

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

C.R.No.55/2016  
Imran Ahmed  
**Versus**  
Jhumra Paper & Board Mills

**Date of Hearing:** 06.02.2019  
**Petitioner by:** Sheikh Muhammad Khizar-ur-Rashid,  
Advocate  
**Respondent by:** Mr. Arif Khan, Advocate

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**MIANGUL HASSAN AURANGZEB, J:-** Through the instant civil revision petition, the petitioner, Imran Ahmed, impugns the judgment and decree dated 05.11.2015, passed by the Court of the learned Additional District Judge, Islamabad, whereby his appeal against the judgment and decree dated 30.04.2015, passed by the Court of the learned Civil Judge, Islamabad, was dismissed. Vide the said judgment and decree dated 30.04.2015, the learned Civil Court, dismissed the petitioner's suit for possession through specific performance of contract dated 13.07.2004, and the respondent was directed to return Rs.5,00,000/- and deposit the same in the Court.

2. The facts essential for the disposal of the instant civil revision petition are that on 13.07.2004, an agreement to sell was executed between the petitioner and the respondent, whereby the latter agreed to sell to the former 35 *kanals*, 11 *marlas* of land, situated in Revenue Estate Kacha Jhumra, Chak No.187 RB, Tehsil Chak Jhumra, District Faisalabad, for a total sale consideration of Rs.11,55,375/- (i.e. Rs.32,500/- per *kana*), out of which, Rs.2,50,000/- was paid as earnest money, whereas the balance amount was to be paid within a period of two months (i.e. by 12.09.2004). It was also agreed that the respondent would obtain the *fard* from the revenue authorities with respect to the said land and hand the same over to the petitioner. The said agreement was signed by Mst. Saltanat Masood Bukhari ("Mst. Saltanat") for and on behalf of the respondent.

3. On 07.10.2004, the petitioner filed a suit for possession through specific performance of the agreement dated 13.07.2004 before the Court of the learned Senior Civil Judge, Faisalabad against the respondent. The respondent contested the said suit by filing a written statement. From the divergent pleadings of the contesting parties, the following issues and additional issues pursuant to order dated 07.07.2011 were framed:-

**"ISSUES**

- 1 *Whether the plaintiff purchased the suit property vide agreement dated 13.7.2004 and Rs.250,000/- has been paid as earnest money? OPP*
- 2 *Whether the plaintiff is entitled to get a decree as prayed? OPP*
- 3 *Whether the defendant at the time of signing of agreement has no knowledge of the description and price of the suit land, what is its effect on the agreement? OPD*
- 4 *Whether the agreement is fabricated one? OPD*
- 5 *Whether the defendant has signed on the agreement under the influence of her husband? If so, what is its effect? OPD*
- 6 *Whether the plaintiff has filed this suit to harass the defendant and defendant is entitled to recover special costs? OPD*
7. *Relief.*

**ADDITIONAL ISSUES**

- 1 *Whether Mst. Saltanant Masood was authorized or competent to execute or sign the agreement to sell dated 13.07.2004? OPP*
- 2 *Whether the agreement dated 13.7.2004 is outcome of fraud, misrepresentation and concealment of material facts? OPD*
- 3 *Whether Mst. Saltanant Masood is an illiterate and Parda Nasheen lady? OPD*
- 4 *Whether the sale price mentioned in the agreement to sell dated 13.7.2004 is highly inadequate and the applicant had no knowledge of the actual value of the disputed land at the time of execution of the said agreement? OPP*
- 5 *Relief."*

4. The said suit was transferred to Islamabad, vide order dated 27.04.2010, passed by the Chief Justice of the Hon'ble Lahore High Court.

5. After the recording of evidence, the learned Civil Court dismissed the suit, vide judgment and decree dated 30.04.2015. The petitioner's appeal against the said judgment and decree was dismissed by the learned Appellate Court, vide judgment and decree dated 05.11.2015. The said concurrent judgments

and decrees have been impugned by the petitioner in the instant revision petition.

6. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant revision petition, submitted that the learned Courts below concurrently erred by not appreciating that no one had appeared on behalf of the respondent at any stage; that Mr. Hussain Masood, the proprietor of the respondent, had also not appeared; that Mst. Saltanat who had signed the agreement to sell on behalf of the respondent had also not appeared before the learned Civil Court to record her testimony; that Mst. Saltanat had appeared through her husband against whom she had levelled the allegation of forcibly obtaining her signature on the agreement to sell; that the learned Courts below erred by not appreciating that the execution of the said agreement to sell and the receipt of the earnest money had been admitted; that the learned Courts below erred by not giving their findings separately on each issue; that no plausible justification was given on behalf of the respondent for backing out from the deal envisaged by the said agreement to sell; that in the power of attorney executed by Mst. Saltanat in favour of her husband, the latter was not given an authority to record evidence on her behalf; that the learned Courts below erred by not appreciating that the petitioner was a victim of fraud at the hands of the respondent; that the evidence recorded in another suit titled "Imran Ahmed Vs. Saltanat Masood Bukhari" had been reproduced verbatim in the petitioner's suit before the learned Civil Court from which these proceedings have arisen; that the learned Courts below erred by not appreciating that Mst. Saltanat's husband had made a statement that they were ready to pay double the amount of earnest money to the petitioner; that it was against the norms of justice to require the petitioner to receive double the amount of the earnest money after ten years; that the learned Courts below erred by not appreciating that the Mst. Saltanat had not been successful in proving that she was an illiterate *parda nasheen* lady or that the agreement to sell dated

