

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

R.A No. 30 of 2015

Applicant : Syed Miran Muhammad Shah through
Mr. Shabeer Hussain Memon, Advocate

Respondents : Syed Maqsood ul Bari and others
Mr. Manzoor Hussain Subhopoto, Advocate

Date of hearing
and Order : 22.08.2022

ORDER

ADNAN-UL-KARIM MEMON, J. Through instant revision application, the applicant has called in question the vires of the judgment dated 20.01.2015 passed by learned VII- Additional Sessions Judge, Hyderabad in Civil Appeal No. 116 of 2011, whereby the learned Judge while allowing the Civil Appeal set-aside the Judgment dated 29.03.2011 and Decree dated 5.4.2011 passed by the trial Court in F.C. Suit No. 67 of 2008. The applicants have now filed the instant Civil Revision Application under Section 115 CPC.

2. Brief facts of the case, in nutshell, are that plaintiff/applicant filed suit for specific performance of the contract, declaration, and mandatory injunction mainly against respondent No.1 stating therein that respondent/defendant wanted to sell his house bearing No. 27, A/B situated in Salma Garden, Hussainabad near WAPDA Colony Hyderabad against a sum of Rs. 16,00,000/-. Since the said house was already rented out by defendant No.1; therefore, the applicant/plaintiff paid Rs. 1,00,000/- as a token amount and further it was agreed that the remaining amount would be paid upon vacating the house by the tenant and executing sale deed; subsequently the tenant of the house was adamant to vacate the said house; therefore, on the request of defendant/respondent the plaintiff himself got vacated the house from the tenant by incurring an amount of Rs.2,00,000/-, subsequently the defendant asked the plaintiff to pay Rs. 2,00,000/- more as he was in crisis and the defendant was asked by the plaintiff for deduction of the said amount from the principal amount; since defendant No.1 failed/neglected to execute the sale deed, therefore, he filed suit for specific performance of the contract, declaration and mandatory injunction.

3. Upon notice defendant No.1 filed written statement, admitting that he and the plaintiff had entered into sale agreement in respect of suit property against a sum of Rs. 16,00,000/- and also admitted receipt of Rs. 1,00,000/- as token money, but he denied all the other amounts.

4. On the pleadings of the parties, the learned trial court framed the following issues:-

1. Whether defendant No.1 has agreed to sell the suit property to the plaintiff in the sum of Rs.16,00,000/-?
2. Whether defendant No.1 has executed the sale agreement dated 4.12.2006 in favor of the plaintiff in respect of suit property by getting Rs. 1,00,000/- as token money through the bank before the witnesses?
3. Whether the plaintiff spent Rs. 2, 00,000/- for getting the suit property vacated on request of defendant No.1?
4. Whether the plaintiff paid Rs. 2,00,000/- to defendant No.1 on 03.06.2007 before the witnesses?
5. Whether the plaintiff has arranged the remaining sale consideration amount?
6. Whether the defendant No.1 has failed to perform his contractual obligations by delivering vacant possession and registering the suit property in the name of the plaintiff?
7. Whether the plaintiff is entitled to get the suit property to be registered in his name by paying the remaining amount/
8. What should the Decree be?

5. Learned trial court after recording evidence of both the parties on the above issues, decreed the suit of plaintiff vide Judgment and decree dated 29.3.2011. The said Judgment was assailed in Civil Appeal No. 116 of 2011 whereby the learned VIIIth Additional Sessions Judge, Hyderabad allowed the appeal and set aside the Judgment and decree of the trial court on the analogy that the plaintiff had no cause of action against the defendant to file a suit in terms of clause 21 of Specific Relief Act, hence the instant Civil Revision Application.

