

Judgment Sheet
**IN THE LAHORE HIGH COURT, RAWALPINDI BENCH,
RAWALPINDI**

JUDICIAL DEPARTMENT

Civil Revision No.75 of 2010

Sultan Khan

Vs.

Saddar-ud-Din

JUDGMENT

Date of hearing:	19-05-2017.
Petitioner by:	Mr. Mujeeb-ur-Rehman Kayani, Advocate.
Respondent by:	Mr. Najam-ul-Hassan Kazmi, Advocate.

SHAHID WAHEED, J: The variant decree of the first appellate court has prompted the defendant to invoke the revisional jurisdiction of this court. This petition under Section 115 CPC stems from a dispute relating to house No.MCB 9/165 (Excise and Taxation No.B-IV/400), measuring 08-marlas 66 square feet situated at Mohallah Basti Allahwali, District Chakwal, which was owned by the defendant-petitioner. On 18-05-2004 the plaintiff-respondent (Saddar-ud-Din) sued the defendant through a suit for declaration with a prayer that he be declared owner in possession of the suit property on the basis of oral sale or in the alternate a decree for specific performance of the oral agreement be issued. Claim of the plaintiff was that in the year 1971, the defendant through an oral agreement had sold the suit property to him for a consideration of Rs.7,500/-; and that the defendant after having received the sale consideration amount had delivered possession of the suit property to him. The above claim was contested by the defendant through a written statement. It was maintained in the written statement

that the plaintiff got possession of the suit property as tenant on a monthly rent of Rs.30/-; that the defendant had asked the plaintiff to vacate possession of the suit property on the ground of his personal need; and, that to counter the said request the plaintiff instituted the suit.

2. On pleadings, learned trial court, vide order dated 04-05-2005 settled following issues;

- i. *Whether the plaintiff is entitled to relief of declaration as stated in the head note of the plaint? OPP*
- ii. *Whether the plaintiff has no cause of action to file the suit? OPD*
- iii. *Whether the suit of the plaintiff is not properly valued for the purpose of Court fee and jurisdiction? OPD*
- iv. *Whether the plaintiff filed this suit just to harass the defendant and defendant is entitled to special costs U/S 35-A CPC? OPD*
- iv-A. *Whether the plaintiff is entitled to specific performance of contract of the disputed house as alternative relief? OPP*
- v. *Relief.*

3. Issues No.1 and 4-A were the material issues. Onus to prove the said two issues was upon the plaintiff. He, therefore, as his own witness appeared before the learned trial court as PW-1 and produced Allah Yar as PW-2 and Muhammad Sharif as PW-3. The plaintiff's counsel in his statement tendered Form-B (Exh.P1), telephone bill 2001 (Exh.P2), telephone bill 2000 (Exh.P3), PT-1, 1991-95 (Exh.P4), and PT-1, 1999 (Exh.P5).

4. The plaintiff in his statement while appearing before learned trial court as PW-1 deposed that oral agreement stood concluded in the presence of Noor Muhammad and Haji Rang Ellahi; that both the said witnesses had died; that he alongwith defendant went to one Tariq and Sharif for arbitration where the defendant though admitted the sale of the suit property but did not extend assurance to get the sale registered in his favour. In order to get corroboration of the above statement the plaintiff produced one of the arbitrators i.e. Muhammad Sharif as PW-3 and did not produce the other one without furnishing any reason. Muhammad Sharif (PW-3) in his statement deposed that the plaintiff was his friend; and, that the plaintiff had informed him that he had purchased the suit property. Since Muhammad Sharif (PW-3) had no direct knowledge of the alleged oral sale transaction, his statement was construed as hearsay. The last witness who appeared on behalf of the plaintiff was Allah Yar (PW-2). He was mason by profession. He only participated in the construction of the suit property. He was not the witness of the alleged oral agreement to sell the suit property. The documentary evidence tendered on behalf of the plaintiff also did not establish the ownership of the plaintiff. On the basis of afore-stated evidence the learned trial court came to the conclusion that alleged oral agreement was not proved. The suit was therefore, dismissed vide judgment and decree dated 30-06-2008.

