

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

**MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE SAJJAD ALI SHAH
MR. JUSTICE MUNIB AKHTAR**

Civil Appeal No.960 of 2017.

(Against the judgment dated 19.5.2017 passed by the Lahore High Court Rawalpindi Bench in CR No. 75 of 2010)

Saddaruddin (since decd) thr. LRs.

Appellant(s)

Versus

Sultan Khan (since decd) thr. LRs etc.

Respondent(s)

For the Appellant(s) : Syed Qalb-e-Hassan, Sr. ASC.

In CMA No.2817/20 Mr. Tanveer Iqbal, ASC

For the Respondents,1-5 : *Ex parte.*

Date of Hearing : 13.01.2021

ORDER

Sajjad Ali Shah, J.- This direct appeal is filed against the judgment of the Lahore High Court Rawalpindi Bench whereby the said Court while exercising revisional jurisdiction by reversing the judgment of the appellate Court restored the dismissal decree passed by the trial Court.

2. Briefly the appellant on 18.5.2004 filed a suit against the respondent seeking declaration regarding his ownership in respect of a house, subject matter of the *lis*. It was claimed by the appellant that in the year 1971, through an oral agreement he has purchased the subject property from the respondent for a sum of Rs.7500/- and the respondent after having received the sale price

handed over the original title documents of the subject property. In order to justify filing of suit for specific performance after almost 33 years the appellant pleaded that the cause of action accrued a week before filing of suit when the respondent refused to execute the sale deed in favour of the appellant. On the other hand, respondent emphatically denied the claim of the appellant and asserted that he was inducted as a tenant in the year 1971 and was handed over the title documents recently for getting electricity connection and now the appellant has turned dishonest and has laid a false claim of sale against the subject property. Issues accordingly were framed and the trial Court, after allowing the parties to adduce evidence, dismissed the suit. The appellant filed an appeal which was allowed giving rise to the respondent to approach the High Court by filing a civil review petition which, after hearing, was allowed through the impugned judgment.

3. Learned counsel for the appellant contends that the High Court erred in setting aside a well reasoned judgment of the appellate Court which has discussed in detail the effect of non-production of witnesses of sale on account of their death and production of one witness of arbitration before whom the parties took their dispute when the respondent refused to execute the sale deed. The Court had further considered the effect of prolonged possession coupled with title documents, installation of electricity meter and additional construction which had fortified the appellant's claim of ownership. The High Court therefore, was not justified to reverse the well reasoned judgment of the appellate Court.

4. However, we have found that the appellant has neither detailed the material contents of the sale agreement in the plaint nor the fact that the said oral agreement was witnessed by any one or the witnesses of the oral sale had died. Even the plaint does not describe the event of *jirga* which the plaintiff has disclosed in his evidence. We have further found the evidence adduced on behalf of the appellant to be against the pleadings as in the plaint appellant in order to justify filing of suit for specific performance after almost 33 years of alleged oral sale agreement has asserted that just a week before filing of suit, the cause of action has accrued whereas PW-3 Muhammad Sharif alleged witness of the arbitration whose evidence was recorded on 19.11.2005, asserted that the arbitration took place in his shop in March last year i.e. March, 2004 whereas the suit was filed by the appellant on 19.5.2004 by asserting that the cause of action has arisen a week before filing of suit i.e. May 2004. Beside, we have noticed that the claim of the appellant suffers from major legal flaws; firstly, that the appellant tried to establish the oral sale agreement through his evidence by asserting two witnesses of sale and further that on refusal to execute sale deed a Jirga took place and a witness to affirm the Jirga was produced. However, we do not find any of such pleas in the plaint and consequently the evidence though neither here nor there but still cannot be considered on the basis of principle laid down by this Court that the parties are required to lead evidence in consonance with their pleadings and that no evidence can be laid or looked into in support of a plea which has not been taken in the pleadings. A party, therefore, is required to plead facts necessary to

seek relief claimed and to prove it through evidence of an unimpeachable character. Reference can readily be made to the case of Sardar Muhammad Naseem Khan versus Returning Officer, PP-12 and others (2015 SCMR 1698) and Binyameen and others versus Chaudhry Hakim and another (1996 SCMR 336). The second legal flaw is that in cases where the sale is pleaded through oral agreement then the terms and conditions which were orally agreed are to be stated in detail in the pleadings and are to be established through evidence. In such like cases, the plaintiff beside detailing subject matter of the sale, the consideration, detail of striking of the bargain, name of the witnesses in whose presence the said oral agreement to sale was arrived at between the parties and other necessary detail for proving the sale agreement as if it would have been executed in writing. Reference can readily be made to the case of Sheikh Akhtar Aziz versus Mst. Shabnam Begum and others (2019 SCMR 524) and Muihammad Nawaz through LRs versus Haji Muhammad Baran Khan through LRs (2013 SCMR 1300). Lastly as to the claim of the appellant regarding his prolonged possession coupled with title documents, suffice it to observe that mere prolonged possession even coupled with title document by itself does not establish the claim of ownership unless the sale is established and in this case the claim of the appellant was met with the plea of tenancy and since neither the sale is established nor the status of the appellant as tenant, therefore, we would not like to further dilate upon the status of the appellant *vis-à-vis* the subject property.

5. For the foregoing reasons, no case of interference is made out. This appeal is consequently dismissed.

Judge

Judge

Judge

Islamabad
13.01.2021
A.Rehman
Approved For Reporting