

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

IInd Appeal No. 208 of 2021

Date	Order with signature of Judge
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For order on office objection a/w reply as at 'A' :
For hearing of main case :

27.01.2022 :

Mr. Muhammad Iqbal, advocate for the appellant.
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NADEEM AKHTAR, J. – Suit No.383/2019 was filed by the appellants against the respondent for declaration, specific performance, damages, direction and permanent injunction which was dismissed by the learned trial Court vide impugned judgment and decree dated 17.10.2019 ; and, Civil Appeal No.406/2019 filed by them against such dismissal was dismissed by the learned appellate Court vide impugned judgment and decree dated 03.09.2021. Through this second appeal under Section 100 CPC, the appellants have impugned the concurrent findings of the learned Courts below.

2. In their plaint, the appellants had pleaded that the respondent / defendant had entered into an oral agreement with them for the sale of the suit property in their favour. While dismissing the Suit, it was observed by the learned trial Court that the suit property was not in the name of the respondent ; not a single document was produced by the appellants to show that the respondent was the owner of the suit property ; and, the alleged sale consideration was paid by the appellants to a third party and not to the respondent. In view of the above observations, it was held by the learned trial Court that the appellants had failed in proving the alleged oral agreement. The learned appellate Court concurred with the findings of the learned trial Court and dismissed the appeal filed by the appellants.

3. Learned counsel for the appellants concedes that the alleged sale consideration was not paid to the respondent. Regarding the title of the respondent, he submits that an application for production of additional evidence in this behalf was filed by the appellants before the learned appellate Court, but the same was rejected. According to him, the appellants wanted to produce material documents before the learned appellate Court in order to show the title of the suit property in favour of the respondent. Perusal of the said application

shows that no document whatsoever was mentioned therein nor was any ground urged therein for production of additional evidence at the appellate stage. It is well-settled that production of additional evidence can be allowed at the appellate stage only when the party seeking such relief had attempted to produce the same at the stage of the trial and the same had been declined by the trial Court, or when the appellate Court itself comes to the conclusion that the judgment cannot be pronounced in the absence of such additional evidence. Admittedly, the appellants did not make any attempt to produce the said evidence at the stage of trial and the learned appellate Court did not find the said evidence essential for pronouncing the judgment.

4. No other ground has been urged in support of this appeal and the learned counsel has not been able to point any illegality or infirmity in the concurrent findings of the learned Courts below. The jurisdiction of this Court is limited in second appeal to the extent of interference on a question of law and not on facts. As such, the impugned judgments and decrees do not require any interference by this Court. Accordingly, the appeal is dismissed in limine with no order as to costs.

J U D G E