

**IN THE HIGH COURT OF SINDH CIRCUIT COURT
HYDERABAD**

IInd Appeal No.23 of 2018

Appellants: Abdul Shakoor and Abdul Hamid
through Mr. Abdul Ghafoor Hakro,
Advocate.

Respondent No.1: Abdul Hamid Brohi through Mr. Farooq
Ali Jakhrani, Advocate.

Respondents No.2to4: Through Mr. Habib-ur-Rehman Jamali,
Assistant Advocate General, Sindh.

Date of hearing: 07.11.2019.

Date of Judgment: 22.11.2019.

J U D G M E N T

AMJAD ALI SAHITO, J. Through instant IInd Appeal, the appellants have impugned the judgment and decree dated 02.04.2018 passed by the learned 2nd Additional Sessions Judge, Badin in Civil Appeal No.21/2018, whereby the learned appellate Court while dismissing the said appeal, maintained the judgment and decree dated 07.02.2018, passed by learned Senior Civil Badin, in F.C Suit No. 131/2015 "Re-Abdul Hamid Brohi v. Abdul Shakoor and others" whereby the suit for respondent No.1/plaintiff was decreed.

02. The facts of the case are that the respondent No.1 (who hereinafter will be referred as "plaintiff") filed a suit for specific performance of contract and permanent injunction against the appellants (the appellants hereinafter will be referred as "Defendants") as well as respondents No.3to5 stating therein that a commercial plot admeasuring 12600 sq.ft situated in Deh Pater, Tapo Badin having boundaries mentioned in the plaint is the property of defendants, (which hereinafter will be referred as "suit plot"). It is also averred in the plaint that

the plaintiff purchased the suit plot from defendants through a sale agreement No.2799 dated 15.01.2015 for total sale consideration of Rs.20,00,000/- and the plaintiff paid the part payment of Rs.15,00,000/- at the time of execution of sale agreement before the witnesses and the possession of the suit plot was handed over to the plaintiff and he is in its physical possession. Per the plaintiff, he incurred a huge amount to develop the suit plot by filling the mud and presently, the suit plot is very much developed. It is further averred in the plaint that according to the conditions of agreement, the defendants have received Rs.5,00,000/- on 05.07.2015 and the plaintiff went to the defendants for registration of sale deed in lieu of balance sale consideration but the defendants asked the plaintiff to wait for some time and also stated that they will come at Badin and then get registered the suit plot on 25.08.2015. However, the defendants along with SHO P.S. Badin came on the suit plot and issued threats to the plaintiff to forcibly occupy the suit plot to which, the plaintiff has shown the sale agreement to the SHO P.S. Badin but the SHO P.S. Badin did not hear the plaintiff. The defendants were trying to get the sale certificate of the suit plot and wanted to sell out the same to the other party without possession and giving rise cause of action to file this suit. It is further averred in the plaint that the defendants are brothers of the one Nazir Abro, who is working in Police Department, and have an influence on the local Police and they are continuously coming to the suit plot and want to forcibly occupy the same, hence, this suit. The plaintiff has prayed for judgment and decree as under:--

- A). *That this Honourable Court may be pleased to direct the defendants Nos.1 and 2 to execute the registered same deed of suit plot viz. 12,600 sq.ft situated in Deh Pater Tapo Badin, Taluka and District Badin in favour of the plaintiff. In case of failure, the Nazir of this Court may direct the Nazir of this Honourable Court to execute the registered sale deed of suit plot on behalf of defendants Nos. 1 and 2 in favour of the plaintiff without fail.*



- B). Issue permanent injunction against the SHO P.S Badin and other defendants not to forcibly occupy the suit plot illegally.
- C). To grant a permanent injunction against the Government defendants not to issue a sale certificate of the suit plot, till the decision of the suit.
- D). The cost of the suit borne by the defendants.
- E). Any other relief which this Honourable Court may deem fit and proper may be passed in favour of the plaintiff.

