

*Judgment Sheet***IN THE HIGH COURT OF SINDH, KARACHI****IIInd Appeal No. 43 of 2024***[Muhammad Imran Farooqui v.Mst. Shagufta Afzal & others]*

Appellant	Through Mr. Muhammad Riaz, Advocate.
Respondents	Through M/s. Muhammad Fahad, Muhammad Aqil Zaidi Advocates and Ahmed Khan Khaskheli, AAG.
Date of Hearing & Order.	02.09.2025

ARSHAD HUSSAIN KHAN, J.- The appellant through instant second appeal has challenged the concurrent findings of the courts below and sought relief as follows:-

- A) *To set-aside the Impugned Judgment dated 12.01.2024 passed by the learned VIth Additional District & Sessions Judge, Central at Karachi, in a 1st Civil Suit No. 09/2024.*
- B) *To set-aside the Impugned Judgment dated impugned consolidated Judgment and Decree dated 02.12.2023 passed by the Learned Vth Senior Civil Judge, at Karachi Central in Civil Suit No. 766/2022 & Civil Suit No. 1757/2022.*
- C) *To call R&Ps from the Learned Trial Judge and Appellate Court and after perusal of evidence and material available in the case recall and set-aside the Impugned consolidated Judgment & Decree.*
- D) *To suspend the operation of the consolidated impugned judgment and decree dated 02.12.2023 till the final decision of the instant appeal.*
- E) *Any other relief or relief(s) which this Court, may deem, fit and proper under the circumstances of the appeal.*

2. From perusal of the record, it reveals that the appellant/ plaintiff-Muhammad Imran Farooqui filed civil suit No.766/2022, before Vth Sr. Civil Judge Karachi [Central], inter alia, against Mst. Shagufta Afzal, Mst. Ushna Khan, Mst. Javeria for Declaration and Permanent Injunction, with the following prayers:

- a) That, this Court may kindly be pleased to declare that, defendants No.1 to 3 are not entitled to get full share in the “Suit Property” according to Hanfia Law.
- b) That, this Court may kindly be pleased to declare that the defendants No.1 to 3 are bound to execute the Will dated 3rd May, 2001 of Deceased Muhammad Afzal in the favor of legal

heirs of late Muhammad Ilyas Farooqui S/o Abdul Rehman in the light of Muhammadan Law and Order of Quran-e-Pak.

- c) That, this Court may be pleased to issue permanent injunction against the defendants restraining the defendants from selling, mortgaging, alienating, leasing or creating third party interest in respect of "SUIT PROPERTY" the official defendants restrained from tampering with the record of property, deed or keep any subsequent entry with regard to 'SUIT PROPERTY' directly or indirectly, in any manner till the final disposal of instant suit.
- d) That, the costs of suit may be awarded to the plaintiff.
- e) That, any other relief, which this Court deems fit and proper, may be awarded to the plaintiff.

3. A perusal of the record further shows that respondent No.1/ plaintiff-Shagufta Afzal, alongwith Mst. Ushna Khan, Mst. Javeria filed civil suit No.1757/2022, before Vth Sr. Civil Judge Karachi [Central], inter alia, against Muhammad Kazim Farooqi, Muhammad Imran Farooqi and others for Administration, Partition, Distribution of Shares, Permanent Injunction & Mense Profit, with the following prayers:

