

Form No: HCJD /A38
JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT
JUDGMENT

Civil Revision No.3093 of 2012

Naveed Ahmed etc.
Versus
Sheikh Amjad Saeed deceased through his legal heirs etc.

Date of Hearing: 01.03.2023

Petitioners by: Mr. Zaheer Ud Din Babar and Agha Arshian Khan, Advocates.

Respondents by: Malik Muhammad Afzal Baloch, Advocate.

MASUD ABID NAQVI, J. Brief facts of this civil revision are that the plaintiffs namely Sheikh Amjad Saeed/predecessor in interest of the respondent No.1 and Sheikh Maalik Saeed/respondent No.4 (hereinafter called the “**plaintiffs**”) filed a suit for specific performance with permanent injunction with the averments that the petitioners/defendants No.1&2 alongwith their brother namely Mohammad Saeed, sister/defendant No.3 & mother/defendant No.4 were the owners of 11 Marlas land on which a shop also exists. The three brothers i.e. petitioners/defendants No.1, 2 & Mohammad Saeed agreed to sell the suit property on their behalf and on behalf of their sister & mother for a sale consideration of Rs.15,50,000/- (Fifteen Lacs and Fifty Thousand) vide agreement to sell dated 25.08.2004. An amount of Rs.50,000/-(Fifty thousand only) was received as earnest

money and the balance consideration of Rs.15,00,000/- was agreed to be paid on or before 28.11.2004 at the time, the sale deed would be registered. When the plaintiffs asked the defendants to receive the remaining balance sale consideration amount and to execute the sale deed, only Mohammad Saeed performed his part of contract while the defendants No. 1 to 4 plainly refused. Hence, the plaintiffs were constrained to institute the instant suit for specific performance of contract against defendants No. 1 to 4 about the property, described in the headnote of plaint by deducting the already sold share of Muhammad Saeed. The defendants contested the suit by way of filing written statement and written reply and by raising certain legal as well as factual objections. Out of divergent pleadings of the parties, issues were framed by the learned trial Court. The parties produced their respective evidence and after recording the same, the learned trial Court **decree**d the suit only against defendants No.1 and 2 subject to payment of Rs.10,00,000/- vide judgment and decree dated 23.09.2011. Feeling aggrieved, the defendants No.1 to 4 filed an appeal challenging the said judgment and decree dated 23.09.2011 and the learned Additional District Judge, Sheikhpura **dismissed the appeal** vide judgment and decree dated 07.07.2012 with slight modification by specific finding that *since the defendants No.3 and 4 were not party to the sale agreement, the suit as against them stood dismissed*. Being aggrieved, only the defendants No.1 & 2/petitioners have filed the instant civil revision and challenged the validity of the impugned judgments and decrees passed by the learned Courts below

while the plaintiffs also filed a Regular Second Appeal No.189/2012 against the sister/defendant No.3 & mother/defendant No.4.

2. During the arguments, learned counsel for plaintiffs/respondents wants to withdraw the connected Regular Second Appeal No.189/2012 and same is dismissed as withdrawn vide separate order of even date passed in connected appeal. The learned counsel for the petitioners/defendants No.1 & 2 mainly argues that the time was the essence of the contract as has been specifically pleaded in written statement by the petitioners/ defendants No.1 & 2 on the failure of the plaintiffs to pay the balance amount within the stipulated period. However, the learned counsel for the plaintiffs fully supports the impugned judgments and decrees of the leaned Courts below.

3. I have heard the arguments of learned counsels for the parties and minutely gone through the record as well as the impugned judgments and decrees of the learned Courts below.

4. An agreement to sell with respect to shop was allegedly executed between the plaintiffs namely Sheikh Amjad Saeed/ predecessor in interest of the respondent No.1 & Sheikh Maalik Saeed/ respondent No.4 & Mohammad Yousaf /predecessor in interest of the petitioners/ defendants on 31.08.1998 after receiving an amount of 100,000/- as earnest money out of a total sale consideration of Rs.500,000/- (Five Lacs). After the death of Mohammad Yousaf /predecessors in interest of the petitioners/defendants, all the defendants filed an ejectment petition against the plaintiffs on 27.06.2003 but during the pendency of that ejectment petition, three

