

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

IInd Appeal No. 111 of 2022

Appellant : Mir Abdul Qayoom, through
Zafar Iqbal Seenharo,
Advocate.

Respondent No.1 : Muhammad Aslam, through
Jawad Ahmed Qureshi,
Advocate.

Respondent No.2 : M/s. Gulshan-e-Mehran
Housing Scheme, through
Anwar Ai Solangi, Advocate.

Date of hearing : 29.04.2024 and 07.05.2024.

JUDGMENT

YOUSUF ALI SAYEED, J.- This Second Appeal assails the concurrent findings of the *fora* below, commencing with the Judgment and Decree dated 24.03.2022 of the learned 5th Senior Civil Judge Hyderabad in F.C Suit No.578 of 2013 instituted by the Respondent No.1 and culminating in the Judgment and Decree dated 26.09.2022 of the 8th Additional District Judge Hyderabad dismissing Civil Appeal No. 74 of 2022 preferred thereagainst by the Appellant.

2. The dispute underpinning the matter revolves around the rival claims espoused by the Appellant and Respondent No.1 to the ownership and possession of Plot Number 74/C situated in Gulshan-e-Mehran Housing Society, deh Sari, Taluka & District Hyderabad.

3. The Respondent No.1/Plaintiff claims ownership on the basis of a registered instrument executed by the Respondent No.2, M/s. Gulshan-e-Mehran Housing Scheme, through its attorney, Muhammad Yousif, in favor of one Majida Khanum, from whom the Respondent No.1 purchased the same through a registered lease deed dated 22.12.1987, where the property was referred to in the opening paragraph as Plot Number 74/C-I but then described in the Schedule as Plot Number 74/C.

4. Conversely, the Appellant claims to be the owner of Plot Number 74/C by virtue of having acquired the same from the Respondent No.2, Bibi Asmat Zohra, with it being averred that she had acquired the same from the Respondent No.2 via a registered lease deed dated 17.08.1999 and that the Appellant had then acquired the same from her through a sub-lease deed dated 16.03.2002.

5. In view of the Appellant's rival claim coupled with possession, the Respondent No.1 instituted the aforementioned Suit claiming a declaration of his title, cancellation of the instruments purporting to confer title on the Appellant and Respondent No.2, as well as possession, mesne profits, and injunction, whilst asserting that that the subsequent transactions in favour of the Respondent No.2 and Appellant were fraudulent and void.

6. Due to the discrepancy in the plot number mentioned in the opening paragraph of the lease deed dated 22.12.1987, the subject of the Suit was referred to in the Plaint as Plot Number 74/C-I, with the Appellant not denying the Respondent No.1's title per se, but instead raising the plea that such a plot did not exist at the site at all and that he had no connection with the property that was being claimed.

7. Initially, the trial Court framed several issues for determination, including the maintainability of the suit, limitation, cause of action, existence of the plot in question, ownership of the plot by the appellant, and cancellation of certain registered deeds. The matter proceeded accordingly, with the Suit coming to be partly decreed and partly dismissed by the trial Court on 29.09.2018, in as much as the relief claimed by the Respondent No.1 against the Appellant was denied whereas the Respondent No.2 was directed to tender compensation.

8. That decision was impugned by the Respondents Nos.1 and 2 through Civil Appeals Nos.172 and 176 of 2018, which were allowed by the VIIIth Additional District Judge Hyderabad on 29.09.2021, with the matter being remanded for decision afresh after framing of additional issues and providing an opportunity to the parties to adduce evidence, if so desired.
9. Three additional issues then came to be framed regarding the authenticity and genuineness of the lease deed dated 26.9.1985 executed by Respondent No.2's attorney in favor of Majida Khanum and the lease deed dated 22.12.1987 executed by her in favor of the Respondent No.1, as well as the availability of Plot No.74-C for resale in the year 1999.
10. Thereafter the matter came to be decided through the Judgment dated 24.03.2022, whereby the Suit was decreed to the extent of the reliefs of declaration, cancellation and possession sought against the Appellant, with the Appellant then mounting an unsuccessful challenge to such a determination through Civil Appeal No. 74 of 2022.
11. Essentially, the crux of the matter boils down to whether Plot Number 74/C-I existed at all and whether or not the title of the Respondent No.1 was in fact in respect of Plot Number 74/C.

12. The trial Court resolved the matter while considering the principle that when there is a conflict in the description of a property, the boundaries should prevail. The Court also noted that the Plaintiff had mistakenly referred to the plot as 74/C-I due to such a reference in the body of the sale deed but that in the Schedule thereto the property had been clearly indicated as 74/C.

