

Stereo. H C J D A 38.
JUDGMENT SHEET
LAHORE HIGH COURT
MULTAN BENCH MULTAN
JUDICIAL DEPARTMENT

W.P No.993/2022

Sabir Hussain *Versus* Additional District Judge etc.

J U D G M E N T

Date of Hearing	30.01.2024
Petitioner By:	Mr. Mehmood Ashraf Khan, Advocate
Respondents No.3-10 By:	Syed Athar Hassan Shah Bukhari, Advocate
Respondent No.11 By:	Ms. Samina Mehmood Rana, Assistant Advocate General.
Respondent No.12	Proceeded <i>ex-parte vide</i> order dated 18.01.2024

Anwaar Hussain J: The petitioner instituted suit for specific performance of contract on the basis of an agreement to sell dated 03.04.2008 (“**the agreement**”) against respondents No.3 to 12. Respondents No.3 to 10 are members of same family whereas respondent No.11 is Province of Punjab. Respondent No.12 is admittedly close relative (brother in law) of the petitioner, who also statedly entered into an agreement to sell with respondents No.3 to 10. When the suit was instituted on 12.03.2015, admittedly respondent No.5 was minor. The execution of the agreement was flatly denied by respondents No.3 to 10. Issues were framed and evidence of both sides have been admittedly recorded. The petitioner filed an application for comparison of thumb impression of respondents No.3 to 10 on the agreement with their specimen/admitted thumb impressions, which was dismissed through order dated 15.09.2021, *inter alia*, on the ground that report of the finger expert is corroborative piece of evidence and the application has been filed by the petitioner at belated stage just to linger on the trial hence, the same cannot be allowed. Order dated 15.09.2021 has been upheld by the Revisional Court below, *vide* impugned order dated 08.11.2021.

2. Learned counsel for the petitioner submits that both the Courts below have erred by not appreciating the *dicta* laid down by the Supreme Court of Pakistan in case reported as “Syed Sharif ul Hassan

through L.Rs. v. Hafiz Muhammad Amin and others” (2012 SCMR 1258) while dismissing the application of the petitioner for comparison of thumb impression of respondents No.3 to 10 even though respondent No.4 while appearing as DW-1 agreed to the said comparison. He also places reliance on an unreported judgment of the Supreme Court in Civil Appeal No.787 of 2017 titled as “Mst. Afzala Virks v. Mian Fazal Haq (decd) thr: L.Rs. & another” in support of his contentions.

3. Conversely, learned counsel for respondents No.3 to 10 submits that the suit instituted by the petitioner is not maintainable as the disputed land belongs to the Government of Punjab and proprietary rights had not been granted to respondents No.3 to 10 till date. Adds that even if it is established that the respondents have affixed their signatures and/or thumb impression on the agreement, the same is of no help to the petitioner as one of the respondents was a minor and a minor cannot enter into a valid agreement under the law in terms of Section 11 of the Contract Act, 1872.

4. Arguments heard. Record perused.

5. Admittedly, the suit property was allotted by the Government to predecessor-in-interest of respondents No.3 to 10 and after demise of said predecessor-in-interest, respondents No.3 to 10 are in occupation thereof. Therefore, without commenting upon the merits of the case lest it may prejudice the case of either side, it is well evident from the record that the suit was instituted by the petitioner on the basis of the agreement purportedly executed by respondents No.3 to 10, which includes respondent No.5, who was a minor at the time of execution of the agreement. The execution of the agreement was outrightly denied by respondents No.3 to 10. The case of the petitioner depends upon proving the agreement through which the suit property has allegedly been sold by respondents No.3 to 10 to the petitioner. It is noteworthy that the object for production of evidence is assistance to the Courts to reach a just conclusion. An application for comparison of thumb impression is one such mode. The only hinderance in not

allowing the application could be if the plaintiff intended to fill in the lacunae of his case after the conclusion of evidence. In the instant case, the respondent side has failed to point out any such effort on part of the petitioner. There appears to be no harm to either side if comparison of thumb impression is made. In fact, the said exercise will be appropriate and in the interest of justice to reach a fair conclusion and render a just and proper decision, even at the cost of some delay in conclusion of the trial. For a Court of law, rendering a fair and just decision is more important than to act hurriedly by drawing a wrong conclusion. Mere fact that application for comparison of thumb impression has been moved at the stage when the entire evidence has been recorded is not a cogent reason to dismiss the application. In this regard, it is worth mentioning that no time has been stipulated in terms of Article 84 of the of Qanun-e-Shahadat Order, 1984 for filing the application of comparison of the signatures and/or thumb impression through expert. Case reported as “Ghulam Haider v. Fateh Muhammad (2005 MLD 1501) is referred in this regard. Moreover, it is the right of a litigant to seek indulgence of the Court so as to discharge the burden of proof placed upon him including comparison of the disputed thumb impressions. I am fortified by the law laid down in case reported as “Mst. Akhtar Begum v. Muslim Commercial Bank Ltd. (2009 SCMR 264). In case of Mst. Akhtar Begum supra while sending the signatures of the petitioner therein for expert opinion in the said case, the Supreme Court held that it is the right of a party to seek and demand every possible assistance from the Courts of law and to hold him/herself responsible only when he or she has acted contrary to law.

6. Moreover, when the evidence was recorded, respondent No.4, namely, Muhammad Irshad, appeared as DW-1 and candidly conceded that they (respondents) have no objection if their (respondents No.3 to 10) signatures are sent to the finger expert for comparison. Both the Courts below have ignored this aspect of the case as well. In order to ensure that correct conclusion is reached in the matter, the Court can look around for an evidence of un-

impeccable caliber such as finger expert, more particularly, when there is a complete denial on part of the respondents/defendants that they have not affixed their thumb impression on the agreement. It is in the interest of justice that the petitioner be allowed to prove his stance by having recourse to the forensic science/handwriting expert. *Dicta* laid down by the Supreme Court in case of Syed Sharif ul Hassan supra, supports the stance of the petitioner. Reliance on an unreported judgment in case of Mst. Afzala Virks supra is also well placed.

7. In so far as the argument of learned counsel for respondents No.3 to 10 that allowing the petitioner to effect comparison of thumb impression of the respondents is likely to result into injustice in so far as respondent No.5, who was minor at the time of alleged execution of the agreement, is concerned, suffice to mention that even if it is proved that alleged thumb impression of respondent No. 5 on the agreement is genuine, the same will merely go on to prove (or otherwise) the execution of the agreement without having any bearing on the competency of the said respondent who was admittedly minor at the time of execution of the agreement as the competency to contract is a question of law and is to be decided by the Trial Court on the basis of applicable law and not on the basis of the report of the finger expert. Therefore, argument of learned counsel for respondents No.3 to 10 has no force.

8. The matter can be examined from another angle. Had the petitioner failed to seek comparison of signature, through expert evidence, in the face of express and outright denial as to the execution of the agreement, the same may propel the Trial Court as also the higher forums to harbour adverse inference against the petitioner/plaintiff. Therefore, this Court is of the opinion that non-acceptance of the application of comparison of thumb impression will lead to miscarriage of justice and thwart the Trial Court in reaching a just conclusion, which is not permissible under the law and will defeat ends of justice.

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9. In view of the above discussion, this constitutional petition is **allowed** and the impugned orders passed by the Courts below are set aside. As a consequence, application of the petitioner for conducting comparison of the thumb impression and/or signatures, of respondents No.3 to 10, is accepted.

(ANWAAR HUSSAIN)
JUDGE

Approved for reporting

Judge