

Stereo. H C J D A 38.
JUDGMENT SHEET
LAHORE HIGH COURT
BAHAWALPUR BENCH BAHAWALPUR
JUDICIAL DEPARTMENT

RSA No.34/2017

Ghulam Mustafa Mazhar **Versus** Samina Amjad

J U D G M E N T

Date of Hearing:	11.11.2025
Appellant by:	Ch. Muhammad Shafi Meo, Advocate, assisted by Mr. Naeem Akhtar Gujjar, Mr. Muhammad Rashid Khan Baloch and Mr. Muhammad Sarwar Meo, Advocates.
Respondent by:	Mr. Muhammad Naveed Farhan, assisted by Mr. Muhammad Karim Joiya and Mr. Muhammad Nasir Khan Pahore, Advocates.

Anwaar Hussain, J. Through this common judgment, present as well as connected Regular Second Appeal bearing No.35/2017 (“**connected appeal**”) are being decided simultaneously as identical question of law is involved *albeit* the respondents before this Court, in both cases, are two different individuals, however, both claim sale of plots through registered agreements to sell, of even date, i.e., 06.01.2005, against the appellant and invariably the evidentiary resume of both the cases is identical.

2. The registered agreements to sell were executed on 06.01.2005 and the sale price was settled as Rs.305,000/- (in both cases). In terms of the agreements, statedly, earnest money to the tune of Rs.125,000/- was paid in advance and remaining amount was to be paid in instalments (in both the cases). The Courts

below decreed the suits of the respondents for specific performance of agreements to sell (in both matters) and when appeals were preferred by the appellant, the same were also dismissed, through separate judgments of even date, i.e., 06.01.2005.

3. It is the case of the appellant that the purported receipts of balance sale consideration were not witnessed, hence, had no evidentiary value in terms of Article 17 read with Article 79 of the Qanun-e-Shahadat Order, 1984 (“QSO”). Learned counsel for the appellant further states that the receipts were brought in the statement of the counsel for the respondents and therefore, had no evidentiary value and places reliance on the law laid down in case reported as Mst. Akhtar Sultana v. Major Retd. Muzaffar Khan Malik through his legal heirs and others (PLD 2021 SC 715). He further contends that the suits were time barred inasmuch as the last payment was purportedly made on 01.12.2007, in both the cases, whereas the suits were instituted on 24.07.2012 and this aspect has escaped notice of the Courts below.

4. Conversely, learned counsel for the respondents submits that the suit plots were part of a town development scheme launched by the appellant in the name and style of “Al-Mustafa Town” and the appellant has sold multiple plots in the said scheme to different persons, including the respondents before this Court, through registered agreements to which presumption of correctness is attached. He further contends that in this regard, payment receipts were clearly in printed form and duly referred in the registered agreements. He avers that marginal witnesses of the agreements were produced who supported the stance of the respondents. Responding to the argument that the suits were time

barred, he submits that no date for actualization (of registered sale deed) was referred in the agreements, therefore, the cause of action arose when the appellant refused to transfer the plots in the names of the respondents. As regards the objection that the payment receipts have no evidentiary value as the same were produced in statements of counsel for the respondents conducting the trial, learned counsel for the respondents submits that the wisdom behind the *dicta* laid down in case of Mst. Akhtar Sultana supra is that an advocate, who brings on record documentary evidence, is not crossed-examined whereas in present case, the PWs while deposing clearly referred to the registered agreements and the receipts, who were cross-examined by the appellant but the same was not fruitful. Further avers that once the receipts were brought on record in statement of the counsel, the same were also confronted to DWs (including the appellant who appeared as DW.1 in both cases) and there was no explicit denial to issuance of the receipts. Further adds that no stance regarding the non-genuineness of the receipts was taken before the First Appellate Court below. In order to further substantiate his stance, learned counsel for the respondents avers that multiple cases were instituted against the appellant as he defrauded many innocent buyers like the respondents and one such matter came before this Court in C.R. No.935/2018 titled Ghulam Mustafa Mazhar v. Parveen Akhtar wherein findings of the Courts below rendered against the appellant were maintained through judgment dated 19.01.2023.

5. In rebuttal, learned counsel for the appellant contends that claim of reference by the PWs to the receipts is misconceived inasmuch as the evidence of the PWs was recorded on 19.11.2015 whereas the counsel of the respondents brought on record the said

receipts/documents on 07.12.2015, hence, no benefit can be given to the respondents for such reference.

