

THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

R.A. No. 308 of 2017

Abdul Hakeem.Versus.Mst. Amina alias Amna
and others.

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C.P.No.S-1236 of 2016.

Abdul Hakeem.Versus.Muhammad Sabir and
others.

Applicant / Petitioner
Abdul Hakem : Through Mr. Javed Chaudhry, Advocate.

Respondents Mst. Amina alias
Mst. Amna and Muhammad Sabir
in both matters: Through Mr. Naved Ahmed Associate of
Mr. Aqeel Ahmed Siddiqui Advocate.

Date of hearing and judgment: 13.04.2018.

J U D G M E N T

Zulfiqar Ahmad Khan, J: The abovementioned revision (arising out of a civil matter) as well as the constitutional petition (arising out of a rent matter) have been filed against the separate but concurrent findings of the Courts below.

2. Brief facts of the case are that the applicant allegedly purchased the suit property being Shop No.2, constructed on plot No.1513-B, Khisakpura, Mirpurkhas from on Mst. Amina alias Amna through a sale agreement dated 27.10.2001 in terms of which Mst. Amna allegedly a co-owner / co-sharer of the said property had obtained a cash of Rs.5,90,000/- and agreed to transfer the subject shop in favour of the applicant through registered sale deed not later than 30.10.2002. Initially the suit shop and other property constructed on plot No.1513-B was jointly owned by private respondents and other co-sharers. Whereafter, the entire property was mutated by way of inheritance in favour of all co-sharers, however, the suit shop was not transferred in favour of the applicant, therefore, the money paid by the applicant alongwith the penalty was liable to be repaid to him. It is an admitted position that the applicant was

nephew of Mst. Amna, who has been given possession of the shop on rental basis initially as the shop belonged to husband of Mst. Amna namely Rasool Muhammad. After the death of respondent's husband as per law and with consent of all legal heirs the said shop was mutated in the name of Mst. Amna (respondent No.1) through extract of Property Register on 15.04.2009, copy of which is available on page-153. It is alleged that latter gifted the said shop through a gift to her son (respondent Sabir) on 15.04.2009 (Copy of the extract is available at page-155) and when the said owner called upon the applicant to hand over possession of the shop for his personal use, the applicant refused the same, which resulted in filing of an application under section 15 of Sindh Rented Premises Ordinance, 1979 before the Rent Controller, where the Rent Controller decided the matter in favour of the respondent Sabir and the appeal preferred against the order of Rent Controller was also dismissed. However, in the circumstances at hand the applicant filed a suit being F.C. Suit No.211/2012 for specific performance of contract, declaration, cancellation of gift deed and permanent injunction with the following prayer:-

- "A. Direct the defendants No.1 and 2 to cause the registration of sale deed in favour of plaintiff as they have already received the full sale consideration.
- B. Cancel the so-called oral gift vide registered sale deed No.3432 dated 03.07.2008 and then direct defendant No.1 to execute registered sale deed in plaintiff's favour. The defendant No.2 who is party to sale agreement can be directly ordered to register the sale deed of suit shop in favour of plaintiff

OR

- In the alternative on failure of defendants No.1 and 2, direct the Nasir of Honourable Court to register the sale deed in plaintiff's favour of the suit shop.
- C. Declare that the defendant No.1 was never in position by stipulated date or even years thereafter to register the sale deed of suit shop in plaintiff's favour and time was never essence of sale agreement and that mutated / sale got by defendant No.1 from alleged heirs Mst. Farida and Imran through registered sale deed No.1173 dated 18.03.2008 and all subsequent sales and mutations are illegal, void and have no legal effect.
- D. Issue permanent injunction restraining the defendants No.1 and 2 from alienating, transferring, creating any charge on the suit shop and be prohibited and restrained permanently from using, uttering and speaking filthy and

abusive language every now and then further from threatening the customers of plaintiff from making purchases from plaintiff arrange discontinuation of electricity directly or indirectly by any means whatsoever and by any agency whatsoever.

