

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Suit No.1928/2016

Date	Order with signature of Judge
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For examination of parties / settlement of issues

22/03/2021:

Mr. Asim Iqbal, advocate for the Plaintiff.
Mr. M. Shafi Rajput, advocate for the Defendants.

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This suit is listed for settlement of issues. The perusal of plaint shows that the plaintiff has prayed for specific performance of two different agreement of sale of two different dates in respect of two different properties in one suit. First contract is dated **01.4.2010** and second contract is dated **16.02.2013**. The Plaintiff has not filed written terms and conditions of the contracts with the plaint. Only payment receipts and few letters have been annexed with the plaint. The contesting defendant No.2 has filed written statement as far back as on **03.2.2017** and raised several disputes/ allegations about failure of the plaintiff to perform his part of the contract in accordance with the terms and conditions between the parties annexed with it. The plaintiff, as averred by the defendant in his written statement, has stopped payment of installment of sale consideration since **08.08.2012** and the suit for specific performance was filed on **31.08.2016**. Then the plaintiff obtained interim order on deposit of only amount of **Rs.13,20,000/-** on CMA **No.12377/2016**. Thereafter at the plaintiff's request Nazir's reports were called from time to time and today instead of proposing issues, learned counsel for the plaintiff, insist to dispose of the instant suit on the basis of an earlier order dated **22.10.2019**.

With utmost respect to the order dated **20.10.2019**, I am not persuaded to grant a discretionary decree in favour of the plaintiff without examining his conduct in performing his part of the contract

and the default on the part of the defendant, if any, without framing issues which include legal issue about maintainability and other factual issues, if required, without recording of the evidence of the parties. The perusal of annexure E-37 and prayer clause-2 shows that the plaintiff is not entitled to claim Plot No.B-64 as per the very letter dated **16.02.2013** (Annexure E-37) on which the plaintiff relies. It is categorically mentioned in the said letter that only half of plot B-64 has been sold to the plaintiff and despite relying on this document the plaintiff instead of seeking specific performance of half of the plot, has prayed for specific performance of contract in respect of entire Plot No.B-64.

In view of the above facts on record, the contention of the counsel for the plaintiff that the suit may be decreed by following the orders dated **22.10.2019** without framing of issues is misconceived. He has refused to file proposed issues despite order of this Court dated **15.02.2021**. In my humble view the suit for specific performance cannot be decreed merely on account of certain amounts have been deposited by the Plaintiff with the Nazir of this Court after a gape of several years from the date of payment according to contract etc. It is the duty of the Court to frame issues when there is contest between the parties. Therefore, following legal and factual issues are framed from the pleading of the parties.

LEGAL ISSUES

- i. Whether the relief for specific performance of contract of an immovable property showing sale consideration of Rs.55,00,000/- can be entertained by the High Court in view of pecuniary jurisdiction?
- ii. Whether the plaintiff's suit to the extent of relief for specific performance of contract below the pecuniary jurisdiction of High Court is liable to be returned to the plaintiff?
- iii. Whether the suit for specific performance of joint immoveable property is possible unless the property is

fully identified and bifurcated between the owners, if not what is its effect on contract in respect of property bearing Plot No.B-64?

- iv. Whether the plaintiff can defeat the law of pecuniary jurisdiction in a suit for specific performance of a contract by adding frivolous and un-natural damages to institute a suit before the High Court knowing well that the relief of specific performance of contract on account of value of sale consideration is outside the jurisdiction of High Court and if not, what is its effect?

FACTUAL ISSUES

- i. Whether the plaintiff is guilty of breach of any of the terms and conditions annexed by the defendant alongwith written statement, if yes what is its effect?
- ii. Whether the plaintiff has stopped payment of installments towards sale consideration from August, 2012 till the date of filing of the suit or subsequent date, if yes, what is its effect?
- iii. Whether two agreements of sale in respect of two different properties entered into by the parties on two different dates can be amalgamated in one suit for specific performance on payment of one court fee?
- iv. Whether the plaintiff is not entitled for specific performance of contract of Plot No.B-64 since he has not purchased the entire plot?
- v. What should the decree be?

The Court should take up legal issues first. Learned counsel for the parties are directed to first argue the legal issues before leading evidence.

To come up on **05.05.2021**.

JUDGE

Ayaz Gul