

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
(JUDICIAL DEPARTMENT)

C.R. No.438/2019
Ehsan Shakoor & 06 others
versus
Jamil Akhtar & another

Petitioners by: Syed Ghazanfar Ali Gilani, proxy counsel for petitioners.

Respondents by: Mr. Abdul Hamid Khan Kundi, Advocate for respondent No.1.
Ms. Sitwat Jehangir, Advocate for respondent No.2

Date of Hearing: 23.02.2021.

MOHSIN AKHTAR KAYANI, J: Through the instant Civil Revision petition, the petitioner has called in question concurrent findings of the courts below, whereby suit filed by respondent No.1 was decreed vide judgment and decree, dated 23.07.2018, by the Civil Court, and appeal filed thereto by the petitioners was dismissed vide the impugned judgment and decree, dated 23.03.2019.

2. Succinctly, Jamil Akhtar (Respondent No.1) filed a suit for specific performance of agreement dated 24.05.2005, declaration, mandatory and permanent injunction against the petitioners asserting therein that he purchased a plot of Category-IV, measuring 30x60 sq. yds., Phase-IV, Sector G-14, Islamabad from the petitioners' predecessor-in-interest namely Abdul Shakoor (late). The learned trial Court after recording of pro and contra evidence of both sides decreed the suit vide impugned judgment and decree, dated 23.07.2018. Feeling aggrieved thereof, the petitioners preferred an appeal, which was dismissed vide impugned

judgment and decree, dated 22.03.2019. Hence, instant Civil Revision petition.

3. Learned counsel for petitioner contended that both the Courts below have failed to appreciate that the sale consideration was not proved as per law, rather both the Courts below have relied upon the forged and fabricated agreement to sell and decreed the suit of respondent No.1 in a slipshod manner, therefore, same are liable to be set-aside.

4. Conversely, learned counsel for respondents No.1 and 2 opposed the filing of instant civil revision petition on the grounds that respondent No.1 has proved the execution of agreement to sell in accordance with law by producing the marginal witnesses, as such, all the original documents relating to the suit plot have also been produced before the learned trial Court, per se, respondent No.1 had been paying the installments of the suit plot; that both the Courts below have properly appreciated the facts and circumstances of the case and decreed the suit.

5. It is pertinent to mention here that learned counsel for petitioners was not available on 23.02.2021 and had requested for adjournment, per se, same was the position on the last date of hearing i.e. 17.09.2020, even learned counsel for respondent No.1 on 02.12.2020 had also made a request for adjournment of the case, whereupon he was directed to argue his case on the next date of hearing, but both the learned counsel have shown lack of interest in pursuing the instant case. In this backdrop, this Court has given ample opportunity and time to both the learned counsel to argue the case, but such delaying tactics are not appreciable, therefore, they were given time of seven (07) days to submit their written submissions, failing which the matter will be decided as per available record, but despite

issuance of such direction on 23.02.2021, no written submission has been submitted, which left this Court with no other option but to proceed with the matter on the basis of available record and position argued by Ms. Sitwat Jahangir, Advocate i.e. learned counsel for respondent No.2.

6. Arguments heard, record perused.

7. Perusal of record reveals that the petitioners are aggrieved with the concurrent findings of the Courts below, whereby suit filed by Jamil Akhtar / respondent No.1 for specific performance of contract, dated 24.05.2005, has been decreed. As such, admittedly Plot No.85, Street 8, Sector G-14/1, Category-IV, measuring 30x60 sq. yards, Islamabad (*suit plot*) was provisionally allotted to late Abdul Shakoor, predecessor-in-interest of the petitioners, by the Federal Government Employees Housing Foundation (*FGEHF / Respondent No.2*) on 14.04.2005, against his application No.038647, per se, provisional offer letter was issued to him on 19.12.2007. The said Abdul Shakoor entered into agreement to sell with respondent No.1 on 24.05.2005 against total sale consideration of Rs.1,375,000/-, whereby he received an amount of Rs.775,000/- through bank draft No.54200505230279, dated 23.05.2006, drawn on Standard Chartered Bank, Islamabad, whereas the amount of Rs.600,000/- was paid in cash, as such, all the original documents were handed over to respondent No.1 by late Abdul Shakoor in his life time. However, when the agreement was not complied with, the suit for specific performance was filed, which had been contested by the legal heirs of late Abdul Shakoor by taking the stance that no agreement was ever executed between the parties and documents presented before the learned Trial

Court are forged and fabricated, per se, they requested the Court to get those documents verified from FIA handwriting expert.