03. The defendants Nos.1 and 2 filed written statement contesting the suit on legal and factual grounds denying all the adverse contentions of the plaintiff against them. The defendants Nos.1 and 2 further stated that they are Government officials, have not sold the suit plot to the plaintiff. According to them, the defendant No. 1 Abdul Shakoor on 15.01.2015 was on duty as Director Anti Corruption Karachi and never executed any agreement of sale in favour of plaintiff while the defendant No.2 Abdul Hamid was also posted as Deputy Director in Land Revenue Karachi and he was on duty on 15.01.2015 and never came to Hyderabad and executed agreement of sale in favour of plaintiff. According to defendants Nos.1 and 2, the agreement of sale is false, fabricated and manipulated and it has been prepared at the instance of a highly influential political person in order to punish the defendants and to take revenge from them. According to defendants Nos.1 and 2, the suit plot is in their possession and they have also raised compound wall around the suit plot and the plaintiff has never remained in possession of the suit plot at any time. According to defendants neither the plaintiff purchased the suit plot nor he remained in possession and the plaintiff had not incurred any amount for the development of the suit plot which, at present, is in their possession. They further stated that the plaintiff is very influential political people and he has managed false agreement in order to usurp their (defendants Nos.1 and 2) property and has tried to take

possession of the suit plot but they resisted due to which, the plaintiff did not succeed in his civil act. According to defendants Nos.1 and 2, neither the agreement was executed by them nor any terms and conditions were settled in the agreement and the agreement is false and baseless and there is no truth in the agreement. According to defendants Nos.1 and 2, they had purchased the suit plot through registered sale deed, which was issued to them from the Microfilming Authority on 09.02.2015 and it was entered in the Office of Microfilming office Hyderabad vide roll No.1925/3847 dated 09.02.2015 as such, they were not the owners of the suit plot on 15.01.2015 then, how they can execute agreement of sale. Further stated that they are government officials and very respectable persons and they cannot resile from any promise if they make with any person. According to them, even in a faisla before Nekmard Al Kalandar Mirza, the agreement of the plaintiff was found to be a false and fabricated document. The defendants pleaded that the plaintiff has no cause of action to file the suit and, the plaintiff is not entitled to any relief, therefore, they prayed for dismissal of the suit with compensatory costs.

04. In order to decide the matter, the learned trial Court framed the following issues:-

- 1) *Whether the plaintiff had purchased the suit plot admeasuring 126000 square feet situated in Deh Pater through sale agreement No.2799 dated 15.01.2015 for a total sale consideration of Rs.20,00,000/- from defendants No.1 and 2?*
- 2) *Whether the plaintiff paid Rs.15,00,000/- to defendants Nos.1 and 2 as earnest money in presence of witnesses?*
- 3) *Whether the sale agreement No.2799 dated 15.01.2015 is a false and fabricated document?*
- 4) *Whether the plaintiff is entitled to relief as claimed?*
- 5) *What should the decree be?*

05. Learned trial Court after recording evidence led by the parties respectively and hearing them decreed the suit of the respondent No.1/plaintiff vide judgment dated 07.02.2018. Against decree of the suit, the Appellants/defendants Nos.1 & 2 preferred Civil Appeal No.21 of 2018, which was dismissed through judgment dated 02.04.2018 passed by the appellate Court against which the instant appeal has been preferred.

06. Learned counsel for the appellants submitted that the impugned judgments passed by the Courts below are against the facts, law, and equity; that the impugned judgments are based on no evidence and the same are liable to be reversed; that both the Courts below have ignored and not considered the oral as well as the documentary evidence adduced by the appellants. Per learned counsel, the appellants were not the owners on 15.01.2015 on which the alleged sale agreement was executed, but both the learned lower Courts failed to consider the enforceability of alleged sale agreement that both the learned lower Courts illegally considered the agreement of sale dated 15.01.2015 Exh. 23/A and decreed the suit of respondents No.1/plaintiff by misreading the above documents which has no date of execution and the amount of consideration of Rs.1,50,000/- mentioned therein, which is contrary to the pleadings and oral evidence of respondent No.1; that the registered sale deed dated 03.02.2015 Exh.36/A, was presented before Sub-Registrar on 23.10.2014 and same was adjourned for admission of executants namely, Shoaib, Mushtaq and Mst.Farzana, who admitted the registered sale deed on 08.12.2014 and finally they put their signatures on sale deed 03.02.2015, therefore, title of suit property acquired by the appellants is from 03.02.2015 and not from 22.10.2014 as provided under the section of 47 of registration Act. He lastly prayed that the impugned judgments may be set aside.

