

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

RFA No. 93 of 2017

Liaquat Hussain Shah

Versus

Gul Faraz, etc.

Date of Hearing	:	12.05.2022.
Appellant by	:	Muhammad Imran, and Ch. Sarmad Abbas, Advocates
Respondent by	:	Malik Irfan Asif, Advocate

ARBAB MUHAMMAD TAHIR, J. The instant Regular First Appeal emanates from ex-parte judgment and decree dated 22.03.2017, passed by learned Civil Judge 1st Class Islamabad West, whereby suit for declaration, possession, mandatory and permanent injunction, filed by the appellants was dismissed.

2. Relevant facts are that the appellants filed the subject suit with the contention that they are co-owners of a house comprising land measuring 8 1/2 marlas purchased by them vide two separate sale deeds dated 10.04.2007 and 29.07.2008; that the subject land is situated with the revenue estate of village Siham, Islamabad; that the sale was also incorporated in mutations dated 13.05.2007 and 13.11.2008 while physical possession was also handed over to them by its owner Mst. Sofia Tabbasum in the year 2003; that they were subsequently dispossessed while respondent 1 & 2 by committing fraud got registered the sale deed on 16.02.2010, by mentioning description of the house of the appellant while the location of their house is entirely different with which the respondent No. 2 have no concern. The appellants also prayed for cancellation of sale deed No. 1065 in favour of respondent 1 & 2.

3. The respondents 1 & 2 fail to appear and were proceeded against ex-parte. In ex-parte evidence, appellant Liaquat Hussain Shah has appeared as PW-1, while documentary evidence comprises registered sale deed dated 10.04.2007 Exh. P/1, second registered sale deed dated 29.07.2008 Exh. P/2. The copy of revenue record Exh. P/2 & P/4, general power of attorney Exh. P/6, copy of Aks Shajrah Exh. P/6 report of Gardawar Exh. P/7 &

P/8, copy of registered sale deed in favour of respondent 1 & 2 Exh. P/10, and order dated 23.05.2014 Exh. P/11. The learned trial court after hearing the arguments, dismissed the suit vide impugned judgment and decree, hence instant appeal.

5. Learned counsel for the appellant argued that the impugned judgment is result of misreading and non-reading of the evidence lead by the appellants as the documentary evidence was even not appreciated; that the land upon which the appellant constructed the house is entirely different than the one of the respondents 1 & 2 by mentioning the description of the property of the appellants, got registered a fake sale deed which is liable to be cancelled.

6. On the other hand, learned counsel for respondents argued that the suit of the appellants is hit by the principle of *res judicata* as on the same subject matter they earlier got withdrawn the suit without permission to file fresh one; that the appellants also got withdrawn private complaint under section 200 Cr.P.C filed against the respondents 1 & 2 from the court of learned ASJ-IV Islamabad West vide order dated 24.08.2003, while the impugned judgment and decree is in accordance with evidence of record, therefore, appeal is liable to be dismissed.

7. Heard the learned counsel for the parties and examined the record.

8. At the very outset, it is noticed that in order to substantiate the assertions, as noted by the learned trial court in Para 7 of the impugned judgment, the appellants tendered in evidence more than 10 documents and the same are part of public record but were not taken into consideration while passing the impugned judgment, therefore, the impugned judgment, on the face of it is sketchy, slipshod, non-speaking and result of misreading and non-reading of evidence, thus not legally sustainable.

9. The stance being taken by respondents 1&2 can well be replied through filing a written statement in due course before the learned trial Court. As the impugned judgment is not legally sustainable, there left no need to dilate upon merits of the case, lest it may cause *pre judice* to the case of either side.

10. Consequently, instant appeal is allowed, impugned ex-parte judgment and decree dated 22.03.2017 is set aside. The matter is remanded to the learned trial Court for decision afresh on merits after affording due opportunity to both the sides to produce

evidence in due course. The suit pertains to the year 2015, therefore, the learned trial court shall decide the same within a period of six months from the receipt of this judgment. There shall be no order as to cost.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in an open Court on 24th 05.2022.

JUDGE

****//Kamran//****