

Form No: HCJD/C.

**JUDGEMENT SHEET.**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT.**

**RFA No.147 of 2014.**

**Zohra Begum**  
**Vs.**  
**Fazal-e-Rab Pirzada & four (4) others.**

**Appellant's by: Abdul Rashid Awan, Advocate**  
**Respondents by: M/s Syed Javed Akbar, Saif ul Islam**  
**Sindhu, Muhammad Imran Amir,**  
**Advocates.**  
**Date of Decision: 27.04.2015.**

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**Aamer Farooq, J.-** Through this consolidated judgement we shall decide the instant appeal as well as RFAs No.90, 95 & 96 of 2014 as they arise out of consolidated judgement and decree dated 16.07.2014.

2. The brief facts leading to filing of the present appeals are that the controversy between the parties pertains to property bearing No.5-A, Street No.61, F-7/4, Islamabad (the **Property**) which is in the name of Fazal-e-Rab Pirzada. Three suits were filed with respect to the property; the first suit was filed by Mansoor Akbar seeking specific performance of agreement to sell dated 17.09.2002. It was alleged in the suit

that Fazal-e-Rab Pirzada agreed to sell property in favour of Mansoor Akbar for total consideration of Rs.10 million (Rupees ten million only) vide agreement to sell dated 17.09.2002. In this behalf it was also alleged that sum of Rs.7,00,000/- (Rupees seven lac only) was paid at the time of execution of the agreement and Rs.23,00,000/- (Rupees twenty-three lac only) was to be paid after 2½ months of signing of the referred agreement and remainder at the time of transfer of the same. It was alleged in the plaint that after a period of eight (8) months the property was to be partitioned into two and all taxes and duties with respect to the property prior to transfer of the same were to be borne by the vendor. The written statement in the referred suit was filed by Fazal-e-Rab Pirzada where the agreement to sell was acknowledged, however, other factual objections were taken. At the stage of evidence in the case, Fazal-e-Rab Pirzada disappeared whereafter the appellant namely Zohra Begum requested to be impleaded as defendant and was eventually ordered to be impleaded as one of the defendants. It is pertinent to state that the referred Fazal-e-Rab Pirzada is still a missing person and despite petition before Hon'ble Supreme Court of Pakistan and registration of FIR in this regard his whereabouts are not known.

3. The second suit filed by Muhammad Ali Sheikh against Fazal-e-Rab Pirzada and Capital Development Authority (CDA) was for specific performance of agreement dated 25.08.2004. It was alleged in the suit that said Fazal-e-Rab Pirzada agreed to sell the property to Muhammad Ali

Sheikh and in this behalf he also received sum of Rs.25 lac (Rupees twenty-five lac only) and it was one of the terms of the sale that in case the vendor is unable to transfer the property he shall pay double the amount already received by him.

4. The third suit was filed by Zohra Begum against Fazal-e-Rab Pirzada, CDA, Mansoor Akbar and Public at Large. The said suit was for declaration, permanent and mandatory injunction against Fazal-e-Rab Pirzada wherein it was alleged that said Fazal-e-Rab Pirzada had executed a Mehrnama in 2001 in favour of Zohra Begum whereby he transferred the property in favour of Zohra Begum in lieu of dower 100 Tolas gold, mentioned in Nikahnama, and possession of the property was also given to her.