07. Learned counsel for the private respondent No.1 as well as leaned A.A.G while supporting the impugned judgments submitted that both the Courts below have rendered the



judgments in proper manner after considering the all material aspects as well as examining the evidence available on record, therefore, no illegality or material irregularity is apparent on surface of the impugned judgments. They lastly prayed that the impugned judgments may be maintained and the instant IInd Civil Appeal may be dismissed. Counsel for respondent No.1 has relied upon the case of '**Ghulam Rasool and others Vs. Akbar Ali and others**' [2011 SCMR 794].

08. I have the learned counsel for the appellants as well as respondent No.1, learned A.A.G. and examined the record with their able assistance, and have also gone through the relevant provision of Registration Act, 1908.

09. The main contention of the learned counsel for the appellants is that they have purchased the plot from one Abdul Jabbar and others through a registered sale deed, bearing registration No.244 dated 09.11.2014 Exh.36/A. The registered sale deed was microfilmed on 09.02.2015, they further submitted that they have received the possession of the suit plot after microfilming on 09.02.2015 and the date mentioned by respondent No.1/plaintiff of purchasing the plot, on the said date it was not entered in revenue record nor in their name, therefore, it will only operate and create rights favouring vendor before the date of microfilming of the documents. Whereas, the claim of the respondent No.1/plaintiff is that the appellants sold out the said plot through sale agreement dated 15.01.2015 and possession of the suit plot was handed over him.

10. Admittedly, one Abdul Jabbar and others executed the sale deed on 23.10.2014 with the appellants/defendants. On 22.10.2014 the said Abdul Jabbar deposited sales tax, Rs.1,000 of the total sale amount of Rs. 10,000,00/- in Sindh Bank, Capital Value Tax Rs.25,000 and other taxes on 22.10.2014 so also obtained the sales certificate (the documents are available at page No.153 to 159 of the file. The sale deed was written and signed on 22.10.2014 and registered on

23.10.2014 in the office of Sub-Registrar Badin and microfilmed on 09.02.2015, it is appropriate to reproduce the relevant section 47 of Registration Act, 1908 which reads as under:-

47. Time from which registered document. A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration.

11. A bare perusal of the said provision of law manifests that a registered document shall operate from the time, day when it was written and signed and it will create rights, title, and interest in favour of the transferee from the date of execution and not from the date of registration. In this case as noted above agreement to sale was written and signed on 22.10.2014 and presented on 23.10.2014 before the Sub-Registrar Badin. However, it was microfilmed on 09.02.2015 therefore, in view of section 47 of the Registration Act it will deem to operate from 22.10.2014, and not from 09.02.2015. In the case of *'Muhammad Sadiq v. Muhammad Ramzan and 8 others'* [2002 SCMR 1821], the Hon'ble supreme of Pakistan has held that "**time from which registered documents operates-title is determined from the date of execution and not from date of registration of documents**". In another case of *'Fazal Karim through legal heirs and others v. Muhammad Afzal and others'* [PLD 2003 SC. Page 818] wherein the Honourable Supreme Court of Pakistan has held that:-

"20.the transaction had initiated form a registrar agreement to sell dated 01.10.1979 while sale deed was executed on 30.12.1979. such deed was registered on 23.08.1981 while the proceeding from the first Appellant Court ended on 07.04.1981 due to compromise discussed above. Confusion might arise at any stage that the transaction becomes effective on 23.8.1981 due to attestation thereof, by the Sub-Registrar, while, the lis was not pending at the time, having been deposed on



07.04.1981. This idea is to negate by section 47 of the Registration Act which clearly lays down that a registered document shall operate from the time which it would have commence to operate if no registration thereof had been required or made, and not from the time of its registration. In this legal aspect of the matter the transaction in hand, if genuine otherwise, would be deemed to be operative with effect from 30.12.1979 if not 01.10.1979."

In another case '*Ghulam Rasool and others v. Akbar Ali and others*' [2011 SCMR 749] wherein Honourable Supreme Court of Pakistan has held that:-

"4.that a registered document shall operate from the time, day when it was written and signed and it will create right, title and interest in favour of the transferee from the date of execution and not from the date of registration. In this case, as noted above, the sale-deed was written and perforce of section 47 of the Registration Act, it will deem to operate from 09.11.1946 and not from 03.03.1947. The learned High Court rightly relied upon the case of *Attaullah Malik v. The Custodian, Evacuee Property (PLD 1964 Supreme Court 236)* in which it was inter alia held that;- even if the sale-deed was registered on subsequent date though, it was executed on prior date then after the registration, the transfer operated in the words of section 47 not from the date of registration but from the date on which it would, if no registration was needed, have taken effect."

