

Form No: HCJD/C-121.

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

R.F.A. No. 127 of 2014

MALIK MUHAMMAD RAMZAN

Vs

TALAT KHALIL, ETC.

APPELLANTS BY: M/s M. Ilyas Sheikh & Talha Ilyas Sheikh,
Advocates.

RESPONDENTS BY: Syed Khurram Shahzad, Advocate.

DATE OF HEARING: **23-01-2020.**

ATHAR MINALLAH, CJ.- This appeal is directed against judgment and decree, dated 21-11-2014, whereby the appellant's plaint was rejected under Order VII Rule 11 of the Civil Procedure Code, 1908 (hereinafter referred to as "**CPC**").

2. The facts, in brief, are that the dispute is regarding residential plot No. 25, measuring 30x60, St No.172, Sector G-13/3, Islamabad (hereinafter referred to as the "**Plot**"). The Plot was allotted in favour of respondent no.1. It was asserted that the latter had entered into an agreement to sell, dated 21-07-2005 with the appellant. A suit was filed by the appellant on 17.04.2007 seeking specific performance of agreement, dated 21.07.2005. The said suit was dismissed as having been withdrawn vide judgment, dated 24.12.2009. It appears from the said order that statements were made

on behalf of the parties to the effect that they had entered into a compromise. Khalil-ur-Rehman Chaudhary son of Muhammad Shafi (hereinafter referred to as the "***predecessor in interest***") passed away on 05.05.2010. However, during his lifetime the plaintiff filed a suit on 01.01.2010 seeking specific performance of two agreements i.e. dated 21.07.2005 and 24.12.2009. It was asserted in the plaint that the appellant had entered into a compromise agreement, dated 24.12.2009 and that specific performance thereof was being sought. Respondents no.1 to 4 are legal heirs of Khalil-ur-Rehman Chaudhary s/o Muhammad Shafi i.e. predecessor in interest.

3. The learned counsel for the appellant has argued that; the impugned judgment and decree, dated 21.11.2014 suffers from misreading and non-reading; the learned trial Court did not take into consideration the fact that pursuant to a compromise between the predecessor in interest and the appellant agreement, dated 24.12.2009 was executed; the failure on part of the predecessor in interest to give effect to the terms and conditions of agreement, dated 24.12.2009 had given a fresh cause of action and, therefore, the suit could not have been dismissed under Order VII Rule 11 CPC nor Order XXIII was attracted.

4. The learned counsel for the respondents on the other hand has argued that; provisions of Order XXIII Rule 1 (3) were attracted; no interference is required with the impugned judgment and decree.

5. The learned counsels have been heard and the record perused with their able assistance.

6. It is an admitted position that the earlier suit which was withdrawn by the appellant and consequently dismissed vide judgment and decree, dated 24.12.2009 was instituted to the extent of seeking specific performance of agreement, dated 21.7.2005. A plain reading of order, dated 24.12.2009 explicitly shows that the parties had stated before the learned trial Court that they had entered into a compromise. The subsequent suit filed by the appellant on 01.01.2010 during the lifetime of the predecessor in interest was for seeking specific performance of agreement, dated 24.12.2009. The said agreement was distinct. Perusal of the impugned judgment, dated 21.11.2014 shows that these crucial factors were not taken into consideration by the learned trial Court while allowing application filed on behalf of the respondents under Order VII Rule 11 of CPC. The learned trial Court was indeed required to have taken into consideration all the relevant facts before deciding the application filed on behalf of the respondent under Order VII Rule 11 CPC. It would be appropriate not to make any further observations lest it may prejudice the adjudication of the matter before the learned trial Court. We are satisfied that the learned trial Court had not taken the relevant matters into consideration while passing the impugned judgment and decree, dated 21.11.2014.

7. In view of the aforementioned reasons, this appeal is allowed and judgment and decree, dated 21.11.2014 is hereby set-aside. The application filed on behalf of the respondents under Order VII Rule 11 CPC shall be treated as pending. The learned trial Court at the first instance is expected to decide afresh the application filed

under Order VII Rule 11 CPC after affording opportunity of hearing to the parties.

(CHIEF JUSTICE)

(LUBNA SALEEM PERVEZ)
JUDGE

Asif Mughal/*

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