

Form No: HCJD/C-121

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT,
ISLAMABAD.

Civil Revision No.432 of 2017

Raheel Ahmad Choudhry.

Versus

Altaf Rasool and 02 others.

**Petitioner's by : Mr. Ahmad Shahzad Awan,
Advocate.**

**Respondent's by : Sardar Arshad Mehmood Khan,
Advocate for respondent No.1.**

Date of Decision : 16.01.2020

AAMER FAROOQ, J. - The facts, leading to filing of the instant petition, are that the petitioner filed a suit for specific performance and permanent injunction against the respondents with respect to property bearing Plot No.07, Ahbab Agro Farms, Islamabad, measuring 10-Kanals situated in Khewat No.1030, Khatooni No.2458, Khasra Nos.3247 to 3252, Mouza Kirpa, Islamabad. It was alleged that total price agreed between the parties was Rs.77 Lacs, out of which a sum of Rs.5,00,000/- was paid on 15.12.2016. Alongwith the suit an application for interim relief was also filed, which was allowed by the learned Trial Court, vide order dated 15.06.2017,

however, the appeal preferred by the respondents was allowed and order dated 15.06.2017 was set-aside, hence the petition.

2. Learned counsel for the petitioner, *inter-alia*, contended that the parties agreed on a plain paper the terms of the sale, however, when the same was reduced in writing on the stamp paper, the respondent refused to sign. It was contended that the law permits an oral agreement to sell and placed reliance on case reported as "*Muhammad Sattar and others Vs. Tariq Javaid and others*" (**2017 SCMR 98**). It was further contended that as per the agreement, pay order in the sum of Rs.5,00,000/- was dispatched to the respondents and there is a delivery report as well.

3. Learned counsel for the respondents, *inter-alia*, contended that there is no agreement between the parties. The execution of the documents on the plain paper is denied and even the pay order received was not encashed.

4. Arguments advanced by learned counsel for the parties have been heard and the documents placed on record examined with their able assistance.

5. It is an admitted position that there can be oral agreement to sell property between the parties, however, where one party denies any agreement, the onus is on the other claiming an agreement. In the instant case, respondent No.1 denies signature on the plain paper and never signed the

agreement on the stamp paper. Even the pay order dispatched by the petitioner to the respondent was not encashed. In this view of the matter, the burden is upon the petitioner to prove that there was a valid agreement between the parties and the same can only be established through cogent evidence. At this stage there is no *prima facie* case in favour of the petitioner. The judgment relied upon by learned counsel for the petitioner i.e. "*Muhammad Sattar and others Vs. Tariq Javaid and others*" **(2017 SCMR 98)** is not applicable in the facts and circumstances. The order passed by the Appellate Court does not suffer from any jurisdictional defect warranting interference.

6. In view of the above, the instant petition is without merit and is accordingly **dismissed**. However, the learned Trial Court is directed to conclude the trial within a period of three (03) months from the date of this order.

(AAMER FAROOQ)
JUDGE

M. Zaheer Janjua