5. Eventually all the above mentioned three suits were consolidated and out of divergent stance taken in pleadings by the parties in the referred suits, the following consolidated issues were framed:

1. **Whether the plaintiff (Mansoor Akbar) is entitled to decree of specific performance of the contract dated 17.09.2002 regarding suit plot and mandatory injunction as prayed for? OPP**
2. **Whether in the suit of Mansoor Akbar the plaintiff has no cause of action and locus standi to bring the suit against defendants? OPD**
3. **Whether in the suit of Mansoor Akbar, he plaint is liable to be rejected under Order 7 Rule 11 CPC? OPD**
4. **Whether the suit of Mansoor Akbar is not maintainable in its present form? OPD**

5. Whether the plaintiff (Mansoor Akbar) has not come to the court with clean hands? OPD (Zohra Bibi, etc.)
6. Whether the suit of Mansoor Akbar is false, frivolous and vexation and the defendants are entitled to special costs under section 35-A CPC? OPD (Zohra Bibi, etc.)
7. Whether the suit of Mansoor Akbar is barred under section 49-E of the Capital Development Authority Ordinance 1960? OPD (CDA).
8. Whether the defendant Mohammad Ali Sheikh is entitled to decree of specific performance of contract date 30.03.2004 and 25.07.2004 regarding suit plot and mandatory injunction as prayed for? OPD (Muhammad Ali Sheikh).
9. Whether the suit of Mohammad Ali Sheikh is not maintainable under law? OPD (Jameela Pirzada, etc. & CDA)
10. Whether Muhammad Ali Sheikh and Mansoor Akbar are in league with each other? OPD (Jameela Pirzada etc).
11. Whether in the suit of Mohammad Ali Sheikh the plaintiff has no cause of action and locus standi to bring the suit against the defendants? OPD (Jameela Pirzada etc. & CDA).
12. Whether in the suit of Mohammad Ali Sheikh, the plaint is liable to be rejected under order 7, rule 11, CPC? OPD (CDA).
13. Whether the plaintiff (Mohammad Ali Sheikh) has not come to the court with clean hands? OPD (Jameela Pirzada, etc & CDA).
14. Whether the suit of Mohammad Ali Sheikh is within time? OPP.
15. Whether the suit of Mohammad Ali Sheikh is barred under section 49-E of the Capital

**Development Authority Ordinance, 1960? OPD (CDA).**

- 16. Whether the Fazal-e-Rab Pirzada gave the suit house to the defendant (Zohra Begum) in lieu of Haq Mehr? OPD (Zohra Begum).**
- 17. Whether Iqrar Nama/Mehr Nama dated 20.08.2001, whereby the suit house appears to have been given by Fazal-e-Rab to Zohra Begum in lieu of Haq Mehr, was executed by Fazl-e-Rab Pirzada? OPD (Zohra Begum).**
- 18. Whether the suit of Zohra Begum is collusive between Zohra Begum and Fazal-e-Rab Pirzada? OPP (Mansoor Akbar).**
- 19. Whether Zohra Begum is stopped by her words and conduct to bring her suit against Mansoor Akbar? OPP (Mansoor Akbar).**
- 20. Whether this learned court lacks jurisdiction to entertain and decide the suit of Zohra Begum pursuant to West Pakistan Family Courts Act, 1964? OPP (Mansoor Akbar).**
- 21. Whether the defendant Zohar Begum has not come to the court with clean hand in her suit? OPP (Mansoor Akbar).**
- 22. Whether the plaint in the sit of Zohra Begum is liable to be rejected under order 7 rule 11 CPC? OPP (Mansoor Akbar & CDA).**
- 23. Whether the suit of Zohra Begum is false and frivolous and is liable to be dismissed with special costs? OPD (Mansoor Akbar & CDA).**
- 24. Whether Zohra Begum has no locus standi or cause of action to bring her suit against CDA? OPD**
- 25. Whether the suit of Zohra Begum is not maintainable under the law? OPD (CDA)**
- 26. Relief.**

6. The parties led their oral as well as documentary evidence. In this behalf Mansoor Akbar appeared as PW-1, Ajmal Hussain, PW-2, Ansar Javed, PW-3, Ch. Imran Ali, PW-4, Zafar Abbas, DW-1, Adil Hussain, DW-1, Muhammad Ali Sheikh, PW-1, Abdul Hafiz, PW-2, Abdul Rehman, PW-3, Adil Hussain, DW-1, Zohara Begum, DW-2, Amir Iqbal, DW-3, Muhammad Ismail, DW-4, Gul Zaman, DW-5, Ubaid Ullah, DW-6, Muhammad Sher Shoaib, DW-6, Adil Hussain, PW-5 and Mansoor Akbar, PW-1 in rebuttal.

