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JUDGMENT SHEET

LAHORE HIGH COURT
MULTAN BENCH MULTAN

JUDICIAL DEPARTMENT

C.R. No.16-D of 2021

Ghulam Akhtar **vs.** **Muhammad Iqbal**

J U D G M E N T

Date of Hearing:	30.05.2024
Petitioner by:	Rana Muhammad Nazir Khan Saeed, Advocate.
Respondent by:	Mr. Muhammad Salman Amir, Advocate.

Anwaar Hussain, J. The respondent, Muhammad Iqbal, instituted a suit for specific performance of contract, against the petitioner, on the basis of a written agreement to sell dated 01.06.2013 ("**agreement**") with the averments that total sale consideration for the suit property was settled as Rs.2,400,000/-, out of which, an amount of Rs.100,000/- was received by the petitioner as earnest money, in the presence of witnesses and the remaining was to be paid within one year and possession of the suit property was handed over to the respondent, however, when the respondent requested for execution of the sale deed, the petitioner declined which constrained the respondent to institute the suit that was contested by the petitioner, *inter alia*, on the ground that the agreement is fraudulent and the possession of the suit property was not given to the respondent under the agreement. The suit was dismissed by the Trial Court, *vide* judgment and decree dated 17.12.2018, against which the respondent preferred an appeal that was allowed and through impugned judgment and decree dated

23.01.2020, the suit of the respondent was decreed. Hence, the present civil revision.

2. Learned counsel for the petitioner states that the judgments of the Courts below are at variance. Adds that well-reasoned judgment of the Trial Court has been upended by the Appellate Court below, without properly appreciating the evidence available on record. Contends that the name of the scribe (PW-2) was not reflected in the plaint and hence, the testimony of PW-2 as the scribe was beyond pleadings; that the petitioner was pursuing litigation before the Revenue Authorities for partition of the suit property forming part of joint *khata* and it belies logic that the petitioner would be selling his property to the respondent; and that even if the agreement is presumed to be genuine, the respondent had no resources to pay the balance sale consideration as the same was not tendered before the Trial Court at the time of filing of the suit, which reflects that the respondent was neither willing nor ready to perform his part of the agreement.

3. Conversely, learned counsel for the respondent supports the impugned judgment and decree passed by the Appellate Court below. As regards non-deposit of balance consideration, learned counsel submits that the respondent was not directed by the Trial Court to deposit the balance sale consideration and when the suit was decreed in appeal, the respondent immediately deposited the said amount within 10-days as directed by the said Court and in order to substantiate his contentions, has produced the original challan that has been seen and returned. He also adds that in the execution proceedings, the petitioner has not appeared and *Bai Nama Sultani*¸ in favour of the respondent has also been registered, in respect of the suit property.

4. Arguments heard. Record perused.

5. While the Trial Court was persuaded with the fact that no record of rights exhibiting ownership of the petitioner/defendant, as on the date of the execution of the agreement, was examined and has not been referred in the agreement and signatures and/or thumb impression of the petitioner were not available on the revenue tickets affixed on the agreement, to non-suit the respondent; the Appellate Court below has relied upon the admission on part of the petitioner *qua* his signatures on the agreement to upend the findings of the Trial Court. Therefore, it is for this Court to examine whether the Appellate Court below erred in upending the judgment of the Trial Court by exercising jurisdiction in a manner which warrants interference of this Court in exercise of revisional jurisdiction and whether while passing the impugned judgment, principles of equity were kept in sight by the Appellate Court below.

6. I have perused the record with abled assistance of learned counsel for the parties. There is no doubt that the agreement brought on record as Exh.P-1 is not written on a stamp paper but on a letter head. There is also no denial of the fact that it was not scribed by an authorized person/stamp vendor and PW-2 was not referred in the pleadings as scribe of the agreement, however, civil cases are to be decided on the basis of preponderance of evidence and perusal of the record reveals that the petitioner while appearing as DW-1 was asked a specific questions to which he responded as under:

> " مدعی کا دفتر جہاں بیٹھ کر سودا کیا تھا میانوالی ہوٹل کے ساتھ ہے۔۔۔۔۔۔۔۔۔۔یہ درست ہے کہ Exh-P-1 پر میرے دستخط ہیں۔"

The above quoted portion of the statement of the petitioner constitutes an unequivocal admission of the execution of the agreement. It is also noted that while the petitioner admitted the

execution of the agreement during cross-examination, he denied affixing of signatures and/or thumb impression on the agreement in his pleadings and has reiterated the same stance before this Court. However, there is no explanation as to why no effort was made by the petitioner to seek comparison of his admitted thumb impression and/or signatures with the disputed signatures and thumb impression on the agreement. Furthermore, while being cross-examined, the petitioner also stated as under:

> "-----میں نے جو درخواستیں دی تھیں بابت قبضہ میری کوئی شنوائی نہ ہوئی میری درخواست لڑائی جھگڑا وغیرہ کی بابت تھی۔۔۔۔۔۔۔۔۔۔میں نے لڑائی جھگڑا کا محمد اقبال کو راضی نامہ تحریر کر کے دیا تھا البتہ میں نے اقرار نامہ کی بابت اور اقرار نامہ کے گواہان کے خلاف تھانہ پر کوئی درخواست نہ دی ہے۔۔۔۔۔۔۔۔۔۔۔۔۔زبانی راضی نامہ ہوا تھا۔"

