

JUDGMENT SHEET
IN THE HIGH COURT OF SINDH, KARACHI
IInd Appeal No.228 of 2024

Muhammad Naeem AhmedAppellant

Vs.

Mst. Surayya Begum & othersRespondents

Date of hearing: 24.01.2025

Date of judgment 24.01.2025

Appellant in person.

Mr. Muhammad Ayaz Safi a/w Fazal Manan, advocate for respondent No.1.

Mr. Muhammad Javed, Asstt. A.G.

J U D G M E N T

Muhammad Iqbal Kalhoro, I:- Respondent No.1 Mst. Surayya Begum instituted a suit against appellant stating that she was owner of House No.L-562, Sector I, Maymarabad, Scheme 41, Karachi which she had initially rented out to defendant/appellant through oral tenancy agreement in good faith. Till June, 1998, appellant paid rent to her but after that he failed to account for the rent and utility bills. Finally, she filed a rent case against him which was dismissed and she filed appeal against it but to no avail. Meanwhile, appellant also filed a suit for Specific performance of contract and declaration against respondent No.1 which was dismissed and the appeal filed against it was also dismissed. Finally, she, filed a suit as above seeking following reliefs:-

- i. To declare that the plaintiff is lawful owner of the suit property i.e. H.No. L-562, Sector 1, Maymarabad, Scheme-41. Karachi as per Lease Deed.
- ii. To direct the defendant to hand over the peaceful & physical possession of the suit property H.No. L-562, Sector I, Maymarabad, Scheme-41, Karachi as per Lease Deed to the respondent No. 1.
- iii. To grant permanent injunction against the defendant, thereby restraining the appellant their agents, servants, colleagues, representatives &/or anybody else acting through them or on their behalf from transfer/mutate/possession of the suit property i.e. H.No. L-562, Sector 1, Maymarabad, Scheme-41, Karachi as per Lease Deed to any person or persons in any manner of whatsoever in nature except due course of law.

- iv. To direct the defendant to pay the rent arrears Rs.591,368/- to the respondent No.1 since July 1998.
- v. Cost of the suit & / or any other relief, which the Court may deem fit and proper in the circumstances of the case may be granted.

2. Appellant filed the written statement stating that he was owner of the property by way of sale agreement with respondent No.1.

3. The trial court out of pleadings of the parties framed the following issues:-

- i. Whether suit as framed is not maintainable under the law?
 - ii. Whether the plaintiff is lawful owner of suit property viz H.No.L-562, Sector-I, Maymarabad, Scheme-41, Karachi as claimed?
 - iii. Whether the plaintiff is entitled to the Possession of suit property & to recover arrears of rent as claimed?
 - iv. Whether plaintiff is entitled to the relief claimed?
- V. What should the decree be?

4. The suit was decreed by a judgment and decree dated 27.09.2023 and appeal against it has been dismissed by impugned judgment dated 08.04.2024, hence this appeal. Today appellant has filed an application seeking permission to argue the case.

5. I have heard appellant in person and learned counsel for respondents. Appellant has contended that he is owner of the subject property and had purchased it from respondent by way of a sale agreement; she had earlier filed a rent case against him which was dismissed and appeal against it was also unsuccessful; that the suit filed by respondent No.1 was not maintainable and time barred but both the courts below have not attended to this fact. He has also filed written submissions which are taken on record.

6. On the other hand, learned counsel for respondent No.1 has supported the impugned judgment.

7. The record reflects that in the suit the plaintiff examined herself by producing her affidavit in evidence and other documents showing her ownership of the suit property.

8. On the other hand, defendant examined himself by way of filing affidavit in evidence. He filed agreement of sale dated 09.09.1992 and various other documents to support his case.

9. Respondent No.1 in her evidence has produced lease deed issued by KDA in her favour vide registration No.1647 pages 123 to 126 volume 329 of Book No. Sub-Registrar T. Division XII, Karachi dated 12.03.1985 which is an undisputed document. As against it, appellant was only able to produce sale agreement to support his version but he could not establish execution of said document as he did not produce any witness to vouch for such a fact. His suit for specific performance of contract seeking execution of sale agreement stands already dismissed upto the appellate court.