7. The documentary evidence included agreement to sell dated 17.09.2002 Ex. P-1, signatures of Ajmal Hussain, Ex.P-1/1, agreement to sell dated 21.10.2002, ExP-2, signatures of Ajmal Hussain Ex.P-2/1, signatures of Ch. Imran Ali, Ex.P-2/2, receipt of payment of property tax dated 05.04.2003, Ex.P/3, bank statement of Mansoor Akbar, Ex.P/4, letter sent by Mansoor Akbar to Fazle Rab Pirzada dated 06.03.2003, Ex.P/5, receipt of courier, Ex. P/6, letter sent by Mansoor Akbar to Fazle Rab Pirzada dated 03.05.2003, Ex.P/7, postal receipt, Ex.P/8, receipt acknowledging delivery, Ex.P/9, certificate of delivery by Post Master, Ex. P/10, FIR No.249 Mark-A, summons received by CDA, Ex.P/11, application by Fazle Rab to CDA, Ex.P/12, Application by Gulbara to CDA Ex.P/13, letterby Mansoor Akbar to CDA, Ex.P/14, Application by Zohra Begum under order 1 rule 10 CPC, Ex.P/15, orders of the Hon'ble Lahore High Court, Ex.P/16, application by Zohra under order 1 rule 10 CPC, Ex.P/17, objection petition by Zohra Begum, Ex.P/18, application by Zohra for setting aside ex-parte decree Ex.P/19,

RFANo.70/2010 Ex.P/20, Ex parte evidence in Zohra's suit Ex.P/21, Suit filed by Gulbara Ex.P/22, Orders of Hon'ble SC dismissing Zohra Begum's petition in missing person's case Ex.P/23, two different certificates of family of Fazle Rab by NADRA, Mark PA/1-2, NICs of Gulbara and her two daughters, Mark PB, CDA's letter dated 23.01.2007, Ex.D/1, letter of Fazle Rab dated 08.12.1984, Ex.D/2, Zohra's letter to CDA dated 04.11.2004 Ex.D/3, the nikahnama between Fazle Rab and Zohra dated 11.09.1984 Ex.D/3, signatures of Maulana Abdul Qadir on the nikah nama Ex.D-3/1 & D-3/2, Signatures of Gul Zaman DW-5 on the nikah nama Ex.D-3/3, Signatures of Ubaidullah DW-6 on the nikahnama Ex.D-3/4, Signatures of Muhammad Ghaffar on the nikahnama Ex.D-3/4, the Iqrarnama/mehrnama dated 20.08.2001 Ex.D-4, signatures of Notary Public on the Iqrarnama, Ex.D-4/1, Stamp of Notary Public on the Iqrarnama Ex.D-4/2, signatures of Ubaidullah on the Iqrarama Ex.D-4/3, NIC of Zohra bearing No.15602-3468727-4 Ex.D-5, family certificate of Fazle Rab by NADRA Ex.D-6, Register of the Notary Public Ex.D-7, summons sent to Muhammad Ismail dated 07.04.2014 Ex.D-8, Endorsement of Muhammad Ismail on the nikah nama dated 04.07.2013 Ex.D-9, statement of Muhammad Ismail regarding the nikahnama dated 04.07.2013 Ex.D/10,j sample of handwriting of Muhammad Ismail taken by Court dated 10.04.2014 Ex.D-11, register of the nikah Ex.D/12, Enry of the nikah between Zohra and Fazle Rab in said register Ex.D-12/1, summons received by Ubaidullah dated 19.05.2003 Ex.D-13, NIC of Ubaidullah DW-6, Ex.D-14, NIC of Muhammad Ghaffar, Ex.D-15,NIC of

