

Form No: HCJD/A 38
JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

JUDGMENT

Civil Revision No. 59135 of 2022

Muhammad Siddique
Versus
Talib Hussain

Date of Hearing: **01.07.2025**

Petitioner by: Miss Kashwer Naheed, Advocate.

Respondents by: Mr. Tariq Hussain, Advocate.

MASUD ABID NAQVI, J. Brief facts necessary for the adjudication of this *lis* are that the plaintiff/petitioner instituted a suit for possession through specific performance of an agreement to sell dated 06.08.2001/Ex.P-1 with the averments that he paid an amount of Rs.2,20,000/- to the defendant/respondent as total sale consideration and the possession of suit land was also delivered to him by the defendant/respondent. By paying all the dues on behalf of defendant/respondent for obtaining proprietary rights, he ensured the execution of deed No.1089/1 dated 05.12.2005 in favour of defendant/respondent. The defendant/respondent contested the suit by filing written statement and specifically denied the execution of agreement to sell & receipt of sale consideration. After the framing of issues, the parties produced their respective oral & documentary evidence and learned trial court **dismissed the suit** vide judgment and decree dated 08.12.2010. Feeling aggrieved, the plaintiff/petitioner filed an appeal and learned Additional District Judge vide judgment & decree dated

13.09.2022 dismissed the appeal. Being dissatisfied, the plaintiff/petitioner has filed the instant Revision Petition and challenged the validity of the judgments and decrees passed by the learned courts below.

2. I have heard the arguments of learned counsels for the parties and perused the available record as well as have minutely gone through the impugned judgments and decrees.

3. It is a well-settled law that the initial burden of proof is on the plaintiff to substantiate his/her claim(s) by adducing cogent, legal, relevant and unimpeachable evidence of definitiveness. In order to prove issue No.1, Jamal Abdul Nasir/attorney of plaintiff/petitioner appeared as PW-5 and produced Muhammad Saddique as PW-1 and Muhammad Shafiq Ramay as PW-2, Muhammad Sabir as PW-3 and Muhammad Zafar as PW-4. While appearing as PW-5, Jamal Abdul Nasir/attorney of plaintiff/petitioner frankly conceded alteration/modification/interpolation in the text of disputed agreement to sell dated 06.08.2001/Ex.P-1 in cross-examination which is reproduced hereunder;

" یہ درست ہے کہ اقرار نامہ Ex.P1 کی پانچیں لائے میں کنگ ہوئی ہے۔ یہ درست ہے کہ Ex.P1 کی لائن نمبر 5 میں پہلے پانچ ہندسے تھے یہ درست ہے کہ چوتھا ہندسہ (0) کو دو میں تبدیل کیا گیا ہے یہ درست ہے کہ (0) کے اوپر زیر و کاہندسہ لکھا گیا یہ درست ہے کہ بعد میں اردو میں دو لاکھ بیس ہزار الفاظ میں لکھا گیا۔ یہ درست ہے کہ اقرار نامہ Ex.P1 کی لائن پانچ میں لفظ نصف کے آگے جو ہندسے لکھے گئے اس کی تعداد پانچ تھی اور آگے لفظ روپے لکھا گیا تھا۔ یہ درست ہے کہ کنگ کے بعد زیر و کی جگہ (/) اور oblique کے اوپر صفر کا اضافہ کیا گیا۔ "

Only alive attesting witness of disputed agreement to sell namely Muhammad Sabir appeared as PW-3 and conceded in cross-examination certain facts which are reproduced hereunder;

"یہ درست ہے کہ اقرار نامہ Ex.P1 کی لائن نمبر 5 میں مبلغ/- 20,000 روپے لکھے گئے پھر دو کے ساتھ والی صفر پر 2 ہندسہ (دو) کا اضافہ کیا گیا۔ یہ درست ہے کہ دو لاکھ بیس ہزار روپے کی رقم تحریر کرتے ہوئے آخری صفر باقی ہندسون سے (/) کے اوپر تحریر کی گئی ہے۔ صفر نشان کا اضافہ کیا گیا ہے"

By bare reading the contents of disputed agreement to sell, there remains no doubt that original written amount of Rs.20000/- was altered to Rs.22000/- by cutting the zero (0) to two (2) and thereafter due to shortage of space another/additional zero (0) was added/written above the altered amount of Rs.22000/-. Similarly, half of the amount was originally written as Rs.10000/- which was also altered to Rs.11000/- by cutting the zero (0) to one (1) and thereafter due to shortage of space another/additional zero (0) was written above the altered amount of Rs.11000/-. Hence, there is clear alteration/modification/interpolation/addition in the text of disputed agreement to sell and the unauthorized material altered/modified/added part of disputed agreement by one party without the consent of other party is not only illegal, unlawful, void but also unenforceable by law because the consensus ad idem is considered the most essential part of an agreement. The consent of both the parties about alteration/modification/interpolation/addition in the text of disputed agreement can be judged if an additional note with the signatures of both the parties to the disputed agreement or at least with the signature of alleged seller/defendant/respondent confirming the alteration/

modification/interpolation/addition with mutual consent is available / written on the disputed agreement **or** through an additional document confirming the consent about the alteration/modification/interpolation /addition with the signatures of both the parties to the disputed agreement or at least with the signature of alleged seller/ defendant/respondent **or** putting signatures near the cuttings & added words. None of the requirements showing the consent of alleged seller/ defendant/respondent are either pleaded or proved through oral & documentary evidence. Hence, even the material changes in the disputed agreement without the consent of seller make disputed agreement to sell unenforceable by law rather this is a fraudulent transaction.

4. It is settled law that jurisdiction of the courts to grant relief of specific performance is discretionary in nature and cannot be claimed as a matter of right. Reference is made to case reported as ***Muhammad Riaz Hussain Vs Zahoor ul Hassan*** (2021 SCMR 431). The learned courts below have rightly refused relief of specific performance 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 maintained/upheld and granting discretionary relief to petitioner/plaintiff in such circumstances would be highly unfair and inequitable.

5. The plaintiff/petitioner has not only failed to prove the execution of agreement to sell/Exh.P.1 as well as payment of sale consideration through oral and documentary evidence rather there are contradictions in the depositions of PW's and averments of the plaint, which is properly discussed by the learned courts below while dismissing the suit as well as the appeal.

6. 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.”

6. 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