10. On the other hand, there is a registered document in favour of respondent No.1; whereas appellant has only an unsubstantiated sale agreement to claim ownership of the suit property. There are concurrent findings on facts against the appellant which during arguments he has not been able to show are an outcome of any illegality or mis-appreciation of evidence. The scope of second appeal is limited to only examining the legal flaws. Appellant has not succeeded in showing what illegality has been committed by both the courts below in view of the fact that respondent No.1 is a registered owner of the subject property and appellant is not. The trial court while discussing issues No. 2 & 3 has appreciated entire evidence in true context. The relevant discussion of evidence are reproduced herein below:-

“Plaintiff has claimed in her plaint that she is lawful, absolute and real owner of suit property. House No L-562, Sector 1, Maymarabad, Scheme-41, Karachi through Lease deed dated 12.03.1985. Plaintiff in her affidavit in evidenced has supported such version and she has produced such lease deed issued by KDA in favour of plaintiff vide registration No 1647, pages 123 to 126 Volume No 329 of Book No. Sub-Registrar T. Division XII, Karachi dated 12.3.1985 at Ex-P/1-B. On the other hand defendant No 1 in his written statement in Para No 20 admitted that he had filed civil suit bearing 284/2012 in the Court of IIInd Sr.Cj West, Karachi for specific performance of contract, declaration and Injunction. It is admitted fact that suit filed by the defendant No 1 was dismissed and the appeal preferred by the defendant No 1 bearing Civil Appeal No 493/2017 was also dismissed vide Judgment dated 13.12.2018. Defendant in his evidence failed to produce any title document of suit property register on his name and in the earlier round of litigation defendant No 1 failed to establish the execution of sale agreement relied by him. During cross defendant No1 admitted that the suit property H.NO L-562. Sector-1, Maymarabad, KDA Scheme Karachi, is KDA registered. He also admitted that lease pertain to suit property was issued in favour of plaintiff in the year 1985. He also admitted that he does not have any title document. Vol. Says: he has only sale agreement. He has also admitted that Civil Suit bearing No 284/2012 filed by him was dismissed.

He has also admitted that he had preferred Civil Appeal against bearing No 493/2017 against the order passed in Civil Suit No 284/2012. He has also admitted that the civil appeal filed by him was also dismissed. He has also admitted that he was failed to establish the sale agreement on the basis of which he made claim for purchasing the suit property. He has also admitted that the Civil Suit No 284/2012 and Civil Appeal No 493/2017 were decided on merits. The documentary evidence available on record reveals that suit property was allotted to plaintiff vide registered lease deed and possession was also handed over to plaintiff. No documentary evidence is available on record which may show that suit property was transferred in favour of any other person in the record of KDA. Such documentary evidence as well as admission of defendant No 1 is sufficient to hold that plaintiff is sole, absolute and lawful owner of suit property. Thus, issue No.2 is answered in affirmative???

ISSUE NO.3

The discussion on issue No.1 & 2 reveals that plaintiff is owner of suit property. According to evidence of defendant No.1 is in possession of suit property. Defendant No.1 has claimed that he had purchased the suit property through sale agreement however, defendant No.1 could not prove the alleged purchase in earlier round of litigation between plaintiff and defendant. Learned counsel for plaintiff relied upon the case law reported as 2014 SCMR 1351 Wherein Honourable Supreme Court of Pakistan while discussing the unauthorized occupation has held that Law lean towards person believe in the rule of law and not those who takes the law in their hands as happened in the instant case where the petitioner with no legal authority had occupied the premises in dispute. As far as the question that he was in possession for so many years is concerned, it can never be a ground for the purpose of proprietary rights. Under the law, plaintiff being the registered owner of suit property is entitled to the possession of suit property & to enjoy the same according to her will & wish. As per Section 8 of Specific Relief Act 1877 plaintiff being registered owner is entitled to recover the possession of suit property from defendants. Plaintiff also claimed the recovery of arrears of rent. Perusal of record shows that in the earlier round of litigation in rent case No 144/2011 plaintiff failed to establish the relation of landlord and tenant, therefore through this suit she cannot claim the recovery of rent when such plea of Plaintiff already decided by the rent controller in rent case No 144/2011. Under the circumstances, I am of the humble view that plaintiff is only entitled to the possession of suit property as claimed. Thus, issue No.3 is answered accordingly."

In view of above, I find no illegality in the same findings, therefore, find no merits in the instant second appeal, which is dismissed alongwith pending applications.

The appeal is accordingly disposed of alongwith pending application.

JUDGE