

Form No:HCJD/C-121

ORDER SHEET

IN THE LAHORE HIGH COURT, LAHORE

JUDICIAL DEPARTMENT

Case No: Civil Revision No. 65806 of 2024

Muhammad Ramzan (deceased) and Others Vs *Muhammad Sharif (deceased) and Others*

S.No. of order/ proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of parties or counsel, where necessary
----------------------------	---------------------------	--

29.10.2024 Mr. Rashid Imran Chohan, learned counsel for the revision-petitioners.

Through the present revision-petition, filed under section 115 of the Code of Civil Procedure-1908 (the ‘*Code*’), the revision-petitioners have challenged judgment and decree dated 06.09.2024 passed by learned Additional District Judge, Kasur as well as judgment and decree dated 29.06.2022 passed by learned Civil Judge, Kasur.

2. The predecessor-in-interest of revision petitioners No. 1A to 1E (the ‘*petitioner*’) instituted suit dated 09.04.2013 (the ‘*suit*’) for specific performance of agreement dated 26.08.1988 (the ‘*agreement*’) and possession of the property measuring 10-marlas, as further detailed in the *suit* (the ‘*suit property*’). The *suit* was contested by respondents No. 2 to 18 and out of the divergent pleadings as many as seven (07) issues were framed. Thereafter, the parties led their respective evidence. The learned trial Court gave issue-wise findings and vide judgment and decree dated 29.06.2022 dismissed the *suit*. The said judgment and decree was assailed in Civil Appeal No. 35 of 2024, which was dismissed vide judgment and decree dated 06.09.2024 by the learned Appellate Court. Aggrieved from the same, present revision-petition has been filed.

3. Mr. Rashid Imran Chohan, learned counsel for the revision-petitioners has pressed this civil revision on the ground that (i) learned two Courts below have not

correctly appreciated the record and (ii) presumption arising under Article 100 of Qanun-e-Shahadat Order-1984 (*'QSO 1984'*) has been applied from the date of institution of the *suit* instead of date of production of the *agreement* (i.e. 14.11.2019) before the learned trial Court and if the thirty (30) years are calculated from its execution till production then the presumption is squarely applicable.

4. Heard.

5. It is averred in the *suit* that Charagh Din and Bagh Ali sold the *suit property* to the *petitioner* vide the *agreement* and promised to transfer the *suit property* after redemption of mortgage charge from Zarai Tarqati Bank. The *suit* for specific performance was instituted after twenty-five (25) years of the *agreement*. It is admitted position that Bagh Ali and Charagh Din both have passed away but somehow in the *suit* or examination-in-chief of petitioner's witnesses even the date of death of Charagh Din and Bagh Ali is not specified. It came to the surface during cross-examination of PW-2 that Charagh Din and Bagh Ali died about thirty (30) years prior to recording of the evidence. There is hardly any justification available for instituting the *suit* after such a long delay from the *agreement* and decades after the death of the alleged seller. The names of the marginal witnesses are given in the *agreement* but even those alleged witnesses have passed away.

6. Muhammad Yaseen (PW-4) claimed that he is son of one of the marginal witnesses and he was with his father at the time of execution of the *agreement*. However, in cross-examination he could not even depose as to the date of the *agreement* and then he stated that he cannot remember the names of the persons who

have given their thumb impressions on the *agreement*. The evidence led by the *petitioner* is not coherent or confidence inspiring so that it can be said that they have discharged the onus to prove any fact that they asserted.

7. Now coming to the second part of the arguments of Mr. Rashid Imran Chohan, who stated that the period of thirty (30) years for presumption under Article 100 of *QSO 1984* is to be calculated till the date when the *agreement* was brought on record, however, the learned trial Court reckoned this period up-till institution of the *suit*. From the plain reading of Article 100 of *QSO 1984* it looks that thirty (30) years are to be taken on the date when a document is produced from any custody. Article 100 of *QSO 1984* is identical to section 90 of the Evidence Act-1872 (the '*Act*'), which came under consideration of this Court in "*Bahadar and Others Versus Sohna and Another*"¹ case, wherein it was concluded that this section refers to production of document. In "*Surendra Krishna Roy and another Versus Mirza Mahammad Syed Ali Mutawali and Others*"² case the Privy Council expressed the opinion that under section 90 of the *Act*, the period of thirty (30) years is to be reckoned, not from the date upon which deed is filed in the Court but from the date on which, it having been tendered in evidence, its genuineness or otherwise becomes the subject of proof. In my opinion the learned trial Court fell to error while reckoning the period up-till filing of the *suit*. However, this error has no bearing on the result of the case, keeping in view the facts of the case and the evidence led by the parties. Article 100 of *QSO 1984* provides *which the Court*

¹ PLD 1961 (W.P.) Lahore 387

² A.I.R. 1936 Privy Council 15

(Also see A.I.R. 1924 Lahore 145, 1925 MADRAS 184, AIR 1972 Allahabad 406 (V 59 C 108) and 1980 CLC 216 SC (AJ&K)).

in the particular case considers proper, the Court may presume..... This article clearly gives discretion to the Court to apply presumption keeping in view the particular case.

8. It is also settled that the Court to presume the signatures and every other part of such document which purports to be in the handwriting of any person and that it is executed by the person by whom it purports to be executed Courts should be very careful about applying any presumption under Article 100 of QSO 1984 in favour of old documents when the same are produced during the trial of a suit, in which the proprietary rights are set up and the Courts in its discretion can refuse to apply presumption where evidence in proof of the document is produced and then it is disbelieved. Reference can be made to the cases titled “*Ch. Muhammad Shafi Versus Shamim Khanum*”³ and “*Yousuf Versus Muhammad Akbar and Others*”⁴. The word ‘may’ used in Article 100 of QSO 1984 signifies that presumption envisaged therein does not follow as a matter of course.⁵

9. The learned two Courts below have disbelieved the evidence of the *petitioner*. I have carefully gone through the record and found that the evidence of the *petitioner* is not credible. Therefore, this civil revision is **dismissed in limine**. No order as to costs.

(Sultan Tanvir Ahmad)
Judge

Approved for reporting

Judge

Announced and dictated on 29.10.2024,
signed on 12.11.2024
Hashmi*

³ 2007 SCMR 838

⁴ 2024 CLC 1085

⁵ “Mst. Hajyani Bar Bibi through L.R. Versus Mrs. Rehana Afzal Ali Khan and Other (PLD 2014 Supreme Court 794)