brothers i.e. petitioners/defendants No.1, 2 & Mohammad Saeed agreed to sell the suit property on their behalf and on behalf of their sister & mother to the plaintiffs for a sale consideration of Rs.15,50,000/- (Fifteen Lacs and Fifty Thousand) vide agreement to sell dated 25.08.2004, after receiving the earnest money of Rs.50,000/- (Fifty thousand only). Muhammad Saeed, brother of the petitioners/defendants No.1 & 2 performed his part of contract and was not impleaded in instant suit and the petitioners/defendants No.1 & 2 although conceded the execution of agreement to sell dated 25.08.2004 but refused to execute sale deed on the ground of alleged failure of the plaintiffs to pay the balance amount within specified time i.e. 28.11.2004. During the pendency of ejectment petition, an amount of Rs.4,00,000/- was paid by the plaintiffs to Mohammad Saeed on 29.03.2005 before the learned Rent Controller and he executed the sale deed in favour of plaintiffs to the extent of his share in suit property while time of execution of sale deed was extended by the rest of executants of agreement to sell, after recording the statements before the learned Rent Controller. The learned counsels for the contesting parties also recorded second statements on 09.05.2006 before the learned Rent Controller, Sheikhpura, wherein the defendants No.1 & 2 / petitioners acknowledged the receipt of another amount of Rs.1,00,000/-. Hence, after the receipt of additional two payments of Rs.5,00,000/- (Five Lacs) by the executants of agreement to sell and extending time of execution of sale deed twice, the defendants No.1 & 2/petitioners cannot agitate the legal

proposition that the time was the essence of the contract. By receiving above said amount(s), defendants No.1 & 2/petitioners No.1 & 2 mutually agreed with the plaintiffs to extend time in agreement to sell therefore time does not remain as an essence of the contract. The Hon'ble Supreme Court of Pakistan in a case reported as Hafiz Shaikh ANWAR-UL-HAQUE through L.Rs Vs JEHAN KHAN and others (PLD 2011 SC 540) held that:-

“.....In law, if time is extended for performance of a contract pertaining to immovable property, then time can never be enforced as of contract.....”

The Hon'ble Supreme Court of Pakistan in a case reported as GHULAM NABI and others Vs Seth MUHAMMAD YAQUB and others (PLD 1983 SC 78) also held that:-

“.....Though time is not ordinarily considered as being of the essence of the contract involving transaction of immovable property but the true intention of the parties can be gathered from the terms of contract and facts and circumstances of the case and mere mention of time in the contract for its performance does not necessarily mean that time was the essence of contract.....”

In a case reported as Faryad Ali Vs Rehmat Ali (PLD 2015 Lahore 75), it has been held that:-

“.....In this contract as I have noticed that the defendant/respondent himself is receiving the money and extending the period and further that the defendant/respondent has never given any notice for

termination of the contract on the basis that the time was essence of the contract and the plaintiff/petitioner could not perform his part of the contract.....”

5. It is important to mention here that even after execution of agreement to sell and receipt of amount(s) before the learned Rent Controller, the petitioners not only failed to withdraw the ejectment petition as is specifically agreed in agreement to sell between the plaintiffs and defendants No.1 and 2/petitioners which was dismissed by the learned Rent Controller after discussing all the questions of facts and law vide judgment dated 22.02.2007 but also filed an appeal against the judgment which was also dismissed. The learned Courts below have granted relief by considering the conduct of the parties, the principles of equity, fairness and good conscious by appreciating the pleadings of the parties as well as oral and documentary evidence of the parties and thereafter reached at the conclusion regarding the controversy, therefore, findings of learned Courts below are hereby maintained/ upheld.

6. Even otherwise, with respect to interference in concurrent findings of the Courts below, the Hon’ble Supreme Court of Pakistan in a case reported as Administrator, Thal Development through EACO Bhakkar and others Vs Ali Muhammad (2012 SCMR 730) held that:-

“Concurrent findings of the trial court and appellate court in favour of appellants were based on proper appreciation of evidence therefore, the same were not open to interference by the revisional court in exercise of its jurisdiction under section 115, C.P.C. which is primarily

meant for correction of jurisdictional defect/error and material illegalities/irregularities, resulting in miscarriage of justice to a party.”

7. Neither any misreading or non-reading of evidence on record nor any infirmity, legal or factual, has been pointed out in the impugned judgments and decrees passed by the learned Courts below, therefore, this civil revision is hereby **dismissed.**

(MASUD ABID NAQVI)
JUDGE

Approved for reporting.

JUDGE

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