

JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Regular Second Appeal No. 13/2013

Bashir Ahmad Baz.
Vs.
Saif Ullah & others.

PETITIONER BY: Ch. Haseeb Muhammad, Advocate.
RESPONDENTS BY: Mr. Amir Latif Gill, Advocate for
respondent No.2/ CDA.
DATE OF DECISION: 05.07.2021.

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BABAR SATTAR, J.- Through this appeal, the appellant has impugned the judgment and decree passed by learned Additional District Judge (West), Islamabad dated 01.10.2013 and the judgment and decree passed by the learned Civil Judge (West), Islamabad dated 05.06.2013, pursuant to which the suit of the appellant for specific performance of agreement dated 03.03.1998 and permanent injunction was dismissed.

2. The facts briefly are that the appellant claims to have lent Rs.120,000/- (one hundred twenty thousand) to respondent No.1 pursuant to agreement dated 03.03.1998. That respondent No.1 had promised to pay profit on such amount and return it within a period of two years. And further that in the event of his failure to return the said amount he would transfer Flat No.08, Block No.15-B, G-10 Markaz, Islamabad ("**Suit Property**") to the appellant. That upon failure of respondent No.1 to return the debt to the appellant and subsequently upon his refusal to transfer the Suit Property to the appellant, the appellant filed the

suit in question on 03.05.2001, in which the impugned judgments and decrees were passed.

3. The parties appeared before the learned Civil Court, which after completion of pleadings framed the following issues:-

1. Whether the plaintiff is entitled to decree for specific performance of agreement dated 03.03.1998 with regard to suit flat as prayed for? OPP
2. Whether the plaintiff has got no cause of action and locus standi to file this suit? OPD
3. Whether the plaintiff has not come to the court with clean hands? OPD
4. Whether the suit is barred by law? OPD
5. Whether the suit is false, frivolous and vexatious and defendants are entitled to special costs U/S 35-A of CPC? OPD
6. Relief.

4. During pendency of the trial, respondent No.1 failed to produce any evidence and his right in such regard was struck off under Order XVII Rule 3 of CPC. The appellant produced documentary as well as oral evidence and upon perusal of the plaint and the evidence adduced before the learned Civil Court, it came to the conclusion that no evidence had been led to establish that the Suit Property belonged to respondent No.1. Further that the appellant's claim that he had purchased the Suit Property from Muhammad Hussain in 1992 and was issued a General Power of Attorney by Muhammad Hussain, on the basis of which, he sold the Suit Property to respondent No.1 was also not backed by evidence. The learned Civil Court, however, concluded that there was no evidence supporting that the Suit

Property was purchased by the appellant or that General Power of Attorney was issued by Muhammad Hussain in the name of the appellant or that the appellant sold the Suit Property to respondent No.1. The learned Civil Court further concluded that respondent No.1, in his written statement, had taken a position that he returned the loan sought pursuant to agreement dated 03.03.1998. In view of the evidence, the learned Civil Court concluded that the appellant had failed to establish that the loan in question had not been returned by respondent No.1. It further held that the agreement dated 03.03.1998, that the appellant sought to enforce, was uncertain and had not mentioned any consideration for the Suit Property. And most importantly, that the claim of the appellant was in relation to the Suit Property, even though there was no evidence that Such Property vested in respondent No.1. On this basis, the learned Civil Court dismissed the suit of the appellant.

5. The learned appellate Court reviewed the evidence and the judgment and decree passed by the learned Civil Court. It came to the conclusion that there was no sale consideration in relation to the Suit Property and the contract that was sought to be enforced was so uncertain that it could not be enforced in view of Sections 4(a) and 21(c) of the Specific Relief Act, 1877.

6. The learned counsel for the appellant made two legal submissions. The first submission was that the learned Civil Court had decided the suit on the basis of a written statement filed by respondent No.1, even though respondent No.1 led no evidence and the judgment and decree passed by the learned

appellate Court was also an ex-parte judgment and decree and that in view of no evidence having been led by respondent No.1, the claim of the appellant ought to have been allowed. For this proposition, he relied on **Hakim-ud-Din through L.Rs. and others vs. Faiz Bakhsh and others** (2007 SCMR 870), **Fateh Muhammad through L.Rs. and others vs. Fida Hussain Shah through L.Rs.** (2007 C.L.C. Lahore 1885), **Farrukh Saeed Khan vs. Anis-Ur-Rehman Bhatti** (2006 C.L.C. Karachi 440), **Overseas Pakistani Foundation and others vs. Sqn. Ldr. (Retd.) Syed Mukhtar Ali Shah and another** (2007 SCMR 569), **Federation of Pakistan through Secretary Ministry of Defence and another vs. Jaffar Khan and others** (PLD 2010 SC 604), **Nazir Ahmad Khan and 02 others vs. Muhammad Ashraf Khan and 3 others** (PLD 1975 Karachi 598), **Muhammad Bashir and others vs. Iftikhar Ali and others** (PLD 2004 SC 465) and **Malik Bahadur Sher Khan vs. Haji Shah Alam Khan and others** (2012 MLD Peshawar 1062). His second submission was that the learned Civil Court had not given separate findings on each and every issue and on this ground too, the impugned judgment and decree dated 05.06.2013 suffered from material illegality. For this proposition, he relied on **Ali Muhammad vs. Muhammad Hayat and others** (1982 SCMR 816), **Mst. Shamshad Akhtar vs. Muhammad Anwar** (2016 MLD Peshawar 655), **Trading Corporation of Pakistan vs. Riyasat Hussain** (2009 C.L.C. Karachi 966) and **Alaf Din vs. Mst. Soni Bibi** (1999 C.L.C. Lahore 1808).

7. Respondent No.1 did not appear before this Court and after proclamation, respondent No.1 proceeded against ex-parte through order dated 11.12.2018.

8. The learned counsel for respondent No.2 stated that the instant appeal was not maintainable as none of the grounds provided under Section 100(c) of CPC had been made out by the appellant.

9. I have perused the record, the evidence adduced by the appellant before the learned Civil Court and the impugned judgments and decrees passed by the learned Civil Court and the learned Additional District Court. The learned counsel for the appellant has failed to point out how the impugned judgments and decrees are contrary to law. He has not identified any material issue that the learned Civil Court and the learned Additional District Court have failed to determine. He has also not pointed out any substantial error or defect in the procedure adopted by the learned Civil Court and the learned appellate Court in adjudicating the suit and the appeal of the appellant.

10. The finding of the learned Civil Court, which has been upheld by the learned Additional District Court, is that no evidence was led to establish that respondent No.1 even possessed ownership rights in relation to the Suit Property. On this basis alone, the suit for specific performance for sale of the Suit Property was liable to be dismissed. The learned counsel for the appellant was further unable to establish that any obligation was due by respondent No.1 to the appellant under the agreement dated 03.03.1998, specific performance of which was

sought. And further that the agreement dated 03.03.1998 was uncertain, did not provide the terms on which a loan agreement would stand transformed into a purchase agreement for the Suit Property or the consideration due and payable for such purchase or the timeframe within which such sale transaction would be consummated.

11. In view of the above, the learned counsel for the appellant has failed to make out any ground in terms of Section 100(c) of CPC requiring this Court to interfere with the impugned judgments and decrees and consequently, this appeal is **dismissed** for being without merit.

(BABAR SATTAR)
JUDGE