

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

First Appeal No.02 of 1983
[*Muhammad Aslam versus Mst. Shakila and others*]

Date of hearing : 04.05.2023.

Appellant
[*Muhammad Aslam*] : Nemo.

Respondents
[*Mst. Shakila & others*] : Nemo.

J U D G M E N T

Muhammad Faisal Kamal Alam, J. This Appeal is preferred against the Judgment of the learned Trial Court, whereby F. C. Suit No.204 of 1970 for Specific Performance filed by present Appellant as Plaintiff, was dismissed.

2. Record shows that for the past many dates, no one is appearing in this Appeal, hence it was reserved for the Judgment.

3. It is averred by the Appellant that he purchased the agricultural land in Survey Nos.23 (4-0), 45 (5-30), 46/1, 2 (10-8), 47/2, 3 (6-16), 48/3, 4 (8-0), 60/2 (4-0), 65/1, 2, 3, 4 (16-12), 78/1 (0-29), 79/1, 2, 3, 4 (14-34), 85/1, 3, 4 (4-5) and 93/1 (1-15), total area 74-0 acres, situated in Deh Bhutta Taluka Sakrand [*the Subject Land*], through an Agreement of Sale dated 08.07.1970 entered into between him and Respondent No.1; and who being mother, also executed the Agreement on behalf of minor children (*at the relevant time*), that is, present Respondents No.2, 3 and 4. The Respondent No.1 (**Seller**) has not disputed the sale transaction between herself and the Appellant / Plaintiff, in the Written Statement; averred that

even constructive possession of the above land was given to the Appellant at the time of the Sale Agreement. With regard to the averment of Appellant, that Respondent No.1 illegally sold the Suit Land to Respondents No.5 to 16, it is stated that Respondent No.1 was informed by Respondents No.5 to 16 that the actual purchaser of the Suit Land is not the Appellant but his elder brother, who has changed his mind to purchase the Subject Land; thus, the Respondent No.1 (Seller) executed the Sale Deed in favour of Respondents No.5 to 16 [VENDEES] and even adjusted the earlier part payment of Rs.37,000/- (*rupees thirty seven thousand only*) paid by present Appellant to her. Respondent No.12 has denied the contents of plaint in his Written Statement and stated that his Agreement of Sale dated 30.01.1969 was prior in time, therefore, the sale transaction between Appellant and Respondent No.1 was illegal.

Evidence is appraised to determine that whether correct conclusion is reached by the learned Trial Court in the impugned Judgment, considering the fact that it is an undisputed fact that Respondent No.1-Seller, had earlier executed an Agreement to Sell dated 08.07.1970 in favour of the Plaintiff (not disputed in her Written Statement). Interestingly, the Respondent No.1 did not lead the evidence.

4. Plaint contains the following Prayer Clause_

“(A) Decree for specific performance of the contract against the Defendant No.1, directing her to obtain the required permission of sale for the share of minors, and to execute the pucca sale deed and handed over the physical possession of the land to the Plaintiff, on receipt of the balance of consideration, which the Plaintiff is already to pay.

(B) The Sale Deeds executed by the Defendant No.1, in favour of the other Defendants, be cancelled.

- (C) *Costs of the Suit be borne by the Defendants.*
- (D) *Any other relief the Hon'ble Court deems fit be awarded."*

5. From the pleadings of the Parties, following issues were framed by the learned Trial Court_

1. *Whether the Suit land was sold to the Plaintiff by the Defendant No.1 by the agreement dated 08.07.1970, as alleged in para No.4 of the plaint?*
2. *Whether there was any agreement in favour of the Defendant No.12 within knowledge of the Plaintiff prior to the agreement in his favour? If so, to what effect?*
3. *Whether the agreement in favour of the Defendant Anwar Ahmed had become absolute and inoperative and had come to an end, as he had not fulfilled the conditions thereof? If so, to what effect?*
4. *Whether the Defendant No.1 knew about the agreements, made by the Defendant No.12 in favour of the other Defendants? If so, to what effect?*
5. *Whether Defendant No.12 had any authority to execute agreements and sale deeds in favour of the other Defendant Nos.5 to 16 (Except No.12) If so, what is the legal position of the such sale deeds?*
- 6) *Whether the Plaintiff is entitled to any relief?*
- 7) *What about the decree be?"*

6. The Appellant examined himself and produced the original of the above Sale Agreement of 08.07.1970 as Exhibit 127-A along with Receipts. While reiterating his stance in the evidence, he has stated that he did not violate any stipulation of the said Sale Agreement and showed his willingness to pay the balance amount. **He was not cross-examined by the Respondent No.1-Mst. Shakila (Seller) but by the learned Advocate**

for Respondents No.5 to 16 (VENDEES). In his cross-examination, he did not dispute that after the registered Sale Deeds in favour of Respondents No.5 to 16 (Defendants No.5 to 16), possession of the Suit Land has been handed over to them and Respondent No.5 (Defendant No.5) subsequently sold his share to a third person-Munawar, by way of another registered Sale Deed. He has admitted that mutation has been done in favour of the said Respondents No.5 to 16.

One of the attesting witnesses of the Appellant, Abdul Ghani Khan also testified in favour of the stance of the Appellant and corroborated the evidence about above Sale Agreement with Respondent No.1. The other attesting witness-Abdul Razzaq at the relevant time was abroad and thus could not be examined.

In the cross-examination, the credibility of the above Witness [Abdul Ghani Khan] became doubtful, when he stated that he was called by the Appellant from the road to witness the Agreement, while he was going to a government Department; stated he did not remember the other attesting Witness of the Receipt-Exhibit 127-B.

