

Form No: HCJD /A38
JUDGMENT SHEET

**IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT
JUDGMENT**

Civil Revision No.63321 of 2020

Date of Hearing: 13.04.2023

**Abdul Shakoor deceased through his Legal Heirs etc
Vs.
Rana Abid Mahmood etc**

Petitioners by: Mr. Naveed Khalid, Advocate
Respondent No.1 by: Mr. Waqas Haider Saqi, Advocate
Respondent No.3 by : Mr. Atif Sattar Arieen, Advocate
Respondent No.2 Proceeded against Ex-parte vide
order dated 07.06.2021.

MASUD ABID NAQVI, J. Brief facts necessary for the adjudication of this *lis* are that the plaintiff/respondent No.1 filed a suit for specific performance and possession with the averments that defendant No.9/respondent No.2 was the owner of disputed plot which was purchased by the predecessor in interest of defendant Nos. 1 to 8/petitioners namely Abdul Shakoor through agreement to sell dated 20.11.2008 after paying the total sale consideration. Thereafter, the predecessor in interest of defendant Nos. 1 to 8/petitioners namely Abdul Shakoor agreed to sell the same plot to the plaintiff/respondent No.1 through agreement to sell dated 25.01.2011 by receiving an amount of Rs.5000/- cash & Rs.495000/- through cheque which was duly encashed as earnest money and also received the balance sale consideration on 16.11.2011 with the promise to transfer the title of disputed plot, after completion of process of LDA

on his agreement to sell dated 20.11.2008. After his death, the plaintiff repeatedly asked the defendant Nos. 1 to 8/petitioners to execute the sale deed but they refused, hence the suit. The defendant Nos. 1 to 8/petitioners contested the suit by filing written statement and raising certain legal as well as factual objections while defendant No.9/respondent No.2 was proceeded against ex-parte by the learned trial court.

2. 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, learned trial court decreed the suit of the plaintiff/respondent No.1 vide judgment and decree dated 23.10.2018. Feeling aggrieved, the defendant Nos. 1 to 8/petitioners filed an appeal and learned Additional District Judge vide judgment & decree dated 17.11.2020 dismissed the appeal. Being dissatisfied, the petitioners/defendant No.1 to 8 have filed the instant Revision Petition and challenged the validity of the judgments and decrees passed by the learned courts below.

3. Learned counsel for the defendant Nos. 1 to 8/petitioners primarily argued that the predecessor in interest of defendant Nos. 1 to 8/petitioners namely Abdul Shakoos was not legally entitled to execute the disputed agreement to sell on the basis of agreement to sell, without being owner of disputed plot while the Learned counsel for the plaintiff/respondent No.1 fully supported the judgments and decrees of learned courts below and learned counsel for LDA/ defendant No.10/respondent No.3 also supported the arguments of

learned counsel for the petitioners and the defendant No.9/respondent No.2 was proceeded against ex-parte on 07.06.2021.

4. I have heard the arguments of learned counsel for the parties and minutely gone through the record as well as the impugned judgments and decrees.

5. The disputed plot was originally owned by Muhammad Bilal/defendant No. 9/respondent No.2 as admitted by all the contesting parties including Lahore Development Authority/ defendant No.10/respondent No.3 and agreement to sell dated 20.11.2008, executed by the Muhammad Bilal/ defendant No. 9/respondent No.2 in favour of the predecessor in interest of defendant Nos. 1 to 8/petitioners namely Abdul Shakoor is also an admitted document and has not been challenged by either of the contesting party and in written statement, LDA/defendant No.10 acknowledged the filing of transfer application by Muhammad Bilal/defendant No. 9/respondent No.2 in favour of the predecessor in interest of defendants No. 1 to 8/petitioners namely Abdul Shakoor. Assistant Director LDA appeared as DW-1 and conceded in cross examination that predecessor of the defendants No. 1 to 8/ petitioner namely Abdul Shakoor also submitted set of documents for transfer of plot on 08.10.2011 which includes affidavits of Abdul Shakoor and Muhammad Bilal and same are available in the record of LDA.

