsetting the same has been made-out, therefore, by means of a short order in the earlier part of the day, this Civil Revision Application was dismissed and these are the reasons thereof.

Judge

ARBROHI