13. The trial Court also went on to observe that the controversy as to the title of the Respondent No.1 in respect of Plot No. 74/C had also been resolved in his favour in proceedings between the protagonists before the revenue authorities, where it had been determined that the Respondent had purchased Plot No. 74/C and the mutation entry in the name of the Appellant had been cancelled and the Appellant's challenge thereto before Senior Member Board of Revenue had proven unsuccessful.

14. The Court thus concluded that the title of the plaintiff was in respect of Plot No. 74/C, which predated the transaction of the Appellant, hence the property did not admit to further alienation at that time and that the subsequent chain of documents were void and liable to be cancelled, with the Court therefore ordering the same and granting possession to the

Respondent No.1, but declining the prayer for mesne profits as it was not specifically pressed at trial.

15. The Appeal filed by the Appellant failed to yield any positive result as the Appellate Court found that the trial Court had correctly decided the issues in accordance with the law and the evidence presented, and determined that no error or illegality had been committed while entering judgment.

16. Indeed, a perusal of the respective lease deeds dated 26.9.1985 and 22.12.1987 shows that the in both Schedules the plot number mentioned is 74/C, with the boundaries of the plot being specified as as follows:
 - East: Plot No. 73
 - West: Plot No. 75
 - North: Plot No. 93
 - South: Plot No. 25' wide road.

17. Needless to say, describing the land with reference to boundaries is significant because it provides a clear and specific identification of the property, as the boundaries serve as physical markers that define the extent and limits of a particular piece of land. Mentioning the boundaries in a legal document such as a lease helps to avoid ambiguity and ensures that there is no confusion or dispute regarding the exact location and extent of the property, hence the information provides a precise and objective way to identify and distinguish one property from another and is crucial for determining ownership, resolving

boundary disputes, and establishing rights and responsibilities related to the land.

18. In the case reported as Muzafar Iqbal v. Mst. Riffat Parveen and others, the Supreme Court set out the parameters of a Second Appeal under Section 100 CPC after considering a host of judgments on the subject, with it being held that:

“8. The jurisdiction of a High Court under section 100, C.P.C. is constricted to appeals encompassing a substantial question of law rather than causing interference on a pure question of fact and, while taking cognizance by means of second appeal under section 100, C.P.C., it is a foremost fragment of jurisdiction to formulate the question of law which is inherent in the spirit of such jurisdiction, hence, for all intents and purposes, the requirements of Order XLI, Rule 31, C.P.C. must be complied with, however, if it is conceivable from the judgment that substantial compliance has been made whereby the cause of justice has not suffered or depreciated, that would be sufficient for the safe administration of justice despite non-adherence to the said Rule stricto sensu. Instead the litmus test is to visualize from the perusal of the judgment whether the controversy between the parties has been decided with proper appraisal, weighing and balancing the evidence and law and, if it is manifested from the judgment, then obviously it would be valid even though it does not contain the points for determination. The right of appeal gives rise to a notion of accentuating by twofold and threefold checks and balances to prevent injustice, and ensuring that justice has been done. There is also marked distinction between two appellate jurisdictions; one is conferred by section 96, C.P.C. in which the Appellate Court may embark upon the questions of fact, while in the second appeal provided under section 100 *ibid*, the High Court cannot interfere with the findings of fact recorded by the first Appellate Court, rather the jurisdiction is somewhat confined to the questions of law which is sine

qua non for the exercise of the jurisdiction under section 100, C.P.C. The High Court cannot surrogate or substitute its own standpoint for that of the first Appellate Court, unless the conclusion drawn by lower fora is erroneous or defective or may lead to a miscarriage of justice, but the High Court cannot set into motion a roving enquiry into the facts by examining the evidence afresh in order to upset the findings of fact recorded by the first Appellate Court. At this juncture, certain dictums laid down on the niceties of section 100, C.P.C. are quite relevant which are replicated as under:-

1. Mir Abdullah v. Muhammad Ali and 2 others (1977 SCMR 280). Both the the Trial Court and the lower Appellate Court had taken into consideration the whole evidence on file and had discussed it in detail. The findings of fact arrived at by them, even if erroneous, could not be the subject of second appeal. The decisions arrived at by both the lower Courts were neither contrary to law nor had failed to determine any material issue. There was also no substantial error or defect in the procedure followed by them and under the circumstances their judgments and decrees were therefore not open to appeal under section 100 of the C.P.C. read with section 101 of the C.P.C.
2. Mst. Naziran Begum through Legal Heirs v. Mst. Khurshid Begum through Legal Heirs (1999 SCMR 1171). A finding on a question of fact arrived at by the First Appellate Court which is based on no evidence or is the result of conjectures or fallacious appraisal of evidence on record is not immune from scrutiny by the High Court in exercise of its power under section 100 or 115, C.P.C.
3. Abdul Majid and others v. Khalil Ahmad (PLD 1955 Federal Court 38). The High Court has no jurisdiction to entertain a second appeal on the ground of an erroneous finding of fact, however gross and inexcusable the error may seem to be, unless there is an error in the procedure provided by law, which may possibly have

produced an error or defect in the decision of the case on the merits. The Court also referred to the decision of the Privy Council in *Durga Chowdhri v. Jawahir Singh Chowdhri* (ILR 18 Cal. 23) which laid down the proposition in clear and unmistakable terms.