- a. To pass preliminary decree for administration and distribution of the suit property @ being Property @ R-236 Sector 15-B Sector North Karachi Township Karachi admeasuring 120 sq. yds. with construction ground + two floor amongst the all legal heirs of Muhammad Afzal Khan.
- b. To pass the Judgment and decree for the partition and Administration of the suit / property @ R-236 Sector 15-B Sector North Karachi Township Karachi admeasuring 120 sq. yds. with construction ground + two floor amongst the plaintiff and other legal heirs of the deceased and determine and affecting the due respective shares of the plaintiff and the other legal heirs by appointing the Nazir of the Court to sale out the said property and disburse the respective shares of the plaintiff and other legal heirs as per Sharia and law.
- c. To restrain the defendants their legal heirs, successors, companions, associates employees servants, subordinate friends, relatives, administrator, representative party or parties, person and persons acting on their behalf from selling dispossessing changing, disturbing, transferring, mortgaging, creating third party interest in respect of above mentioned deceased's immovable property @ R-236 Sector 15-B Sector North Karachi Township Karachi admeasuring 120 sq. yds. with construction ground + two floor amongst the surviving legal heirs according to shariat and law.
- d. To pass a final decree for administration the estate No. R-236, Sector 15-B, North Karachi Township, Karachi admeasuring 120

Sq. yards with construction ground plus two floors amongst the survival legal heirs according to shariat and law.

- e. Cost of the suit may also be awarded.
 - f. To grant any other relief or relieves which this Court may deem fit and proper in the circumstances of the case.
4. Before going into further discussion it would be appropriate to state the brief facts of both the suits here under:

Briefly stated facts of **suit No. 766 of 2022** are that the suit property, House No. R-236, Sector 15/B, Buffer Zone, Karachi, was registered in the name of late Muhammad Afzal. In the year, 1989, the plaintiff's father, Muhammad Ilyas Farooqi [brother of Afzal], sold out his own house and purchased the suit property in Afzal's name. Both lived jointly, and in the year 2001, Afzal executed a **Will** in favor of Ilyas, directing his heirs to transfer the property to him. Afzal died in the year 2002, but despite repeated requests, defendant No.1 (Afzal's widow) never transferred the property. After Ilyas's death in the year 2020, the plaintiff sought transfer, but defendant No.1, having remarried, allegedly colluded with defendants No.2 and 3 to fraudulently transfer the property, ignoring the **Will**. The plaintiff, along with his mother, brothers, and sisters, claim entitlement to the property under Hanafi Law, while defendants attempt to deprive them of their lawful rights.

Conversely, briefly stated the facts of Suit No. 1757 of 2022 are that Plaintiff No.1(Shagufta Afzal) married with Muhammad Afzal Khan in the year 1999, and two children namely, Ushna Khan (plaintiff No.2) and Javerai Khan (plaintiff No.3) were born from the said wedlock. Muhammad Afzal Khan passed away on 27.07.2002, leaving behind property No. R-236, Sector 15-B, North Karachi, measuring 120 sq. yards. The property was occupied under a joint family system. His brother, Muhammad Ilyas Khan (defendant No.2), later died in 2020, leaving behind several heirs who began creating disputes with the plaintiffs. On 21.12.2021, plaintiff No.1 contracted a second marriage with defendant No.1 [brother of her deceased husband namely Muhammad Kazim Farooqui]. She, then sought to sell the property and distribute shares among all the legal heirs. When she initiated mutation, the heirs of defendant No.2 filed civil suit No. 766/2022. The plaintiffs claim entitlement to their lawful shares but allege that defendants have

refused to release them and barred them from residing in the property since 23.09.2022, as well as attempting to sell the property without consent.

5. Learned counsel for the appellant has argued that the impugned judgments are perverse, arbitrary, and the result of non-reading and misreading of material facts and evidence on the record. It is contended that the learned trial court rendered its judgment in undue haste and failed to cite or rely upon any provision of law while dismissing the appellant's suit. Such dismissal, being devoid of any cogent reasoning and legal foundation, is liable to be set aside. Learned counsel further submits that the facts stated by the appellant in the Plaint stood corroborated by documentary evidence duly produced before the learned trial court. It is argued that the courts below overlooked the facts that the property belonged to the appellant's deceased father by virtue of a Will dated 03.05.2001, which ought to have been distributed according to law. However, both the trial court and the appellate court have failed to appreciate such evidence and ignored the material illegalities and irregularities committed in the proceedings. The impugned judgments, therefore, suffer from serious legal infirmities, misreading, and non-reading of material evidence and documents on record. It is contended that the courts below have failed to apply their judicial mind to the material aspects of the case, resulting in miscarriage of justice. Lastly, it is contended that the impugned judgments are not sustainable in law or on facts and the same are liable to be set aside.