**13.07.2004 was a consequence of fraud and misrepresentation; and that the impugned judgments and decrees are devoid of reasons. Learned counsel for the petitioner prayed for the revision petition to be allowed and for the concurrent judgments passed by the learned Courts below to be set-aside.**

**7. On the other hand, learned counsel for the respondent submitted that Mst. Saltanat had not been authorized by the respondent to execute and sign the said agreement to sell; that it is an admitted position that the suit land was owned by the respondent; that the agreement to sell (Exh.P1) shows that it was signed by Mst. Saltanat on behalf of Hussain Masood and not by the respondent; that it is an admitted position that the suit land was not owned by Mst. Saltanat; that the agreement to sell having been executed by an unauthorized person was a nullity in the eyes of law; that the price of the suit land was far in excess of the sale consideration mentioned in the said agreement to sell; that the learned Civil Court had correctly held that Mst. Saltanat had never been authorized to sell the suit land on behalf of the respondent; that Mst. Saltanat did not have a perfect title in the suit land and therefore, could not sell the same; that the said agreement to sell was not enforceable in law; and that the concurrent judgments and decrees passed by the learned Courts below do not suffer from any jurisdictional infirmity so as to warrant interference in the Constitutional jurisdiction of this Court. Learned counsel for the respondent prayed for the revision petition to be dismissed.**

**8. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.**

**9. The facts leading to the filing of the instant revision petition have been set out in sufficient detail in paragraphs 2 to 6 above and need not be recapitulated.**

**10. It is an admitted position that when the said agreement to sell was executed, Mst. Saltanat who signed the said agreement purportedly on behalf of the respondent had not been given any**

authority by the respondent to execute the said agreement. It is also admitted that title in the suit land vested in the respondent when the said agreement was executed. The petitioner did not make a demand for an authority letter from the respondent authorizing Mst. Saltanat to execute the said agreement to sell. The *jamabandi* (Exh.P4) shows that the title in the suit land had vested in the respondent. The said *jamabandi* also shows that Syed Hussain Masood Shah was Managing Partner of the respondent. The petitioner should have had the good sense of requiring Mst. Saltanat to produce an authority given to her by the respondent to sell the suit land.

11. The record does not make it clear as to whether the respondent is the partnership or a company. If it is assumed that the respondent is a partnership, the petitioner should have required the production of the partnership deed in order to ascertain as to whether Mst. Saltanat was one of the partners or had the authority to sell the land owned by the respondent. On the other hand, if it is assumed that the respondent was a company limited by shares, the petitioner ought to have obtained a resolution of its Board of Directors authorizing Mst. Saltanat to sell the suit land. Additionally, if it is assumed that Syed Hussain Masood Shah being the managing partner of the respondent was in fact the owner of the suit land, then the petitioner's suit for specific performance could not have been decreed against Syed Hussain Masood Shah who had not even entered into or signed the agreement to sell.

12. Be that as it may, the payment of Rs.2,50,000/- as earnest money to Mst. Saltant's husband, Masood Shah is admitted. This amount was taken by Masood Shah, after the said agreement to sell was executed. The impression obviously given by Masood Shah was that he was entitled to receive the said earnest money in part performance of the agreement to sell. This amount was paid as far back as the year 2004.

13. Now, in the said agreement to sell, it was also agreed that in the event the transaction was not completed for default on the

part of the respondent, then double the amount of the earnest money would have to be returned. Since neither Mst. Saltanat nor Masood Shah had been authorized by the respondent to execute or sign the said agreement to sell, they were consequently not authorized to receive the earnest money. Therefore, the mode for the return of the earnest money and its quantum would not be governed by the terms of the said agreement to sell. This is a clear error of jurisdiction committed by the learned Courts below. Consequently, the impugned judgments and decrees are modified to the extent that the petitioner would be entitled to receive the present day value of gold which could have been purchased for Rs.2,50,000/- in the year 2004. I deem this to be an adequate compensation to the petitioner.

14. Petition is disposed of in the above terms.

**(MIANGUL HASSAN AURANGZEB)  
JUDGE**

**ANNOUNCED IN AN OPEN COURT ON 26-4-2019**

  
Qamar Khan\*

**(JUDGE)**