Muhammad Shoaib DW-6, Ex.D-16, Written statement of Zohra in Muhammad Ali's suit, Ex.D-18, Rapat entered by Police Station Kohsar, Islamabad dated 04.09.2004, Ex.D-19, FIR No.249 dated 19.05.2011 Ex.D-20, Orders of Hon'ble SC dated 17.07.2013, 19.07.2013, 31.07.2013 & 06.08.2013, Ex.D-21, Affidavit of Fazle Rab dated 08.12.1999 Mark-DB, copy of plaint and order sheet in Zohra's suit against Muhammad Ali dated 17.08.2004 Mark DC, Receipt by Fazle Rab dated 20.03.2004 Ex.DDW-1, agreement to sell dated 30.03.2004 Ex.DDW-2, continuation of agreement to sell dated 21.07.2004 Ex.DDW-3, letter by Muhammad Ali to Fazle Rab dated 05.08.2004 Ex.DDW-4TCS receipt Ex.DDW-5, receipt of delivery Ex.DDW-6, Report of Process Server Ex.DDW-7, letter written by Fazle Rab to CDA dated 20.10.1984 Mark-1, letter written by Fazle Rab to CDA dated 30.10.1984, Mark-2, letter written by Abdul Mabood to CDA dated 07.12.1984 Mark-3, letter written by Fazle Rab to CDA dated 08.12.1984 Mark-4, letter written by Fazle Rab to CDA dated 29.04.1998 Mark-5, letter of CDA regarding division of Plot No.5 into 5-A dated 23.01.2007 Mark-6, transfer letter of plot No.5-A issued in favour of Fazle Rab by CDA dated 18.09.2000 Mark-7, letter written by CDA to Abdul Mabood dated 04.11.1984 Mark-8, letter written by Fazle Rab to CDA dated 13.07.2000 Mark-9, release deed in favour of Fazle Rab dated 15.05.2000 Mark-10 were placed on record.

8. The learned counsel for the appellants, inter alia, submitted that Zohra Begum and Fazle Rab Pirzada are husband and wife and in the nikahnama dated 11.09.1984



Ex.D-3, Fazle Rab Pirzada was to be paid dower of 100 Tolas of gold to the appellant and since the dower could not be paid, therefore, he transferred the property and its possession in favour of Zohra Begum through Mehrnama dated 20.08.2001, Ex.D-4. It was further submitted by the learned counsel for the appellants that since the property stood transferred in favour of Zohra Begum in 2001, therefore, Fazle Rab Pirzada could not have been entered into agreements to sell with Mansoor Akbar and Muhammad Ali Sheikh and the referred agreements are in valid and not binding on the legal heirs of Fazle Rab Pirzada. It was further submitted by the learned counsel that Fazle Rab Pirzada is missing since 2004 and his whereabouts are not known and there is a presumption under the law that he has died. The learned counsel pointed out that learned Trial Court while dismissing the suit of Zohra Begum erred in facts and law inasmuch as through cogent evidence both the documents i.e. Nikahnama and Mehrnama were duly proved by tendering the same in evidence and calling the available marginal witnesses, therefore, the appellant had proved her claim vis-à-vis the ownership of the property. The learned counsel further submitted that the findings by the learned Trial Court in the impugned judgement that the documents in questions are forged has no basis or justification.

