

JUDGMENT SHEET.
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD.

Civil Revision No. 92 of 2015

Mashahid Raza

Versus
Mst. Inayat Bibi and others

Petitioner By : Mr. Naveed Malik, Advocate

Respondents By : M/s Zulfiqar Ali Abbasi, G. Shabbir Akbar
and Malik Javed Iqbal Wains, Advocates

Date of Hearing : 30.01.2019

AAMER FAROOQ, J. - This judgment shall decide the instant Civil Revision as well as Civil Revision No. 93 of 2015, as common questions of law and facts are involved.

2. The facts, in brief, are that a suit for specific performance of the agreement dated 08.01.1997 with respect to Plot No. 712, Sector E-12/3, Islamabad (suit was filed by the petitioner against predecessor-in-interest of respondent No. 1-A to 1-C namely Mst. Inayat Bibi). It was alleged in the suit that the parties had entered into an agreement to sell with respect to property in question for consideration of Rs.13,00,000/-. It was further alleged that the entire consideration amount had been paid and as a result whereof, original documents of the property had been handed over by Mst. Inayat Bibi to the petitioner and she also executed three General Power of Attorneys, duly registered with Sub-Registrar at Sr. No. 115 dated 08.06.1997, Sr. No. 116 dated 08.06.1997 and Sr. No.117 dated 08.06.1997 as well as affidavit. The petitioner alleged that suit property remained non-transferable till December 2002, and when it became transferable, the petitioner approached Mst. Inayat Bibi for

execution of transfer documents but she lingered on the matter on one pretext or the other, hence the suit was filed. Mst. Inayat Bibi also filed suit for declaration and cancellation of the sale agreement as well as Power of Attorneys. Both suits were consolidated and issues were framed accordingly. The parties led their evidence in support of their claims. The suit filed by the petitioner was dismissed and one filed by Mst. Inayat Bibi was decreed in her favour vide judgment and decree dated 30.03.2013. Appeals were preferred by the petitioner against the referred consolidated judgment and decree, which were dismissed vide consolidated judgment and decree dated 22.01.2015, hence the petitions.

3. Learned counsel for the petitioner, *inter alia*, contended that the petitioner had executed sale agreement in favour of Mst. Inayat Bibi and the petitioner had paid the entire consideration amount; that the referred fact had been duly proved by the petitioner and the impugned judgments by the Courts below suffer from misreading and non-reading of evidence. It was further pointed out that application for comparison of signatures of Mst. Inayat Bibi was made by the petitioner which was dismissed without any justification or basis. It was further submitted that under Article 84 of Qanun-e-Shahadat Order, 1984, the Court has power to compare the signatures.

4. Learned counsel for respondent No.1, *inter alia*, contended that the petitioner has failed to prove execution of the agreement as well as payment of consideration; that marginal witnesses to the agreement were not produced; that in light of the fact that Mst. Inayat Bibi categorically denied her signatures on agreement, the burden of proof was on the petitioner to prove. In support of his contentions, learned counsel placed reliance on cases reported as Mst. Sumera versus Mst. Zaitoon Jan and 03 others (2018 YLR 2452), Hafiz Tassaduq Hussain versus Lal Khatoon and others (PLD 2011 SC 296),

Farzand Ali and another versus Khuda Bakhsh and others (PLD 2015 SC 187), Javed Iqbal versus Mst. Naziran Begum (2001 MLD 416).

5. Learned counsels for the parties have been heard and the documents placed on record examined with their able assistance.

6. The facts leading to filing of the instant petitions have been mentioned with brevity hereinabove, therefore, need not be reproduced.

7. The petitioner since alleged the agreement in his favour, hence had the burden of proof to prove the referred transaction in light of the fact that Mst. Inayat Bibi denied sale and execution of the agreement. The petitioner was also required to prove payment of the consideration. Bare perusal of the sale agreement [Ex-P1] shows that it is duly attested by three witnesses, however, the referred witnesses never entered into the Witness Box. Only Muhammad Aslam Khokhar appeared as PW-2 and deposed to the effect that Mst. Inayat Bibi put thumb impression in his presence, however, others did not appear. Under Article 79 of Qanun-e-Shahadat Order, 1984, it is incumbent to prove a document in accordance with the provision thereof. Moreover, it was incumbent upon the petitioner to prove payment of the consideration amount, which he failed to do so. In case reported as *Mst. Sumera versus Mst. Zaitoon Jan and 03 others (2018 YLR 2452)* the Division Bench of this Court observed that execution of document and its contents were distinct items and where neither payment of consideration nor contents of transfer letter were proved, the agreement stood vitiated. Moreover, testimony of the petitioner's witnesses also is not confidence aspiring inasmuch as the petitioner stated that identification of Mst. Inayat Bibi was performed by the Sub-Registrar through her National Identity Card which bore her photograph, which was not the case. Learned counsel for the petitioner failed to point out any misreading and/or non-reading of evidence. It is trite law that in Civil Revision, this Court interferes only where there is gross illegality or misreading or non-reading of evidence. There are

concurrent findings of fact which do not warrant interference under the facts and circumstances.

8. As noted above, the impugned judgments do not suffer from any error of law or fact warranting interference; hence, the above petitions are without merit and are accordingly **dismissed**.

(AAMER FAROOQ)
JUDGE

Announced in open Court this 26th day of April, 2019.

JUDGE

M.Shah/.