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Judgment Sheet

IN THE LAHORE HIGH COURT,
LAHORE

(JUDICIAL DEPARTMENT)

Civil Revision No.15213/2023

Amir Sajjad Vs. Ghulam Murtaza Ch.

JUDGMENT

Date of Hearing	08.05.2023
Petitioner by:	Mr. Muhammad Sarwar Qamar, Advocate.
Respondent by:	Mr. Pervaiz Akhtar Tahir, Advocate.

MUHAMMAD RAZA QURESHI, J. Since the instant Revision Petition as well as connected petition bearing No. 15217 of 2023 emanate from consolidated Judgments and Decrees (hereinafter referred to as the “**Impugned Judgments and Decrees**”) and agitate similar questions of law as well as facts, therefore, they are decided together.

2. Through these Civil Revisions under Section 115 of the Code of Civil Procedure, 1908 (the “**CPC**”), the Petitioner has called into question the validity and legality of findings contained in the Impugned Judgments and Decrees dated 29.06.2022 and 07.02.2023. Pursuant to the Impugned Judgment and Decree passed by the Trial Court, counter suits filed by the parties seeking specific performance of agreement to sell and cancellation of said agreement to sell were dismissed. However, through the Impugned Judgment and Decree dated 07.02.2023 rendered by the Appellate Court, the Judgment and Decree passed in suit for specific performance of agreement to sell filed by the Petitioner was maintained, whereas the Judgment and Decree passed by the Trial Court in the suit filed by the Respondent seeking cancellation of subject matter agreement to sell was reversed and the suit filed by the Respondent was decreed.

3. Learned counsel for the Petitioner submits that the Impugned Judgments and Decrees are illegal and unlawful and both the Courts below while passing the same have committed material irregularity. According to learned counsel, since the subject matter agreement to sell was an admitted document, therefore, there was no occasion for the Trial Court to dismiss Petitioner's suit on the ground that Petitioner failed to produce original agreement to sell and also failed to prove the same in terms of Articles 17 and 79 of the Qanun-e-Shahadat Order, 1984 (hereinafter referred to as the "**Order**"). According to learned counsel, to the extent of findings contained in Impugned Judgment and Decree passed by the Appellate Court on issue No.3, it misread the evidence by holding that Petitioner was liable to pay rent to the Respondent for the subject matter property. Lastly, contends that the Impugned Judgments and Decrees are nullity in the eyes of law, hence are liable to be set aside.

4. Conversely, learned counsel for the Respondent while supporting the Impugned Judgment and Decree passed by the Appellate Court contends that the Appellate Court followed the cannons of justice and rightly adjudicated the matter in view of pleadings respectively canvassed by the parties and documentary as well as oral evidence. According to learned counsel, the findings contained in the Impugned Judgments and Decrees passed to the extent they are concurrent cannot be evaluated by this Court in exercise of supervisory jurisdiction as Courts below while passing the same neither misread the evidence nor failed to appreciate the material on record. Pursuant to query posed by this Court with respect to findings on issue No. 3 recorded in Judgment and Decree passed by the Appellate Court, learned counsel concedes factual as well as legal position.

5. Arguments of learned counsel for the parties have been heard and record has been perused with their able assistance. At the outset, it is observed that the contention of the Petitioner that subject matter agreement to sell was an admitted document is

inherently flawed and factually incorrect as the contents of written statement filed by the Respondent clearly reflects that though Respondent conceded the existence of the subject matter agreement to sell, but alleged an interpolation with respect to date contained therein and categorically pleaded that the subject matter agreement to sell was forged one and date mentioned therein as 10.12.2012 was interposed by writing as 10.12.2014, therefore, in such scenario, it cannot be accepted that the subject matter agreement to sell was an admitted document. It was obligatory for the Petitioner to produce the original document and in case the Petitioner contended that original agreement to sell was with the Respondent, it was his responsibility to follow the mandate contained in provisions of Article 76 of the Order with respect to production of secondary evidence. The failure of the Petitioner to serve notice to produce or admit and deny the subject matter agreement to sell under Order XII of the CPC, has serious consequence under the law and one of the fundamental consequences thereof, is that without following the mandate of law he was debarred to produce secondary evidence. This is the primary justification and rightly so prevailing with the Trial Court while dismissing the suit for specific performance of agreement to sell.

