

ORDER SHEET
THE HIGH COURT OF SINDH AT KARACHI

II-Appeal No.29 of 2015

Date: Order with signature(s) of the Judge(s)

Hearing/Priority Case.

1. For Hearing of CMA No.2946/2018.
2. For Hearing of CMA No.3191/2015.
3. For Hearing of Main Case.

09th April, 2021.

Mr. Khadim Hussain Thaheem advocate for the appellant.
Ms. Fareeda Mangrio advocate for respondent No.5.

Heard learned counsel for respective parties.

Concisely relevant facts as per the appellant are that the appellant filed suit for the relief of declaration, damages, directions, cancellation and permanent injunction in respect of residential plot No. A-33, Sector 6-H, measuring 240 squares yards, Korangi Township, Karachi. According to the appellant he is working at Saudi Arabia for the last 11 years. After June 2001 he visited his family, on 02.07.2001 he remained in Pakistan till 23.12.2001, then again he visited on 02.11.2005 and remained here till 31.01.2006 and subsequently he visited on 13.10.2007 and remained there till 23.01.2008. He had purchased residential plot referred above from the previous allottee namely Abdul Anees. The plot was transferred in his name by the Karachi Development Authority vide transfer order dated 12.004.2000. Possession was also handed over to the plaintiff alongwith documents. Plaintiff erected boundary wall and gate. The lease formality was not completed because plaintiff was required to join his duty at Saudi Arabia; therefore, he has appointed his friend namely Bashir Khan as attorney and authorized him to complete lease formalities in the name of appellant. The respondent No.1 informed him on telephone regarding execution of lease deed by the KDA on the basis of power of attorney in favor of the plaintiff vide indenture of lease deed bearing

registration No. 1610 dated 15.05.2000, having M.F Roll No.U-13356 dated 20.05.2000. On his arrival at Karachi he demanded the original documents from his friend who replied that all formalities are not yet completed and thereafter appellant returned bank. He again visited his family at Karachi and remained here from 13.10.2007 to 23.01.2008 but the respondent avoided to meet with him. He got search certificate which confirmed that suit plot is in his name. On verification of indenture of lease he came into knowledge that lease did not exist in favor of the appellant and also did not tally with the office record. As such, the appellant filed suit.

It is settled principle of law that this court is every limited scope in II-Appeal and only judgment of trial court are examined by keeping in view of whether the same was result of misreading or non-reading of evidence and there is any finding contrary to the law. It would be conducive to refer adjudication of the trial court on issue No. 4, which reads as under:

"Issue No.4: According to the plaintiff, he purchased the suit plot from Abdul Anees and after purchase the suit plot the same was transferred/mutated in the name of the plaintiff by the KDA vide transfer order dated 12.04.2000 and the previous owner Abdul Anees handed over vacant possession alongwith original title documents of the suit property to him and thereafter the plaintiff gave the same to his friend the defendant No.1 with power of attorney for completing formalities to obtain the lease of the suit plot but the defendant No.1 after obtaining the lease in the name of the plaintiff has refused to hand over the original title document to the plaintiff, though the plaintiff in possession of the suit plot. Whereas, the plaintiff in his cross examination has admitted that he and the defendant No.1 are residing in the same muhallah since last more than 16 years but admittedly the plaintiff has never lodged any FIR or complaint against the defendant No.1 for not returning his original title documents. Admittedly the plaintiff did not give any application to the Sub-Registrar or CDGK for duplicate documents. The plaintiff has admitted that he has not filed or produced copy of paid challan in respect of the lease or transfer/mutation order. Admittedly no public notice was given in any newspaper before purchasing the suit plot by the plaintiff. The plaintiff has admittedly not filed even photocopy of NIC of the previous owner Abdul Anees. Further the plaintiff has not produced any ale agreement or payment receipt executed by the previous owner Abdul Anees in his favor. The

