

Stereo.HCJDA-38
JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

C.R. No.45106 of 2023

Muhammad Arif and another
v.
Haji Khalid Mahmood (deceased) through L.Rs

JUDGMENT

Date of hearing	06.11.2024
Petitioners by	Mr. Malik Naveed Akram, Advocate.
Respondents by	Mr. Nazir Ahmad Bhatti, Advocate.

Rasaal Hasan Syed, J. This civil revision impugns judgment dated 14.3.2023 of the court of first instance whereby the suit for specific performance was decreed and judgment dated 26.6.2023 whereby the appeal thereagainst of the petitioners was dismissed and the judgment of trial court was affirmed.

2. Haji Khalid Mehmoor now deceased and represented by respondent Nos.(i) to (v), brought an action for specific performance of agreement of sale dated 06.8.2010, in respect of the suit property, claiming that the petitioners promised to sell the property for consideration of Rs.90,00,000/-, received Rs.20,00,000/- as earnest money through cheque dated 06.8.2010 and Rs.10,00,000/-, thereafter; and that balance amount was payable initially within one year and three months from the date of agreement and thereafter within the extended period of two years and nine months; and that the plaintiff remained

ready and willing to perform his part who was entitled to enforce the agreement through the indulgence of the court as the petitioners were attempting to avoid the performance of contract. Suit was contested. Issues were framed and evidence got recorded. After trial, learned Civil Judge vide judgment dated 14.3.2023 decreed the suit. Appeal thereagainst of the petitioners/defendants was dismissed by the learned Addl. District Judge, Lahore vide judgment dated 26.6.2023. In the instant revision petition the judgments of the courts below are under challenge.

3. Learned counsel for the petitioners submitted that the courts below only discussed issues No.1 to 4 and recorded their findings on those issues while the remaining issue Nos.5 to 7 were not considered in the light of the evidence available on the file and that certain admissions made by PWs in cross-examination were ignored and that the impugned orders were legally untenable and that judgments of the courts below are result of misapplication of law which resulted in miscarriage of justice and that the impugned findings are not based on legally admissible evidence. Contrariwise, learned counsel for the respondents/plaintiffs supported the impugned judgments and submitted that there were clear admissions in the statements of DW-1 and DW-2 as to the execution of agreement to sell and payment of consideration and that concurrent finding of fact were recorded by the courts below as to the execution of agreement to sell which

were recorded after due consideration and appraisal of evidence and that no misreading or non-reading was specifically pointed out and that the plea of admissions or discrepancies in the evidence was misconceived which had no bearing on the findings of the courts below and that the findings of fact recorded by courts below on correct analysis of evidence could not be expected to be interfered with in revisional jurisdiction by taking a different view of the same evidence.

4. Points raised by the parties' learned counsel have been duly attended and considered in the light of the evidence on record and the findings recorded by the courts below. The case of the respondents was that petitioners entered into an agreement of sale in favour of deceased Haji Khalid Mehmood (predecessor-in-interest of the respondents) on 06.8.2010 in respect of shop No. 2 measuring 144 sq ft bearing property No. SXVIII-49-S-4 at ground floor of Bilal Shah Market, Farooq-e-Azam Bazar, Ichhra, Lahore, for a consideration of Rs.90,00,000/-. A sum of Rs.20,00,000/- was received as earnest money by them through cross cheque dated 06.8.2010. In terms of the agreement the remaining amount of Rs.70,00,000/- was payable at the time of execution of sale deed which was agreed to be executed within one year and three months from the date of sale agreement. The period was extended with the consent of both sides on 06.10.2011 for two years and nine months and, thereafter, on petitioners' request a further sum of Rs.10,00,000/- was paid to them while the

