

Stereo. H C J D A-38.
JUDGMENT SHEET
IN THE LAHORE HIGH COURT, RAWALPINDI BENCH,
RAWALPINDI
JUDICIAL DEPARTMENT

Civil Revision No.404-D of 2015

**Muhammad Arif
Versus
Javaid Khan**

JUDGMENT

Date of hearing: 11.09.2024.

Petitioner by: M/s. Muhammad Kashif and Malik Shamsul Haq, Advocates.

Respondent by: Mr. Nasir Iqbal, Advocate.

MUHAMMAD SAJID MEHMOOD SETHI, J.- Through instant revision petition, petitioner has assailed the vires of judgments & decrees dated 03.04.2014 & 18.02.2015, passed by learned Civil Judge and Additional District Judge, Jand (Attock), respectively, whereby petitioner's suit for declaration along with permanent and mandatory injunction, was concurrently dismissed, however, Trial Court's findings to the extent of decree qua specific performance of contract passed in favour of respondent, were set aside by the Appellate Court.

2. Facts in brief are that petitioner instituted a suit for declaration along with permanent and mandatory injunction to the effect that he is owner-in-possession of suit property measuring 02-Kanal 03-Marla, situated in Khasra No.457, Mauza Basal, Tehsil Jand, District Attock and respondent has no concern whatsoever with the suit property and if respondent has managed / maneuvered any sale deed / agreement, same being against the law and facts, is inoperative qua rights of petitioner and liable to be set aside. The suit was contested by respondent by way of filing written statement. Learned Trial Court, after framing issues, recording evidence and hearing arguments of both sides, proceeded to dismiss the suit vide judgment & decree dated 03.04.2014 and at the same time, passed decree for specific performance of contract in favour of respondent. Feeling discontent,

petitioner filed appeal before learned Additional District Judge, who vide judgment & decree dated 18.02.2015 partly accepted the same, set aside the findings of Trial Court to the extent of decree qua specific performance of contract and upheld Trial Court's decision qua dismissal of petitioner's suit. Hence, this revision petition.

3. Learned counsel for petitioner submits that document *Exh.D1* is in fact a loan receipt and not an agreement to sell. He further submits that the Courts below have misconstrued the evidence brought on record by the respondent in the shape of *Exh.D1* & *Exh.D2* as the agreement between the parties was that of a loan as assurance from the petitioner towards the respondent, not for sale, thus, impugned judgments & decrees are unsustainable in the eye of law.

4. On the other hand, learned counsel for respondent defends the impugned judgments & decrees.

5. Arguments heard. Available record perused.

6. It is the stance of petitioner that due to a friendly relationship between the parties, he borrowed Rs.1,00,000/- from the respondent, who in exchange thereof, obtained petitioner's signatures on stamp paper for the return of aforesaid amount, however, since petitioner is illiterate, he was unable to understand the contents of the stamp paper, which was subsequently transformed into a sale agreement. The petitioner asserts that this document is false, fabricated and concocted.

7. It is apparent from bare perusal of record that petitioner himself admitted to receiving Rs.10,000/- from respondent's father-in-law, namely Haji Abdur Raheem and his signature upon receipt slip *Exh.D1*, which states that on 07.10.2000, he received Rs.10,000/- as token money for land. For convenience, the contents of receipt *Exh.D1* are reproduced hereunder:-

آج مورخ 7.10.2000 کو حاجی عبدالحیم خان نے مجھے (محارف خان) مبلغ 10000 روپے
بطور زمین بیانہ مجھے دیا ہے میں تحریر دے رہا ہوں۔ تاکہ سند رہے۔

Similarly, signature and thumb impression of petitioner are also available on the back of stamp paper (*Exh.D2*), which explicitly states that suit property has been sold to respondent for Rs.1,10,000/- vide

Iqrarnama / sale deed. During his testimony as PW-1, petitioner acknowledged during the course of cross-examination that he purchased the stamp paper from Muhammad Ramzan, the Stamp Vendor. He also confirmed his signature in the register of Muhammad Ramzan. For facility of reference, relevant portion of petitioner's cross-examination is reproduced hereunder:-

میں نے اشتمام متد عویہ موضع تھے کے محمد رمضان اشتمام فروش سے خرید کیا تھا۔ اشتمام متد عویہ
کے پشت پر میرے دستخط بحروف انگریزی اور انگوٹھا ثابت ہے۔ رمضان اشتمام فروش نے میرے
سامنے دستخط نہ کیے تھے کیونکہ میں نے اشتمام نہ خریدا تھا۔ رمضان اشتمام فروش کے رجسٹر پر بھی
میرے دستخط ہیں۔

8. Receiving of payment and affixing signature on disputed stamp paper (*Exh.D2*) are admitted by the petitioner himself. It is also a matter of record that according to report of Local Commission (*Exh.D4*), respondent was in possession of the land in question – a fact conceded by PW-2 Adeel Akhtar. This evidence provided a basis for learned lower Appellate Court to set aside decree of specific performance of contract in respondent's favour, and appellate decision is thus based upon correct appreciation of evidence brought on record and applicable law.

9. Needless to observe that oral evidence cannot outweigh the documentary evidence. The documentary evidence, which was not objected to at relevant time, would prevail against oral evidence, regardless of how abundant the latter may be. Moreover, it is firmly established that oral evidence cannot substitute for documentary evidence. The Supreme Court, in *Abdul Ghani and others v. Mst. Yasmeen Khan and others* (2011 SCMR 837), underscored that mere oral assertions are insufficient to rebut documentary evidence, which holds greater weight and credibility. This principle is further reinforced by the ruling in *Shamshad v. Arif Ashraf Khan and others* (2010 SCMR 473), where the court lamented that the lower courts failed to recognize the precedence of documentary evidence over oral testimony. In determining the rights of the parties, it is the quality, nor the quantity, of the evidence that should be prioritized. When

documentary evidence contradicts the oral testimony, the latter cannot be relied upon. It is a well-established rule of appreciation of evidence that a person may lie, documents do not. Reliance is placed upon Azeem Khan and another v. Mujahid Khan and others (2016 SCMR 274).

10. Article 103 of *Qanun-e-Shahadat* Order, 1984 excluded oral statement made between the parties to any instrument or their representatives. The rationale behind this provision is that inferior evidence should be excluded in the presence of superior evidence; that a written agreement reflects a deliberate and well considered settlement. Furthermore, a party acknowledging a fact in writing is immune from mischief, failure and lapse of memory. Once an agreement has been reduced in writing, oral evidence is to be excluded while proving the terms thereof as against the terms specifically reduced in writing. Reference is made to Mst. Baswar Sultan v. Mst. Adeeba Alvi (2002 SCMR 326), Bolan Beverages (Pvt.) Limited v. PEPSO Co. Inc. and 4 others (PLD 2004 Supreme Court 860) and Elahi Bakhsh through Legal Heirs and others v. Muhammad Iqbal and another (2014 SCMR 1217).

11. Petitioner could not prove his case through cogent and confidence inspiring evidence, as rightly observed by the learned Courts below. Learned counsel for petitioner could not point out any illegality, material irregularity, misreading or non-reading of evidence and jurisdictional error in the concurrent decisions of learned Courts below qua declaratory decree, warranting any interference by this Court in exercise of revisional jurisdiction.

12. Resultantly, this revision petition, being devoid of any merits, is hereby dismissed. No order as to costs.

(Muhammad Sajid Mehmood Sethi)
Judge

APPROVED FOR REPORTING

Judge

A.H.S.