7. In view of the above quoted admission of the petitioner, even if the version of the petitioner is accepted that the respondent forcibly took possession of the suit property, admittedly, there was no application of the petitioner for registration of criminal case in that regard and only applications on account of quarrels and wrangles with the petitioner were filed, which too were dismissed. It belies logic that a person will lose his entire land on account of use of force and will remain mum and will not initiate legal proceedings against the culprits. Moreover, the Appellate Court below has aptly encapsulated the entire controversy in the impugned judgment while dealing with assertion of the petitioner that he was pursuing the litigation on the revenue side and hence, logically cannot execute an agreement to sell. Operative part of the impugned judgment reads as under:

> "15. Further, admittedly possession of the suit property was with the appellant and although respondent attempted to justify the same by alleging and stating that appellant took the possession forcibly but this stance was not substantiated by the respondent

during the evidence and he failed to place on file any document to prove that he ever approached to the concerned quarters for recovery of possession. Admittedly respondent had not filed any suit for possession against the appellant till to date. Keeping in view the admission on behalf of respondent regarding signatures available on agreement to sell Exh.P-1 it is proved that long standing, continued and uninterrupted possession of the appellant over the suit property is in consequence of the agreement to sell Exh.P-1.

16. ***Learned trial court was swayed with the documentary evidence produced by the respondent to prove that some litigation was already pending before the revenue court between the parties and due to which execution of agreement to sell was uncalled for. It is available from the record that appellant had earlier purchased the share of brothers and sisters of the respondent whereupon a petition for partition was filed by the respondent. This was not such kind of litigation prohibiting the execution of agreement to sell. In addition to all above according to the document Exh.P-1 the suit property was purchased by the appellant against a consideration of Rs.24,00,000/- whereas a meager amount of Rs.1,00,000/- has been shown to be paid as earnest money which shows bona fide on part of appellant and there was no restraint upon him to mention a bigger portion of price of the suit property to be mentioned as earnest money if the agreement to sell Exh.P-1 was prepared with forgery***."

(***Emphasis supplied***)

This Court agrees with the reasoning put forth by the Appellate Court below while holding that the agreement stood proved. It is settled principle of law that in the event of a conflict between the judgments of the Courts below, preference should be given to the views of the Appellate Court below, who had the opportunity of re-examining and analyzing the evidence on the record. Cases reported

as *"Enayat Sons (Pvt.) Ltd. v. Government of Pakistan through Secretary, Finance and others"* (**2007 SCMR 969**) and *"Muhammad Hafeez and another v. District Judge, Karachi East and another"* (**2008 SCMR 398**) are referred in this regard.

8. However, this Court cannot lose sight of the fact that in terms of Section 22 of the Specific Relief Act, 1877 ("**the Act**"), the jurisdiction of the Courts to issue a decree of specific performance is discretionary/equitable in nature, thus, the Court is not bound to grant such relief merely because it is lawful to do so. In cases involving specific performance, the primary part of the contract is the consideration to be paid by the vendee for which he must exhibit his willingness and readiness, at all times. In this regard, the vendee must unconditionally seek permission of the Court, on the first date of hearing, to deposit the remaining sale consideration. The Supreme Court in case reported as *"Hamood Mehmood v. Mst. Shabana Ishaque and others"* (**2017 SCMR 2022**) observed that it is mandatory for a person seeking performance of the contract, under the Act, to seek permission of the Court to deposit the balance sale consideration. The respondent/plaintiff had admittedly not made any such request in terms of settled principle of equity i.e., "**he who seeks equity must do equity**", without waiting for any direction from the Trial Court and/or the Appellate Court till such time the suit was decreed by the latter Court.

9. No doubt that the Trial Court did not direct the respondent to deposit the balance sale consideration until the Appellate Court below decreed the suit, however, the same enabled the respondent to enjoy the possession of the suit property, for good 07 years approximately, while he only paid Rs. 100,000/- to the petitioner, which constitute approximately 4%, only, of the total sale consideration (Rs. 2,400,000). Generally, a substantial amount, at

least 20 or 25% of the sale consideration amount, is paid as earnest money and even more in cases when the agreement to sell is executed coupled with handing over of the possession, to the vendees. In the present case, a meagre amount of Rs.100,000/- was paid as earnest money and the possession of the suit property was also taken over by the respondent whereafter the respondent continued to retain both the possession of suit property as well as the 96% of outstanding sale consideration, which in the opinion of this Court is inequitable, on the part of the respondent. Inequity perpetuated when neither the Trial Court nor the Appellate Court below directed deposit of the balance consideration, at the time of entertaining the suit or admitting the appeal preferred by the respondent, in addition to the fact that the respondent never showed his willingness to deposit the balance sale consideration. This aspect of the matter has not been considered by the Appellate Court below, which needs to be corrected by this Court while exercising revisional jurisdiction.

10. There is no denial that with the passage of time, there has been inflation in the country and Pakistani Rupee has considerably devalued. While the petitioner claims that price of similar property in the vicinity has escalated thrice, learned counsel for the respondent could not refute that the price has been doubled during the pendency of the proceedings. Therefore, it is equitable to improve the total sale price. In this regard, I am fortified by the *dicta* laid down in case reported as "*Muhammad Siddique vs. Muhammad Akram"* (**2000 SCMR 533**). While the findings of the Appellate Court below are upheld, the respondent is directed to deposit additional Rupees Two Million, within a period of two months, from today with the Treasury Office where the respondent had already deposited the balance sale consideration (i.e., Rs. 2,300,000), in

compliance with the impugned judgement dated 23.01.2020. In case of failure on part of the respondent to deposit the said amount, this judgment shall cease to have an effect and the petition shall deemed to have been accepted as prayed for.

11. **Disposed of** in above terms. No order as to costs.

(ANWAAR HUSSAIN)
JUDGE

Approved for reporting

Judge

Maqsood