

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

C.R.No.243/2017  
Muhammad Khalid

**Versus**

Mst. Shehnaz Begum and others

<b>Date of Hearing:</b>	08.03.2019
<b>Petitioner by:</b>	Mr. Niazullah Khan Niazi, Advocate
<b>Respondents by:</b>	Mr. Muhammad Asif Khan, Advocate for respondent No.9, Mr. Abdullah Qazi, Advocates for respondents No.10 and 11.

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**MIANGUL HASSAN AURANGZEB, J:-** Through the instant civil revision petition, the petitioner, Muhammad Khalid, impugns the judgment and decree dated 24.05.2017, passed by the Court of the learned Additional District Judge, Islamabad, whereby his appeal against the consolidated judgment and decree dated 01.09.2016, passed by the Court of the learned Civil Judge, Islamabad, was dismissed. Vide the said consolidated judgment and decree dated 01.09.2016, the learned Civil Court had dismissed the petitioner's suit for specific performance and permanent injunction, whereas suit for specific performance, declaration and permanent injunction filed by respondent No.10 (Mst. Qamar-un-Nisa) was decreed.

2. The facts essential for the disposal of this petition are that vide letter dated 30.08.1999 (Exh.P/9), the Federal Government Employees Housing Foundation ("F.G.E.H.F.") made a provisional offer for the allotment of a plot in Phase-III, Sector G-13, Islamabad, to one Akbar Hussain. This offer is said to have been accepted by Akbar Hussain.

3. On 01.05.2000, Akbar Hussain entered into an agreement to sell with Mst. Qamar-un-Nisa, whereby the former agreed to sell the plot to the latter for a total sale consideration of Rs.4,65,000/- out of which Rs.2,25,000/- was paid as earnest money, whereas the remaining amount of Rs.2,15,000/- was to be deposited by the said

purchaser with the F.G.E.H.F. and Rs.25,000/- was payable to the seller at the time of the issuance of the allotment letter.

4. On 26.01.2001, Akbar Hussain applied to the F.G.E.H.F. for a change of his address to "House No.73/1-E, Street No.35, F-6/1, Islamabad". This address was in fact Mst. Qamar-un-Nisa's address as mentioned in the said agreement to sell dated 01.05.2000.

5. The F.G.E.H.F., vide letter dated 13.04.2002, (Exh.P/10) allotted plot No.9 (Category-IV), Street No.167, G-13/3, Islamabad ("the suit plot"), to Akbar Hussain. This allotment letter was sent by the F.G.E.H.F. to the above-mentioned address mentioned in Akbar Hussain's application dated 26.01.2001.

6. Vide letter dated 11.07.2003 (Exh.P/11), Akbar Hussain applied to the F.G.E.H.F. for the transfer of the suit plot in favour of Ms. Samina Khan, who was Mst. Qamar-un-Nisa's sister and nominee. It is an admitted position that the suit plot was not transferred in Ms. Samina Khan's favour at any material stage.

7. On 15.04.2002 (i.e. prior to the filing of the said application dated 11.07.2003 for the transfer of the suit plot in favour of Ms. Samina Khan), Akbar Hussain entered into an agreement to sell with Muhammad Khalid, whereby the former agreed to sell the suit plot to the latter for a total sale consideration of Rs.10,00,000/- out of which Rs.8,00,000/- was paid in advance, whereas the remaining amount was payable at the time of the transfer of the suit plot in favour of the said purchaser. On 20.10.2003, Muhammad Khalid instituted a suit for specific performance of contract and permanent injunction against Akbar Hussain etc, before the Court of the learned Civil Judge, Islamabad. In the year 2013, Mst. Qamar-un-Nisa and Ms. Samina Khan were also impleaded as defendants in the said suit.

8. On 05.11.2003, Akbar Hussain appeared before the learned Civil Court and recorded his statement to the effect that he had received Rs.10,00,000/- from the plaintiff (Muhammad Khalid) and that he would have no objection if the suit was decreed. Instead of decreeing the suit on basis of Akbar Hussain's statement, the

learned Civil Court, in its wisdom called upon Akbar Hussain to produce the original allotment letter on the next date of hearing. Despite several adjournments, Akbar Hussain did not produce the original allotment letter before the Civil Court. On 28.09.2004, Akbar Hussain breathed his last. After this Akbar Hussain's legal heirs were impleaded as defendants in the said suit.

