

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

CASE NO. : C.R. NO.142-2014

Nasir Saeed Akhtar Warriach

Vs.

Shafique-ur-Rehman etc.

Petitioner by : Mr. Mushtaq Hussain, Advocate
Respondents by : Ch. Abdur Rehman Bajwa, Advocate
Mr. Owais-ul-Islam, Advocate
Mr. Nauman Munir Peracha, Advocate
Date of decision : 11.12.2019

AAMER FAROOQ J. The facts, leading to filing of instant petition, are that respondent No.1 filed a Suit for Declaration and Specific Performance against *inter alia* the petitioner and respondents No.2 to 5 with respect to property bearing Plot No.514, measuring 25x50, Sector G-14/4, Islamabad. The basis, for filing of the suit, was agreement to sell between respondent No.1 and respondent No.2; total consideration settled was Rs.8,00,000/- and sale agreement was dated 13.05.1996. Apparently the basis, for impleading respondent No.3, was that he was the original allottee of the plot in question; the petitioner was impleaded, as the plot stood transferred in his favour by respondent No.3, whereas respondent No.4 was impleaded because it had floated the Housing Society. The facts, as narrated in the plaint, also indicated that respondent No.3 had entered sale agreement with respondent No.2 and also executed general power of attorney. Respondent No.3 had also executed another sale agreement. In the suit filed by respondent No.2 against respondent No.3, latter conceded sale agreement and expressed no objection to the decree of the suit, however, the same was dismissed with direction that property be transferred in favour of respondent No.2. The petitioner also acquired title by filing suit and obtaining a decree. Respondent No.1, in turn, moved an application under section 12(2) CPC with respect to the decree obtained by the petitioner against respondent No.3. In the referred background, the suit filed by respondent No.1 was dismissed vide

judgment and decree dated 11.05.2011. Appeal was preferred which was allowed and the matter was remanded for decision on merits.

2. Learned counsel for the petitioner, *inter alia*, contended that since the property stood transferred in favour of the petitioner therefore sole claim of respondent No.1 is against respondent No.2 and that too in the monetary terms. It was submitted that in the facts and circumstances, there was no justification or basis for remanding the case and decision on merits.

3. Learned counsel for respondent No.1, *inter alia*, contended that plot in question has chequered history of litigation and in the facts and circumstances, it was appropriate that the matter be thrashed out by leading evidence and decision on merits. It was submitted that even otherwise, civil revision is not competent, as it does not contain all the requisite documents. Reliance was placed on cases reported as 'Muhammad Bashir and others Vs. Muhammad Hussain' (1994 CLC 1207), 'Mst. Sabiran Bi Vs. Ahmad Khan and Another' (2000 SCMR 847) and 'Abdul Hafeez Vs. Shaukat Ali and others' (2014 MLD 555).

4. Learned counsel for respondent No.3 supported the contentions made by learned counsel for respondent No.1.

5. Learned counsel for respondents No.4 & 5 submitted that referred respondents are the proforma.

6. Arguments advanced by learned counsels for the parties have been heard and the documents, placed on record, examined with their able assistance.

7. The facts, leading to filing of instant civil revision, have been mentioned hereinabove therefore need not be reproduced.

8. Learned trial court, vide judgment and decree dated 11.05.2011, dismissed suit of respondent No.1 summarily, as same did not disclose any cause of action, however the matter was remanded by learned appellate court to be decided on merits.

9. The background of the case, as mentioned hereinabove, clearly shows that multiple litigation is pending with respect to the property in question and different persons have claims over it. In the above facts and circumstances, learned appellate court was justified to decide that the matter should be decided on merits after leading evidence. The impugned

judgment does not suffer from any jurisdictional error warranting interference.

10. For the above reasons, instant civil revision is without merit and is accordingly dismissed. However, since the matter is pending sing long therefore learned trial court is directed to conclude the trial within a period of six months from the date of this judgment.

(AAMER FAROOQ)
JUDGE

Zawar