

Judgment Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

IInd Appeal No. 120 of 2020

Appellant : Abdul Ghafoor Kandhro, through
Mr. Matloob Hussain Qureshi advocate.

Respondent : Mst. Sakina, through Ms. Shazia Hanjrah advocate.

Date of hearing : 05.10.2021.

J U D G M E N T

NADEEM AKHTAR, J. – Suit No.25/2011 filed by the respondent against the appellant for declaration, possession, permanent injunction and damages was decreed with no order as to costs by the learned trial Court vide impugned judgment and decree dated 24.08.2017 and 30.08.2017, respectively. The said judgment and decree were maintained by the learned appellate Court vide impugned judgment and decree dated 14.03.2020 passed in Civil Appeal No.55/2017 filed by the appellant, with the modification that the respondent's claim for damages was rejected and the costs of the Suit were awarded to her. The appellant has impugned the concurrent findings of the learned Courts below through this second appeal under Section 100 CPC.

2. The relevant facts of the case are that the above mentioned Suit was filed by the respondent claiming to be the grantee / owner of 16-00 acres of un-surveyed Barani Agricultural Land situated in Deh Kohistan, Tapo Gharo, Taluka Mirpur Sakro, District Thatta (**'the suit property'**), having proprietary / malkana rights in respect thereof. It was stated by the respondent in her plaint that she had planned to construct a small mosque, a small room and a farm house on the suit property. It was also stated by her that the appellant offered his services voluntarily as Pesh Imam for the proposed mosque and also sought her permission to use the farm house temporarily, which offer was accepted and permission was granted by her in view of old family relations between the parties. It was alleged by her that instead of taking interest in the construction of the mosque, the appellant indulged himself in other activities and also started creating problems for the local people of the area and the Karachi Water and Sewerage Board (KW&SB). It was further alleged by her that the appellant filed Suit No.22/2001 before the Senior Civil Judge Thatta against KW&SB and its officials by forging her signatures and without her knowledge. It was also alleged by her that in the year 2004 the appellant, in collusion with one Nabi Ahmed and one Ahmed Shah and some functionaries of the Revenue Department, managed to obtain a forged duplicate lease for

thirty years in respect of the suit property in favour of the said Nabi Ahmed which was fraudulently transferred in favour of the said Ahmed Shah ; vide letter dated 22.09.2005, the respondent informed the Mukhtiarkar concerned that the appellant was not her authorized representative nor was he competent to act on her behalf in relation to the suit property ; the general power of attorney dated 12.02.2002 executed by the respondent in favour of the appellant only for representing her in Court matters relating to the suit property was revoked by her through a publication in newspaper, a legal notice and a deed of revocation ; and, the aforesaid forged lease and fraudulent transfer were cancelled by the Executive District Officer Revenue Thatta vide order dated 02.06.2010 in Revenue Appeal No.890/2005 filed by her.

3. It was averred by the respondent in her Suit that in March 2007 she came to know that Suit No.Nil/2006 was filed by the appellant before this Court against the Province of Sindh and others, including her, challenging the deed of revocation executed by her for revoking the power of attorney in his favour ; the aforesaid Suit filed by the appellant was based on two forged sale agreements dated 07.10.2001 and 12.02.2002 whereby the respondent had allegedly sold 5-00 acres of land out of the suit property to the appellant in consideration of Rs.150,000.00 and the possession thereof was allegedly handed over to him against a token amount of Rs.10,000.00 ; as the appellant did not wish to press his Suit No.Nil/2006, the same was dismissed as not pressed by this Court vide order dated 26.02.2009 ; during the pendency of Suit No.Nil/2006, the appellant filed Suit No.369/2009 before this Court for specific performance of the aforesaid alleged agreements which fact was not disclosed by him to this Court when his Suit No.Nil/2006 was withdrawn / dismissed ; and, in view of the above and also as the suit property was situated outside the territorial jurisdiction of this Court, the respondent filed an application under Order VII Rule 11 CPC for rejection of the plaint of the said Suit No.369/2009. In the above background, it was prayed by the respondent in her Suit No.25/2011 that the sale agreements dated 07.10.2001 and 12.02.2002 be declared as forged and fabricated ; the appellant be directed to vacate the farm house constructed at the suit property ; the appellant be restrained from interfering in the peaceful possession of the respondent in respect of the suit property ; and, the appellant be directed to pay an amount of Rs.20.000 million to the respondent as damages.

4. The appellant filed his written statement wherein his main contention was that the power of attorney executed in his favour by the respondent was a part and parcel of sale agreement dated 07.10.2001 and as such the same could not be revoked by the respondent ; the respondent had failed to perform her

agreed part of the said agreement ; and, Suit No.369/2009 filed by him for specific performance of the said agreement was subjudice before this Court and as such the respondent's Suit was not maintainable. It was admitted by him in his written statement that Suit No.Nil/2006 filed by him before this Court challenging the deed of revocation executed by the respondent for revoking the power of attorney in his favour was withdrawn by him.