9. After coming to know about the civil suit instituted by Muhammad Khalid, Mst. Qamar-un-Nisa applied to the learned Civil Court to be impleaded as a defendant in the said suit. Vide order dated 01.10.2013, the said application was allowed.

10. On 10.10.2006, Mst. Qamar-un-Nisa instituted a suit for specific performance, declaration, permanent and mandatory injunction against Akbar Hussain's legal heirs. In the said suit, Mst. Qamar-un-Nisa had prayed for a declaration to the effect that she is a *bonafide* purchaser of the suit plot through agreement dated 01.05.2000. She had also sought the specific performance of the said agreement.

11. It is an admitted position that the above-mentioned suits instituted by Muhammad Khalid and Mst. Qamar-un-Nisa were consolidated. Vide order dated 25.06.2014, the learned Civil Court framed the consolidated issues.

12. Vide consolidated judgment and decrees dated 01.09.2016, the suit instituted by Muhammad Khalid was dismissed, whereas the suit instituted by Mst. Qamar-un-Nisa was decreed. The said consolidated judgment and decrees were assailed by Muhammad Khalid before the Court of the learned Additional District Judge, Islamabad. Vide consolidated judgment and decree dated 24.05.2017, the said appeal was dismissed. The said concurrent judgments and decrees passed by the learned Courts below have been assailed by Muhammad Khalid in the instant civil revision petition.

13. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant civil revision petition, submitted that the concurrent judgments of the learned Courts below suffer from misreading and non-reading of evidence; that Akbar Hussain

had had his statement recorded before the learned Civil Court to the effect that he had received the entire sale consideration for the suit plot from Muhammad Khalid and that he would have no objection if the suit instituted by Muhammad Khalid was decreed; that after the said statement was recorded, the learned Civil Court ought to have decreed the suit instituted by Muhammad Khalid; that the learned Civil Court acted in excess of jurisdiction by requiring Akbar Hussain to produce the original allotment letter before the learned Civil Court; that the learned Courts below erred by not appreciating that the reason why Akbar Hussain was unable to produce the original allotment letter with respect to the suit plot before the learned Civil Court was because the same was lost and he had filed an application before F.G.E.H.F. for the provision of a duplicate allotment letter; and that the learned Courts below erred by not appreciating that Muhammad Khalid had paid the entire sale consideration of the suit plot to Akbar Hussain. Learned counsel for the petitioner prayed for civil revise petition to be allowed and for the concurrent judgments and decrees passed by the learned Courts below to be set-aside.

14. On the other hand, learned counsel for respondents No.10 and 11 (Mst. Qamar-un-Nisa and Mst. Samina Khan) submitted that the impugned judgments and decrees passed by the learned Courts below do not suffer from any jurisdictional infirmity; that Mst. Qamar-un-Nisa had paid the entire sale consideration for the suit plot; that since the suit plot was non-transferable until payments in accordance with the schedule of payments issued by the F.G.E.H.F. were made; that prior to the issuance of the allotment letter dated 13.04.2002, Akbar Hussain's application to the F.G.E.H.F. for the change of his address so that all future correspondence regarding the suit plot is made by the F.G.E.H.F. on Mst. Qamar-un-Nisa's address; that the subsequent installments for the suit plot had been paid by Mst. Qamar-un-Nisa and the relevant receipts had been tendered in evidence; that since the original allotment letter dated 13.04.2002 was in Mst. Qamar-un-Nisa's possession, Akbar Hussain was unable to produce the same

before the learned Civil Court; and that after selling the suit plot to Mst. Qamar-un-Nisa, Akbar Hussain was left with no proprietary rights over the suit plot so as to sell the same to Muhammad Khalid.

