

Judgment sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Present

Mr. Justice Muhammad Jaffer Raza

IInd No. 219 of 2021

Shahjahan Khatoon
(since deceased through her legal heirs) Appellants

Versus

Mst. Farida & others Respondents

IInd No. 220 of 2021

Shahjahan Khatoon
(since deceased through her legal heirs) Appellants

Versus

Mst. Farida & others Respondents

Date of hearing : 22.05.2025.

Date of judgment : 22.05.2025.

Mr. Raheel Samsam Ali Khan, Advocate for the Appellants.

Mr. Muhammad Jamshed Arshad, Advocate for the Respondents 1 to 3 a/w
Mr. Aslam Pervaiz Advocate.

J U D G E M E N T

MUHAMMAD JAFFER RAZA-J: The instant IInd Appeal has been filed by the Appellants impugning the consolidated judgment and decree dated 03.11.2021 in Civil Appeal Nos.08/2021 and 09/2021.

2. Brief facts of the case are that the Respondents preferred Civil Suit No.1056/2014 against the Appellants with the following prayers: -

- a. To declare the Plaintiffs to be legal, lawful owner and bonafide transferee of the immovable property viz. Quarter No.F-5, Measuring 120 Sq. Yards, Sector 43-B, Korangi Town, Karachi, on consideration of the title documents under his name as per record of rights.
- b. To direct the Defendant No.1 to hand over the possession in respect of Immovable Property vz.

Quarter No.F-5, Measuring 120 Sq. Yards, Sector 43-B, Korangi Town, Karachi, to the Plaintiffs.

- c. To direct the Defendant to pay mesne profit on the said property at the rate of Rs.3,000/- per month from last 34 years till handing over the possession of the said property to the Plaintiffs and also direct the Defendants to produce the accounts records of the funds of the said house.
- d. To permanently restrain the Defendants jointly and severally and individually their men, employees, agents, associates, servants, sub ordinates, contractor or any other person or persons working under them by directing them to not create the third party interest and hand over the possession of the said Immovable Property viz. Quarter No.F-5, Measuring 120 Sq. Yards, Sector 43-B, Korangi Town, Karachi, and avoid to extend illegal threats to the Landlords who are lawful co-owner of the same without any pressure without due process of law.
- e. Cost of the suit.
- f. Any other relief or relief(s) which this Hon'ble Court may deem fit and proper under the circumstances of the case may also be granted.”

3. Thereafter, the Appellants preferred Civil Suit bearing No.1558/2018 with the following prayers: -

- “(A) To declare that the Plaintiffs and other legal heirs of deceased (Hashmatullah Khan) are the lawful owners of property residential House/Quarter No.F-5, Sector 43-B, measuring 120 sq. yards, situated at Korangi Township, Karachi.
- (B) To direct the Defendant No.02 to transfer/regularize the said suit property residential House/Quarter No.F-5, Sector 43-B, measuring 120 sq. yards, situated at Korangi Township, Karachi in the name of the Plaintiffs and other legal heirs or on the basis of possession as per Iqrarnama executed by original Allottee Waheedullah Khan.
- (C) To direct the Defendant No.04 do not transfer the said suit property residential House/Quarter No.F-5, Sector 43-B, measuring 120 sq. yards, situated at Korangi Township, Karachi in the name of third party in any manner till finalize the said suit.

- (D) To direct the Defendant No.01 to 3 may not dispossess illegally or forcibly the Plaintiffs or other legal heirs of Hashmat Khan from the suit property residential House/Quarter No.F-5, Sector 43-B, measuring 120 sq. yards, situated at Korangi Township, Karachi.
- (E) Any other relief or relief(s) this Honourable Court may deem, fit and proper under the circumstances of the case may also be granted.
- (F) Cost of the suit.”

4. Both the above noted Civil Suits were consolidated on 08.10.2019 and the Civil Suit filed by the Respondents (1056/2014) was dealt with as the leading Suit.

5. The Civil Suit filed by the Respondents was allowed and the suit preferred by the Appellants was dismissed. Thereafter learned counsel for the Appellants filed the above noted Civil Appeals and the same were dismissed vide Impugned judgment and decree. Learned counsel has impugned the concurrent findings of the Courts below.

6. Learned counsel for the Appellants has argued that his claim was rejected by the learned Trial Court as well as by the Appellate Court on the ground that he has sought declaration of the ownership of the suit property on the basis of Iqarnama dated 22.01.1964. Learned counsel further argued that no relief for specific performance has been sought on the basis of said Iqararname and only relief sought was the declaration of ownership. He has further stated that the allotment was made after partition in terms of the Displaced Persons (Land Settlement) Act, 1958 (“**Act**”), in the name of one Waheedullah who was his brother. He has further contended that said Waheedullah was declared as the “*head of the family*” in the allotment and representing the interest of Hashmatullah Khan whose name appears in the said allotment. Their father Hashmatullah was the brother of Hameedullah. It is further contended that the entire family was the co-owner of the suit property. He has further argued that under Section 25 of the Act the Civil Court does not have jurisdiction to entertain the suit. Lastly, he has very categorically and candidly admitted that neither of the suits were maintainable and

both the suits ought to have been dismissed with the Appellants retaining possession.

