

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

IInd Appeal No.65 of 2024

Mrs.Shahnaz ParveenAppellant
Vs.
Sohail Farooq and anotherRespondents

1. For hearing of CMA No.2173/2024
2. For hearing of main case

24.09.2024

Syed Ehsan Raza, Advocate for the appellant.
Mr. Rehan Kayani, advocate for the Respondent No.1.

ORDER

Muhammad Iqbal Kalhoro, J:- Respondent No.1 filed a suit for specific performance of contract against appellant bearing Suit No.435 of 2010 in respect of residential property bearing Plot No.670, Sheet No.IV in Katchi Abadi, Pakistan Bazar U.C.09, Sector 11 ½ , Admeasuring 196.37 Sq.Yards, orange town, Karachi in terms of a sale agreement dated 02.07.2009. At the time of sale agreement Rs.1,700,000/- were allegedly paid to the appellant as earnest money/advance. The remaining sale consideration of Rs.300,000/- was required to be paid at the time of registration. However, when subsequently appellant failed to perform his part of performance in terms of the agreement, the aforesaid suit was filed by the respondent, which was however dismissed vide judgment dated 27.09.2022. Against the said judgment, respondent No.1 filed a Civil Appeal No.366 of 2022 which has been allowed vide impugned judgment dated 14.12.2023.

2. I have heard the parties and gone through the impugned judgment with the assistance of learned counsel for the parties.

3. Learned counsel for the appellant has not succeeded in pointing out any error in the impugned judgment. The reasons given by the appellate Court in support of findings are solid and well conceived; the entire evidence is appreciated by the appellate Court in its true context shows that respondent No.1 had succeeded in proving execution of agreement between the parties and payment of earnest money amounting to

Rs.1,700,000/-to the appellant. It has transpired in arguments that after the impugned judgment in execution proceedings the lease deed in respect of property has been executed in favour of respondent by the Nazir of the Court and the remaining sale consideration of Rs.300,000/- has been deposited by the respondent in the Court. However, in compliance of execution proceedings, when the court official went to take possession of the property, they found a third party in occupation thereof who claimed to be legal heirs of one Saeed Akhtar, purportedly another purchaser of the property. Learned counsel for appellant has claimed that this property was subsequently sold to the third party Saeed Akhtar by the appellant, who had paid Rs.1,000,000/- but since he could not pay remaining amount, the transaction was cancelled; but then the legal heirs of third party occupied the property illegally.

4. Be that as it may, it is informed that the legal heirs of Saeed Akhtar have filed an application under section 12(2) CPC before the appellate Court, which has passed the impugned judgment. This application has been heard and reserved for orders. Learned counsel for the appellate has admitted that as far as his interest in the property is concerned, it has expired to the extent of respondent because neither he is in possession of the property nor the documents of the property stand in his name any more after execution of lease deed in favour of the respondent. Now the dispute over the property, if any, is between respondent No.1 and the third party which is in occupation of the property. After extending such submissions, learned counsel for the appellant submits that if this appeal is disposed of in the terms whereby, the appellant is set at liberty to seek a remedy against third party, which is in occupation of the property, in accordance with the law, he would be satisfied. This proposal has not been controverted by the otherside.

5. In view of the above factual position obtaining in the case and the statement of the appellant's counsel, this petition is disposed of along with listed application as not pressed in the terms as above.

JUDGE