JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

R.F.A No.413 of 2020

Raja Saqib Mehboob

Versus

Taj Begum and another

Date of Hearing	:	23.05.2022
Appellant by	:	Mr.Qaiser Imam Chaudhry, Advocate.
Respondent by	:	Mr. Saqib Ali Mumtz, Advocate.

ARBAB MUHAMMAD TAHIR, J. This Regular First Appeal is directed against the judgment and decree dated 03.12.2020, passed by the learned Civil Judge 1st Class, Islamabad (West), whereby *suit for declaration, possession through specific performance of agreement to sell dated 10.05.2019, mandatory and permanent injunction* instituted by the appellant, was dismissed.

2. Precisely, the appellant filed the subject suit with the averments that respondent No.1 is co-owner in House No. 540, Street No. 78-C, Sector G-8/1, Islamabad, which she inherited from her parents; that on 10.05.2019, appellant/plaintiff entered into an agreement to sell with the respondent No.1 to the extent of her share for consideration of Rs.32,00,000/-, which was also paid through bank; that both the parties approached the Capital Development Authority (CDA) for transfer of share of respondent No.1 in the name of appellant which was refused due to change of CNIC of respondent No.1; that the respondent No.1 also took the responsibility of obtaining NOC from the concerned authorities and to get renew/correct CNIC; that she also executed General Power of Attorney in favour of Raja Shahid Mehboob for doing the needful

before CDA and court as well; that despite lapse of six months she has not returned from Norway and that respondent No.1 intends to transfer her share to another person, which constrained him to file the instant suit.

3. The respondent No.1 filed consenting written statement while the right of respondent No.2 to file written statement was closed on 02.10.2020. The appellant/plaintiff got himself examined as PW-1 while respondent No.1 besides tendering written statement also appeared before the Court and had made a statement to the effect that she had received total sale consideration and had no objection if the suit of the appellant/plaintiff is decreed. The learned Trial Court after hearing arguments dismissed the suit vide judgment and decree dated 03.12.2020 being impugned through the instant appeal.

4. Learned counsel argued that under the law, a lawful owner can transfer his/her share even without due partition by metes and bounds; that under the agreement, respondent No.1 explicitly committed to alienate her lawful share to the appellant after the receipt of entire sale consideration and to testify the said facts, she herself appeared and got recorded statement on oath; that agreement to sell, also provides the details of the subject matter/ house, therefore, impugned judgment and decree is liable to be set aside.

5. On the other hand, learned counsel for respondent-CDA while placing on record copy of transfer letter dated 31.12.2009 contended that the decree as prayed for could not be granted without impleading other co-sharers of the suit house; that the evidence to substantiate the due share of the respondent No.1 was not produced therefore, appeal is liable to be dismissed.

6. Heard, record examined.

7. The appellant had prayed for decree for specific performance of agreement to sell Ex.D-1 wherein the respondent No.1 claimed herself to be the lawful **“co-owner”** of the **subject house** on the basis of

Allotment Letter Dated 05.04.2013 but surprisingly the letter on the basis of which she claimed co-ownership was not produced by the appellant in the evidence. It also emerges that the subject house is ancestral property inherited by of respondent No. 1 alongwith her other 5 siblings of Fazal Hussain (late), but the appellant has not arranged all co-owners/legal heirs as party for effective adjudication of the case.

ORDER 1 RULE 3 CPC

Order 1 of the Code of Civil Procedure, 1908 regulate parties to suits.

> **1. Who may join as plaintiff.** All persons may be joined in suit as plaintiff in whom in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if such persons brought separate suits, any common question of law or fact would arise.
>
> **3. Who may join as defendants.** All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate suits were bought against such persons, any common question of law or fact would arise.

8. It is significant to note that as per letter dated 31.12.2009 of CDA, the names of widow, three daughters and two sons were incorporated in the allotment of subject house on the basis of court decree, therefore, impleadment of all co-sharers is necessary for proper adjudication and in order to avoid complexity and multiplicity of suits and to protect the rights of all the co-owners of the subject suit property. Under the law, it is the duty of the appellant/plaintiff to prove his case by producing convincing and reliable evidence.

9. On examination of the evidence on record, it appears that the suit of the appellant could not be dismissed but he may be afforded an opportunity to amend the plaint in due course by impleading all

co-sharers and to advance documentary evidence to substantiate his claim.

10. In view of above, the impugned judgment and decree dated 03.12.2020 is **set aside** and the case is remanded to the learned Trial Court for decision afresh in accordance with law by providing an opportunity to appellant to implead all the co-sharers in the suit.

(ARBAB MUHAMMAD TAHIR)
JUDGE

//Kamran//