

**IN THE HIGH COURT OF SINDH AT KARACHI**

IInd Appeal No.04 of 2023  
[Mir Zaman (late) through his legal heirs v. M. Aslam and 02 others]

IInd Appeal No.05 of 2023  
[Fida ur Rehman v. M. Aslam and 02 others]

IInd Appeal No.06 of 2023  
[Mohammad Zahid through attorney v. M. Aslam and 02 others]

IInd Appeal No.07 of 2023  
[Mir Zaman (late) through his legal heirs v. M. Aslam and 02 others]

Appellants:- through Qazi Umair Ali, Advocate.

Respondent No. 1:- through Mr. Hamza Maqsood Habib, Advocate.

Date of hearing:- 18.09.2024

**J U D G M E N T**

**MUHAMMAD IQBAL KALHORO, J:-** This judgment shall dispose of four connected Second Appeals in hand, in which, the parties are same, however, the transactions in respect of properties between them are separate.

Second Appeal No.04 of 2023 is in respect of Shop No.28, Tahir Complex, Survey No. 5 and 6, Survey Sheet No.SB-8, Sadar Bazar, Karachi.

Second Appeal No.05 of 2023 is in respect of Shop No.29, Tahir Complex, Survey No. 5 and 6, Survey Sheet No.SB-8, Sadar Bazar, Karachi.

Second Appeal No.06 of 2023 is in respect of Shop No.16, Tahir Complex, Survey No. 5 and 6, Survey Sheet No.SB-8, Sadar Bazar, Karachi.

Second Appeal No.07 of 2023 is in respect of Shop No.17, Tahir Complex, Survey No. 5 and 6, Survey Sheet No.SB-8, Sadar Bazar, Karachi.

2. As per contents of plaint, plaintiff purchased the aforesaid shops from the defendant through a sale agreement dated 02.05.2015 against

a total sale consideration of Rs.10,50,000/- for each shop. Out of which, plaintiff paid Rs,10,00,000/- through separate cheques for each shop as earnest money. It was agreed between the parties that the remaining balance amount of Rs.950,000/- will be paid by the plaintiff to the defendant at the time of registration of the sale deed of the suit properties in the name of plaintiff by the defendant before the Sub-Registrar concerned. It was further stipulated in the sale agreement, that the possession of the suit properties shall be delivered to the plaintiff by the defendant on or before the registration of the sale deed in favour of plaintiff and that the defendant shall execute the sale deed within non-extendable time of two years from the date of the sale agreement. After the period of two years, plaintiff sent a legal notice calling upon the defendant to receive balance sale consideration and execute the sale deed in favour of the plaintiff but he replied that two years had passed and advance/earnest money paid in terms of sale agreement stood forfeited. Thereafter, plaintiff approached the defendant so many times pressing him to execute the sale deed in his favour but in vain. The defendant always claimed that since two years had passed, the sale agreement had become invalid and the delay was on the part of plaintiff, who did not pay the remaining sale consideration to him within the time. Finally, when all the tricks up on the sleeves of the plaintiff failed to persuade defendant to execute the sale deed in his favour, he filed the separate suits in respect of all four properties against the defendant, praying as under:-

- a) Judgment and decree for Specific Performance of Sale Agreement dated 02.05.2015 with direction to the defendant No. 1 to execute Sale Deed of the said shop/suit property Shop No.28, Ground Floor, in the building known as Tahir Complex constructed on Plot bearing No.5 & 6, Survey Sheet No.SB-8, Saddar Bazar, Karachi, in the name of the plaintiff or his nominee and hand over the possession

of the said suit shop/property to the plaintiff and/or perform the liability according to sale agreement and/or of the manner of sale agreement, clause seven and on failure to do so by the defendant, Nazir of this Hon'ble Court may be directed with all powers and authority to perform the duties and obligations of defendant No. 1 for transferring of said shop and registration of sale deed in the name of plaintiff in the office of concerned/defendant No. 2 or to do all act for compliance of sale agreement in any of the manner of sale agreement and also directing the defendant No. 2 to register the same in the name of plaintiff/his nominee.

