

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.692 of 2008

Khalid Jamil-----Plaintiff

Versus

Syed Nasim-ul-Hasan-----Defendant

Date of hearing: 26-02-2016

Date of judgment: 26-02-2016

Plaintiff: Through Mr. Abdul Aziz Abro, Advocate.

Defendant: Nemo (Ex-parte)

J U D G M E N T

Muhammad Junaid Ghaffar, J. Through this Suit the Plaintiff has sought Specific Performance, Cancellation and Injunction against Defendant No.1 in respect of a Sale Agreement dated 19-10-2007 for purchase of immovable property bearing House No.A-54, Jinnah Garden Model Colony, Malir Karachi for a total sale consideration of Rs.68,00,000/-. After issuance of notices and summons none has affected appearance on behalf of Defendant No.1 and vide Order dated 31.03.2010, the Defendant No.1 was declared as Ex-parte. It appears that thereafter, Defendant No.2 was impleaded as a party on the ground that the Defendant No.1 had sold out the property to Defendant No.2 and had also executed Sale Deed in his favour. On 02.05.2011 the Plaintiff and Defendant No.2 compromised the matter before the Court as Defendant No.2 had paid Rs.500,000/= to the Plaintiff as compensation and return of the token money pursuant to Sale Agreement dated 19.10.2007. The Plaintiff thereafter filed Affidavit-in-Evidence in Ex-parte proof and produced Sale Agreement dated 19.10.2007 (**Exhibit PW-1/4**) and Receipt dated 19.10.2007 (**Exhibit PW-1/5**) issued by Defendant No.1 for Rs.1 Million.

2. Counsel for the Plaintiff submits that since Defendant No.1 has been declared Ex-parte, therefore, Plaintiff is entitled for return of the token money of Rs.10,00,000/= as well as damages.

3. I have heard the Counsel for the Plaintiff and perused the record as well as the evidence file. Insofar as, the payment of token money is

concerned, the Plaintiff has exhibited the Original Receipt, which bears the signatures of Defendant No.1 as well as the Sale Agreement dated 19.10.2007, which the Defendant No.1 has not come forward to challenge. Insofar as, the claim of damages is concerned, the same does not appear to be justified for the reason that after settlement with Defendant No.2, the Plaintiff has not amended the plaint to claim any damages as initially the Suit was filed only for Specific Performance and Injunction. In the circumstances, no damages can be granted.

4. Insofar as the return of token money is concerned, the Order dated 02.05.2011, whereby, the Plaintiff had entered into a compromise with Defendant No.2 reflects that Rs.500,000/- was paid by Defendant No.2 in lieu of return of token money pursuant to the Agreement dated 19.10.2007, therefore, I am of the view that the Plaintiff is only entitled for Rs.500,000/-, out of 10,00,000/-, which he has paid as token money to Defendant No.1.

5. In the circumstances and for the reason that the claim of the plaintiff has gone unchallenged, the Suit of the Plaintiff is decreed against Defendant No.1 in the sum of Rs.500,000/- (Five hundred thousand only) along with markup as prescribed by the State Bank of Pakistan in the relevant period from the date of institution of Suit till its realization.

6. Suit decreed. Office is directed to prepare decree accordingly.

Judge