

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

R. A. No. S – 67 of 2006

1. For orders on statement dated 23.01.2015 (LRs)
2. For Katcha Peshi

Mr. Muhammad Asim Malik Advocate for the applicant.
Mr. Sarfraz A. Akhund Advocate for respondent No.4.
Mr. Ahmed Ali Shahani, Assistant Advocate General.

Date of hearing: 30.10.2017

JUDGMENT

NADEEM AKHTAR, J. Through this Civil Revision Application, the applicant has impugned concurrent findings given against him by the learned trial Court and learned appellate Court. F. C. Suit No.147/1997 filed by the applicant against the respondents for specific performance was dismissed by the learned trial Court vide judgment and decree dated 26.02.2004 and 28.02.2004, respectively ; and Civil Appeal No.34/2004 filed by him against such dismissal was dismissed by the learned appellate Court through the impugned judgment and decree dated 11.05.2006.

2. The case of the applicant before the trial Court, as averred in his plaint, was that agricultural land described in paragraph 1 of the plaint was owned by respondent / defendant No.4 who agreed to sell the same to the applicant vide sale agreement dated 11.04.1992 in consideration of the price mentioned in the said paragraph ; upon receiving part payment from the applicant at the time of the agreement, possession of the subject land was handed over to him by respondent No.4 ; out of several survey numbers, survey No.68 was mutated in his name on 12.07.1995 ; on 02.06.1997, respondent No.4 executed a fresh agreement in his favour in respect of remaining survey numbers viz. survey Nos.70, 71 and 169, whereby sale consideration of Rs.187,125.00 was payable by him ; he paid an amount of Rs.170,000.00 to respondent No.4 leaving a balance of only Rs.17,125.00 which was payable by him on 01.11.1997 at the time of registration of sale deed ; he offered the said amount to respondent No.4 on the agreed date and on several subsequent dates, but respondent No.4

refused to accept the same on all such occasions ; he was ready and willing to perform his remaining part of the contract ; and, despite repeated requests and demands by him, respondent No.4 refused to complete the sale in his favour.

3. In the above background, suit for specific performance and injunction was filed by the applicant. The suit was contested by respondent No.4 by filing written statement wherein sale of the subject land was denied by alleging that the documents filed and relied upon by the applicant were forged and the applicant was his hari. Eight issues were settled by the learned trial Court whereafter the parties led their respective evidence. It was held by the learned trial Court that since only one out of two attesting witnesses of the first sale agreement was produced by the applicant, and none of the two attesting witnesses in respect of the second agreement was produced by him, he had failed to prove both the sale agreements as required under Articles 17 and 79 of the Qanoon-e-Shahadat Order, 1984. This finding was upheld by the learned appellate Court by further observing that one of the witnesses of the applicant had admitted in his evidence that the applicant was a hari of respondent No.4 in respect of the subject land.

4. Mr. Muhammad Asim Malik, learned counsel for the applicant, contended that both the learned courts below failed to give proper findings and reasons in respect of the issues involved in the suit, and the material available on record was not appreciated by the learned courts in its true perspective. He further contended that the very fact that possession of the subject land was and is still with the applicant, was sufficient to accept his claim. It was urged by him that this is a case of misreading and non-reading of evidence which has resulted into miscarriage of justice.

5. On the other hand, Mr. Sarfaraz A. Akhund, learned counsel for respondent No.4, contended that alleged possession of the applicant had no significance as he was a hari of respondent No.4 and such possession does not create any right, title or interest in favour of the hari. He submitted that the alleged sale agreements could be proved by the applicant only through the attesting witnesses, but he had miserably failed in discharging this burden.

He strongly supported the impugned judgments and decrees by submitting that the same are in accordance with law. In support of his submissions, learned counsel relied upon *Ghulam Murtaza V/S Abdul Salam Shah and others, 2007 SCMR 1062* and *Rafaqat Ali V/S Muhammad Farid and others 2007 SCMR 1083*.

6. I have heard learned counsel for the parties and have also examined the material available on record with their assistance. According to the applicant, there were two sale agreements which were produced by him in evidence. Both the said purported sale agreements were attested admittedly by two witnesses each. Thus, both the agreements, being the documents of the applicant, could be proved by him only by producing the two witnesses who had attested the same. Needless to say that the burden to prove execution of these agreements was squarely upon the applicant, however, by not producing the two attesting witnesses, the applicant had failed in discharging such burden in terms of Articles 17 and 79 of Qanoon-e-Shahadat Order, 1984. In such circumstances, both the learned courts below rightly declined the discretionary relief of specific performance to the applicant. I am of the considered view that the concurrent findings of both the learned courts below on this point are in consonance with the law laid down by the Hon'ble Supreme Court. It is well-settled that concurrent findings of fact cannot be looked into or disturbed in revisional jurisdiction.

7. Since the applicant has not been able to point out any illegality or infirmity in the concurrent findings contained in the impugned judgments and decrees, the same do not call for any interference by this Court. This Revision Application is, therefore, liable to be dismissed.

Foregoing are the reasons of the short order announced by me on 30.10.2017 whereby this Civil Revision Application was dismissed with no order as to costs.

JUDGE