5. The plaintiff assailed the judgment and decree of the learned trial court through an appeal under Section 96 CPC before the learned Additional District Judge, Chakwal. On appeal the learned Additional District Judge after evaluating the evidence led by the defendant reversed the decree of the learned trial court. It was observed that the version of the defendant that the plaintiff had not been paying monthly rent

since 1999 was not plausible; that solitary statement of the defendant was of no value; and, that since the defendant had failed to prove the assertions made in the written statement, it would be safe to hold that in fact there was an agreement to sell between the parties on the basis of which the plaintiff was in possession of the suit property. Wherefore, the suit was treated as one for specific performance of agreement. The learned first appellate court vide judgment and decree dated 25-11-2009 accepted the appeal while setting aside the decree of learned trial court and issued a decree for specific performance of agreement, in favour of respondent/plaintiff.

6. The sole question which falls for determination in this case is whether the decree issued by the first appellate court is valid. This is a case where judgments and decrees of the courts below are at variance and, therefore, I have examined the same from stem to stern with the assistance of learned counsel for the parties. In the present case the plaintiff had pleaded that in the year 1971 the defendant had sold the suit property to him though an oral agreement for consideration of Rs.7,500/- and therefore, a decree for declaration of title or in the alternate a decree for specific performance of agreement was sought. Keeping in view the averments made in the plaint, learned trial court framed issue No.1 and Issue No.4-A. Onus to prove the said two issues were rightly placed upon the plaintiff. Now, it was the duty of the plaintiff to prove the said issues through confidence inspiring evidence. The plaintiff could not take advantage of any weakness of the defendant's case. It is settled principle of law that plaintiff's case must stand or fall on its own merits and not on the weaknesses of the defendant's case. It appears that this principle of law was not adhered to by the learned first appellate court. Without appraising the evidence which was led by the plaintiff to prove Issues No.1 and No.4-A,

learned first appellate court reversed the findings of the learned trial court and issued decree in favour of the plaintiff on the basis of weaknesses in the evidence led by the defendant. Since the approach to address the issues was not proper and legal, the judgment and decree of the first appellate court cannot sustain.

7. This is a case where plaintiff sought decree on the basis of oral agreement. The decree as prayed for in the plaint could be issued in favour of the plaintiff provided he would have firstly mentioned in the plaint: (i) the date, month, time and name of persons before whom the oral agreement stood concluded; (ii) the complete details of the terms and conditions of sale; and, (iii) a satisfactory explanation for not reducing the terms and conditions of sale into writing and thereafter corroborate the same through reliable oral and as well as documentary evidence. The above requirements of law were not complied with by the plaintiff. In fact the plaint was silent about all the above cited necessary details of the oral agreement to sell. This omission was fatal. The evidence which was led by the plaintiff was beyond pleadings and, therefore, it could not be read and relied upon. The documentary evidence was also not brought on record through witnesses and therefore, the same as per principle settled in the case of “Khan Muhammad Yousaf Khan Khattak V. S.M Ayub and 2 others” (PLD 1973 SC 160), “Messrs Aluminium Processing Industries International (Pvt.) Ltd., through Director and Chairman and another Karach. V. Federation of Pakistan through Chairman, Central Board of Revenue, Islamabad and 2 others” (2003 PTD 1411) and “Federation of Pakistan through Secretary Ministry of Defence and another V. Jaffar Khan and others” (PLD 2010 SC 604) could not be taken into consideration by the court. Even otherwise documents produced by the plaintiff were not title

documents and, therefore, were of no significance. These aspects of the case were taken into consideration by the learned trial court and, thus, it rightly dismissed the suit of the plaintiff. Since, the learned first appellate court proceeded on incorrect premises, its judgment and decree are not valid.

8. In the sequel, this petition is accepted, the judgment and decree dated 25-11-2009 of the learned first appellate court are set aside and the judgment and decree dated 30-06-2008 of the learned trial court are restored with no order as to cost.

(SHAHID WAHEED)
JUDGE

Approved for reporting.

Judge