15. Learned counsel further submitted that Muhammad Khalid had been unable to prove that the execution of the agreement to sell dated 15.04.2002 by producing its marginal witness; that the said agreement had not been proved in accordance with Article 79 of the *Qanun-e-Shahadat* Order, 1984; that Muhammad Khalid was also not able to produce the scribe of the said agreement despite availing repeated opportunities for the said purpose; that Mst. Qamar-un-Nisa had proved the execution of the agreement to sell dated 01.05.2000 by producing the two marginal witnesses of the said agreement; that the original allotment letter bears Mst. Qamar-un-Nisa's address; and that Muhammad Khalid had embroiled Mst. Qamar-un-Nisa and Mst. Samina Khan in unnecessary litigation. Learned counsel for the said respondents prayed for the revision petition to be dismissed.

16. I have heard the contentions of the learned counsel for the petitioner and have perused the record with his able assistance.

17. The facts leading to the filing of the instant petition have been set out in sufficient details in paragraphs 2 to 12 above and need not be recapitulated.

18. The petitioner, Muhammad Khalid, places the foundation of his case on the agreement to sell dated 15.04.2002 executed with Akbar Hussain for the purchase of the suit plot. Muhammad Khalid has not been able to prove the execution of the said agreement by producing its two marginal witnesses. It is a matter of record that Muhammad Khalid was given opportunities to produce such witnesses, but he was unable to do so. Therefore, the requirements of Article 79 of the *Qanun-e-Shahadat* Order, 1984, for the proof of such an agreement to sell had not been satisfied.

19. Muhammad Khalid was neither able to produce the stamp vendor who had issued the stamp paper on which the said agreement was written nor the notary public.

20. As regards Akbar Hussain's statement recorded by the learned Civil Court on 05.11.2003 that he would have no objection if Muhammad Khalid's suit was decreed, I am of the view that such a statement was not enough by itself to decree the said suit. The learned Civil Court acted wisely by calling upon Akbar Hussain to produce the original allotment letter regarding the suit plot before the Court. If Akbar Hussain was in a position to transfer the suit plot, he ought to have produced the said allotment letter before the Court. It was after the learned Civil Court called upon Akbar Husain to produce the original allotment that he applied to the F.G.E.H.F. for the issuance of a duplicate allotment letter on the ground that he had lost the original allotment letter. It is an admitted position that a duplicate allotment letter pertaining to the suit plot had not been issued by the F.G.E.H.F. to Akbar Hussain. A duplicate allotment letter could not have been issued to Akbar Husain for a simple reason the original allotment letter had already been sent on 13.04.2002 by the F.G.E.H.F. on Mst. Qamar-un-Nisa's address (i.e. House No.73/1-E, Street No.35, F-6/1, Islamabad). It was Akbar Husain who had applied to the F.G.E.H.F. to change his address, to Mst. Qamar-un-Nisa's said address after he had entered into the agreement to sell dated 01.05.2000 with Mst. Qamar-un-Nisa, the intention behind that all future correspondence regarding the suit plot should be made by the F.G.E.H.F. at Mst. Qamar-un-Nisa's address. The subsequent installments for the suit plot had also been paid by Mst. Qamar-un-Nisa and receipts in this regard were duly exhibited as Exh.P3/1 to 5. On 11.07.2003, Akbar Hussain had filed an application (Exh.P/11) before the F.G.E.H.F. for the transfer of the suit plot in favour of Mst. Qamar-un-Nisa's nominee, Ms. Samina Khan.

21. The execution of the agreement dated 01.05.2000 between Akbar Hussain and Mst. Qamar-un-Nisa had been duly proved through the production of its marginal witness (DW.5), notary public (DW.6) and stamp vendor (DW.4). No anomaly or contradiction has been found in the evidence produced by respondents No.1 to 8's witnesses.

22. In view of the above, I do not find any jurisdictional infirmity or misreading or non-reading of evidence by the learned Courts below. Consequently, the instant civil revision petition is dismissed with no order as to costs.

**(MIANGUL HASSAN AURANGZEB)  
JUDGE**

**ANNOUNCED IN AN OPEN COURT ON 12/03/2019.**

**(JUDGE)**

*Qamar Khan\**

**APPROVED FOR REPORTING**

*Uploaded By: Engr. Umer Rasheed Dar*