6. Mr. Shabeer Hussain Memon learned counsel for the applicant has submitted that that the impugned Judgment and Decree passed by learned Appellate court suffers from legal infirmity and is liable to be set-aside; that sale consideration has been admitted by respondent No.1 as well as receipt of token amount thus the applicant proved the case regarding specific performance of contract but the appellate court has failed to consider the evidence in its true perspective; that the evidence of plaintiff and his witnesses is in line with each other and there is no contradiction between them; that in cross-examination respondent No.1 has admitted his signature on first page of sale agreement while denied his signature on page 2 of sale consideration which infers that when respondent No.1 signed the sale agreement on the first page he was fully aware of the transaction; that the findings of learned trial court are just and in accordance with law but the learned appellate court set-aside the same without any reason and lawful justification; that learned appellate court reversed the findings merely on technical point which is not permissible under the law; that learned appellate court failed to consider that the applicant / plaintiff arranged the remaining sale consideration by selling his house and such amount was kept in bank and such bank statement was

produced in court. He lastly prayed for allowing the instant Civil Revision Application.

7. Mr. Manzoor Hussain Subhopoto learned counsel for the respondent has opposed the maintainability of the instant revision application and supported the impugned order passed by the learned appellate Court on the premise that the applicant failed and neglected to perform his part of contract in terms of sale agreement, therefore, learned appellate court rightly upset the decision of learned trial court. On the issue of conflicting decisions, he submitted that in the event of a conflict of judgments, in principle, the findings of the Appellate Court are to be preferred and respected.

8. I have heard learned counsel for the parties on the subject issue and perused the conflicting judgments and decrees passed by both the courts below and other material placed on record.

9. In the present case appellate court upon the careful, conscience, and lawful appreciation of evidence of the parties in juxtaposition to the case set up by the respondent allowed the appeal and rightly concluded as under:-

“The section 21(a) of the Specific Relief Act 1877 provides that “a contract for the non-performance of which compensation in money is an adequate relief cannot be specifically enforced”. Besides this, the subsection-C of Section-21 of the said act also provides that a contract cannot be specifically enforced the terms of which the court cannot find with reasonable certainty”. The said sale agreement (Ex.33-A) shows that in Para No.5 it was agreed that in case appellant/ defendant No.1 failed to deliver the possession of suit house to respondent No.1 / plaintiff and then he would pay Rs.2,00,000/- as fine to respondent No.1 / plaintiff. Therefore, the case of respondent No.1/ plaintiff fall under Section 21(a) of the Specific Relief Act, 1877. Therefore, this agreement cannot be enforced as respondent No.1/plaintiff can be compensated through an adequate relief as provided para No.5 of sale agreement. Moreover, this sale agreement (Ex.33-A) shows that date of making remaining sale consideration of Rs.15,00,000/- by respondent No.1/ plaintiff is left blank in para No.3 the Para No.4 of this sale agreement is entirely left blank, whereas in para No.5 date also not mentioned.

In these circumstances, the sale agreement is of nature in which court cannot find with reasonable certainty, hence the same fall under Section 21(e) of the Specific Relief Act. In these circumstances, I am view that respondent No.1 / plaintiff is not entitled for the claim relief and a suit is barred under Section 21 of the Specific Relief Act.

Upshot of the above discussion are that learned trial court has not properly appreciated the evidence on record and has erred to check the maintainability of the suit in view of the terms and conditions shown in the sale agreement, specially the Para No.5 of the same. Accordingly the instant appeal is allowed, consequently the impugned Judgment and Decree passed by the learned IV-Senior Civil Judge, Hyderabad in first class suit No. 67 of 2008 are set-aside. The suit of respondent No.1 / plaintiff is dismissed. There will be no order as to costs.

10. Primarily, it was obligatory for the applicant on the first appearance before the trial Court or on the date of institution of the suit under the Specific Relief Act 1877, to deposit the balance amount in terms of the sale agreement; and, merely say

that the amount was lying in his bank account, which was not handed over to the seller, was/is not sufficient to ask for enforcement of his part of the contract; and, any omission on his part entailed in dismissal of his suit, which was/is the right decision does not require reappraisal; and, interference at revisional stage.

11. In view of the above legal position to which no exception can be taken, I do not see any infirmity much less illegality in the impugned appellate order dated 20.01.2015 passed by learned VII- Additional Sessions Judge, Hyderabad in Civil Appeal No. 116 of 2011, therefore, this revision application is not maintainable and is accordingly dismissed with no order as to costs.

JUDGE

Karar Hussain /PS