8. In view of this contentious situation, Jamil Akhtar/Respondent No.1 appeared as PW-1 and submitted original agreement Exh.P1, receipt Exh.P2, original offer letter Exh.P3, offer letter dated 19.12.2007 Exh.P4 and original provisional letter Exh.P5, even he has produced receipts of payment of the installments deposited by him in the account of FGEHF through receipts Exh.P6 to Exh.P9. He has also produced the affidavit of late Abdul Shakoor as Exh.P10, acknowledging the entire transaction and as per his own stance, only the amount of Rs.200,000/- had been left outstanding, which has been deposited by him in the Court.

9. Respondent No.1 has also produced PW-2 Chan Pir Shah and PW-3 Sajid Rasheed as witnesses of the agreement, who acknowledged their signatures as Exh.P1/1 and Exh.P1/2, respectively, as such, both the witnesses remained consistent regarding the execution and payment of the agreement qua the suit plot.

10. On the other hand, Ehsan Shakoor, real son of late Abdul Shakoor appeared as DW-1, who acknowledged that respondent No.1 and some other persons contacted him qua the suit plot, which was allegedly sold by his father (late Abdul Shakoor), but he denied that he is not aware of any sale transaction, even in his examination-in-chief he categorically stated that:

تمام اصل دستاویزات FIA Handwriting Expert کو fingerprint اور handwriting

موازنے کے لیے بھجوا دیا جائے۔ تاکہ مقدمہ کا فیصلہ انصاف کے مطابق ہو۔ اگر ہمارے والد نے معاہدہ ہذا تحریر کیا کہ اور اس

پران کے دستخط اور نشان اگٹھادرسٹ ہیں تو ہم معاہدے کی پاسداری کریں گے۔ اور اگر دستخط اور نشان اگٹھاجعلی ہیں تو مدعی

وگواہان کے خلاف کاروائی عمل میں لائی جائے۔ اور ہمیں انصاف دیا جائے۔

11. The other son of late Abdul Shakoor also appeared as DW-2, who has also taken similar stance.

12. In view of the stance taken by the petitioners in their evidence as well as in their written statement, the matter had been referred to a Handwriting Expert of FIA, whereby Director Technical, FIA submitted a report before the learned trial Court with the request that the matter could not be finalized for want of additional admitted documents and routine signatures / thumb impressions of the deceased. Consequently, the learned Trial Court, vide order dated 18.01.2018, handed over a report comprising of three (03) pages, referred as Exh.P1/1-3, Exh.P10/1-2 (5 pages) and service book. On the basis of said documents, the handwriting expert vide report, dated 31.01.2018, confirmed the thumb impression of late Abdul Shakoor on agreement to sell as well as at the verso of stamp paper, as such, even the thumb impressions at front page were found identical with routine thumb impressions available on late Abdul Shakoor's service book, per se, the contention raised by respondent No.1 with respect to execution of agreement to sell has duly been proved.

13. Furthermore, the petitioners while appearing in the witness box have acknowledged that they had neither deposited any installment with respect to suit plot in any manner nor the original record is available with them. In this backdrop, the learned Trial Court has rightly appreciated the evidence and decreed the suit, as such, the learned first Appellate Court has also confirmed the stance taken by respondent No.1, per se, there is no

illegality in the entire proceedings of the learned Trial Court as well as of the learned first Appellate Court, which requires interference in terms of Section 115 CPC.

14. It is pertinent to mention here that learned counsel for respondent No.2 i.e. Ms. Sitwat Jahangir, Advocate, while appearing before the Court has submitted copy of transfer letter, dated 07.02.2020, in favour of respondent No.1, whereby the suit plot has been transferred in his name in execution of the decree, though same is conditional subject to final outcome of instant civil revision petition, as such, the entire matter has been confirmed in favour of respondent No.1 and petitioners have failed to point out any illegality in the concurrent findings of the Courts below, therefore, the instant Civil Revision petition is not made out and same is hereby **DISMISSED**.

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on: **05.03.2021**.

JUDGE

Khalid Z.