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IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE FAISAL ARAB
MR. JUSTICE MUNIB AKHTAR

CIVIL APPEAL NOS. 1-K TO 3-K OF 2017

(On appeal against the judgment dated 14.11.2016
passed by the High Court of Sindh, Karachi in Revision
Application Nos. 172 to 174 of 2006)

Mrs. Parveen Zahid and others

(In all cases)

... Appellants

VERSUS

Masood Ali Khan (decd) through LRs etc

(In all cases)

... Respondents

For the Appellants: Mr. Kashif Hanif, ASC
Mr. Muhammad Iqbal Chaudhry, AOR

For Respondents (2-3): Mr. Haider Waheed, ASC
Mr. K.A. Wahab, AOR

Date of Hearing: 31.07.2018

ORDER

CIVIL APPEAL NO. 01-K OF 2017

FAISAL ARAB, J.- In the year 1983, appellant No. 1's husband was inducted by respondent No. 1 as tenant in Flat No. E-11, Gulberg Square, Block No. 6, Federal B Area, Karachi. Five years later under an agreement to sell dated 30.07.1988, he agreed to sell the said flat to appellant No. 1 for a total sale consideration of Rs.105,000/- out of which Rs.42,000/- were paid in advance and the remaining Rs.63,000/- were to be paid within eighteen months. Two months before the expiry of time, the respondent No. 1 called upon the appellant to complete the transaction which she refused on the ground that under the agreement sufficient time is still left to complete the transaction. Even after the expiry of the time, the appellant No. 1 did not come forward to complete the transaction.

ATTORNEY

Senior Court Associate
Supreme Court of Pakistan
Karachi.

2. On 25.07.1991, after a lapse of more than one year of the expiry of the time fixed for completion of the transaction, the appellant No. 1 filed a suit for specific performance against the respondent No. 1 claiming that she was inducted in the premises on the basis of the agreement to sell and that the transaction could not be completed for the reason that the respondent No. 1 failed to supply the documents required to draw up the sale deed. In the evidence, the husband of the appellant No. 1 appeared as her witness and examined as PW-1. He admitted that the lease deed was provided to him but the sale deed was not prepared for the reason that the title of appellant No. 1 upon verification was found to be bogus as the mutation in the relevant record did not stand in the name of respondent No. 1. The respondent No. 1 on his part filed suit for cancellation of sale agreement dated 30.07.1988. He also filed suit for recovery of Rs.21,600/- as rent from appellant No. 1. The suits were consolidated and tried together. The learned Trial Court decreed the suits of the respondent No. 1 and dismissed the suit of the appellant No. 1. The Appellate Court vide its judgment dated 30.08.2006 reversed the findings of the learned Trial Court. However, the learned High Court in revisional jurisdiction, set aside the order of the Appellate Court and maintained that of the Trial Court.

3. From the evidence that has come on the record, it clearly appears that inspite of the lease deed that was supplied to appellant No. 1, the sale deed was not drawn up for the reason that she considered that respondent No. 1 does not hold title to the property. The very filing of the suit for specific performance by a buyer who considers the seller not to be the owner is contradiction in terms as no one would want to buy a property with defective title. This also demonstrates that buyer is not ready and willing to complete the sale transaction, which is a condition precedent for seeking the relief of specific performance of a contract.

Hence, it appears that the relief of specific performance was sought only to remain in possession of the flat which the appellants were enjoying, not under any of the terms of the sale agreement but on the basis of the tenancy agreement created much earlier in the year 1983. Where title of the seller is found to be defective, the buyer can sue for damages but in the present case, the appellant No. 1 has not even claimed damages. Even otherwise nothing has come on the record to establish that respondent No. 1 was not the owner and the title belonged to someone else, hence in that eventuality also failure on the part of the appellant No. 1 to complete the transaction in terms of the agreement to sell does not entitle her for the grant of decree of specific performance.

4. For what has been discussed above, we find no legal error in the elaborate judgment of the learned High Court. This appeal having no merit is accordingly dismissed.

CIVIL APPEAL NOS. 2-K & 3-K OF 2017


5. In view of the order passed in the connected Civil Appeal No. 1-K of 2017, these appeals have become infructuous and are disposed of accordingly.

Sd/= Faisal Arab, J
Sd/= Munib Akhter, J

CERTIFIED TO BE TRUE COPY

Senior Court Associate
Supreme Court of Pakistan
Karachi.

Karachi, the
31st of July, 2018
Not Approved For Reporting
Khuram


07/8/2018