9. The learned counsel for Mansoor Akbar, inter alia, submitted that Zohra Begum is not the owner of the property as in the record of CDA it still exists in the name of Fazle Rab Pirzada; Fazle Rab Pirzada is not a missing person and is

deliberately not appearing in order to avoid the obligations undertaken by him. The learned counsel further submitted that Ex.D-3 and D-4 are forged documents and the findings in this behalf rendered by the Trial Court are inconsonance with the factual and legal position; the register of Nikah tendered in evidence shows that there is tampering and interpolation and the word '100 tolas gold' has been inserted subsequently. It was further contended that Muhammad Ismail son of Nikahkhan also tendered evidence to the effect which makes the Nikah dubious. The learned counsel further pointed out that Mehrnama can neither be termed as an acknowledgement of oral gift nor can it be regarded as document conferring title in favour of Zohra Begum inasmuch as the same is not registered as required under section 17 of the Registration Act, 1964. The learned counsel also submitted that Ex.D-3 was registered in 1984 whereby Nikah between Fazle Rab Pirzada and Zohra Begum took place in 1997-98; Zohra Begum has failed to establish her Nikah with Fazle Rab Pirzada because she has not produced any witness of the Nikah who attended the nikah ceremony as well as walima. Moreover witnesses of Nikahnama were not the witnesses of registration of Nikah and there are material discrepancies in statement of Zohra Begum and witnesses about dates of walima and Nikah. The learned counsel in support of his referred contentions relied upon **PLD 2003 Peshawar Page-1** and **PLD 1997 Lahore 364** wherein it was held that where Nikahnama is not registered under the Family Laws Ordinance, 1961 the Nikah is not duly proved.

10. The learned counsel further submitted that Muhammad Ismail son of Abdul Qadir tendered in evidence Ex.D/10 whereby he confirmed that the form of Nikahnama is fake; DW-6 who is the real brother of Zohra Begum submitted that form of Nikahnama was brought by Fazle Rab Pirzada who gave it to Moulvi Sahib; Ubaidullah DW-6 forged Nikahnama in collaboration with Zohra Begum to establish her claim to the property; Ubaidullah DW-6 and Gul Zaman DW-5 are not qualified to be marginal witnesses of Nikahnama because they did not witness the execution of the same. Reliance was placed on **2003 MLD 954**. The learned counsel further submitted that likewise Iqrarnama has not been proved by Zohra Begum. In this behalf it was submitted that under Articles 17 & 79 of Qanoon-e-Shahadat two marginal witnesses of a documents are required to be adduced in evidence to prove its execution. In this behalf reliance was placed on **PLD 1996 SC 256, PLD 1996 Lahore 367**; Mehrnama-Iqrarnama is not a registered document as required under Section 17 of Registration Act, therefore, creates no right under section 49 of the referred Act. Reliance was placed on **PLD 2003 SC 410, 2013 YLR 2439 and 1989 CLC 698**. The learned counsel submitted next that an agreement of exchange is compulsorily registerable under the Registration Act. It was further contended that in case of dispute about the execution of the document it is mandatory to prove the document by calling in evidence the marginal witnesses of the same and also to exhaust all satisfactory modes. Reliance was placed on **1994 MLD 1622**; for a document to qualify as an Iqrarnama both the parties should

have executed same **(1990 SCMR 28)**. The learned counsel pointed out that one of the marginal witness of the Iqrarnama namely, Fazle Nawab has not been produced in evidence and one marginal witness who entered in the witness box namely Ubaidullah is an interested witness being the real brother of Zohra Begum; the scribe and stamp vendor of the Iqrarnama has also not been examined; Iqrarnama does not bear thumb impressions by Fazle Rab Pirzada and Zohra Begum and the signatures of referred persons have not been proved in accordance with law. The learned counsel emphasized that since Zohra Begum was relying upon Iqrarnama, therefore, under Qanoon-e-Shahadat Order she had to prove the referred document. The learned counsel also pointed out that date of issue of stamp paper is tampered to make it 20.08.2001. The learned counsel further stated that the witnesses to Nikahnama and Iqrarnama are interested witnesses, therefore, they are not credible and reliance was placed in this behalf on **PLJ 2004 Lahore 1583**. The learned counsel also submitted that plain reading of Mehrnama shows that 100 tolas of gold had been given to Zohra Begum but was taken back from her and in lieu thereof the property was transferred, therefore, the transaction could not be termed as transfer of property in lieu of dower and was merely an acknowledgement of debt and agreement to do the same in case of non-payment. Reliance was placed on **2000 MLD 1638**. The learned counsel summed up his attack on Nikahnam and Iqrarnama by submitting that the suit for declaration was filed as an afterthought inasmuch as Zohra Begum in her testimony stated that she came to know about

