

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

**IIInd Appeal No.95 of 2023**

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Date Order with Signature of the Judge

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**Priority.**

1. For hearing of CMA No.2910 of 2023.
2. For hearing of main case.

Heard on : 28<sup>th</sup> November, 2023.  
 Date of Decision : 06<sup>th</sup> February, 2024  
 For Appellant : M/s. Liaquat Ali Hamid Meyo & Raees Ahmed, Advocates.  
 For Respondent No.1 : M/s. Rehan Farooq & Tariq Ali, Advocates.

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

**Kausar Sultana Hussain, J.** :- This second appeal under Section 100 C.P.C is directed against the Judgment and Decree dated 31.03.2023 and 06.04.2023, respectively passed by the learned V<sup>th</sup> Additional District Judge/Model Civil Appellate Court, Karachi West in Civil Appeal No. 267 of 2022 filed by the Appellant/Defendant against the Judgment & Decree dated 31.05.2022 passed by the learned I<sup>st</sup> Senior Civil Judge, Karachi West in Civil Suit No. 1320 of 2019, whereby, the Appeal of the Appellant/Defendant was dismissed, hence this IIInd Appeal.

2. Necessary facts, in brief, forming background of instant appeal are that Respondent No.1/Plaintiff had filed a Civil Suit No.1320 of 2019 against his real brother Appellant/Defendant for Possession, Declaration, Mesne profit, Damages and Perpetual Injunction on the ground that he is exclusive and lawful owner of property bearing House No. 96, Street No.1, Sector 11  $\frac{1}{2}$ , measuring 119.17 sq.

yards, situated in Muhammad Mustafa colony, near Rehmat chowk, Orangi Town, Karachi (hereinafter referred to as suit property), and same property was purchased by plaintiff from his mother Mrs. Razia Khatoon wife of late Waheed-ud-Din and soon after purchasing and getting possession of suit property, plaintiff raised construction and built ground plus first floor from his own and exclusive funds and thereafter plaintiff got transferred the suit property in his name from his mother by virtue of Conveyance Deed dated 18.10.2017, registered before Sub-Registrar Orangi Town, vide registration No.1527, dated 29.06.2018, Book No.1, Sub-Registrar Orangi, Karachi, and then he obtained mutation order in his name from the office of Project Director, Katchi Abadi, Orangi Town, KMC, Karachi. It is further averred in the plaint that he is residing in property in question with his family and mother, whereas the defendant being his elder brother was also permitted to reside with his family at first floor of suit property by occupying two rooms out of three rooms on sympathy grounds and love. Defendant is working as Government Employee in Post Office Department since 1998 and having his own house No.155, KESC-1155, Sheet No.1, near Rehmat Chowk, sector 11<sup>1/2</sup>, Orangi Town, Karachi and getting its rent of Rs.8,000/per month. Thus, having no alternative he filed this suit with the following prayers:

- a) Pass judgment and decree for possession of 2 rooms situated upon first floor of suit property, which is in possession of defendant and his family.
- b) Declare that the defendant and his family unauthorizedly and unlawfully are in occupation of 2 rooms of first floor of the suit property.

- c) Permanently restrained to the defendant not to hand over possession of first floor of suit property to their attorney(s), agents(s), employee(s), and / or any other person(s), and not to take possession of one room that is in possession of the plaintiff situated upon first floor of suit property and not to damage the first floor or suit property OR
- d) Alternatively direct to the Nazir of this Court to get peaceful and vacant possession to the plaintiff from the defendant.
- e) Direct to the defendant to pay Mesne profit Rs. 15,000/- per month from the date of possession of 2 rooms of first floor of the suit property till final decision of the suit and with increase of 10% per annum.
- f) That grant of any other relief.

