

JUDGMENT SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT HYDERABAD

R.A. No.19 of 2013
R.A. No.20 of 2013.

Date of hearing	07.08.2015.
Date of decision	.08.2015
Applicant	Mst. Shahida Parveen W/o Noor Muhammad Through Miss Shazia Umrani Advocate.
Respondent:	Saiful Malook s/o Qadir Bux Through Miss Naseem Abbasi Advocate.

JUDGMENT

NAZAR AKBAR, J.- By this common Judgment, I intend to dispose of Civil Revision Application No.19 of 2013 and Civil Revision Application No.20 of 2013 challenging common Judgment and Decree dated 19.01.2013 and 23.01.2013 respectively passed by the Ist Additional District Judge, Hyderabad in Civil Appeal No.188 of 2012 and Civil Appeal No. 189 of 2012 maintaining Judgment and Decree dated 17.04.2012 and 28.04.2012 respectively passed by learned IVth Senior Civil Judge, Hyderabad in two consolidated suits, whereby applicant's F.C suit No.99 of 2009 for Specific Performance of Contract was dismissed and F.C. Suit No.53 of 2009 filed by respondent for Possession, Permanent Injunction, Recovery of Utility Charges/ Bills and Mesne Profit was decreed.

2. Brief facts of the case are that respondent Saiful Malook filed F.C. Suit No.53 of 2009 against the applicant claiming to be owner of immovable property bearing House No.3030/C, Wadhan-Jo-Pir as per entries in the record of City Survey (hereinafter 'the suit property') since 29.05.1996 through family settlement. In the year 2003, the respondent on the verbal commitment of the applicant to pay Rs.6000/- per month as

rent and also to pay utility bills/charges, allowed her to live in the suit property for few months; however, she failed to pay the utility charges, therefore, the respondent requested the applicant to vacate the suit property and hand over its vacant possession to him. The applicant repeatedly assured the respondent that in future she would be careful and will pay the utility bills etc regularly but failed again and again. Ultimately when the respondent approached the concerned departments, he came to know that phone No.2631366 was disconnected and new phone connection bearing phone No.2632680 was installed in the suit property in the name of applicant. The respondent served a legal notice dated 18.02.2009 upon the applicant which was not replied, therefore, the respondent was constrained to file Suit No. 53 of 2009, amongst other, prayed for the following relief(s):-

- a. To direct the defendant to handover the possession of the suit property to the plaintiff;
- b. To direct the defendant to pay all the utility charges, which amount as under:-
 1. Electricity (as per Feb.2009 bill) 68263-00
 2. Gas (as per Feb:2009 bill) 2,930-00
 3. Water (as per Feb:2009 bill). 2582
 4. Telephone (as per Feb:2009 bill) 5394-00
- c. To pay the amount of Rs.6000/- for three years as rent amount;
- d. To direct the concerned Department to disconnect the utilities bills till the final order/ Judgment of this suit;

3. The applicant Mst. Shahida Parveen in her written statement denied the claim of respondent and pleaded that she has purchased the suit property from the respondent through sale agreement dated 16.5.2006 for total sale consideration of Rs.300,000/, out of which she paid him Rs.200,000/- as part payment under receipt and she was put into possession of the suit property. She further asserted that she has regularly paid utility bills after taking possession of the suit property. According to the applicant, she approached the respondent to perform his part of contract and execute sale deed in terms of sale agreement on

receiving the remaining sale consideration but he refused. Therefore, while praying for dismissal of the suit of respondent with cost, the applicant also filed F.C. Suit No.99 of 2009 for Specific Performance of Contract dated 16.5.2006 in respect of the suit property. She further asserted that eighteen months time was fixed for execution of sale deed but during eighteen months, the respondent never came forward for execution of sale deed, therefore, the applicant sent legal notice dated 3.3.2009 which was not replied compelling her to file Suit No. 99 of 2009 with the following prayer:-

- a. To pass a decree for specific performance of contract, directing the defendant to execute sale deed in favour of the plaintiff by receiving balance amount of Rs.100,000/- at the time of execution of sale deed.