Now the onus to prove issue No.3 about the valid execution of agreement to sell dated 25.01.2011/Ex.P-2 lies on the plaintiff/respondent No.1 which was allegedly executed by the predecessor in interest of defendant Nos. 1 to 8/petitioners in favour of plaintiff/

respondent. There is no denial of the fact that the predecessor in interest of defendant Nos. 1 to 8/petitioners namely Abdul Shakoor received an amount of Rs.4,95,000/- through cheque No. 723191 which was duly encashed. Although, defendant No.1/petitioner No.1 conceded in cross examination that he read the bank statement of his late father but has not specifically denied the receipt of amount through cheque by his father in cross-examination as DW-2 and the plaintiff/respondent exhibited his Bank statement/Ex.P-3 to prove that an amount of 4,95,000/- was withdrawn from his account through cheque No. 723191. The plaintiff/respondent No.1 himself appeared as PW-1 & produced two attesting witnesses namely Rana Zahid Hussain & Fiaz Bajwa as PW-2 & PW-3 to prove the execution and contents of agreement to sell as well as payment of an amount of Rs.5000/- in cash & Rs. 4,95,000/- through cheque No. 723191. The plaintiff/respondent No.1 also produced Manager of Bank as PW-6 and after checking/examining the bank record, he deposed about the clearance of cheque No. 723191 in favour of predecessor in interest of defendant Nos. 1 to 8/petitioners namely Abdul Shakoor. The plaintiff/ respondent No.1 also exhibited the receipt of balance sale consideration of Rs.850000/- as Ex.P-1 and also produced the witnesses of receipt namely Faisal Sadique & Manzoor Hussain as PW-4 & PW-5 to prove the execution and contents of receipt as well as payment of balance sale consideration of an amount Rs. Rs.8,50,000/-. By producing two attesting witnesses of agreement to sell dated 25.01.2011/Ex.P-2 alongwith the Bank Manager & two attesting witnesses of receipt of balance

sale consideration/ Ex.P-1, both the documents are proved by the plaintiff/petitioner in accordance with the requirements of Article 79 of the Qanoon-e-Shahadat Order 1984.

After successfully proving the Ex-P-1 & Ex.P-2, the onus shifts on the defendant Nos. 1 to 8/petitioners to negate the claim of plaintiff/respondent No.1 but only the defendant No.1/petitioner No.1 appeared as DW-2 and no one else appeared on behalf of defendant Nos. 1 to 8/petitioners in support of the stance of defendant Nos. 1 to 8/petitioners.

In admitted agreement to sell dated 20.11.2008 executed by the Muhammad Bilal/defendant No. 9/respondent No.2 in favour of the predecessor in interest of defendant Nos. 1 to 8/petitioners namely Abdul Shakoor, the executant namely Muhammad Bilal specifically allowed Abdul Shakoor to execute another agreement to sell with someone else on the basis of agreement to sell dated 20.11.2008 and to receive earnest money. Relevant portion of the said agreement is reproduced hereunder:-

یہ کہ مقرالیہ اقرار نامہ معابدہ بیع بذا کی رو سے کسی بھی دیگر سے سے معابدہ بیع کر سکتا ہے زر بیعانہ وصول کر سکتا ہے جس پرمن مفرکو اعتراض نہ ہو گا۔

The predecessor in interest of defendant Nos. 1 to 8/petitioners namely Abdul Shakoor acted in accordance with stipulated terms & conditions of 1st agreement to sell dated 20.11.2008 by executing the 2nd agreement to sell dated 25.01.2011/Ex.P-2 in favour of plaintiff/respondent and the predecessor in interest of defendant Nos. 1 to 8/petitioners namely Abdul Shakoor was legally authorized to execute the 2nd agreement to sell in favour of plaintiff/respondent

and after executing the 2nd agreement to sell voluntarily by late Abdul Shakoor, his successors in interest/defendants No. 1 to 8/petitioners cannot wriggle out of the commitment of late Abdul Shakoor as argued by the learned counsel for the petitioners or pleaded in Para VI of the grounds of instant civil revision. In this regard guidance is sought from the following reported judgments:-

(i) Muhammad Jalil and 4 others Vs Muhammad Sami and 8 others (PLD 2007 Lahore 467)

“the second party, (فریق دویج), had specifically been granted authority to enter into an agreement with a third party without the intervention of the original owners. The said clause in effect amounted to the purchaser being an authorized attorney of the original owners, capable of executing agreements as of right, in favour of third parties.”

(ii) Mst. Jaiwanti Bai vs Messrs Amir Corporation and others (PLD 2021 Supreme Court 434)

“22. An assignment, in cases relating to immovable property, takes place when one party to an existing contract (as in this instant case the under the agreement to sell) conveys all the obligations, rights and interest under the agreement to another person.”

(iii) Nisar Ahmed Afzal vs Muhammad Taj and 7 others
(2013 SCMR 146)

In law, there is no bar for a prospective purchaser under a sale agreement, from alienating his interest in immovable property acquired by virtue of a sale agreement to any other person through another sale agreement.”

6. Both the learned Courts below have properly discussed in detail the pleadings as well as oral and documentary evidence adduced by both the parties and have elaborately discussed the factual as well as legal controversy between the parties and arrived at right conclusion, hence, the findings of the learned Courts below are hereby upheld/confirmed. 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 revision petition is **dismissed.**

(MASUD ABID NAQVI)
Judge

Approved for reporting.

Judge