3. The Appellant/Defendant contested the matter through filing written statement, wherein he denied all the allegations levelled against him. It is further stated that the suit property was purchased by his mother namely Mst. Razia Khatoon; she obtained lease in her name in the year 1996 and for this purpose she had arranged funds from the Postal Life Insurance of her deceased husband namely Waheeddudin and further funds had been provided to her by the appellant/defendant from his own pocket, besides that some amount was arranged by his mother with her own sources as she used to work in garments factory during the period of 1975 to 1989; that the respondent No. 1 / plaintiff did not expend a single penny or any amount in the suit property; that respondent No. 1 / plaintiff fraudulently obtained sale deed from the concerned department as their mother was psycho patient since, 2015; that the respondent No. 1 / plaintiff by misrepresentation filed the instant suit without seeking declaration of his ownership of the disputed property; that

the construction of the suit property raised and built up ground plus first floor was completed in the year 2003 from own and exclusive funds of the defendant; that utility bills of the suit property were paid by the appellant / defendant from his own pocket on regularly basis; that respondent No.1 / plaintiff in collusion with the Sub-Registrar, Orangi Town, Karachi obtained fake conveyance deed dated 18.10.2017, mutated falsely in his name from the office of Project Director, Katchi Abadi Orangi Town, Karachi. He lastly prayed for dismissal of the suit with cost.

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

1. Whether the suit is not maintainable?
2. Whether the defendant is in unlawful possession of two rooms constructed on first floor of the suit property i.e. House No. 96, sheet No.1, Muhammad Mustafa Colony, Sector 11  $\frac{1}{2}$  Orangi Town, Karachi and whether the plaintiff is entitled to possession thereof?
3. Whether the plaintiff is entitled to mesne profit @ Rs. 15,000/- per month with 10% increase per annum.
4. Whether the plaintiff is entitled to relief claimed?
5. What should the decree be?

5. During trial, the parties had led their respective evidence. The respondent No. 1 / plaintiff had examined himself at Exh. P, and produced several documents at Exh. P/1-P-79 respectively. The respondent No. 1 / plaintiff had also produced his two witnesses namely Naheed Parveen and Daniyal, who led their evidence at Exh. P-80 to P-83.

6. In order to rebut, the appellant / defendant had examined himself at Exh. D, and also produced two witnesses in support of his version namely Afshan Ali and Fayyaz at Exh. DW-1 and DW-2.

7. The learned trial Court after assessment of the evidence led by the parties as mentioned supra and hearing arguments of their counsel Decree the Suit of the respondent No.1 / plaintiff in his favour vide judgments and decree dated 31.05.2022. Being aggrieved the appellant / defendant preferred Civil Appeal No. 267 of 2022, which was heard and dismissed by the learned Vth Additional District judge, Karachi West, vide judgment dated 31.03.20 and decree dated 06.04.2023. The appellant / defendant has assailed the impugned judgments and decrees through filing instant second appeal.

8. Heard the learned counsel for the appellant / defendant as well as respondent No. 1 / plaintiff and perusal the material available on record with their valuable assistance.

9. The learned counsel for the appellant / defendant has mainly contended that the learned trial Court and learned first appellate Court have erred in holding that the respondent No. 1 / plaintiff is the actual owner of the suit property and appellant / defendant is not in legal occupation of two rooms out of three rooms at first floor of the suit property, while under the law of inheritance the share in property in question should had been distributed amongst the legal heirs of their mother, who was the owner of that suit property and the respondent No. 1 / plaintiff by adopting illegal procedure on the basis of fraud and misrepresentation got the suit property transferred in his name through Conveyance Deed dated 18.10.2017

while their mother being 74 years old lady become Psycho patient and was not in position to understand her good or bad. The learned counsel for the appellant / defendant further submitted that the Courts below have misconstrued and misinterpreted the matter before them and the findings recorded are therefore wrong and not sustainable in law. He has further contended that the learned Courts below did not appreciate the facts that respondent No. 1 / plaintiff arranged / managed to transfer the suit property in his name with the active connivance of Sub-Registrar, Orangi Town and mutated falsely in his name from the office of Project Director, Katchi Abadies, Orangi Town, Karachi, as such the findings of Courts below being illegal, perverse, contrary to the settled principle of law, are liable to be set aside.