6. Arguments heard. Record perused.

7. The controversy essentially revolves around the evidentiary value of certain receipts/documents, which were brought on record through the statement of counsel but were subsequently confronted to the defendant during his cross-examination. The learned Courts below concurrently found such receipts/documents to be part of the admitted contractual transaction between the parties recorded in registered agreements to sell. In these circumstances, the following question of law arises for determination in the present and connected appeal:

“Whether, in the facts and circumstances of the present case, documents brought on record through the statement of counsel, but subsequently confronted to the opposite party’s witness and forming part of a registered contractual transaction, possess evidentiary value in view of the principle laid down by the Hon’ble Supreme Court in case of Mst. Akhtar Sultana supra, which otherwise excludes consideration of documents not proved through witnesses in accordance with law?”

8. The object of the principle laid down by the Hon’ble Supreme Court in case of Mst. Akhtar Sultana supra is to preserve the sanctity of the evidentiary process and to ensure that no document which has not been duly proved in accordance with law—particularly those produced through counsel’s statement without being confronted to the witnesses is relied upon for adjudication. The ratio of the said judgment, therefore, is not to rely upon the documents that never became part of the evidence through any lawful mode of proof or confrontation.

9. Having above legal position in sight, perusal of evidentiary resume of the present case reveals that the situation is materially distinguishable. The agreements between the parties are registered documents containing thumb impressions and signatures of the appellant. Presumption of correctness is attached to such registered documents. However, the appellant has denied the same. No effort was made by the appellant to get forensic comparison of his thumb impressions on the said documents to establish that any fraud was committed by the respondents. Even otherwise, a comparison of the agreements to sell executed in both matters shows that the terms and conditions are almost identical, except for the variation in plot numbers, and both bear the thumb impressions of the appellant and the respective vendees—two different women who are respondents before this Court. The suggestion that both of them simultaneously committed fraud/coercion upon the appellant before the Sub-Registrar's Office in obtaining his thumb impressions on identical printed agreements (to sell) is wholly implausible. These circumstances collectively indicate that the appellant had in fact launched a housing scheme under the name and style of "Al-Mustafa Town," allotted plots to the general public, received substantial amounts under the agreements and then issued printed receipts in the ordinary course of business, and, when called upon to deliver the possession of plots and execute sale deeds, resiled from his commitments in a manner indicative of calculated deceit.

10. As regards the receipts issued by the appellant in respect of payments made by the respondents, it is imperative to note that clause No.10 of the agreements expressly authorises the vendor

(the appellant) to issue receipts from time to time against payments received. Clause 10 reads as under:

”10- جملہ اقساط ادا کرتے وقت فروخت کنندہ غلام مصطفیٰ کی دستخط شدہ رسید حاصل کرنا ضروری ہوگا۔ بصورت دیگر قسط ادا شدہ تصور نہ کی جائے گی۔“

Perusal of the record depicts that the receipts forming the basis of the decree were not only printed with the appellant's own stamp but bears a seal and were also confronted to the appellant when he appeared as a witness (DW.1). He neither denied his signatures thereon nor offered any plausible explanation as to their issuance. The said receipts thus emanate from an admitted registered contractual transaction and constitute corroborative evidence, lawfully introduced and tested through confrontation.

11. The matter can be examined from another angle as well—the conduct of the appellant, which does not inspire confidence and reflects a pattern of deliberate evasion. In paragraph 3 of his written statement, while replying to the corresponding paragraph of the plaint (in both cases), the appellant candidly admitted that he had launched a housing scheme under the name of “Al-Mustafa Town.” Para 3 of the plaint and its corresponding reply read as under:

Para 3 of the Plaint:

”3. یہ کہ مدعا علیہ نے اراضی متذکرہ بالا میں المصطفیٰ ٹاؤن کے نام سے اور اپنی جانب سے نقشہ بنا کر پلاٹ بندی کر کے کالونی بنائی ہوئی ہے۔ اور اس نقشہ کے مطابق متعدد لوگوں کو پلاٹس فروخت کیے ہوئے ہیں۔ مدعا علیہ نے اراضی متذکرہ بالا (المصطفیٰ ٹاؤن) میں سے ظاہر کردہ پلاٹ نمبری 15 برقبہ تعدادی 10 مرلے پیمائش 55×50 فٹ کا اقرار نامہ معاہدہ بیع بموجودگی ندیم اعجاز ولد محمد یونس اور تنویر یونس ولد محمد یونس ہمراہ مدعیہ مورخہ 05.01.05 کلہم بشمول ترقیاتی اخراجات رقم مبلغ = 305000 روپے میں طے کیا اور کلہم زر شمن میں سے مبلغ = 125000 روپے بطور پیشگی بموجودگی گواہان بالا وصول کر کے قبضہ