4. *Keramat Ali and another v. Muhammad Yunus Haji and others* (PLD 1963 SC 191). The High Court in second appeal had no jurisdiction to go into the question relating to the weight to be attached to a particular item of evidence. The learned Judge in the High Court fallen into the error of drawing upon conjectures for which he has found fault with the trial Court. On a perusal of the judgments of the Courts below and the evidence in this case we are not in a position to agree with the High Court that their findings were based purely on conjectures or surmises. The findings of fact of the Courts below were neither based upon conjectures nor upon inadmissible evidence nor to have been arrived at by any error in the procedure provided by law.
5. *Pathana v. Mst. Wasai and another* (PLD 1965 SC 134). This Court considered the case reported as *Mst. Durga Choudhrani v. Jawahir Singh Choudhri* (171 A 122), wherein it was held that an erroneous finding of fact is a different thing from an error or defect in the procedure and that there is no jurisdiction to entertain a second appeal on the ground of such an erroneous finding, however gross or inexcusable the error may seem to be. This principle was also affirmed by the Federal Court of Pakistan in a case reported as *Abdul Majid v. Khalil Ahmad* (PLD 1955 FC 38). The fallacy in appraising the evidence as to a fact, unless it amounts to a material mistaken assumption, is merely an error in coming to a finding as to that fact, and such error has never been held to be an error of law justifying interference in second appeal.
6. *Muhammad Khan v. Mst. Rasul Bibi* (PLD 2003 SC 676). Ordinarily concurrent findings recorded by the Courts below could

not be interfered with by the High Court while exercising jurisdiction in the second appeal however erroneous that finding may be, unless such finding has been arrived at by the Courts below either by misreading of evidence on record by ignoring a material piece of evidence on record or through perverse appreciation of evidence. The case in hand squarely falls within the exception clause, inasmuch as, the High Court interfered with concurrent findings, after noticing that the judgments of the Courts below suffered from acute misreading of evidence and exclusion of material available on the record, resulting in gross miscarriage of justice.

7. Shah Muhammad v. Sardar Habibullah Khan and others (1988 SCMR 72). The first appellate Court on re- appraisal of evidence upheld the conclusions reached by the trial Court. These findings of fact are based on proper and legitimate conclusions that can be drawn from the evidence recorded in the case and interference by the learned Judge in the High Court became a contrary view of evidence prevailed with him did not warrant interference by the High Court in a second appeal under section 100 of the Code of Civil Procedure.
8. Muhammad Tufail and 2 others v. Ghaus Muhammad through Legal Representatives (PLD 2007 S C 26). The finding by the lower appellate Court would be immune from interference in second appeal only if it was found to be substantiated by evidence on record and was supported by logical reasons. This exercise cannot be completed unless the High Court makes a comparison of the reasoning of two Courts, which again, is not possible unless evidence is appreciated.
9. Raruha Singh v. Achal Singh and others (AIR 1961 SC 1097). The High Court should not have entered to the question of appreciating the evidence as it appears to have done in the last portion of its judgment. This Court has repeatedly pointed out that in second appeal the High

Court's jurisdiction is confined to questions of law.

10. State Bank of India and others v. S.N. Goyal (AIR 2008 SC 2594). The word 'substantial' prefixed to 'question of law' does not refer to the stakes involved in the case, nor intended to refer only to questions of law of general importance, but refers to impact or effect of the question of law on the decision in the lis between the parties. 'Substantial questions of law' means not only substantial questions of law of general importance, but also substantial question of law arising in a case as between the parties.”

19. In the matter at hand, learned counsel for the Appellant was unable to demonstrate any misreading/non-reading of evidence or perversity in the findings of the fora below falling within the scope of a Second Appeal, and on the contrary, the view taken through the concurrent findings at hand appears a reasonable and sustainable one on the basis of the evidence, as referred.

20. In view of the foregoing, no case for interference stands made and the Second Appeal stands dismissed accordingly, with no order as to costs.

JUDGE