

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.
R.A. No.34 of 2011.

DATE	ORDER WITH SIGNATURE OF JUDGE
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07.08.2014

Mr. Faheem Hussain Panhwar Advocate for the applicant.
Miss Shazia Umrani Advocate for the respondents.

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NAZAR AKBAR J: This Revision Application is directed against the Judgment and Decree dated 23.10.2010 and 08.11.2010 respectively passed by VIIIth Additional District Judge, Hyderabad in Civil Appeal No.31/2008, whereby the learned appellate court has maintained the Judgment and Decree passed by IInd Senior Civil Judge, Hyderabad in Suit No.96/1999. Through this revision, concurrent findings have been challenged.

2. Pre admission notices were issued to the respondents and they have been represented by their counsel.

3. Brief facts of this case are that the applicants have filed suit for declaration of ownership and specific performance of contract valued at Rs.45,200/- in respect of Quarter No.298 Block öFö, Unit No.8 Latifabad Hyderabad. The plaintiffs have filed this suit as legal heirs of one Zahoor Ahmed, who died on 17.05.1995 and prior to his death he had filed suit No.415/1987 against the respondent which was dismissed in Civil Appeal No.282/1994 by Judgment dated 08.01.1998 passed by learned VIIIth Additional District Judge, Hyderabad. It was contended by the applicants that they could not file Revision Application as there was some compromise between the applicants and the respondent. However, they have filed this suit No.96/1999 for specific performance against the father of the respondents in the trial court on 01.07.1999 claiming that cause of

action accrued to them six months prior to filing of the suit. The applicants have sought following prayers in suit No.96/1999:-

- a) It may kindly be declared that the plaintiffs are lawful owners of the full Quarter No.298, Block öFö, Unit No.8, Latifabad Hyderabad and that they are entitled to possession of the southern portion of the said quarter from the defendant after payment of compensation to him for the construction;
- b) That a decree for possession/ specific performance of contract in favour of the plaintiffs and against the defendant in respect of southern portion of Quarter No.298, Block öFö, Unit No.8, Latifabad Hyderabad be passed.
- c) Any other relief;
- d) Costs.

4. The respondents in their written statement in the suit have denied all averments of the plaint and relied on a Judgment of Civil Appeal No.282/1994 which was decided on 08.01.1998. Learned trial court framed as many as ten issues and after recording evidence and hearing respective counsel dismissed the suit of the applicants. The applicants preferred Civil Appeal No.31/2008 and the appeal also met with same fate.

5. I have heard learned counsel for the parties and perused the record and on perusal of plaint I have observed following things:-

- i) The suit for specific performance of of an oral contract was filed by the applicants, however, neither particulars of contract nor consideration have been mentioned in the memo of plaint.
- ii) It is alleged in para No.7 of the plaint that the defendants have agreed to vacate the premises on the intervention of the respectable persons of the community after receiving compensation from the applicants/plaintiffs, however, the plaint is silent regarding the öamountö of compensation agreed, if any.

- iii) The suit has been valued at Rs.40,000/- for specific performance of oral contract though the figure of Rs.40,000/- is not established as a settled compensation or consideration for obtaining possession nor was it alleged that when and how this amount shall be payable by the applicants.
- iv) In examination in chief, the applicant/plaintiff No.2 has changed his stance by suggesting that the defendants/ respondents have agreed to pay an amount of Rs.40,000/- to Rs.50,000/. This is reversal of the terms of alleged compromise / oral agreement and on such assertion in evidence, the plaintiffs case of specific performance stand changed to the case of recovery of money as compensation as compromised.
- v) The applicants have admitted in their pleadings that the claim of possession of the suit property raised by their father in Suit No.415/1987 as well as mesne profits against the same defendant had been dismissed in Civil Appeal No.282/1994 by the court of VIIth Additional District Judge Hyderabad, and no further remedy against the dismissal of their suit was availed by the applicants and only on the pretext of negotiations between the applicants and the respondents, they had filed subsequent suit No.96/1999, which was also dismissed.
- vi) Admittedly, the applicants /plaintiffs father Zahoor Ahmed had lost his case for possession of the suit property and therefore the applicants being legal heirs of said Zahoor Ahmed have no locus standi to claim ownership of the property in question and at the same time they have failed to establish contrary plea of entering

into compromise with the respondent to seek possession of the suit property on payment of undisclosed compensation.

vii) The prayer of declaration of ownership is contrary to the prayer for a decree of specific performance of contract as owner of the property is not supposed to enter into agreement to purchase his own property.

viii) In view of the above facts the claim of the applicants/plaintiffs that they are entitled to the ownership by way of inheritance being legal heirs of owner of the property has no basis.

6. The concurrent findings of two courts below in view of the facts and evidence discussed by the two courts below and the facts mentioned in para 5(i) to (vii) above from the record, the applicants have failed to show any illegality in the findings of learned trial Court and appellate Court, therefore, this Revision Application against the concurrent findings is dismissed and no interference is required by this court.

These are the reasons of my short order dated 05.08.2014, whereby this Revision Application was dismissed.

JUDGE

A.K