

Judgment Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Second Appeal Nos. 78 & 80 of 2016

Appellant
in both appeals : Ramzan Ali Lakhani through his legal heirs,
through Mr. Samsam Ali Khan Advocate.

Respondent No.1
in both appeals : Amir Ali Jamal Nanji
through Mr. Muhammad Aziz Khan Advocate.

Respondent No.2
in both appeals : IIIrd Additional District Judge, Karachi East.

Respondent No.3
in both appeals : VIIth Senior Civil Judge, Karachi East.

Date of hearing : 02.05.2019.

J U D G M E N T

NADEEM AKHTAR, J. – Suit No.967/2004 for possession, mesne profits and permanent injunction was filed by respondent No.1 against the appellant, and Suit No.1058/2004 for specific performance and permanent injunction was filed by the appellant against respondent No.1. Both the above Suits were filed by the parties against each other in respect of half portion of Office No.M-1-B, mezzanine floor, situated in the building known as Mashriq Centre, constructed on Sub-Plot No.ST-6/A/1 out of Plot No.ST-6/A, Block 14, Gulshan-e-Iqbal, Karachi, (**'suit property'**). Through a consolidated judgment and decree dated 14.12.2011, Suit No.967/2004 filed by respondent No.1 was decreed by the learned trial Court to the extent of mesne profits and possession, and Suit No.1058/2004 filed by the appellant was dismissed. Civil Appeals No.27/2012 and 28/2012 filed by the appellant against the findings of the learned trial Court were dismissed by the learned appellate Court vide consolidated judgment and decree dated 25.03.2016 and 02.04.2016, respectively. The above concurrent findings of the learned Courts below have been impugned by the appellant in this second appeal.

2. It was the case of respondent No.1 in his Suit No.967/2004 that he was the owner of the suit property ; the appellant requested him that the appellant may be allowed to occupy the suit property as he had no other place of his own to carry on his business ; as the appellant was on friendly terms with him and was in serious financial crisis, such request was accepted by him on the condition that the status of the appellant shall be that of a licensee, without any

consideration, who shall vacate the suit property as and when demanded by him ; the permission / license granted in favour of the appellant was terminated / withdrawn by him with effect from 01.10.2003 by demanding possession of the suit property ; a legal notice dated 07.08.2004 was sent by him to the appellant as the latter was not honouring his commitment ; and, instead of vacating the suit property, the appellant served a letter dated 17.08.2004 upon him by alleging that the suit property was sold by him to the appellant. In the above background, Suit No.967/2004 was filed by respondent No.1 against the appellant in August 2004 for possession, mesne profits and permanent injunction.

3. In September 2004, the appellant filed Suit No.1058/2004 against respondent No.1 by alleging that respondent No.1 had requested him to supply chicken for poultry business and also to invest in the land of his poultry farm ; amounts of Rs.70,000.00 on account of supply of chicken by him, Rs.1,863,000.00 advanced by him in relation to other business and Rs.500,000.00 invested by him for the land were owed to him by respondent No.1 ; the above amounts were not returned to him nor were the accounts in respect thereof rendered by respondent No.1 ; in partial adjustment of his liability, respondent No.1 agreed to sell the suit property to him in consideration of Rs.800,000.00, which offer was accepted by him ; an amount of Rs.200,000.00 was incurred by him for demarcation and renovation of the suit property ; and, in spite of his requests, respondent No.1 failed to execute sale deed in respect of the suit property in his favour. In view of the above, a decree for specific performance and permanent injunction in respect of the suit property was sought by the appellant in his Suit No.1058/2004.