5. After settlement of the issues, both the parties led their evidence by producing their witnesses and documents in support of their respective claims. In his cross-examination, it was admitted by the appellant that no sale agreement was mentioned in the general power of attorney executed in his favour by the respondent ; the respondent had lawfully revoked the said power of attorney ; and, Suit No.Nil/2006 filed by him against such revocation was withdrawn by him. Through the impugned judgment and decree, the Suit filed by the respondent was decreed by the trial Court with no order as to costs, which were maintained by the appellate Court with the modification that the respondent's claim for damages was rejected and the costs of the Suit were awarded to her.

6. I have heard learned counsel for the parties and have carefully examined the material available on record, particularly the impugned judgments and decrees. The following admitted position has emerged from the record :

- I. The title of the respondent in respect of the suit property was/is not disputed.
- II. The appellant was allowed by the respondent only to supervise the construction of a mosque on a portion of the suit property and to manage and look after the same, and to use the farm house.
- III. The power of attorney executed by the respondent in favour of the appellant was revoked by her through a deed of revocation.
- IV. The said deed of revocation was challenged by the appellant by filing Suit No.Nil/2006 before this Court which was dismissed as withdrawn on 26.02.2009.
- V. The appellant also filed Suit No.369/2009 before this Court against the respondent for specific performance of the alleged sale agreement in respect of a portion of 5-00 acres out of 16-00 acres of the suit property, the plaint whereof was returned for presentation before the Court of competent jurisdiction. The appellant then presented the plaint of the

said Suit before the Senior Civil Judge Thatta which was registered as F.C. Suit No.111/2011.

- VI. The plaint of the appellant's F.C. Suit No.111/2011 was rejected by the trial Court vide order dated 30.04.2013, and Civil Appeal No.23/2013 filed by him against such rejection was dismissed by the appellate Court vide order dated 28.05.2016.
- VII. The concurrent findings of the trial and appellate Courts regarding the rejection of his plaint of F.C. Suit No.111/2011 were not challenged by the appellant any further.
- VIII. F.C. Suit No.111/2011 filed by the appellant for specific performance was not pending when the impugned judgment and decree were passed by the trial Court in the respondent's Suit No.25/2011.
- IX. In addition to the above admitted position, it was admitted by the appellant in his cross-examination that no sale agreement was mentioned in the general power of attorney executed in his favour by the respondent ; the respondent had lawfully revoked the said power of attorney ; and, Suit No.Nil/2006 filed by him against such revocation was withdrawn by him.

7. In view of the admitted position discussed above, the order of dismissal of Suit No.Nil/2006 filed by the appellant to challenge the revocation of the general power of attorney and the order of rejection of the plaint of his F.C. Suit No.111/2011 for specific performance attained finality in the years 2009 and 2016, respectively ; and, till date he has not been able to establish his alleged right, title or interest in respect of the suit property and or any part thereof. The record shows that despite the above admitted position regarding the finality of the orders passed against the appellant in his above mentioned Suits, the respondent had successfully discharged her burden to prove her claim in her Suit, whereafter the burden had shifted upon the appellant to prove her wrong and further to establish his own claim. However, the appellant had completely failed in proving his alleged claim as he had not only failed in dislodging the claim of the respondent, but had also admitted in his cross-examination that no sale agreement was mentioned in the general power of attorney executed in his favour by the respondent and the power of attorney in his favour was lawfully revoked by the respondent. In the above circumstances, the appellant, having no right, title or interest whatsoever in the suit property and or any part thereof, had no locus standi to question the lawful title of the respondent and or to remain in possession of the suit property.

8. Perusal of the impugned judgments and decrees shows that the pleadings and evidence of the parties were minutely examined by both the learned Courts below and well-reasoned findings were rendered for decreeing the Suit of the respondent by discussing and analyzing every aspect of the case. The learned Courts below, particularly the appellate Court, did not act in a mechanical manner as the damages awarded by the trial Court while decreeing the respondent's Suit were declined in appeal on the ground that she could not prove the same. The jurisdiction of this Court is limited in second appeal to the extent of interference on a question of law and not on facts. The appellant has not been able to raise any question of law or to point out any illegality or infirmity in the concurrent findings of the learned Courts below, and as such they do require any interference by this Court. Accordingly, the appeal is liable to be dismissed.

9. Foregoing are the reasons of the short order announced by me on 05.10.2021 whereby this appeal was dismissed along with the pending stay application with costs of Rs.50,000.00 (Rupees fifty thousand only).

J U D G E