7. Conversely, learned counsel for the Respondents has argued that scope of Section 100 C.P.C. is limited and the judgments and decrees of both the Courts below require no interference. He has further argued that no illegality or infirmity has been pointed out by the learned counsel for the Appellant which require interference by this Court in the instant Appeals. He has further averred that his claim of ownership stands as Waheedullah Khan was his father, and after his demise, his legal heirs became co-owners of the suit property. He has further invited my attention cancellation of allotment dated 09.10.2013 which was in favour of the predecessor of the Appellant. Subsequently, vide letter dated 26.10.2013 the Respondent/KDA advised the Respondents to seek the remedy in the Court. He has further stated that the cancellation and the subsequent advice by KDA is not disputed by the Appellants. Learned counsel for the Respondents has further argued that he has approached the Civil Court in compliance of the advice rendered by KDA. Thereafter, he invited my attention to the cross-examination of both the parties and has categorically stated that the Appellant failed to prove ownership in respect of the suit property.

8. I have heard both the learned counsels and perused the record. I have perused the allotment referred by the learned counsel for the Appellants. The learned counsel has conceded that the cancellation of the said allotment was not challenged by the Appellants at any forum and even in the suit which was filed in the year 2018. The suit filed by the Appellants was a counter blast to the suit filed earlier filed by the Respondents. It is further evident that the Appellants sought declaration of ownership on the basis of Iqarnama. The said Iqarnama was not a title document and no declaration of the ownership could have been sought on the basis of such instrument. The failure of the Appellant to seek specific performance (though the same may be time barred), was correctly held as fatal to his claim by the courts below.

9. It is trite law that right to file Second Appeal provided under section 100 of CPC, can be set into motion only when the decision is contrary to law; fails to determine some material issue of law, and substantial error or defect in the procedure provided by the Code or law. The principles governing the scope of Section 100 CPC have been expounded by the Honourable Supreme Court in the case of ***Bahar Shah versus Mansoor Ahmed***¹ in the following words: -

“10. Now we would like to pay attention to the niceties of a right to file Second Appeal provided under section 100 of C.P.C, which can be set into motion only when the decision is contrary to law; failure to determine some material issue of law, and substantial error or defect in the procedure provided by the Code or law. In the case of Madan Gopal vs. Maran Bepari (PLD 1969 SC 617), this Court held that if the finding of fact reached by the first Appellate Court is at variance with that of Trial Court, such a finding by the lower Appellate Court will be immune from interference in second appeal only if it is found to be substantiated by evidence on the record and is supported by logical reasoning, duly taking note of the reasons adduced by the first Appellate Court. In another case reported as Amjad Ikram v. Mst. Asiya Kausar (2015 SCMR 1), this Court held that in case of inconsistency between the trial Court and the Appellate Court, the findings of the latter must be given preference in the absence of any cogent reason to the contrary.

11. The first Appellate Court thoroughly evaluated and mull over the evidence adduced by the parties and reached to a just and proper conclusion that the appellants failed to prove and justify their defence pleas and judgment of Trial Court was not based on correct exposition of law and facts, whereas the learned High Court in second appeal has also gauged and assessed the overall evidence perfectly and rightly maintained the judgment of first Appellate Court.”

10. More recently the Honourable Supreme Court in the case of ***Faqir Syed Anwaruddin versus Syed Raza Haider and others***² held as under: -

“It is settled law that concurrent findings are not interfered with under section 100 of the C.P.C. unless the lower courts have misread the evidence on record, or may have ignored a material piece of evidence on record through perverse appreciation of evidence. It is also settled law that reappraisal of evidence on record by the second appellate court is not permissible while exercising jurisdiction under section 100 of the C.P.C. The High Court had rightly dismissed the regular second appeals filed by the defendants on the touchstone of the aforementioned principles.”

11. In light of what has been held above no case for interference in the impugned judgments and decrees is made out. Accordingly, both the instant

¹ 2022 SCMR 284

² PLD 2025 Supreme Court 31

Appeals are dismissed with no order as to cost. At this stage the learned counsel for the Appellants requested that six (6) months' time may be granted to vacate the subject property. Order accordingly.

12. Office to prepare decree in the above terms.

JUDGE

Nadeem Qureshi "PA"