the suit of Mansoor Akbar after Fazle Rab Pirzada went missing whereas her real brother Ubaidullah DW-6 stated in evidence that they knew about the suit when the same was filed by Mansoor Akbar. Lastly, the learned counsel submitted that Mansoor Akbar is entitled to the decree of specific performance and learned Trial Court has rightly decreed the suit in his favour inasmuch as he has proved the agreement in question as well as payment of the consideration amount and there is no bar to the specific performance of the agreement. Reliance was placed on **1973 SCMR 225**.

11. The learned counsel for Muhammad Ali Sheikh, inter alia, submitted that suit for specific performance was filed on 25.08.2004 with respect to the agreement dated 30.03.2004; the total consideration for the property was settled as Rs.24,200,000/- (Rupees twenty-four million, two hundred thousand only), out of which sum of Rs.2,500,000/- (Rupees two million five hundred thousand only) was received by Fazle Rab Pirzada as part of sale consideration. The learned counsel emphasized that Mohammad Ali Sheikh has duly proved execution of the agreement and payment to Fazle Rab Pirzada, therefore, judgement & decree passed by learned Trial Court whereby legal heirs of Fazle Rab Pirzada were ordered to pay sum of Rs.5,000,000/- (Rupees five million only) to Muhammad Ali Sheikh does not suffer from legal or factual infirmity.

12. The main controversy between the parties pertains to claim of Zohra Begum that the property stands transferred in her favour through Mehrnama; Fazle Rab Pirzada had no title

in the same to enter into agreements to sell with Mansoor Akbar and Muhammad Ali Sheikh. In order to prove her claim Zohra Begum initially sought to establish that she is married to Fazle Rab Pirzada and under the nikahnama he was bound to pay 100 Tolas gold which he could not honour, therefore, transferred the property in lieu thereof. Her stance in the plaint and evidence is that though they were married in 1977-78 but Nikahnama was executed in 1984 and the Mehrnama in 2001. The main document in the controversy referred above is Mehrnama dated 20.08.2001 (Ex.D-4). The bare reading of the above document shows that the transaction in question is not a gift. Moreover the referred Mehrnama also states that 100 Tolas of gold had been given to Zohra Begum as dower but subsequently taken back and since Fazle Rab Pirzada could not give back the referred dower, therefore, he transferred the property. Transaction in question could not be termed as Mehrnama or transfer of the property in lieu of dower inasmuch the dower had been paid/tendered, as per the document, but subsequently Zohra Begum gave the same back to Fazle Rab Pirzada for business requirements which Fazle Rab Pirzada could not give back. Therefore, transaction is in the nature of acknowledgement debt whereby 100 tolas gold was given as debt to Fazle Rab Pirzada and since the same could not be returned, hence property is to be transferred. In this behalf judgement relied upon by learned counsel for Mansoor Akbar is instructive. In case titled "Mst Farhad vs. Additional District Judge" (2000 MLD 1638) it was observed as follows:

**“Dower once paid the liability of dower is satisfied. Taking away of the dower after the marriage may be considered a loan/credit the return of which could only be sought through civil suit.”**

