

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
(JUDICIAL DEPARTMENT)

Regular First Appeal No.18 of 2020

Syed Jarar Haider Gardaizi
Versus
Mst. Aasra Perveen and others

Appellant by: Syed Nayab Hassan Gardezi, Advocate.
Respondents No.1-43 by: Syed Nadeem Hussain Zaidi, Advocate.

Date of Hearing: 28.10.2020.

GHULAM AZAM QAMBRANI,J.:- The appellant has assailed the impugned order and decree dated 14.10.2019, passed by the learned Civil Judge^{1st} Class, Islamabad-West, whereby suit for Specific Performance of the agreement dated 13.11.2018 was dismissed, whereas, the learned trial Court directed the respondents/ defendants to return the amount received from the appellant/ plaintiff.

2. The brief facts leading to filing of the present appeal are that the appellant/ plaintiff had filed a suit for Specific Performance of agreement dated 13.11.2018 along with Permanent and Mandatory Injunction stating therein that the respondents/defendants are lawful owners of land bearing Khasra No.1815/501 situated in revenue estate of Bokkara, Tehsil and District Islamabad; that they are also bonafide members of the National Bank Staff Co-operative Housing Society Islamabad, (hereinafter be referred as “Housing Society”); that the said housing society purchased land measuring 24-Kanal 11 Marla for its employees through registered sale deed No.604 dated 07.02.1984 from the above said Khasra No.1818/501, but unfortunately, the said housing society could not took over the possession of the land at the spot, but in the year 1986, allotted the land in shape of plots to the respondents/ defendants through allotment letters; that on 24.10.2018, the respondents/ defendants

dissolved the said housing society through unanimous resolution as the housing society failed to develop the land at spot and also failed to take over the vacant possession of the land and that the respondents/ defendants being exclusive owners of allotted plots, on 13.11.2018, entered into an agreement to sell with plaintiff against the sale consideration of Rs.4,00,000/- of each plot and the appellant/ plaintiff paid an amount of Rs.2,00,000/- to each respondent/ defendant against Pay Order at the time of agreement as earnest money and it was further settled between the parties that the remaining amount of Rs.2,00,000/- of each plot will be paid at the time of execution and completion of deed or mutation within a period of 15 days but the respondents/ defendants refused to honour their commitment. The appellant/ plaintiff being aggrieved filed the above said suit. The defendants appeared before the learned trial Court and instead of filing written statements, got recorded their conceding statements for the decree of suit and also alleged receiving of remaining amount of Rs.2,00,000/- as remaining sale consideration. The learned trial Court after hearing learned counsel for the appellant/ plaintiff passed the impugned order, hence the instant appeal.

3. Learned counsel for the appellant/ plaintiff submitted that the respondent/ defendants being lawful owners of the plots entered into an agreement to sell with the appellant on 13.11.2018 and as per terms and conditions of the said agreement, the appellant has paid the total sale consideration of Rs.4,00,000/- (Rs.2,00,000/- as earnest money and Rs.2,00,000/- as remaining sale consideration), therefore, the impugned order passed by the learned trial Court is against the law and facts of the case. Further contended that the learned trial Court failed to understand the valuable rights of the appellant in the property in question when there was no denial of the fact that the respondents were bonafide members of the erstwhile society; that the respondents being undisputed owners of their respective plots rightly alienated their rights against consideration, as such, the

impugned order passed by the learned trial Court is liable to be set-aside.

4. On the other hand, learned counsel for the respondents supported the contentions raised by the learned counsel for the appellant by contending that the respondents being lawful owners of the plots, entered into an agreement to sell dated 13.11.2018, with the appellant; that they have received an amount of Rs.4,00,000/-, from the appellant and have no objection on the acceptance of this appeal.

5. Argument of the learned counsel for the parties heard, record perused.

6. Perusal of the record reveals that the appellant entered into an agreement to sell dated 13.11.2018, with the respondents whereas, the said housing society had already been dissolved on 24.10.2018, and this fact is also admitted by the appellant in his suit, wherein, it is stated that the said society purchased land measuring 54-Kanal 11-Marlas for its employees on 07.02.1984, but the possession of the said land could not be handed over to the society, whereas, provisional allotment letters of the said land were issued to the respondents in the year 1986, on the basis of which, the appellant entered into an agreement to sell with the respondents when the names of the respondents were also not incorporated as owners of the said land in the revenue record. Learned trial Court has rightly referred to Section-20 of the Contract Act, 1872, according to which where both the parties to an agreement are under mistake as to a matter of fact essential to the agreement, the agreement is void. This section speaks of mutual mistakes as to a fact, which goes to the root of the agreement and frustrate its object. To constitute an agreement both the parties should have understood the obligations created through the said agreement in the same sense and not differently and if one party understand the obligations in one sense and the other in a different sense, then there is no agreement as to a

matter of fact essential to an agreement. In the instant case, although the plots were allotted to the respondents/ defendants on the basis of the provisional allotment letters by the housing society but the same were not in existence when the appellant entered into an agreement to sell on 13.11.2018 with the respondents, as such, the specific performance of the said agreement to sell was not enforceable in terms of Section 21 (h) of the Specific Relief Act, 1877. Even otherwise, in accordance with Section 22 of the Specific Relief Act, 1877, grant of a decree for specific performance is a discretionary relief and the Court can exercise the discretion in favour of a person, who fully proves his entitlement for grant of a decree whereas, admittedly in the instant case, the appellant entered into an agreement to sell dated 13.11.2018 with the respondents when the housing society and the disputed plots, provisionally allotted to the respondents, were not in existence and the names of the respondents were also not mentioned in the revenue record as owners of the said plots. In this eventuality, the view taken by the learned trial Court is in accordance with law. Keeping in view the above facts of the instant case, the learned trial Court has rightly passed the impugned order dated 14.10.2019.

7. For the foregoing reasons, the instant appeal having no force is hereby **dismissed**.

(AAMER FAROOQ)
JUDGE

(GHULAM AZAM QAMBRANI)
JUDGE

Announced in open Court, on this 22-12, 2020.

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