- E. Restraining and prohibiting the defendant No.3 from issuing any certificate of ownership in favour of defendants No.1 and 2 enabling them to alienate the suit shop.
- F. Granting cost of the suit.
- G. Any other relief to the plaintiff be granted to which he be found entitled in the facts and circumstances of the case.”

3. The trial Court framed 8 issues out of which issues No.3, 4 and 5 are of critical significance which are reproduced as under

- “3. Whether on 27.10.2001 defendant No.1 agreed to sell suit shop to plaintiff at the consideration of Rs.5,90,000/- which amount was paid to defendant No.1?
- 4. Whether after such transaction tenancy in respect of shop in question stands ceased?
- 5. Whether sale agreement is a forged and manipulated document having received any sale consideration by defendant No.1 from plaintiff?

4. The trial Court after going through evidence produced by the parties and examining the other material available before it, dismissed the suit observing that on the date of execution of the alleged sale agreement, the respondent No.1 Mst. Aman had no right to sell the subject shop to the applicant / plaintiff since she was only a co-sharer, keeping in mind the fact that the lady being illiterate completely denied the transaction however, she remembered placing her thumb impression on an agreement but denied that the sum of Rs.5,90,000/- were handed over to her. The trial Court as mentioned earlier, dismissed the suit for the reasons mentioned therein against which an appeal was preferred, however, the appellate Court maintained the findings of the trial Court and also raised an issue that the suit filed by the applicant should have been dismissed on account of limitation because it was filed for the specific performance of a contract after about 10 years because as per the contents of sale agreement, the sale deed was required to be executed till 30.10.2002, whereas the suit was filed in 2012.

5. The instant revision has been filed against the concurrent findings of the Courts below as well as C.P.No.S-1236/2016 has been filed challenging the order / judgment passed by the Rent Controller and the appellate Court in the said matter.

6. Learned counsel for the applicant read over the entire evidence and the documents and in particular referred to Article 114 of the Qanun-e-Shahadat Order and submitted that there was estoppel against Mst. Amina, the mother of respondent No.1, who had agreed to sell the shop to the applicant notwithstanding at the time of signing of the contract she was only a co-sharer, but since she eventually became full owner of the subject shop in the year 2009, it was illegal to have her transfer the said shop in the name of respondent No.1 as she should have it transferred in favour of the applicant. In support of his contention the learned counsel relied upon **1996 MLD 60**.

7. The applicability of Article 114 of the Qanun-e-Shahadat Order, in my humble view the said Article does not apply to the circumstances of the case at hand as in this case the buyer knew that the seller was not at all competent to sell 100% share in the property to the buyer. Learned counsel on the later part of his arguments was also unable to satisfy that how the suit was not barred under Article 113 of the Limitation Act where three years' time is provided to file a suit for specific performance of a contract. The ground realities at hand are that two concurrent findings of the Courts below agitating the instant revision, as well as two independent and concurrent findings of the Rent Controller as well as appellate Court in rent matter are against the applicant as well as the facts and circumstances of the case law **1996 MLD 60** being clearly distinguishable to the facts of the instant case, hence the same does not apply in the circumstances at hand.

8. Further the instant revision having been filed against the concurrent findings of the Courts below. A perusal of the judgments impugned in the instant revision as well as impugned through the constitutional petition shows that the same have been rendered after considering the evidence available on record and hearings both the sides, no illegality or irregularity in my view has

been committed by these Courts, and in the absence of any defect in the concurrent findings of the Courts below, interference of High Court in civil revision as held by Apex Court in **2006 SCMR 50**, amounts to improper exercise of revisional jurisdiction.

9. In the given circumstances as well as in the light of the above cited judgment of the Apex Court and other judgments delivered on the same point being **2006 SCMR 1304** and **2010 CLC 528**, the instant Revision No.308/2017 as well as the Constitutional Petition No.S-1236/2016 preferred against concurrent findings of the Courts below, merit no consideration and the same are accordingly dismissed alongwith pending applications.

JUDGE

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