- b) Judgment and Decree for permanent injunction restraining the defendant(s), their agents and employees from transferring and threatening for transferring the suit shop/property in any manner or by way of possession or by way of transferring of title etc. or in any manner of whatsoever nature.
- c) Cost of the suit.
- d) Any other relief which this Hon'ble Court may deem fit to be granted to the plaintiff under the circumstances of the case.

3. The defendant contested the suits by filing the written statement in each suit stating, in essence, that the plaintiff had failed to make payment of remaining sale consideration within time of two years, which was essence of the sale agreement. It is further claimed by him that it was agreed between the parties that defendant No.1 will give possession of the suit property after payment of balance sale consideration either before or at the time of execution of the sale deed. Since plaintiff failed to pay the balance sale consideration, the possession was not handed over to him. Despite many requests by the defendant to the plaintiff to pay the balance sale consideration for execution of the sale deed qua the said properties within two years from the date of execution of the

sale agreement, the plaintiff failed to make good of that and failed to perform his part of the agreement.

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

1. Whether the suit is maintainable ?
2. Whether plaintiff had repeatedly approached defendant No. 1 for paying balance sale consideration at Rs.950,000/- within two years of sale agreement and defendant No. 1 deliberately any *malafidely* avoided to receive the same or otherwise ?
3. Which of either party failed to fulfill his part of sale agreement dated 02.05.2015 ?
4. Whether forfeiture of part payment at Rs.100,000/- by defendant No. 1 is lawful ?
5. What should the decree be ?

5. At evidence stage, plaintiff examined himself and produced affidavit-in-evidence at Exh. P, sale agreement and Photostat copies of cheques given to defendant as earnest money/advance. He was cross-examined by defendant No. 1. On behalf of defendant's side, his attorney Arif Ali Khan produced his affidavit-in-evidence at Exh. D, Photostat copy of legal notice dated 11.05.2017 and Photostat copy of legal notice dated 19.06.2017. Defendant No. 1 also examined witnesses Raheem and Amjad Hussain, who produced their affidavits-in-evidence in support of his case.

6. After a full-dressed trial, the learned XII Senior Civil Judge, Karachi-South, dismissed the suits vide judgments and decrees dated 30.05.2022.

7. The respondent challenged the judgments by filing separate Appeals bearing Nos.137 to 140 of 2022, which have been decided vide impugned judgments dated 27.09.2022, whereby learned Appellate

Court has remanded the case to the trial court with the direction to decide the case afresh after hearing both the parties and without being influenced from the earlier judgment.

8. Learned counsel for the appellant has argued that the decision rendered by the Appellate Court is erroneous and based on misappreciation and non-appreciation of evidence and the sale agreement between the parties; that the sale agreement specifically stipulates that remaining sale consideration was to be paid by the plaintiff/respondent within two years but he failed to do so; that the appellant was required to hand over possession of the suit properties to the respondent/plaintiff only at the time of registration of sale deed which was subject to payment of remaining sale consideration to the appellant/defendant; that respondent failed to make good of the remaining sale consideration within two years; that he in his evidence has admitted that during the interim period of two years, as specified in the sale agreement, he did not ever make part payment to the defendant. He has further admitted in his evidence that he did not tender remaining sale consideration to the appellant/defendant by means of any pay order, money order or by any other banking modes. According to learned counsel, the respondent/plaintiff has admitted in evidence that as per terms of sale agreement, it had expired on 08.05.2017, since the plaintiff failed to perform his part of agreement in two years, the agreement had become invalid and void beyond performance by either party. Learned counsel for the appellant has also referred to Section 24(b) and Section 55 of Specific Relief Act in support of his arguments and to urge that after two years, the sale agreement had become invalid, and void which could not be executed by the defendant in favour of plaintiff.

9. On the other hand, learned counsel for respondent No. 1 has read out the very sale agreement and submits that it clearly stipulates that liability was on defendant to inform the plaintiff about registration of

sale deed in his favour before the Sub-Registrar on a particular date in two years, to enable the plaintiff to make good of the remaining sale consideration. Further, he has supported the impugned judgments.

10. I have heard both the parties, perused material available on record and the case law relied upon by learned counsel for the appellant.

