Order Sheet

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No.S-45 of 2019

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE.

1. For hearing of main case.
2. For orders on CMA No.205/19

Date of hearing.
14.04.2022

Mr. Sikandar Ali Junejo Advocate for Applicant.
Mr. Tarique G. Hanif Mangi Advocate for respondents.

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JUDGMENT

ARSHAD HUSSAIN KHAN, J.- The applicant through instant Revision Application has called in question the judgment and decree dated 27.11.2018, passed by III-Additional District Judge, Sukkur, in Civil Appeal No.109 of 2017, dismissing the appeal preferred by the present applicant/plaintiff, maintained the Order dated 15.05.2017, passed by IIIrd Senior Civil Judge, Sukkur, in F.C Suit No.272 of 2017.

2. Briefly, the facts giving rise to instant Revision Application are that applicant/plaintiff filed F.C suit No.272 of 2017 [Re-Ameenullah v. Mujeebullah & others] for possession through pre-emption and permanent injunction. It is averred that applicant/plaintiff was co-sharer and *Shafi-e-Jaar* as the suit property is adjacent to the flat of the plaintiff as such the plaintiff had right of pre-emption as *Shafi-e-Jaar* and *Shafi-e-Khalit*. On 16.11.2016, the plaintiff came to know about sale of the suit property, on which he, before his witnesses, made first demand to respondent Nos.4 and 5 (purchasers of suit property) by exercising his right of pre-emption but respondents refused. Then, plaintiff made second demand before his witnesses Javed Ahmed and Muhammad Imran but respondents No.4 to 5 again refused. Thereafter, the applicant/plaintiff approached the Sub-Registrar and obtained certified true copy of Sale-Deed, and filed FC Suit No. 272 of 2017 and has prayed for directions to defendant to receive sale consideration of Rs.500,000/- from him and get his name substituted in respect of suit property. He has further prayed for grant of permanent injunction. Upon notice of the

case, respondents No.4 and 5 filed application under Order VII Rule 11 CPC for rejection of the Plaint. Learned trial court, after hearing the parties rejected the plaint of the suit, vide order dated 15.05.2017. Relevant portion of the order is reproduced as under;

> *"Para-9 of the plaint does disclose that there had been specific reference to the first demand. Nevertheless plaintiff voices that the plaintiff came to know about the sale on 16.04.2016 at 09:00 p.m. and without loss of time he made Talab-i-Muwasibat. Plaintiff has produced certified copy of the registered sale-deed obtained by him and stamp paper on which endorsement of the certified copy is there has been produced by plaintiff on 14.11.2016. This document has been produced by plaintiff himself. This shows that the plaintiff was in the knowledge of sale on 14.11.2016 when he purchased the same and, therefore, making Talab-i-Muwasibat on 16.11.2016 was not with promptitude and in such circumstances obvious result would be failure of the suit as being incompetent.*
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> *In such a situation, the plaint is rejected.*

3. The said order was subsequently challenged by plaintiff/applicant in Civil Appeal No.109 of 2017, and the said appeal was dismissed by learned III-Additional District Judge, Sukkur, vide judgment dated 27.11.2018. Relevant portions whereof are reproduced as under:

> "I have considered the reason of rejection of plaint and I have also analyzed the explanation given by learned Advocate for appellant in opposition to that reason. It is settled by now that Talab-e-Muwsabat is a jumping demand and it should be made immediately upon the receipt of information and any delay in making this demand defeats the right of pre-emption. One may refer to D.F. Mulla's 'Principles of Mahomedan Law' where (in section 236) he defines Talab-e-Muwsabat as under;
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> > *"236. Demands for pre-emption- No person is entitled to the right of pre-emption unless.*
> >
> > *(1) he has declared his intention to assert the right immediately on receiving information of the same. This formally is called Talb-i-Mowasibat (literally, demand of jumping, that is, immediately demand);"*
>
> It is to be noted from the above section that a claim of pre-emption must be made immediately upon learning of the sale. Plaintiff has himself produced a document (stamp paper) which is stating that plaintiff was in knowledge of sale on 14.11.2016, on which date, he purchased the stamp paper but he remained silent for two days and made first demand on 16.11.2016 at 09:00 p.m. This is showing that he has not made the immediate demand, as required by law and in such

