

M. Rafiq S/o. M. Akbar
Vs.
Sarfaraz H. Abidi & others.

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
II-Appeal No. 37 of 2014

Date	Order with signature of Judge
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1. For orders on office objections as at "A".
2. For hearing of CMA No. 2548 of 2019.
3. For hearing of main case.

10th December 2020.

Mr. Khaleeq Ahmed, advocate for appellant.
Mr. Badar Alam, advocate for respondent No.1

Through instant II-Appeal appellant has challenged the judgment dated 01.03.2014 and decree dated 06.03.2014 passed by learned III- Additional District Judge Karachi East in Civil Appeal No. 168 of 2011 whereby the suit filed by the appellant (plaintiff) was dismissed and the judgment of the civil court was maintained.

2. Heard learned counsel for the respective parties .
3. At the outset, learned counsel for the appellant contends that impugned judgments recorded by both courts below are not sustainable under the law; trial Court and appellate court have failed to adjudicate upon the issue with regard to allotment and lease in favour of the present appellant. He further contends that trial Court relied upon documentary evidence produced by one KDA official who was not aware about facts of the case and brought relevant record.
4. Whereas, learned counsel for the respondent has emphasized over memo of suit No.100 of 2005, through which declaration to ownership of plot bearing No. B-543, Sector 32-A, Korangi Town by virtue of lease deed was sought, according to learned counsel, plaintiff has failed to establish his case by producing any relevant original documents.
5. At the outset, it needs to be clarified that scope of the *Second Appeal* is limited one and normally the concurrent findings, so recorded, would not be open to interference unless it is, *prima facie*, established that decision of lower

courts is contrary to law or that same is contrary to law or usage, having the force of law. Reference may be made to the case of Naseer Ahmed Siddique v. Aftab Alam & another PLD 2011 SC 323 wherein it is held as:-

“17. Where trial Court has, exercised its discretion in one way and that discretion has been judicially exercised on sound principles and the decree is affirmed by the appellate Court, the High Court in second appeal will not interfere with that discretion, unless same is contrary to law or usage having the force of law’

In another case of Akhtar Aziz v. Shabnam Begum 2019 SCMR 524, it is held as:-

14. ... Although in second appeal, ordinarily the High Court is slow to interfere in the concurrent findings of fact recorded by the lower *fora*. This is not an absolute rule. The Courts cannot shut their eyes where the lower *fora* have clearly misread the evidence and come to hasty and illegal conclusions. We have repeatedly observed that if findings of fact arrived by Courts below are found to be based upon misreading, non-reading or misinterpretation of the evidence on record, the High Court can in second appeal reappraise the evidence and disturb the findings which are based on an incorrect interpretation of the relevant law....

6. Since this is a second appeal and appellant is required to prove that both judgments are contrary to evidence and against such principles of law. Here custodian record of rights appeared before the trial Court and produced material evidence which is against the appellant, appellant has failed to produce any concrete evidence regarding his legal character. Besides trial court in its finding has rightly observed that:-

“All the aforesaid evidence and the discussion above reveals that there is no doubt that originally plot in question have been allotted to one Mateen Khan from whom the defendant No.1 have purchased the same through a sale agreement and having given irrevocable power of attorney which documents still are available in the office of the defendant No.2 & 3 besides the above, the documents produced by plaintiff have not been recognized even awing not available in the office the defendant No.2 & 3 and neither the author of the said documents nor the signatory have been examined to corroborate the said documents as much as all the documents produced by defendant No.1 in his evidence have been treated as a genuine one available in the record of the defendant No.2 das 3 who is a competent to recognized and to maintain to such record, even to transfer and allot the plots in Karachi and there is no reason to disbelieve of the evidence or defendant No.1 which have been corroborated by the responsible

official of the defendant No. 2 & 3 that the original allottee of plot No.G-543 Sector 32-A measuring 320 square yards situated at Korangi Township, as per record of defunct KDA (City District Government) is a one Abdul Mateen Khan to whom it was allotted in lieu of plot bearing No.68 measuring 400 square yards in Block 1-A Landhi Colony, which is in occupation and possession of the plaintiff illegally and unlawfully and there is no record available in the office of the defendant No.2 & 3 having purchased plot bearing No. G-543 Sector 32-A measuring 320 square yards situated at Korangi Township from its original and true owner, even the said sale agreement plaintiff himself has not produce in evidence about which plaintiffs son also have shown ignorance as much as the said Rehmat Ali also has not been examined in evidence to corroborate and establish that he was/is a lawful and true owner of the plot in question having been allotted by any authority and that he legally have transferred the said plot to the plaintiff, thus issue replied that Abdul Mateen Khan is a rightful allottee plot No. G-543 Sector 32-A measuring 320 square yards situated at Korangi Township, and he sold the same to the defendant No.1 and the plaintiff has failed to establish its purchase from the lawful and true owner.

ISSUE NO.5

On du. basis of my findings upon issue No.3 that originally allottee of the plot G-543 Sector 32-4 measuring 320 square yards situated at Korangi Township was Abdul Mateen Khan who sold the same to the defendant No.1 and that plaintiff have not produce document having recognized by the authority, even sale and purchase from the Rehmat Ali to whom he states having allegedly purchased the same, thus there is no doubt that the plaintiff has no right and title over the plot in question, although he is in possession and his possession over the said plot is no more as encroacher and the documents produced by him are manipulated and managed."

In view of above findings that appellant failed to produce any cogent evidence to establish his case, even custodian of record of rights appeared in court, produced record which shows that documents were not part of official record, hence, instant II-Appeal is dismissed alongwith pending applications.

JUDGE

SAJID