remaining amount of Rs.60,00,000/- was agreed to be paid on completion of sale deed and that despite readiness and willing of the respondents' predecessor to pay the balance amount and to get the sale deed executed, the petitioners adopted dilatory tactics and tried to avoid execution of the sale deed which resulted in filing of suit for enforcement of agreement through indulgence of court. Petitioners resisted the suit. Defence taken was that the agreement was based on fraud. There was no agreement of sale and that as a matter of fact the agreement was entered to secure the investment of Rs.20,00,000/- by the deceased respondent in the business of petitioners and that thereafter further investment of Rs.10,00,000/- in the business of petitioners was made and in view thereof the agreement was liable to be cancelled. Issues were framed and evidence was recorded by both sides. Late Haji Khalid Mehmood himself appeared as PW-1, Sh. Kamran Javaid as PW-2 and Muhammad Afzal as PW-3. In documentary evidence agreement to sell was produced as Ex.P1, receipt of payment of Rs.10,00,000/- as Ex.P2 and receipt of payment of Rs.20,00,000/- as Ex.P3 while receipt of deposit of Rs.60,00,000/- as balance consideration was placed as Mark-A. Petitioners in response produced Sh. Muhammad Arif as DW-1, Muhammad Arshad as DW-2, Muhammad Amin as DW-3, Muhammad Mohsan as DW-4 and Abdul Haq as DW-5. No documentary evidence was produced by them. After giving due consideration to the oral and documentary evidence and the points raised pro

and contra, the learned Civil Judge decreed the suit vide judgment and decree dated 14.3.2023. Petitioners went in appeal which was dismissed by learned Addl. District Judge, Lahore vide impugned judgment dated 26.6.2023.

5. Findings recorded by the courts below are that execution of Ex.P1, Ex.P2 and Ex.P3 was not only proved by adducing oral and documentary evidence but also the documents were admitted in the evidence of the petitioners. Perusal of the defence taken by the petitioners shows that the stance of petitioners was that in fact there was no sale agreement rather it was an agreement for investment in the business of the petitioners for which they were allegedly paying the profits to the respondents. While appearing as DW-1, petitioner Muhammad Arif, in his cross-examination admitted that agreement of sale Ex.P1 bears his signatures and thumb-impression and that Ex.P3 receipt for payment of earnest money also bears his signatures and thumb-impression and that it is correct that the value of the shop was fixed at Rs.90,00,000/- and that as per agreement on payment of balance consideration Rs.60,00,000/- the shop was to be transferred and that he did not have any receipt for payment of profits to the respondents nor he had any receipt or writing for the return of money and that it was correct that he had thumb-marked and signed the document Ex.P1 after reading it. DW-2, petitioner Muhammad Arshad, in his cross-examination admitted that it was correct that his signature and thumb-impression existed on Ex.P1 i.e. the

agreement of sale and that the signatures and thumb-impression are also available on Ex.P3, the document regarding payment of earnest money and that he could not produce any document to prove his claim about the return of money. He admitted that he did not make any application to the police regarding their defence taken in the written statement about the document. DW-4 Muhammad Mohsin produced by the petitioners, was not a witness to the document. Be that as it may, he admitted in cross-examination that agreement Ex.P1 did not bear his signatures and thumb-impression nor he was present at the time of drafting of the document Ex.P1 or at the time of signing the same by Muhammad Arif and Muhammad Arshad petitioners and that the alleged payment of Rs.10,00,000/- was not made in his presence. Same was the position of the statement of Abdul Haq DW-5 who admitted that he was a salesman and that the document Ex.P1 did not bear his signatures or thumb-impression nor he was present at the time of payment of Rs.20,00,000/- or at the time of execution and that the document reflecting payment of Rs.10,00,000/- was not written in his presence nor it bore his signatures and thumb-impression. It is manifest from the evidence of the petitioners that they did not deny the execution of agreement Ex.P1 or Ex.P2 and Ex.P3 and also that document pertained to the sale and transfer of property and that they received the payment of the amount as claimed by the respondent in terms of Ex.P1, Ex.P2 and Ex.P3. They also admitted that they

have no proof in support of defence that the arrangement between the parties was in regard to the investment in their business or that they had been paying the profits to the respondent or that the amount received by them was returned. It is also in their evidence that the respondent did not make any complaint/application to the police for some action in respect of the plea qua the document. The petitioners were unable to prove their counter-version in regard to document Ex.P1. As against the petitioners, the evidence of respondent comprised of PW-1 Haji Khalid Mehmood, PW-2 Sh. Kamran Javaid and PW-3 Muhammad Afzal. In documentary evidence agreement to sell Ex.P1, receipt for payment of Rs.10,00,000/- as Ex.P2, and receipt of payment Rs.20,00,000/- as Ex.P3 were produced and receipt for payment/deposit in court of the remaining amount of Rs.60,00,000/- was adduced as Mark A. PW-1, plaintiff in the case, deposed that he entered into agreement Ex.P1 to purchase the property and paid Rs.20,00,000/- through cheque and Rs.10,00,000/- thereafter and that he had deposited the balance sale price in the court. He also deposed that he always remained ready and willing to perform his part but the sale deed could not be executed due to the evasive attitude/conduct of the petitioners and that the stance of investment in business was based on falsehood. His statement was cross-examined but nothing adverse could be extracted therefrom. Same was the position of PW-2 and PW-3 who were the marginal witnesses of agreement Ex.P1

and deposed in support of respondent's stance and in this way the execution of document of sale agreement and payment of consideration were proved by the respondent.

