

Judgment Sheet

IN THE LAHORE HIGH COURT, LAHORE

(JUDICIAL DEPARTMENT)

Civil Revision No.1432 of 2015

Karam Elahi

vs.

Ahmad Din, etc.

JUDGMENT

Date of Hearing	02.05.2023.
Petitioner by:	Mr. Mehboob Rasool Awan, Advocate.
Respondent No.1 by:	M/s Nusrat Javed Bajwa and Ali Javed Bajwa, Advocates.
Respondent No.2 by:	Nemo.

MUHAMMAD RAZA QURESHI, J. Through this Civil Revision, the Petitioner has challenged the Judgments and Decrees dated 24.10.2013 and 24.04.2015 passed by the learned Trial Court and the learned Appellate Court respectively pursuant where to Suit for specific performance of agreement to sell filed by Respondent No.1 was conditionally decreed by the learned Courts below.

2. Learned counsel for the Petitioner submits that the Impugned Judgments and Decrees are illegal and unlawful as both the learned Courts below failed to advert that the Respondent No.1 failed to produce witnesses of the subject matter agreement to sell. According to learned counsel, his failure to produce the witnesses of the subject matter agreement to sell was fatal as by non-production of attesting witnesses the subject matter agreement to sell never stood proved in terms of Articles 17 and 79 of the Qanun-e-Shahadat Order, 1984. Additionally, learned counsel submits that present Petitioner is *bonafide* purchaser of the subject matter property from the Respondent No.2 who was impleaded as the Defendant No.1 in the Suit and had denied the execution of the subject matter agreement to sell. According to learned counsel, the Impugned Judgments and Decrees are nullity in the eyes of law and both the learned Courts below by passing the same

have committed material illegality. Lastly, submits that though the Impugned Judgments and Decrees are concurrent in their nature and scope but there is sufficient material floating on the surface to establish that by the error of law committed by the learned Courts below and on account of misreading and non-reading of evidence, this Court may interfere in the Impugned Judgments and Decrees in its supervisory jurisdiction. In support of his contentions, learned counsel has relied upon judgments reported as “Nazir Abbas through L.Rs v. Ghulam Muhammad through L.Rs” (2017 CLC 996), “Qasim Ali v. Khadim Hussain through Legal Representatives and others” (PLD 2005 Lahore 654), “Nazim-ud-Din and others v. Sheikh Zia-ul-Qamar and others” (2016 SCMR 24) and “City Education Board (Registered) Sialkot through Director v. Mst. Maqbool Nasreen” (PLD 2008 Lahore 51).

3. Conversely, learned counsel appearing for Respondent No.1/Plaintiff submits that he filed a Suit seeking specific performance of agreement to sell dated 15.07.2007 and also challenged the transfer of Suit property in favour of the Petitioner who was impleaded in the Suit as Defendant No.2. According to learned counsel, the subject matter agreement to sell was written on a plain paper and was adduced in evidence as Exh.P.1. The attesting witnesses of this agreement to sell were Muhammad Aslam, Ameer Hussain and Nazir Ahmad whereas the scribe of this document was Muhammad Abid. Respondent No.1/Plaintiff Ahmad Din himself appeared as PW-1 whereas Muhammad Abid appeared as PW-2 and two witnesses of the subject matter agreement to sell namely Nazir Ahmad and Ameer Hussain appeared as PW-3 and PW-4, therefore, according to learned counsel, the contention of the Petitioner is misconceived that Respondent No.1 failed to produce attesting witnesses as well as scribe of the subject matter agreement to sell. Learned counsel has also assisted this Court that Respondent No.2/vendor though filed written statement and claimed the subject matter agreement to sell as bogus but nowhere denied his signatures thereon. Upon framing of issues, the

said vendor failed to appear in the witness box to subject himself to cross-examination to be conducted by Respondent No.1 being Plaintiff. According to learned counsel the Impugned Judgments and Decrees were never challenged by the vendor and those have only been challenged by the Petitioner who appeared as DW-1 and deposed hearsay evidence as he had nothing to do with the subject matter agreement to sell. According to learned counsel, infact the Petitioner's case is a case of no evidence and he has no legal entitlement to claim himself a *bonafide* purchaser. Lastly contends that the condition imposed by the learned Trial Court for depositing balance sale consideration of Rs.30,000/- within 15 days has already been complied with by the Respondent No.1 and according to learned counsel, this Civil Revision is liable to be dismissed.

4. No one is present on behalf of Respondent No.2/vendor, thus, he is proceeded *exparte*.

5. Arguments of the learned counsel for the parties have been heard and record has been perused with their able assistance. There is no cudgel to the legal position that it is not mandatory that an agreement to sell be written or printed on a stamp paper as the law fully acknowledges even an oral agreement. It is equally correct that in case of non-appearance of attesting witnesses to an agreement to sell, the contents and existence of said document cannot be proved in terms of Article 17 read with Article 79 of the Qanun-e-Shahadat Order, 1984 which is mandatory.