13. Ex.D/4 can also not been termed as document transferring title in favour of Zohra Begum because under section 17 of Registration Act any document that transfers title with respect to immoveable property has to be compulsorily registered and if the same is not registered then under section 49 of the referred Act no right is created with respect to the transaction. Admittedly, the document is not registered, therefore, the argument on behalf of Zohra Begum that by virtue of Ex.D/4 the property was transferred in her favour has no substance. Reliance is placed on cases titled “Amirzada Khan & others vs. Ahmad Noor and others” (PLD 2003 SC 410), “Sardar Ahmad vs. Mst. Zeenat Bibi” (2013 YLR 2439) and “Mst. Bibi Amina vs. Ikramullah & 4 others” (1989 CLC 698). In PLD 2003 SC supra it held as follows:

**“Since contents of such document purported to transfer absolute ownership of land, same required compulsory registration irrespective of fact, whether such document was agreement of sale or sale-deed—Such document being inadmissible in evidence, no presumption as to its correctness or validity could arise.”**

The document referred as Mehrnama has also not been proved by Zohra Begum in accordance with provision of Qanoon-e-Shahadat, 1984. Under Article 17 of the referred Order the document was required to be witnessed by two witnesses and since execution of the referred document has

been questioned and is in dispute, therefore, both the marginal witnesses were required to be called in evidence which in the present case has not been done. Even the scribe and stamp vendor were not called to prove the document on account of non-availability of the marginal witnesses. In a recent judgement by the Hon'ble Supreme Court of Pakistan in case titled "Muhammad Javed Shafi vs. Rashid Ahmed" (PLD 2015 SC 2012) it was observed that agreement to sell is required to be witnessed by two persons and to be proved in evidence by calling the referred persons in evidence. Therefore, Mehrnama has not been proved in accordance with law. The learned counsel for Zohra Begum during the course of arguments submitted that the referred document has duly been proved as the original has been tendered in evidence, the referred argument has no substance inasmuch as if the same was to be exhibited then the provisions of Articles 17 and 79 would become redundant. It is also an established principle that merely tendering a document has no evidentiary value unless proved in accordance with law (PLD 2002 SC 84).

14. The learned counsel for Mansoor Akbar has assailed the Nikahnama on different premises, mentioned herein above, in his submissions. There are material contradictions in the Nikahnama, however, for the purposes of the present controversy no elaboration or specific findings are required on the same because the fact remains that Zohra Begum is the wife of Fazle Rab Pirzada and this fact has not been challenged by anyone other than the respondents in the



present appeal. Even otherwise Nikahnama is not the document in question which has any bearing on the transfer of the property and it is Mehrnama which is the focal document which is neither registered nor proved in accordance with the provision of Article 79, therefore, the findings of the learned Trial Court on the issue in question are unexceptional and it is affirmed that Zohra Begum has failed to prove transfer of the property by Fazle Rab Pirzada in her favour.

15. In so far as claim of Mansoor Akbar is concerned the agreement to sell was duly proved and even Fazle Rab Pirzada in his defence did not deny execution of agreement to sell. There is nothing on record that to grant specific performance in favour of Mansoor Akbar would be inequitable in any way, therefore, findings of the learned Trial Court on the referred question as well are sustained. In so far as claim of Mansoor Akbar with respect to charges pertaining to taxes & other utilities is concerned the same are not specific and cannot be allowed, therefore, are rejected.

16. The appellant namely Zohra Begum has not pointed out any infirmity vis-à-vis judgement and decree passed in favour of Muhammad Ali Sheikh. The agreement was duly proved by him wherein it was one of the terms that in case of failure on part of vendor to transfer the property double the amount of money paid by the vendee shall be returned by the vendor. The learned counsel for Zohra Begum has failed to point out any basis which requires setting aside of the referred finding by the learned Trial Court.

17. For the foregoing reasons the instant appeal as well as all appeals mentioned herein above are dismissed and the impugned judgement and decree dated 16.07.2014 is affirmed. There is no order as to costs.

(ATHAR MINALLAH)  
JUDGE

(AAMER FAROOQ)  
JUDGE

\*Altaf Malik\*

Announced in open Court on this 9th day of July, 2015.

JUDGE

JUDGE

*Approved for Reporting*