6. It is discernible from the evidence that the respondent did prove the execution of agreement of sale Ex.P1 and the documents showing payment thereagainst by producing two marginal witnesses. Their statements could not be shaken in cross-examination. As against the plaintiff the petitioner defendants not only admitted the execution of document Ex.P1 in their written statement but also in their statements as DW-1 and DW-2. Perusal of the defence taken in paragraph 1 of the preliminary objections of the written statement reveals that petitioners admitted that at the time of execution of document they did take notice of the fact that the document pertained to sale of property and not as a security to protect the alleged investment in business. Despite that the petitioners executed the document, admitted the receipt of payment thereagainst and did not challenge the document by filing any suit or through a complaint/application to the police as admitted in their evidence. So much so no notice for raising this objection was claimed to have been sent. The conduct of the petitioners is manifest from the facts which give no other impression except that the document is an agreement of sale, its contents leave no room for doubt that the petitioners agreed to sell the property and received compensation as mentioned in Ex.P1, Ex.P2 and Ex.P3. Plea raised in the written statement about

the nature of document as security appears to be afterthought and, as such, inadmissible and also impermissible as per Articles 102, 103 and 104 of the Qanun-e-Shahadat Order 1984. Article 102 contemplates that when the terms of a contract or of grant or of any other disposition of property have been reduced to the form of a document no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself or secondary evidence of its contents in cases in which secondary evidence is admissible. Article 103 of the Qanun-e-Shahadat Order, 1984 provides that the terms of any such contract, grant or other disposition of property or any matter required by law to be reduced to the form of a document, have been proved according to the last above-noted provision of law, no evidence of any oral agreement or statement shall be admitted as between the parties to an instrument or their representative-in-interest, for the purpose of contradicting, varying, adding, or subtracting from, its terms. Article 104 of Qanun-e-Shahadat Order, 1984 provides that when language used in a document is plain in itself and when it applied accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts.

7. It is manifest from the provisions of law referred supra that where the parties to the transaction reduced the terms and conditions of an agreement in the form of document, then the document itself is the only evidence and no oral

evidence can be adduced to add, vary, subtract or modify the terms thereof. For the purpose of understanding the real intent of the parties therein only the document itself is deemed to be final and no oral evidence can contradict or vary the same and that the parties are bound by the terms as specified in the document. Reference in this regard can be made to Muhammad Tufail and 3 others v. Muhammad Aslam Khan and another (1999 YLR 934) and Zaheer Uddin Pathan through Legal Heirs and 8 others v. Mst. Hajiani Zainab through Legal Heirs and another (1999 YLR 728) wherein it was observed that oral evidence, contradicting the terms of written instrument, is inadmissible under Article 103 of Qanun-e-Shahadat Order 1984. In view of the rule supra, it is manifest that the plea taken by the petitioners in defence was not only inadmissible in law but also not proved in accordance with law and that they were estopped by their conduct to raise such plea. To the contrary the respondent had proved the agreement of sale and payment of earnest money and subsequent payments thereof as also the readiness and willingness to perform their part and were therefore entitled to the enforcement of the agreement through the indulgence of the court.

8. Perusal of the judgments of the courts below also reveals that the entire evidence of both sides as was relevant and material was duly scrutinized and it was only after indepth consideration of the evidence that the conclusion drawn was that execution of agreement and

receipt of payment of earnest money were not only admitted in the pleadings and the evidence but were also proved in accordance with law and that the respondents were entitled to the grant of decree in the suit. No misreading or non-reading of evidence or any material discrepancy therein could be highlighted in the course of hearing of the petition which could vitiate the findings of the courts below. No ground for interference could be made out in the concurrent findings of fact in the circumstances. Revision petition is devoid of substance and is **dismissed**.

**(RASAAL HASAN SYED)
JUDGE**

ANNOUNCED IN OPEN COURT 29.11.2024.

JUDGE

APPROVED FOR REPORTING

JUDGE