4. The respondent contested the suit and filed his written statement denying the claim of the applicant. He further pleaded that suit of the applicant was not maintainable in view of Sections 10 and 11 CPC and further the suit was time barred.

5. Learned trial court consolidated both the suits and framed consolidated issues as under:-

1. Whether the suit is maintainable under the law?
2. Whether plaintiff Saiful Malook has allowed defendant Mst. Shahida Parveen to reside in the suit property for few months on verbal commitment?
3. Whether plaintiff has entered into sale agreement on 16.05.2006 with the defendant for the sale of the suit property for total sale consideration of Rs.300,000/- and the defenant paid Rs.200,000/- in cash?
4. Whether the defendant Saiful Malook has any cause of action to file the suit against defendant in F.C.S. No.43 of 2009 (new No.53 of 2009)?
5. Whether the defendant Mst. Shahida Parveen being plaintiff in F.C. S.No.72 of 2009 (new No.99 of 2009) has any cause of action to file the suit against defendant Saiful Malook?
6. Whether the plaintiff Saiful Malook is entitled for possession of the suit property and mesne profit?

7. Whether Mst. Shahida Parveen in Suit No.72/2009 (new No.F.C. Suit No.99 of 2009) is entitled for possession of the suit property and mesne profit?

8. What should the decree be?

6. The respondent examined himself at Ex.35 and produced Extract from the Property Register Card at Ex.35/A, copy of complaint made to the Divisional Engineer, Phones Hyderabad at Ex.35/B, Non-system defaulter bill regarding telephone No.2631366 at Ex.35/C, copy of complaint made to SDO (HESCO) at Ex.35/D, copy of complaint made to Assistant Finance (WASA) H.D.A Hyderabad at Ex.35/E, copy of legal notice dated 16.02.2009 at Ex.35/F., OCS receipt alongwith its tracking report showing service of legal notice upon the defendant/applicant at Ex.35/G and closed his side. The respondent also examined his witness Inayat Ali as Exh. 36 in support of his claim. The applicant examined only herself at Ex.41 and produced Sale Agreement dated 16.05.2012 and closed her side.

7. After hearing learned counsel for the parties, learned Trial Court decreed the suit of respondent and dismissed the suit of applicant by consolidated Judgment and decree which were assailed by the applicant before the learned Appellate Court but failed, hence the instant Revision Applications.

8. I have heard learned counsel for the parties and gone through the R&Ps of both the Revision Applications.

9. From the pleadings of the parties it is apparent that applicant Mst. Shahida entered into the suit property through respondent who admittedly is owner of the suit property. The plea taken by her to resist the suit for the recovery of possession filed by the respondent was her claim of purchase of suit property on the basis of agreement of sale. Therefore, the burden was on the applicant to prove the existence of agreement to sale and handing over of the possession of the suit property through the sale agreement. In support of her claim she has examined

only herself therefore issue No.3 was crucial issue for the applicant whereby she was under burden to proof existence of the agreement of sale and payment of sale consideration. The record shows that neither she has produced the receipt of payment of Rs.2,00,000/- nor she has produced the marginal witnesses or any other witness to prove the execution of sale agreement with the respondent. The sole testimony of applicant herself was not sufficient and both the trial courts have rightly held that the applicant has failed to discharge her burden in terms of Section 79 of Qanaun-e-Shahadat Order, 1984.

10. The applicant has failed to show any error or illegality of the trial court or the appellate court or misreading or non-reading of evidence to establish that there was sufficient material before the trial court to accept the plea of the applicant that her possession of the suit property was lawful. It is not a case of mis-reading and non-reading of evidence of two courts below and the concurrent findings of the learned lower courts cannot be set-aside in exercise of jurisdiction under Section 115 CPC unless found perverse or contrary to record. Admittedly the applicant has not been able to justify her possession of the suit premises contrary to the claim of respondent who was admittedly owner of the suit property and she was put in possession by the said owner/ respondent and therefore the respondent was rightly found liable for recovery of the possession of the suit property.

11. In view of the above facts no case is made for interference in the concurrent findings of two courts below. Consequently both the Revision Applications stand dismissed.

JUDGE