6. On the other hand, learned counsel for the respondents vehemently opposed the submissions advanced by learned counsel for the appellant. Reiterating the objections filed on behalf of the respondents, he has contended that the impugned order is well-reasoned and strictly in accordance with the law, thus not warranting any interference by this Court. It is urged that the appellant has failed to substantiate his stance through evidence, and, therefore, the trial court rightly dismissed his suit, which dismissal was subsequently upheld by the appellate court. It is further argued that the appellant could not identify a single ground raised before the learned single Judge, which remained unaddressed in the impugned judgments. Lastly, it is

contended that the judgments under challenge suffer from no illegality or infirmity, and hence the present second appeal is liable to be dismissed with costs.

7. I have heard the arguments advanced by learned counsel for the parties and have also perused the record.

8. Record reveals that both the aforesaid suits were clubbed together and suit No.766 of 2022 treated as leading suit. The learned trial court, on the basis of divergent pleadings of the parties, framed the consolidated issues, recorded evidence, and after hearing the learned counsel for the parties, vide judgment dated 02.12.2023, **dismissed** the Suit No. 766 of 2022 filed by the appellant and **decreed** the Suit No. 1757 of 2022 filed by respondent No.1. The said consolidated judgment and decree were assailed before the learned VI-Additional District Judge, Karachi Central, in Civil Appeal No. 09 of 2024, which too was dismissed, vide judgment dated **12.01.2024**. The appellant has now preferred the present second appeal challenging the concurrent findings of the courts below.

9. From perusal of the impugned judgment dated **02.12.2023**, it appears that the trial court held that the Will dated 03-05-2001, relied upon by the plaintiff, no reliable or cogent evidence was produced to prove its authenticity or legal effect. The court found the documentary evidence produced by the plaintiff to be unconvincing and unreliable, especially when compared to the respondents' documentary ownership records, which carry a legal presumption of correctness. It was further held that oral assertions cannot override valid documentary evidence, and since the plaintiff failed to establish his claim of ownership through credible proof, the Will could not be given any legal weight. Accordingly, Suit No. 766 of 2022 was dismissed by the learned trial court.

Similarly, the lower appellate court upheld the trial court's decision, holding that the appellant had failed to discharge the burden of proof as required under Article 117 of the Qanun-e-Shahadat Order, 1984. It was observed that the Will in question was neither registered nor Sharia-compliant, as it purported to distribute the estate during the lifetime of the testator and excluded certain legal heirs, particularly

female heirs, from their Quranic shares, thereby rendering it contrary to Islamic law. Reliance was placed on the judgment of the Hon'ble Supreme Court in *Zakia Begum v. Nasir-ul-Islam Khan* [2022 SCMR 2130], wherein it was categorically affirmed that such a Will is null and void. Finding no misreading or non-reading of evidence, nor any legal infirmity in the trial court's judgment, the appellate court dismissed the appeal through the impugned judgment dated 12.01.2024.

10. From the evidence brought on record, it is apparent that the plaintiff in Suit No. 766 of 2022 failed to discharge the burden of proof to establish his claim. The Will dated 03.05.2001 (Exh. P/1), along with the testimony of his witnesses, neither inspires confidence nor satisfactorily rebuts the documentary evidence produced by the defendants. Conversely, the plaintiff in Suit No. 1757 of 2022 successfully substantiated his case by producing cogent oral and documentary evidence, including the death certificate, Family Registration Certificate (FRC), and Indenture of Lease (Exhs. D/1 to D/3), all of which remained unshaken during cross-examination.

