

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

R.A. No.70 of 2006

Muhammad Amjad APPLICANT.

Versus

Shaikh Inamullah and others RESPONDENTS.

Date of hearing: 11.04.2022

Date of decision: 29.04.2022

Mr. Arbab Ali Hakro advocate for applicant.

Mr. Jawad Ahmed Qureshi, advocate for respondents No.1 & 2.

ORDER

MUHAMMAD SHAFI SIDDIQUI, J. Applicant filed a suit for performance of an agreement against four defendants. Respondents No.3 & 4 were the original owners with whom applicant entered into contract of sale however before it could be materialized property was purchased by respondents No.1 & 2, without knowledge of previous agreement of sale with applicant. Pleading and evidence are not clear about date of earlier and subsequent agreements however they disclosed that the applicant entered into an agreement with the respondents No.3 & 4 by virtue of an agreement dated 24.09.1977 which is also recorded as 24.09.1978. The pleadings disclosed that prior to this agreement respondents No.3 & 4 earlier entered into an agreement of sale with respondents No.1 & 2 through broker Akber Ali Khowaja. However, the deal at the relevant time was not materialized as the offer was much less than what was offered by the applicant. Sale deed however was registered on 01.10.1978 in favour of respondents No.1 & 2 who claimed no knowledge of any agreement with applicant. Annoyed with it, a suit for specific performance was filed for enforcement of an agreement against all including subsequent buyer as well u/s 27 of the Specific Relief Act r/w section 41 of the Transfer of Property Act. The matter proceeded and the suit was dismissed by virtue

of a judgment dated 24.12.1995 and decree dated 26.12.1995. Aggrieved with the dismissal of the suit, civil appeal No.33 of 1996 was preferred by the applicant which too was dismissed by the appellate court.

2. The substantive questions are; whether defendants No.1 & 2 are bonafide purchasers of the property without any notice to any earlier agreement of sale and whether the execution of the sale deed by respondents No.3 & 4 in favour of respondents No.1 & 2 without advertisement / public notice is lawful or tainted with malice.

3. I have heard the learned counsel and perused the material available on record. Although this revision application is based on the concurrent findings of facts of two courts below, however for the purposes of aforesaid questions respondent No.1 deposed that after filing of the suit only, they came to know that Jan Muhammad had entered into a sale agreement in respect of the said shops with the applicant / plaintiff. Suit was filed on 18.01.1979 whereas on 09th March 1979 he lodged an FIR before police station. He deposed that before purchase of suit property by him, he had no knowledge that there was any transaction between applicant and respondents No.3 & 4. Whatever he deposed in respect of an offence registered u/s 457, 448 PPC was after he acquired knowledge when the suit was filed and by then sale deed was registered. The statement which he recorded that he knew about the agreement between applicant and respondents No.2 & 3, was after he acquired knowledge when a suit was filed, hence it was not a knowledge prior to agreement and/or sale deed. The applicant has not been able to prove that respondents No.1 & 2 had earlier knowledge of the agreement of sale prior to their entering into an agreement of sale with respondents No.3 & 4. Hence, u/s 27(b) of the Specific Relief Act the applicant cannot seek performance of an agreement against the subsequent buyer who had no knowledge of the earlier agreement. Secondly, purchasing a property without public notice also cannot be equated with any malice approach

unless the prior knowledge of agreement is proved. Reliance is placed on the case of *Messrs RAEES AMROHVI FOUNDATION versus MUHAMMAD MOOSA* reported as 1999 C L C 296. Since the applicant has failed to prove that the respondents No.1 & 2 had the knowledge of any sale transaction, the act of purchasing the property without public notice cannot be pressed into service to prove the *mala fide* of the respondents No.1 & 2. It could be a careless approach being less serious but not at par with mala fide / dishonesty. Hence specific performance cannot be enforced against subsequent buyer in view of facts of case. Similarly with respect to other issue which concerns with the willingness of applicant, which also on facts ended against applicants, no claim of any alternate relief of damages could be granted. Even otherwise applicant did not argue as far as alternate relief is concerned. This being the situation and on account of concurrent finding of these facts, this revision application is dismissed.

JUDGE

Ali Haider