Notwithstanding to the above, since the Exhibit 127-A (Sale Agreement of 08.07.1970) between Appellant and Respondent No.1 is an admitted document, hence the above testimony of attesting witness is not fatal to the stance of the Appellant.

Similarly, the evidence of other two witnesses of Appellant, namely, Muhammad Zameer Baig and Ghulam Muhammad, are not necessary to discuss in view of the above admitted fact regarding the sale transaction between the Appellant and Respondent No.1.

From the Respondents' side (Defendants), Respondent No.12-Syed Anwar Ahmed testified and reiterated that he purchased the Subject Land through Sale Agreement dated 30.01.1969 and subsequent

Sale Agreement dated 30.12.1969 [termed by the said Witness as a 'Renovated Agreement'] produced as **Exhibit 156**. He has specifically mentioned in his examination-in-chief that the Appellant knew about the Sale Agreements, yet he entered into subsequent Sale Agreement (*ibid*); the witness produced *the Sale Deeds, as Exhibits 157 to 163*, in favour of the other Respondents [*collectively referred to as the Vendees, ibid*]. He has not been cross-examined on this specific assertion in his examination-in-chief about the Appellant's prior knowledge of the above Agreements between the Respondents *inter se*, which means that this material fact has been admitted. During his cross-examination, he has specifically denied that either of the Vendees / Respondents sent some other person to Respondent No.1, claiming to be the elder brother of the Appellant, as claimed by the Respondent No.1 [in her Written Statement]. It means that this fact, as alleged [by Respondent No.], in view of the above testimony, has been disproved.

The other witness is Munawar Khan, regarding whom it is stated in the evidence of Respondent (*ibid*), that the portion of the Subject Land has been sold out to him vide a registered Sale Deed dated 24.01.1979, has deposed that record of right is also mutated in his favour, which he produced as Exhibit-167; whereas, in his cross-examination no contradiction appeared.

The attesting witness of Exhibit-156 (Sale Agreement) between Respondent No.12 (Syed Anwar Ahmed and Respondent No.1-Mst. Shakila), namely, Ghulam Abbas, had corroborated the stance of Respondent No.12-Syed Anwar Ahmed and in his cross-examination, his credibility could not be impeached.

One of the Purchasers [Vendees], namely, Noor Muhammad has also testified, who is Respondent No.8 in the present Appeal. In his cross-examination, his credibility was not damaged, in particular,

about the fact that he had any prior knowledge about the Sale Agreement between Respondent No.1 and the Appellant. He was not confronted in his cross-examination about his assertion that he purchased a portion of the Subject Land through a registered Sale Deed, possession was handed over; subsequently it was further transferred in favour of Afzal Ahmed and mutation was also done; it means, that this significant fact as deposed by the above Witness [Respondent] has been proved.

The other witness is Subhan, who is Respondent No.13 in the present Appeal. Like other purchasers, he has also corroborated the stance of Respondent No.12-Syed Anwar Ahmed. In his cross-examination, he has emphasized that he has paid sale consideration to Respondent No.1, however, to a question, he did not deny the fact, that Appellant had protested with Respondent No.1 about sale of land to other Respondents.

7. It is significant that the Appellant has not challenged the authenticity of the registered Instruments, viz. Registered Sale Deeds [*supra*] exhibited in the evidence along with the Mutation entries, which are part of the Official record; thus, the presumption that the Official acts have been performed lawfully, as envisaged in Article 129(e) of the Qanoon-e-Shahadat Order, 1984, is also attracted in the present case; consequently, no illegality is done by the Respondents (Vendees) in purchasing the different portions of the Subject Land.

8. After considering the record, finding in favour of Respondents-Vendees [*ibid*], who purchased the Subject Land through Registered Instrument-Sale Deeds [*supra*], does not require any interference; in particular, after passing of so many decades, when admittedly, after mutation, valuable third party interest is also created; **however**, the determination of the learned Trial Court, regarding the refusal of monetary

relief to Plaintiff, in view of the judicial precedents and present record, is not acceptable. Although there is no specific prayer in the plaint about returning the partial sale price of Rs.37,000/- (*rupees thirty seven thousand only*) paid to Respondent No.1, way back on 08.07.1970, but, by invoking Section 19 of the Specific Relief Act, the learned Trial Court could have extended that relief to Plaintiff, particularly when his Sale Agreement is not disputed by the Respondent No.1. Finding under the Issue No.6 [partly] is erroneous and illegal, resulted in monetary loss to Plaintiff, who has not breached any of the terms of the above Sale Agreement; on the contrary, the learned Trial Court has reached the conclusion that it is the Respondent No.1 who played fraud upon the Appellant. Thus, to this extent impugned Judgment is Reversed. Respondent No.1 or her legal heirs are liable to pay back Rs.37,000/- (*rupees thirty seven thousand only*) to the Appellant along with the damages of Rupees Two Million, within four weeks from today. In this regard, the Judgment of the Hon'ble Supreme Court handed down in the Case of Liaquat Ali Khan versus Falak Sher and others, reported in PLD 2014 Supreme Court 506, is relevant.

9. In the above terms, this Appeal is disposed of and the Office to prepare a modified Decree.

10. **Since it is an old matter, therefore, I have directed the Office to prepare a backup / digitised record of the present Appeal along with the Record and Proceedings.**

11. **In my considered view, it is necessary to digitise the Record of OLD CASES, *inter alia*, in order to create a backup. The learned Registrar will take immediate steps in this regard.**

Copy of this Judgment be communicated to the learned Registrar, besides retaining a copy at the Principal Seat, for compliance of the above directions, as the entire record is to be

returned/sent back to the High Court of Sindh, Circuit Court at
Hyderabad.

JUDGE

Hyderabad

Dated : _____