12. Thus, in view of the above provision of section 47 of Registration Act, 1908 and the above-noted case law, it is held that the agreement of sale executed between Abdul Jabbar and the appellants will be operative and created rights, title and interest to the transferee/vendee in the said property from 22.10.2014 and not from 09.02.2015. Further it is revealed from Ex.36/A Sale-agreement which is written in Sindhi language that "we have already received amount Rs.10,00000/- from appellants and handing over possession of the suit plot on 22.10.2014", hence, the contention of the appellants that they were not the owner of the said plot on 22.10.2014 has no force.

13. The instant 2nd appeal has been preferred against the concurrent finding of the Courts below. A review of both judgments suggests that all aspects of the controversy, as well as the evidence produced by both the parties, have been properly examined by the Courts below. It is established position that 2nd appeal doesn't lie on the ground of error or question of fact as it could only lie on the ground of law or error in procedure, which might have affected decision of the case upon merits. The decision delivered by the Courts below is not based on irrelevant or inadmissible evidence or that the evidence in any view was misread by the Court. Reversal of concurrent finding of fact as a result of re-appraisal of evidence on record under section 100 of C.P.C as sought by appellants is not permissible unless the same was found to be perverse or contrary to the evidence on record. Reliance is placed on the case of '**Syed RAFIUL QADRE NAQVI v. SYEDA SAFIA SULTANA & others**' [2009 SCMR 254], the Honourable Supreme Court of Pakistan has held that:-

"6. From a perusal of above grounds mentioned in section 100, C.P.C., second appeal does not lie on the ground of error or question of fact. It only lies on ground of law or error in procedure which may have affected decision of case upon merits. The decision arrived at by two Courts below was not shown to be either based on irrelevant or inadmissible evidence or further that evidence had anyway been misread by them. Although concurrent findings could not be reversed in case of non-reading or misreading of evidence but the learned single judge has not pointed out any flaw in the evidence to set aside the concurrent findings that evidence had anyway been misread by them. It is obvious that learned single judge had wrongly interfered with concurrent findings of fact. Reliance may be placed on the case of Abdul Rashid v. Mst. Bashiran and another 1996' SCMR 808. A similar view has been taken in the case of Haji Sultan Ahmad (deceased) through L.Rs. V Naeem Raza and others 1996 SCMR 1729. As per provisions of section 100, C.P.C. reversal of concurrent findings of fact as a result of reappraisal of evidence on record is not permissible unless the same is found to be perverse or contrary to the evidence on record."

While exercising jurisdiction under section 100 C.P.C, the concurrent findings of the fact recorded by two Courts below can not be interfered or reversed on surmises and conjectures until and unless it is shown that such findings have been arrived at either by misreading of evidence on record or by ignoring the material piece of evidence on record or through perverse appreciation of evidence. However, I have not found such condition in the instant case. In this context, I am also fortified the view taken by the Apex Court in the case of '*AMJAD SHARIF QAZI v. SALIM ULLAH FARIDI and others*' [2006 PLD SC 777].

14. As a result of what has been discussed above and with guidance of case law of the apex Court [supra], I am of the view that the learned trial Court after appreciating the evidence brought on record has come to the conclusion that the respondent No.1/plaintiff has successfully proved his case and the suit was decreed as prayed by him. The learned Appellate Court after re-appraisal of the evidence has dismissed the appeal and maintained the judgment and decree of the trial court. A reading of the both the judgments passed by both Courts below as well as evidence brought on the record would reveal that the same are based on proper appreciation of the facts and circumstances of the case and also on accurate appraisal of the evidence and there is no illegality, irregularity or any jurisdictional defect, hence, the same does not call for any interference by this Court. The learned counsel for the appellants has also not been able to point out any illegality or infirmity or jurisdictional defect in the impugned judgments and decrees passed by both the learned courts below. Accordingly, the appeal being devoid of merit is **dismissed** along with listed applications with no order as to costs.



Sd/- AMJAD ALI SAHITO,
JUDGE