8. Conversely, learned counsel for the respondent No. 1/ plaintiff has contended that both the Courts below have concurrently held that the respondent No. 1/ plaintiff had purchased the suit property from his mother, who had duly executed Conveyance Deed in his favour against Sale consideration of Rs. 1,66,000/-. The learned counsel for the respondent No. 1/ plaintiff has further mentioned that the appellant / defendant had failed to prove the Conveyance Deed of the suit property as fake, fabricated and forged document, therefore, the instant Second Appeal does not lie on the ground of a error on question of facts as it lies only on the ground of error of law, or on error in the procedure which might have affected decision of case on merits, hence the decision rendered by two Courts below being based on judicial consideration of evidence adduced in the case requires no

interference of this Court on any point of fact, hence the instant Second Appeal is liable to be dismissed.

9. It appears from the perusal of the record that the respondent No. 1/ plaintiff through filing a suit against appellant / defendant claimed possession of two rooms situated upon first floor of suit property, which are admittedly in possession of appellant / defendant. The based of respondent's / plaintiff's claim is that he is owner of the suit property which was purchased by him from his mother and in support of his claim of ownership the respondent No. 1 / plaintiff produced original title documents of the suit property consisting upon 'Lease Deed' dated 24.06.1996 executed between the Directorate of Katchi Abadies Metropolitan Corporation of the City of Karachi through Assistant Dy/Director Land (lessors) and Mrs. Razia Kathoon (mother of the parties) and after becoming owner of the suit property Mrs. Razia had sold out it to her son the respondent No. 1/ plaintiff and executed 'Conveyance Deed' dated 18.10.2017 in favour of the respondent No. 1/ plaintiff. The respondent No. 1/ plaintiff had produced both documents before the trial Court while leading his evidence. The appellant / defendant although claimed in his written statement that the respondent No. 1/ plaintiff fraudulently obtained title documents from the concerned department as their mother Mst. Razia Khatoon was Psycho patient since 2015 but the respondent / plaintiff did not obtain mental health certificate from the competent Court of law under Mental Health Ordinance. Although the appellant / defendant had taken such defence mentioned above while denying the claim of the respondent / plaintiff with regard to obtaining possession

of the suit property from the appellant / defendant through filing a suit for possession against him but he himself neither challenged the ownership of the respondent / plaintiff before concerned civil Court of law nor filed a suit for cancellation of such property documents, which amounts to acceptance of said documents.

10. The appellant / defendant had legal pleas in his written statement i.e. that the suit is not maintainable according to law as without declaration of the disputed documents of the suit property consequential relief cannot be granted; that suit is bad in law without joining or impleading necessary party i.e. concerned department of K.M.C and lessee of the property Mst. Razia Khatoon. The learned trial Court has framed issue of maintainability of the respondent's / plaintiff's suit and discussed it while deciding the suit of the respondent / plaintiff, whereby the learned Civil Judge was of the view that the appellant / defendant has failed to prove that how suit is not maintainable, when the respondent / plaintiff had purchased the suit property from his mother through Conveyance Deed duly registered with Sub-Registrar concerned; that the counsel for the appellant / defendant failed to put a single question or suggestion from respondent / plaintiff at the time of his cross-examination that suit is not maintainable, therefore, in view of the trial Court the suit of the respondent / plaintiff is maintainable. The respondent / plaintiff in his plaint nowhere narrated any fact which could show that the appellant / defendant is denying or interested to deny the ownership of the respondent / plaintiff, therefore, the respondent / plaintiff was not supposed to file a suit for declaration against the



respondent / plaintiff under Section 42 of the Specific Relief Act for seeking declaration of his ownership.

11. The appellant / defendant has failed to point out in his instant Second Appeal that under which law the impugned judgment is barred, or which material point of law has been left undecided or what substantial error, or procedural defect has occurred while deciding the matter on merits or what misreading, misinterpreting and non-reading of evidence has been termed as a substantial error resulting miscarriage of justice. The instant Second Appeal having no merits deserved to be dismissed. I, therefore, dismiss the present Second Appeal having no merits. There shall be no order as to cost.

J U D G E