11. Upon consideration of the respective arguments, I find that the submissions advanced by learned counsel for the appellant are not borne out by the record. The allegations that the courts below misread or failed to consider the material evidence, including the Will dated 03.05.2001, is unfounded. Both the trial court and the appellate court have duly examined

the oral as well as documentary evidence adduced by the parties. The Will, being unsupported by credible proof of authenticity, was rightly disbelieved. No specific instance of misreading or non-reading of evidence has been demonstrated so as to justify interference by this Court in exercise of its jurisdiction in second appeal.

12. In view of the above findings of both the trial court and the appellate court, I concur with the conclusions drawn regarding the invalidity of the Will dated 03.05.2001. The courts below have duly evaluated the oral and documentary evidence and correctly applied the relevant legal principles, including Islamic inheritance law and the Qanun-e-Shahadat Order, 1984. The Will, substantively flawed, appears to have been an afterthought intended to deprive lawful heirs,

particularly female descendants of their rightful Quranic shares, in contravention of settled Islamic principles. The appellant failed to produce any credible or admissible evidence to establish the Will's legal effect, and both courts rightly held that such a document cannot override the statutory and Sharia entitlements of the heirs.

13. Besides, it is a well-established principle of law that concurrent findings of fact recorded by the courts below are not open to interference by the High Court in the exercise of its jurisdiction in second appeal, unless it is shown that such findings are tainted by misreading or non-reading of material evidence, or otherwise are afflicted with a manifest illegality. The concurrent findings rendered by the learned courts below are, therefore, entitled to deference. In the present case, no jurisdictional defect, legal infirmity, or misapprehension of evidence has been demonstrated. The learned counsel for the appellant has also failed to point out any material irregularity warranting interference.

14. Moreover, it is pertinent to note that the present matter has been instituted as a second appeal under Section 100 of the Code of Civil Procedure, 1908. The scope of such jurisdiction is narrowly defined and may only be invoked in the following circumstances:

- (a) Where the decision is contrary to law or a usage having the force of law;
- (b) Where the court below has failed to determine a material issue of law or a usage having the force of law; or
- (c) Where there exists a substantial error or defect in the procedure prescribed by the CPC or any other law for the time being in force, which has resulted in an erroneous or defective decision on the merits.

Admittedly, none of the above conditions are present in the instant case.

15. The Supreme Court of Pakistan in the case viz. *Muzafar Iqbal v. Mst. Riffat Parveen and others*, [2023 SCMR 1652] while dilating upon the scope of second appeal, inter alia, has held as under :

“There is a marked distinction between two appellate jurisdictions; one is conferred by section 96, C.P.C. in which the Appellate Court may embark upon the questions of fact, while in the second appeal provided under section 100, C.P.C., the High Court cannot interfere with the findings of fact recorded by the first Appellate Court, rather the

jurisdiction is somewhat confined to the questions of law which is sine qua non for the exercise of the jurisdiction under section 100, C.P.C. The High Court cannot surrogate or substitute its own standpoint for that of the first Appellate Court, unless the conclusion drawn by lower fora is erroneous or defective or may lead to a miscarriage of justice, but the High Court cannot set into motion a roving enquiry into the facts by examining the evidence afresh in order to upset the findings of fact recorded by the first Appellate Court”.

16. It may be observed that the Legislature, by circumscribing the scope of a second appeal under Section 100, C.P.C., intended to secure the finality of litigation and to discourage repeated challenges premised merely on questions of fact. Interference with concurrent findings of fact, in the absence of jurisdictional error or a substantial question of law, would not only transgress the statutory boundaries but also frustrate the very object of expeditious and effective dispensation of justice. The High Court, while exercising its jurisdiction under Section 100, C.P.C., is therefore required to exercise caution and restraint, as it cannot assume the role of a fact-finding forum.

Accordingly, in view of the above discussion, this second appeal is **dismissed** being devoid of any merit.

JUDGE

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