6. To evaluate the concurrent findings contained in the Impugned Judgments and Decrees, it is imperative to identify whether the Respondent No.1 being Plaintiff fulfilled the mandatory conditions to prove his case. It is also essential to identify the effect of contesting written statement filed by Respondent No.2 being Defendant No.1/vendor and consequence of his failure to appear in the witness box.

7. Upon divergent pleadings of the parties, the learned Trial Court framed as many as 5 issues. Respondent No.1 appeared as PW-1 and produced subject matter agreement to sell as Exh.P1 and deposed that Nazir Ahmad, Ameer Hussain and Muhammad Aslam signed the document as marginal witnesses. The Respondent No.1/Plaintiff also deposed that his son Muhammad Abid was scribe of the subject matter agreement to sell. The attesting witnesses as well as the scribe appeared as PW-2 to PW-4 whose examination-in-chief is found consistent and it has been observed by this Court that during cross-examination, the Petitioner failed to impeach or discredit the testimony of said witnesses. Therefore, through oral evidence and by producing scribe and marginal witnesses the Respondent No.1/Plaintiff discharged his onus as to existence and contents of the subject matter agreement to sell.

8. The actual dent caused to the case of the Petitioner was due to non-appearance of Respondent No.2 being vendor in the witness box. Article 129(g) of the Qanoon-e-Shahadat Order, 1984 permits the Court to draw an adverse inference against the party who fails to appear in the witness box. Reliance in this regard is placed upon “Naveed Akram and others v. Muhammad Anwar” (2019 SCMR 1095), “Shamir through Legal Heirs v. Faiz Elahi, through Legal Heirs” (1993 SCMR 145) and “Fateh Muhammad through L.Rs and others v. Fida Hussain Shah through L.Rs” (2007 CLC 1885). Therefore, no matter how strong the written statement filed by Respondent No.2/vendor was, it lost its efficacy as he did not make himself available for the cross-examination, and his written statement could not have been treated as substantive piece of evidence. The sole evidence of the Petitioner is inconsequential as whatever he deposed was hearsay.

9. Another angle to analyze the status of the Impugned Judgments and Decrees is that same were never challenged by the vendor i.e. Respondent No.2, therefore, to his extent these Judgments and Decrees have attained finality. A challenge by a subsequent

purchaser would be hit by the principle of *lis-pendens*. Such purchaser would sink and sail with the vendor and does not have a *locus standi* to take up cudgels for and on behalf of the defendant or the vendor. Reliance in this regard is placed upon “Muhammad Sahrif and others v. Mst. Fateh Bano and others” (2004 SCMR 813).

10. The attack on the subject matter agreement to sell by the Petitioner that it has no sanctity in the eyes of law is also ill-foundedly premised. In this case at maximum, the subject matter agreement to sell was on a simple paper or insufficiently stamped paper. Under the law a contract can be in writing or oral and oral agreement would be valid and enforceable just like a written agreement provided it fulfills the requirements of valid agreement. Reliance in this regard is placed upon “Bashir Ahmad v. Muhammad Yousaf through Legal Heir” (1993 SCMR 183). Therefore, the argument of the Petitioner is meritless that the agreement to sell being written on a simple paper has no sanctity in the eyes of law.

11. In this case, the Respondent No.1 being Plaintiff discharged his onus by appearing in the witness box personally and producing attesting witnesses as well as a scribe. Conversely, the vendor/ Respondent No.2 failed to present himself for cross-examination and this was fatal to the case of the Petitioner as well as Respondent No.2. The appearance of the vendor in written box was also imperative as Respondent No.1/Plaintiff in his evidence had placed on record the criminal proceedings as Exh.P.4 to Exh.P.6 and said proceedings were decided in his favour. Therefore, the failure of the Respondent No.2/vendor to appear in witness box and depose to rebut the evidence of the Respondent No.1/Plaintiff has serious consequences as under the law it amounts to admission. The deposition of the Petitioner being subsequent purchaser about the subject matter agreement to sell was just hearsay as he was not in a position to depose with respect to the existence and contents of the subject matter agreement to sell.

12. In such facts and circumstances, this Court in the light of judgment reported as “Bashir Ahmad v. Muhammad Yousaf through Legal Heir” (1993 SCMR 183) is convinced that the concurrent findings contained in the Impugned Judgments and Decrees cannot be disturbed as by passing the same neither the learned Courts below have committed any illegality nor same are tainted with any material irregularity.

13. Despite hectic efforts of the learned counsel for the Petitioner, this Court is not persuaded that the Impugned Judgments and Decrees warrant any interference and consequently, this Civil Revision is **dismissed** with no order as to costs.

(MUHAMMAD RAZA QURESHI)
JUDGE

Approved for reporting.

JUDGE

*M. Arshad *