plaintiff has admitted that copy of the lease filed by him as annexure P-8 is appearing stamp of Sub-Registrar-T Division while Search Certificate produced by the plaintiff at Ex. P-1/D is used by Sub-Registrar Korangi Tonwship, Karachi. The plaintiff has examined two witnesses namely Fazal Rahim and Muqeem Gul as Pw-2 & Pw-3 who have stated that the plaintiff purchased the suit property from Abdul Anees in the year 2001 and raised a boundary wall with a gate and then the plaintiff went abroad while handing over the original documents of the suit property to the defendant No.1. But both these witness have admitted that the plaintiff had not purchased the suit property in their presence nor any sale consideration was paid by the plaintiff in their presence to the previous owner Abdul Anees. They further are not known even amount of sale consideration. Pw-2 does not know as which title document were given by the plaintiff to the defendant No.1 in his presence. Pw-3 has admitted that neither he has seen the documents given by the plaintiff to the defendant No.1 nor plaintiff handed over any documents to the defendant No.1 in his presence. Further CDGK in their written statement have also stated that the transfer order dated 12.04.2000 and the lease dated 15.05.2000 filed by the plaintiff in his favor are bogus and not issued by the concerned department.

In these circumstances discussed above how the plaintiff can say that defunct KDA (CDGK) after realization of the charges from the plaintiff issued indenture of lease of the suit plot in the name of the plaintiff on 15.05.2000. Hence, Issue No.4 is answered in negative".

In juxta position appellate court also maintained judgment passed by the learned trial court. Page-23 being relevant, same is reproduced as herewith as under:

"The respondent No.2 contested the matter by filing written statement whereby the denied the allegations and stated that documents in favor of the appellant are bogus. Suit plot was initially allotted in the name of Abdul Anees S/o. Abdul Ghaffar on 10.09.1975 and then it was transferred in the name of the Aisha Bibi on 07.08.2002 and lastly in the name of Maid Gul on 03.02.2005.

It is worth mention here that appellant in his evidence admitted that he has not produced sale agreement or payment receipt executed in his favor by the original allottee namely Abdul Anees. It was privilege transfer and appellant has also failed to produce the copy of challan. Appellant during his evidence produced search certificate. The appellant has also examined PW Fazal Rahim and Muqeem Gul in his support but they did not support on the

point of execution of sale agreement, sale transaction and payment made by the appellant. As far as indenture of lease annexed with memo of plaint/suit is concerned it reflects that it was executed by the Assistant Director Karachi Development Authority but his name is not transpired that which officer (by name) execute such indenture of lease in favor of the appellant. The marginal witnesses of the indenture of lease were not examined and even their particulars in detail are not available in the indenture of lease. NIC numbers appears on the indenture of lease are also old one, whereas, in the year 2000 the computerized national identify card has been introduced. The appellant has failed to examine his friend namely Bashir Khan. No publication with regard to sale transaction was held in newspaper and it is admitted by the appellant in his evidence. In case of breach of agreement law provides two remedies one is specific performance of contract and other is damages, here in this case if any cheating committed with the appellant he could have to sue against Abdul Anees and Bashir Ahmed his friend for damages.

Under the circumstances and in view of the above I am of the humble opinion that the judgment & decree of the learned trial court is based on sound reasoning which does not need any interference of this court, the same is dismissed, in result, appear in hand stands dismissed, with no order as to costs".

Perusal of above reflects that though appellant claimed that he is owner of subject matter property and approached to the civil court for seeking declaration in Section 42 of Specific Relief Act. The written statements were filed by the official respondents denying therein that any title document produced by the appellant is not part of their record, however, appellant failed to call any official witness to substantiate his pleadings. Whereas, the appellant examined two witnesses namely [1] Fazal Rahim and [2] Muqeem Gul but they also failed to support sale transaction and payment made by the appellant. Accordingly, instant II-Appeal is dismissed alongwith listed application[s].

JUDGE