circumstances appellant/ plaintiff has lost his right of Shaffa (pre-emption). Reference can be made to the case of Subhanuddin v. Pir Ghulam (PLD 2015 SC 69), on his point I have analyzed the explanation given by the learned advocate for appellant regarding the stamp paper and the date (14.11.2016) mentioned on it but I do not consider that explanation satisfactory as it appears an afterthought and an attempt to fill up a lacuna. I have respectfully gone through the case law relied by learned Advocate for appellant but in my opinion, same is not attracting on circumstances of present case and it has distinguishable circumstances from the matter in hand.

Above discussion has brought me to the conclusion that trial Court has rightly rejected the plaint and I see no illegality in the impugned order. Accordingly, the points No.i and ii are answered in negative.

Point No.iii.

Therefore, keeping forth the above discussion, instant appeal is dismissed for the reasons discussed above".

4. Learned counsel for the applicants while reiterating the facts has contended that the orders impugned herein are not sustainable in law and facts both. It is contended that the learned courts below while passing the impugned orders have failed to consider the evidence available on the record, which fully support the stance of the applicant.

5. Conversely, counsel for respondent stated that both the decision of courts below are just and proper, do not require any interference by this Court.

6. The provisions of Section 115, C.P.C. envisage interference by the High Court only on account of jurisdiction alone, i.e. if a court subordinate to the High Court has exercised a jurisdiction not vested in it, or has irregularly exercised a jurisdiction vested in it or has not exercised such jurisdiction so vested in it. It is settled law that when a court has jurisdiction to decide a question it has jurisdiction to decide it rightly or wrongly both in fact and law. The mere fact that its decision is erroneous in law does not amount to illegal or irregular exercise of jurisdiction. For an applicant to succeed under Section 115, C.P.C., he has to show that there is some material defect in procedure or disregard of some rule of law in the manner of reaching that wrong decision. In other words, there must be some distinction between jurisdiction to try

and determine a matter and erroneous action of a court in exercise of such jurisdiction. It is a settled principle of law that erroneous conclusion of law or fact can be corrected in appeal and not by way of a revision, which primarily deals with the question of jurisdiction of a court i.e. whether a court has exercised a jurisdiction not vested in it or has not exercised a jurisdiction vested in it or has exercised a jurisdiction vested in it illegally or with material irregularity.

7. It may be observed that the facts and documents admitted on record may be taken into consideration by a court while deciding an application under Order VII, Rule 11, C.P.C. If a suit is found to be not maintainable being hit by any clause of Order VII, Rule 11, C.P.C. then the Court should try to nib the evil in the bud and should go for rejection of the plaint instead of undertaking a lengthy and cumbersome inquiry of facts in the shape of a full-fledged civil trial. Such an approach would not only save time and energies of the parties but would also save precious time of a court of law. By now, it is mandatory for the trial court as held by the Hon'ble Supreme Court in the case of *'Haji Abdul Karim and others v. Messrs Florida Builder (Pvt.) Limited* [PLD 2012 SC 247], to reject a plaint when it is hit by any of the four clauses mentioned in Order VII, Rule 11, C.P.C.

8. In the circumstances, I am of the considered view that both the learned courts below have rightly appreciated the relevant provisions of the law, in its true perspective which does not call for any interference in the revisional jurisdiction as both the courts below have not committed any material illegality or irregularity while passing the impugned judgments/orders. The learned counsel for the petitioner/plaintiff has failed to point out any jurisdictional defect and non-application of judicial mind by courts below, therefore, this civil revision petition having no merits is accordingly dismissed leaving the parties to bear their own costs

JUDGE

Ihsan.