

94/25

IN THE SUPREME COURT OF PAKISTAN
 (Appellate Jurisdiction)

Present:

Mr. Justice Irfan Saadat Khan
 Mr. Justice Muhammad Shafi Siddiqui

Civil Appeal No.117-K of 2022

Against the order dated 03.09.2021 passed by High Court
 of Sindh, Karachi in Revision Application No.239/2010

Muhammad Ahmed Shaikh & others

...Appellant(s)

Versus

Shabbir Ahmed

...Respondent(s)

For the Appellant(s): Mr. Shahenshah Hussain Syed, Sr. ASC
 Mr. Ghulam Rasool Mangi, AOR

For the Respondent(s): Mr. Shaukat Ali Shaikh, ASC

Date of Hearing: 20.03.2025

O R D E R

Muhammad Shafi Siddiqui, J.- The impugned order in Revision Application No.239 of 2010 has reversed the concurrent findings of two Courts below. The appellants' suit bearing No.22 of 2005 for possession was decreed whereas the appeal there against of the respondent bearing No.65 of 2010 was dismissed, which led to filing of the Revision Application No.239 of 2010 before the High Court which was allowed via impugned order and the two concurrent findings were upset.

2. We have heard learned counsel for the parties and perused material available on record.

3. The history of the litigation for the purpose of aforesaid appeal is that on the strength of a registered sale deed dated 05.03.1989 a suit for possession and mesne profit was filed against the respondent Shabbir Ahmed. The suit was contested by the respondent wherein in paragraph 2 of the written statement his defence was that it was a joint property as the respondent has paid certain amount to the father of the plaintiffs/

appellants. In paragraph 3 the respondent took the defence that the appellants, being plaintiffs of the suit, committed fraud with their late father and despite assurances i.e. his (respondent's) share will be transferred, the assurance was not fulfilled.

4. On the above set of pleadings, the trial Court framed following issues:-

1. Whether the plaintiffs are owner of the suit property?
2. Whether the defendant is in illegal possession of suit property?
3. Whether plaintiffs are entitled for mesne profits? If yes since when and at what rate?
4. Whether the suit is not maintainable?
5. Whether the plaintiffs have no cause of action?
6. Whether the suit is barred by any law?
7. What should the decree be?

5. In consideration of the pleadings and the evidence brought on record, all issues were decided in favour of the appellants by the trial Court,. The appellants were thus declared as the owners of the subject property and the respondent/defendant as the one in illegal occupation and in consequence thereof the appellants were declared entitled for the mesne profits accordingly. In consequence of such decree the respondent preferred an appeal in the Court of VII-Additional District Judge Hyderabad as Civil Appeal No.65 of 2010, which after contest was dismissed as no interference was held to be required. The respondent preferred Revision Application under section 115 CPC and despite concurrent findings of the two Courts below and the evidence that was brought on record the same was allowed hence this appeal.

6. The impugned judgment has not provided any reason for the reversal of the concurrent findings of facts and law of the two Courts below keeping the jurisdiction framed under section 115 CPC.

7. The Revisional Court also did not attribute any reason to ignore the registered sale deed in favour of the appellants. The Revisional Court also did not consider the fact that the belated suit of the respondent i.e. First Class Suit No.632 of 2012, which essentially was for cancellation of the very registered sale deed of 1989, referred above, in favour of the appellants, was dismissed by a detailed judgment answering eight issues which were framed including the issue as to the ownership of the subject plot/property and the claim of entitlement of the respondent over it. Learned Revisional Court also failed to consider that the appeal there against as Civil Appeal No.276 of 2022 was dismissed by VII-Additional District Judge Hyderabad on 16.02.2023.

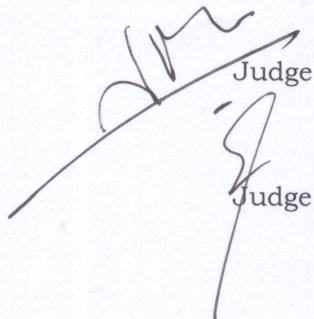
8. Originally it (the subject property) may or may not be the property of one Manzoor Ali but the evidence that was brought on record leads to an irresistible conclusion that it was transferred after a surrender of the earlier lease in favour of appellants and/or their late father by the Municipal Corporation. Furthermore, if the respondent has paid any amount towards part or full consideration seeking title in the property, as pleaded by him in the written statement, this does not bestow a title to him in the property unless specific performance thereof is sought, which relief/remedy admittedly respondent has failed to avail; at least he could have pleaded his case for return of the amount and/or for performance.

9. To our surprise while reversing the findings of the two Courts below the Revisional Court has observed to consider the suit of the appellants (for possession) as the one for administration for respondent, whereas the pleadings of the appellants in the referred suit were nowhere near for the administration. The suit was purely for possession and mesne profit and the appellants pleaded such facts and took the respective pleas. Even the Revisional Court has failed to appreciate the fact that the respondent in claiming payment of certain amount to the late father of the appellants

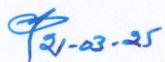
has not produced any proof to substantiate such claim as the impugned order is silent in that regard.

10. We failed to understand that how a registered instrument as a sale deed being a title of the subject property could be ignored despite the fact that it was challenged belatedly by the respondent and such challenge failed not only at the trial stage but also at the first appellate stage. The two Courts below, other than the Revisional Court whose order is impugned before us, have decided all questions based on material and evidence placed before them with well-reasoned justification to arrive at such conclusion and within their jurisdiction.

11. In view of the aforesaid consideration we, via short order dated 20.03.2025, of which these are the reasons, allowed the appeal of the appellants and the order of the High Court was set aside and that of the trial Court as well as the Appellate Court were restored. However, at the conclusion of short order, the request of Mr. Shoukat Ali Shaikh, counsel for the respondent, was considered and allowed thereby, the respondent is allowed to avail the legal remedy, if any available to him under the law.

Two handwritten signatures of judges are shown. The signature on the left is "J.W." and the signature on the right is "J.J." Both signatures are followed by the word "Judge" written vertically.

Karachi
21.03.2025

A handwritten date stamp in blue ink that reads "21-03-25".

"Approved for reporting"