

IN THE HIGH COURT OF SINDH AT KARACHI

BEFORE:
Mr. Justice Muhammad Shafi Siddiqui

IInd. Appeal No. 131 of 2012

Kaleemuddin
Versus
Nawshaba Mobeen & others

Date of Hearing: 30.11.2017

Appellant: Through Raja Aftab Ahmed Khan Advocate.

Respondents: Nemo.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- This Second Appeal is against the concurrent findings of two Courts below. Respondent No.1 filed a suit for recovery of advance amount paid towards sale consideration and damages to the tune of Rs.29,60,000/- which was decreed followed by dismissal of appeal by the appellate Court.

Brief facts are that respondent No.1 reached to an agreement of sale of a property with appellant and an amount of Rs.7 lacs was forwarded towards part sale consideration. The plaintiff filed suit praying therein that a decree in the sum of Rs.29,60,000/- be passed as the appellant had played fraud with her at the time of entering into an agreement of sale as he had no title. Ten issues were framed by the trial Court which include material issues such as issues No.1 to 4 which are reproduced as under:-

1. Whether suit is not maintainable?
2. Whether the defendant No.1 did not supply copies of the title documents to the plaintiff, as he was not owner of the apartment nor he was in possession of the flat in question as such, defendant No.1 had no legal authority to execute sale deed?

3. Whether all the defendants had conspired and conveyed to commit fraud on plaintiff and to cheat her and deprive her from huge amount?
4. Whether it was agreed between plaintiff and the defendant No.1 on or above 20.08.2005, the agreement of sale shall stand cancelled and the defendant No.1 would return/refund total amount of Rs.7,00,000/- within seven days with interest?

The appellant was unable to provide copies of the title documents of the subject property to the respondent No.1 and it has not been established beyond reasonable doubt that he was the owner of the subject property. The Issue No.2 was answered in affirmative by the trial Court. On the basis of the evidence the trial Court reached to the conclusion that there was a conspiracy between respondents No.1 and 2 (alleged owner and agent) and consequently an agreement of sale was executed between the appellant and respondent No.1. The plaintiff on realization of such conspiracy filed suit for recovery of the amount along with damages, which was decreed by the trial Court. The appellate Court maintained the order.

The appellant's counsel read entire cross-examination of respondent No.1 however there is nothing available on record to suggest that the title documents were shown by the appellant. The agreement that was reached provides that the vendor at the time of agreement has shown/considered himself to be sole and undisputed owner, seized and possessed of and is otherwise well and sufficiently entitled to all that a leasehold flat No.F/5, First Floor of the building/project known as Hasan Centre, the subject flat. The appellant has not been able to show either by reading cross-examination of the respondent or through any piece of evidence which was either ignored or if read, could have reversed the findings as recorded by the courts below. The claim of damages has

already been declined by the trial Court and the suit was decreed only to the extent of principal amount of Rs.7 lacs with interest thereon till its realization.

The scope of this Court under revisional jurisdiction is limited to cure the defect, if the jurisdiction was not vested with the trial Court or if the trial Court failed to exercise the jurisdiction vested on it or acted in exercise of its jurisdiction illegally or with material irregularity, which learned counsel for the appellant has failed to point out while arguing the matter at length.

In view of above, no interference is required in the concurrent findings of the courts below. The Revision Application is accordingly dismissed along with pending application.

Above are the reasons of my short order dated 30.11.2017.

Dated:

Judge