

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE FAISAL ARAB

MR. JUSTICE MAZHAR ALAM KHAN MIANKHEL

CIVIL APPEAL NO.528-L OF 2012

(Against the judgment dated
17.09.2009 of the Lahore High Court,
Lahore passed in RSA No.58/2008)

Muhammad Afzal (decd.) through L.Rs. etc.

...Appellant(s)

VERSUS

Muhammad Bashir and another

...Respondent(s)

For the appellant(s):

...
Maulvi Anwar-ul-Haq, ASC
Syed Rifaqat Hussain Shah, AOR

For respondent No.1:

Malik Noor Muhammad Awan, ASC

Date of hearing:

20.11.2019

...

ORDER

FAISAL ARAB, J.- The case of respondent No.1 in his suit for specific performance of contract was that the predecessor-in-interest of the appellant No.1 entered into an agreement to sell with him with regard to his property comprising of 29 kanals. In this regard the appellant No.1 executed a sale agreement on 23.01.1992 which admittedly was signed by him and on the same day a registered power of attorney was also executed in favour of his brother entrusting all the powers of sale and transfer etc. to him. At that time the property was mortgaged therefore could not be transferred and when the mortgage was redeemed on 18.01.1994, the respondent No.1 filed the suit for specific performance of the contract on 30.04.1994. Both the documents were produced in evidence, however, out of the two attesting witnesses of the sale agreement only one

appeared as witness. On the basis of the admission of the executant of both the documents the suit was decreed. The appeal filed by the appellants failed and so was their second appeal. Against the concurrent findings of the three courts below, leave was granted on the ground that though the execution of the sale agreement has been admitted but its contents have been denied.

2. Learned counsel for the appellants contends that the requirements of Article 17 of the Qanun-e-Shahadat Order, 1984 were not met and only one attesting witness out of two was examined. He further submits that though the execution of sale agreement is admitted but its contents were denied, therefore the sale agreement ought not to have been allowed to be admitted in evidence and resultantly the suit ought to have been dismissed. In support of his contention, he has relied upon the judgments reported as Hafiz Tassaduq Hussain Vs. Muhammad Din through Legal Heirs and others (PLD 2011 SC 241), Mt. Hira Bibi and others Vs. Ram Hari Lal and others (AIR 1925 Privy Council 203) and Sheik Kachu Vs. Muhammad Ali Mahmud (AIR 1927 Calutta 926).

3. In rebuttal, learned counsel for the respondent relied upon a judgment of this Court reported as Abbas Ali Vs. Liaqat Ali and another (2013 SCMR 1600) wherein it has been held that the documents are required to be attested by two witnesses but where the executant admits the execution of the document, then in terms of Article 81 of the Qanun-e-Shahadat Order, 1984, such document can be used against him though it was required by law to be attested.

4. We have heard the learned counsel for the parties and find that the sale agreement has been attested by two witnesses and

the omission to produce one attesting witness is of no legal consequence in terms of Article 81 of the Qanun-e-Shahadat Order, 1984. The said Article reads as under:-

"81. Admission of execution by party to attested document.-- The admission of a party to an attesting document of its execution by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested."

Article 81 is an exception to the general rule that where a document is required by law to be attested the same cannot be used in evidence unless two attesting witnesses are called for the purposes of proving its execution. The simple reading of Article 81 shows that where the execution of a document is admitted by the executant himself, the examination of attesting witnesses is not necessary. The case law cited by the appellants' counsel has no application as Article 81 is attracted in this case. Furthermore, the execution of power of attorney has not been denied which also contains the power to sell. When sale agreement is considered in the light of the contents of the power of attorney, clearly both the documents depict that the sale transaction has taken place. We are, therefore, not inclined to interfere with the concurrent findings of three courts below. This appeal is, therefore, dismissed.

JUDGE

JUDGE

Islamabad, the
20th of November, 2019
Approved for reporting
Waqas Naseer/*