6. Likewise, though the Petitioner in paragraph No.3 of his Suit categorically pleaded his readiness and willingness to perform his part of agreement to sell, yet he throughout failed to satisfy the test of law, wherein to substantiate his *bona fide* claim, the Petitioner should have filed an Application with the Trial Court for depositing the balance sale consideration. Thus, the findings of the Trial Court with respect to silence of the Petitioner to substantiate his readiness and willingness cannot be interfered.

7. It is evident from the subject matter agreement to sell that it bears names of two marginal witnesses, namely, Nasir Hussain and Sana Ullah. The Petitioner has conceded before this Court that only witness who appeared before the Court was Nasir Hussain

(DW-2), but the other witness Sana Ullah could not be produced as he had already died. In case the said witness had passed away, then the Petitioner was under an obligation to prove his death and prove through secondary evidence the elements such as comparison of signatures and thumb impressions with admitted thumb impressions and signatures on other documents and he was required to prove signatures or thumb impressions of dead person through identification of his signatures from any one of his relatives like son, brother, etc. Mere statement of the Plaintiff regarding death of a witness does not alleviate or exonerate him to prove the contents of a disputed document. These facts should have been pleaded and having established the non-availability of the witness by reason of his death, steps should have been taken to adduce secondary evidence with the leave of the Court. Reliance in this regard is placed upon the judgments reported as Anwar Ahmad vs. Mst. Nafis Banno through Legal Heirs (2005 SCMR 152), Sheikh Muhammad Muneer vs. Mst. Feezan (PLD 2021 SC 538), Mst. Kausar Bibi vs. Muhammad Sarwar and others (2022 YLR 1028) and City Education Board (Registered) Sialkot through Director vs. Mst. Maqbool Nasreen (PLD 2008 Lahore 51).

8. In the instant case, the Petitioner did not make any effort to prove the alleged agreement to sell through the mode prescribed under the Order. This Court concurs with the findings contained in the Impugned Judgments and Decrees, as to the proof of the subject matter agreement to sell which was mandatory, especially, when there was an allegation of interpolation in the contents of said agreement to sell and the Petitioner in the course of evidence failed to prove transaction satisfying the tests laid down by the provisions of Articles 17 and 79 of the Order.

9. The findings contained in the Impugned Judgments and Decrees dismissing the suit for specific performance of agreement to sell do not warrant any interference and this case is classic example of law laid down by the Supreme Court of Pakistan,

wherein it has been held that concurrent findings of facts cannot be interfered with, especially, if the wishful thinking of the Petitioner expects a different conclusion on facts than the one arrived at by courts below. Reliance in this respect is placed on the Judgments reported as Amjad Khan versus Muhammad Irshad (deceased) through L.Rs (2020 SCMR 2155) and Shajar Islam versus Muhammad Siddique and 2 others (PLD 2007 Supreme Court 45)

10. So far as the findings of the Appellate Court contained in issue No.3 are concerned, it is held that those findings could not have been arrived at in view of order dated 10.03.2021 passed by the learned Special Judge (Rent), Faisalabad, wherein the ejectment petition and claim in respect thereof agitated by the Respondent was dismissed for non-prosecution and this error has also been conceded to by learned counsel for the Respondent, therefore, the findings of Appellate Court to the extent of decision on issue No.3 are set aside.

11. The findings of the Appellate Court with respect to decreeing the suit for cancellation of agreement to sell filed by the Respondent, this Court is convinced that there was sufficient material in the oral as well as documentary evidence available with the Appellate Court to vary with the Judgment and Decree passed by the Trial Court as it is settled law that in case of difference of opinion in the Judgments and Decrees passed by the trial court and the appellate court, the view expressed by the latter shall be given preference and weightage. Reliance in this regard is placed on the Judgments reported as Madan Gopal and 4 others Vs. Maran Bepari and 3 others (PLD 1969 SC 617), Muhammad Nawaz through LRs. Vs. Haji Muhammad Baran Khan through LRs and others (2013 SCMR 1300), Amjad Ikram Vs. Mst. Asya Kausar and 2 others (2015 SCMR 1) & Muhammad Yasin through L.Rs. and others vs. Muhammad Latif and others (2016 CLC 553).

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12. Despite hectic efforts of the learned counsel for the Petitioner, this Court is not persuaded that findings contained in the Impugned Judgments and Decrees passed by learned Courts below suffer from any material illegality or are tainted with any material irregularity. Consequently, the same are maintained and both the Civil Revisions are **dismissed**.

**(MUHAMMAD RAZA QURESHI)
JUDGE**

Approved for Reporting.

JUDGE

Syed Zameer