

IN THE HIGH COURT OF SINDH, KARACHI
HCA No.222 of 2024

Present:
Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Muhammad Osman Ali Hadi

05.05.2025

Mr. Muhammad Umer Lakhani, advocate for appellant a/w Shahryar Ahmed Advocate.
Mr. Owais Jamal, advocate for Respondents No.3 & 4.

=

JUDGMENT

MUHAMMAD IQBAL KALHORO, J:- Appellant filed a suit for declaration, permanent injunction, cancellation of sale deed/mutation of entries and damages against respondents. The subject matter of the suit property comprised two acres, 39 Ghuntas in Survey Nos.79, 80, 81 and 82 of Deh Safoora, Tapo Malir, Taluka and District Malir, Karachi. The suit was partially decreed by the learned Single Judge vide impugned judgment dated 20.02.2024 and decree dated 19.03.2024.

2. Learned counsel for the appellant has argued that the same property was also the subject matter of an earlier Suit No.361 of 1995 filed by the appellant against respondents No.1 and 2 from whom he had purchased the suit property but when they refused to perform their part of the sale agreement he had filed that suit. The suit was compromise decreed vide order and decree dated 27.10.1997. However, before the appellant could file an execution application for causing mutations of the property in his favour, he came to know that same property had been sold out during pendency of the suit to respondents No.3 and 4, hence he filed subsequent suit for the reliefs as stated above.

3. According to him, learned Single Judge, however, in Para No.27 of the impugned judgment has observed that since there is already a decree passed in favour of the appellant, no further decree of specific performance of contract can be passed in his favour. And his remedy is to file execution application in terms of order and decree passed earlier in the suit in his favour. Nonetheless, the relief of cancellation of registered documents in favour of Respondents No.3 and 4 has been granted to the appellant by responding to issue No.3 and 4 in Para No.25 and 26. Learned counsel further submits that on the one hand, he has succeeded in two suits and on the other hand because of observations in the impugned judgment declining

relief of injunctions i.e. directing defendants No.3 and 4 to execute sale deed in favour of appellant, on the ground that there is already a decree passed in the suit in his favour. He is unable to have fruits of the orders passed in his favour. He submits that if in compliance of the impugned judgment, he files Execution Application in Suit No.361 of 1995, it would be considered as barred by time and since learned Single Judge has refused to grant relief of directing defendants No.3 and 4 to execute sale deed in respect of the suit property in his favour and for causing mutation of the property to be registered in his name, he has been rendered remediless.

4. Learned counsel for respondents submits that no one had stopped appellant from filing execution application in terms of order and decree passed in earlier suit and if he did not file the same within time, he should bear consequences thereof.

5. Be that as it may, we however do not agree with the proposition articulated by learned counsel for respondents that appellant be left in the lurch to have consequences of not filing the execution application in the earlier suit. We feel that appellant had a time of three years to file execution application in terms of order and decree passed in Suit No.361 of 1995. But before he could act upon and approach the Court for execution of decree, he came to know that the suit property in respect of which his suit had already been decreed had changed hands and been sold by purported attorney of defendants No.1 and 2 to the respondents No.3 and 4 and they were holding its title. This caused alarm in his mind and brought him around to file the subsequent suit under an impression that in presence of registered documents in favour of respondents No.3 and 4, the relief of specific performance of contract and causing mutation of the property in his favour would not be granted to him.

6. The learned Single Judge, however, while decreeing the suit thought it appropriate to advise the plaintiff/appellant to file an execution application in terms of earlier suit without realizing the dilemma faced by the appellant that the execution application meanwhile had been time barred. Now on the one hand, the execution application in terms of the earlier order in Suit No.361 of 1995 has become time barred and on the other the learned Single Judge has refused to grant relief of directing respondents No.3 and 4 to execute sale deed in respect of the suit property in favour of appellant and mutation to be registered in his favour. Therefore, virtually the appellant, who has succeeded in two suits over the long passage of time, had nothing in

terms of the judgments and decrees qua the suit property. It is a settled proposition of law that no party shall be caused prejudice by the act of the Court. The present suit was filed in the year 2000 and took the Court more than 24 years to decide it. When the suit was filed by the appellant/plaintiff, he had still time to file execution application but because of registered documents of the said property standing in favour of respondents No.3 and 4, he could not ask for execution of contract by respondents No.1 and 2. Hence he preferred to file the suit seeking cancellation of those documents first. His act of not filing the execution application therefore was swayed by a bona-fide impression, which was not wrong, that until and unless the registered documents of the property in favour of respondents No.3 and 4 are cancelled, he will not be competent to have performance of contract executed and mutation of the property done in his favour. The act carried out under a bona-fide impression cannot be considered as a willful default on the part of the appellant to deny him fruit of the orders obtained after a long drawn and strenuous litigations. It would amount to an injustice to him and the judgments and orders passed by the Courts in his favour would be reduced to only paper decrees. It is not scheme of the law that the judgments and decrees passed by the courts on merits of the cases shall be rendered redundant because of some technicalities, not even rooted in merits of the case.

7. Therefore, we dispose of this appeal in the terms, whereby, we modify observation of learned Single Judge and in reply to issue No.5 i.e. “ whether the plaintiff is entitled to the reliefs claimed” and proceed to declare that appellant would be competent to present an execution application seeking performance of the contract in terms of earlier order and decree dated 27.10.1997 in Suit No.361 of 1995. The limitation lapsed meanwhile between filing of the present suit and its decree vide impugned judgment would stand condoned. The time which had already lapsed from passing of the judgment and decree dated 27.10.1997 in Suit No.361 of 1995 and filing of the present Suit in the year 2000 shall be treated to have already lapsed. And from today, the remaining time would be available to the appellant to file execution application which if filed within time shall be decided on merits within 60 days thereof in accordance with law.

The High Court Appeal is disposed of.

JUDGE

JUDGE