11. Clause-2 of the sale agreement, which is an undisputed document, states that balance amount of Rs.9,50,000/- shall be paid by the vendee to the vendor at the time of registration of sale deed in the name of vendee or his nominee by the vendor before the concerned Sub-Registrar, and that all the original title documents shall be handed over to the vendee by the vendor at the same time. Clause-3 of the sale agreement stipulates that the peaceful and vacant possession of the said shop shall be delivered to the vendee by the vendor on or before the registration of sale deed positively and without any delay. Clause-5 of the sale agreement lays down that the vendor shall execute the sale deed within two years from the date of this agreement and this time shall not be extended/enhanced. Clause-7 of the sale agreement reads that for the purpose of execution of sale deed/title documents, and possession, time stipulated in the agreement shall be treated as an essence of the agreement and in case the vendor fails to execute the sale deed within time, the vendor shall pay Rs.1000,0000/- to the vendee. Clause-9 of the sale agreement indicates the intention of the parties whereby after receiving the part payment i.e. Rs.100,000/- from the total sale consideration amount, the agreement could not be cancelled by the vendor and he shall be bound to execute and register the sale deed and hand over the possession of the said shop in favour of the vendee as per agreement.

12. A reading of the above clauses of the sale agreement indicates specifically that the liability was upon the vendor to execute the registered sale deed before the Sub-Registrar and the vendee was

required to pay the remaining sale consideration to him in presence of Sub-Registrar. This clause is phrased in the manner as to assign duty to the vendor of initiating the process of registration of the properties. It was he who was required to execute the sale deeds before the Registrar and subject to such process, the plaintiff/vendee was required to pay the vendor the remaining sale consideration. Clause-5 of the agreement also puts liability on the vendor to execute the sale deeds within two years, with the caution that in case of failure, he was bound to pay Rs,1000,0000/- as a fine to the vendee/respondent. Further Clause-9 binds the vendor from backing out from the sale agreement and cancelling the same under any circumstances.

13. The entire record is silent as to whether after execution of sale agreement, the vendor/appellant within two years had ever approached the vendee/respondent showing his intention to execute the sale deed before the Sub-Registrar and asking the plaintiff to pay the remaining sale consideration. There is nothing in the sale agreement whereby plaintiff has been made bound or liable to approach the vendor/appellant within some stipulated period for execution of the sale deed before the Sub-Registrar. The contention of learned counsel for the appellant that plaintiff's failure to approach the vendor/appellant for paying remaining sale consideration would amount to his failure to perform his part of agreement, is not correct. Because, nowhere in the agreement this condition has been imposed upon the vendee/plaintiff to approach the vendor/appellant for registration of sale deeds and paying the remaining sale consideration. Clauses 2, 3, 5, 7 and 9, if perused together, would clearly make out a case whereby it was the duty cast upon the vendor to give a notice, or approach directly, for execution of sale deed before the Sub-Registrar to the vendee. Clause 2 of the agreement makes it abundantly clear that plaintiff/vendee was bound to pay the remaining sale consideration at the time of registration of sale

deed before the Registrar, and not before it at any time. The execution of sale deed was to be enforced by the vendor and not by the vendee. Therefore, unless he was ready to perform that part of the agreement, there was no occasion for the vendee to pay him the remaining sale consideration.

14. During the arguments, in a reply of a query, learned counsel for the appellant candidly admitted that there is no record to show that vendor/appellant had ever made effort(s) to notify the vendee/respondent regarding his intention to perform his part of agreement by executing the sale deed in presence of Sub-Registrar. In absence of any such material, showing intention of the appellant to perform his part of agreement, the emphasis by learned counsel that there is admission in the evidence of respondent/vendee admitting that he had not approached the vendor/appellant for the purpose of asking him to execute sale agreement, is of no consequences.

15. I, therefore, find no illegality in the impugned judgments and none has been in fact pointed out by learned counsel for the appellant to justify interference by this Court. In the circumstances, I find no merit in these appeals in hand and dismiss the same along with pending applications.

These are the reasons of my short order announced on 18.09.2024.

JUDGE

HANIF