پلاٹ متدعو یہ / اراضی متدعو یہ حوالے مدعیہ کیا۔ جبکہ بقیہ زر زمین مبلغ = 180000 روپے کی 36 اقساط میں جنوری 2005ء سے دسمبر 2007ء عرصہ 3 سال میں ادا ہونے تھے۔ اور بموجودگی گواہان بالا اقرار نامہ معاہدہ بیج محرہ مورخہ 05.01.05 تحریر و تکمیل کروا کے اور مورخہ 06.01.2005 کو اصالتاً بموجودگی گواہان بالا روبروسب رجسٹرار فورٹ عباس پیش ہو کر اپنے العبدات کر کے اقرار نامہ معاہدہ بیج رجسٹری کروایا۔ نقل اقرار نامہ معاہدہ بیج محرہ مورخہ 05.01.05 رجسٹری شدہ مورخہ 06.01.05 لف ہذا ہے۔“

Para 3 of written statement:

3. یہ کہ فقرہ نمبر 3 مصطفیٰ ٹاؤن کی حد تک درست تسلیم ہے۔ بقیہ فقرہ بالکل غلط اور بے بنیاد ہے۔ مدعا علیہ نے ابھی بھی پلاٹ متدعو یہ کا سودا بیج ہمراہ مدعیہ نہ کیا ہے۔ اور نہ ہی کوئی زر پیشگی وصول کیا ہے۔ مدعیہ نے دعویٰ ہذا فرضی واقعات پر دائر کیا ہے۔ مدعا علیہ کے ساتھ مدعیہ نے کبھی بھی کوئی معاہدہ نہ کیا ہے۔ اور نہ ہی کوئی زر پیشگی مدعا علیہ نے ازاں مدعیہ وصول کیا ہے۔ اور نہ ہی کبھی مبینہ معاہدہ بیج کی بنیاد پر قبضہ حوالے مدعیہ کیا گیا ہے۔ مبینہ اقرار نامہ معاہدہ بیج مورخہ 05.01.2005 جعلی فرضی اور خود ساختہ ہے۔ مدعا علیہ نے کبھی بھی اقرار نامہ معاہدہ بیج بابت اراضی متدعو یہ بحق مدعیہ تحریر و تکمیل کر کے نہ دیا ہے۔ اور نہ ہی کبھی روبروسب رجسٹرار پیش ہو کر مبینہ اقرار نامہ کو تصدیق کروایا ہے۔ اور نہ ہی مدعا علیہ نے اقرار نامہ معاہدہ بیج پر اپنے العبدات کیے ہیں۔ مبینہ اقرار نامہ معاہدہ بیج جعلی فرضی تحریر کیا گیا ہے۔“

However, when the appellant appeared as DW-1, he made a complete volte-face by denying the very existence of such a scheme, asserting that he had never developed any “Al-Mustafa Town.” The appellant DW-1 stated as under:

"میں نے المصطفیٰ ٹاؤن کے نام پر کوئی ٹاؤن نہ بنایا ہوا ہے۔"

Thus, his case falls within clutches of legal maxim **Allegans Contraria Non Est Audiendus** (A person who alleges things contradictory to each other is not to be heard) disentitling the appellant to any relief. This contradiction alone is sufficient to

expose the intent of the appellant to mislead the Court and to defeat the legitimate claims of the allottees.

12. Moreover, the present cases are not isolated instances of *malafide* on part of the appellant; similar patterns of denial have surfaced in other cases arising out of the same housing scheme. One such matter, bearing Civil Revision No.935/2018, was dismissed by this Court through judgment dated 19.01.2023, affirming the concurrent findings of the Courts below. On a pointed query by this Court, learned counsel for the appellant could not deny that the present cases are related to the same housing scheme, namely, “Al-Mustafa Town”.

13. In view of the above discussion, the question of law framed hereinabove is answered in the manner that, while documents produced through the statement of counsel carry no evidentiary value and cannot be made sole basis of a judicial finding as a general rule, the position is materially different where such documents are subsequently confronted to the witnesses of the opposite party and form part of a registered contractual transaction. In such circumstances, their probative value stands recognised under the law, and reliance thereon by the Courts below does not amount to any legal error or misreading of evidence. Resultantly, the present as well as connected appeal have no merits, hence, **dismissed**.

(ANWAAR HUSSAIN)
Judge

Approved for reporting.

Judge