4. As the parties and subject matter in both the above Suits were common, both the Suits were consolidated by the learned trial Court with direction to treat the respondent No.1's Suit No.967/2004 as the leading Suit, whereafter following consolidated issues were settled :

- “1. Whether any agreement to sell in respect of property in question ½ portion of office No.M-01, situated on the Mezzanine floor of building known as Mashrique Centre was reached between the parties as alleged and claimed by plaintiff ?*
- 2. Whether the terms and conditions of the alleged agreement to sell the property in question can be ascertained, if not, to what effect ?*
- 3. Whether any sale consideration was agreed to and was passed on by the plaintiff to the defendant, if so when ?*
- 4. Whether any cause of action has accrued to the plaintiff to file the present Suit and whether the Suit is within time ?*

5. *Whether the Suit is barred under the law ?*
6. *Whether the permission / license to use and occupy the suit property was withdrawn / revoked / terminated by way of legal notice dated 07.08.2004 of the plaintiff ?*
7. *Whether amount of rental could (!) the suit property or any comparable property fetch per month for determination of rate of mesne profit ?*
8. *Whether the defendant has become trespasser and is in unauthorized possession of the suit property after revocation of license by the plaintiff ?*
9. *Whether the plaintiff is entitled for the reliefs claimed or any part thereof in the Suit ?*
10. *What should be the decree ?”*

5. Respondent No.1 / plaintiff in the leading Suit examined himself and produced several documents in support of his claim whereafter he was cross-examined by the counsel for legal heirs of deceased appellant. On behalf of the appellant, one of his legal heirs examined himself by producing several documents and he was also cross-examined by the respondent No.1's counsel. After evaluating the material available on record and hearing the respective submissions of the parties, Suit No.967/2004 filed by respondent No.1 for mesne profits and possession was decreed by the learned trial Court, whereas Suit No.1058/2004 filed by the appellant for specific performance was dismissed ; and, the appeals filed by the appellant against the consolidated judgment and decree of the learned trial Court were dismissed by the learned appellate Court.

6. Record shows that important admissions were made by the appellant's son / witness in his cross-examination, such as, he did not file any document in support of the assertion made by him in paragraph 2 of his affidavit-in-evidence regarding supply of material by the appellant to respondent No.1 ; he also did not produce any document to show that the appellant had invested any amount in the land for poultry farm / business ; he also did not produce any document in respect of the amounts of Rs.700,000.00, Rs.1,863,000.00 and Rs.500,000.00 allegedly owed by respondent No.1 to the appellant ; it was correct that no date in respect of any of the above amounts was mentioned by the appellant in his pleadings and/or evidence ; no documentary evidence was filed by him to show that loan amount of Rs.100,000.00 was paid by the appellant on behalf of respondent No.1 ; he did not remember the date, month and year when respondent No.1 had allegedly offered to sell the suit property to the appellant ;

he did not know whether any other person was present or not at the time of such offer ; no document was obtained from respondent No.1 that the amount of Rs.700,000.00 had been adjusted leaving the balance amount of Rs.100,000.00 ; and, no documentary evidence was produced by the appellant to establish that specific performance had been claimed or demanded by him in relation to the suit property. All the above admissions made by the appellant's son / witness in his cross-examination were specifically noticed and mentioned in the impugned judgment by the learned trial Court.

7. The burden was squarely on the appellant to prove that there was a binding and enforceable contract between the parties in respect of the suit property and in pursuance thereof he had performed his agreed part of the contract, and that he was entitled to specific performance of such contract. However, the appellant failed in discharging such burden as not a single piece of evidence was produced by him in support of his claim and the above admissions made by his witness / son were sufficient to belie his claim. On the contrary, the averments made by respondent No.1 in his Suit that the appellant was allowed by him to occupy and use the suit property only as a licensee without any consideration on the condition that the appellant shall vacate the same as and when demanded by him, had throughout remained consistent and the same were further reiterated by him in his evidence, which could not be shaken in his cross-examination.

8. In view of the above, I am of the considered view that the concurrent findings of both the learned Courts below are well-reasoned and based on proper appreciation of evidence and law. Learned counsel for the appellant has not been able to point out any illegality or infirmity in the impugned judgments which do not require any interference by this Court. Accordingly, both these appeals and the applications pending therein are liable to be dismissed.

Foregoing are the reasons of the short order announced by me on 02.05.2019 whereby both these appeals were dismissed with no order as to costs.

J U D G E