

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

C.R.No.153 of 2018
Nisar Ahmed Afzal
Versus
Muhammad Sarwar and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	04.07.2018	Mr. Shakil-ur-Rehman Khan, Advocate for the petitioner. Mr. Saeed Khurshid Ahmad, Advocate for respondents No.1 to 3.

Through the instant civil revision petition, the petitioner, Nisar Ahmed Afzal, impugns the judgment dated 18.04.2018, passed by the learned Additional District Judge, Islamabad, whereby the petitioner's appeal against the order dated 25.09.2017, passed by the Court of the learned Civil Judge, Islamabad, was dismissed. Vide the said order dated 25.09.2017, the learned civil Court dismissed the petitioner's application under Order XXXIX, Rules 1 and 2, C.P.C. filed along with the petitioner's suit for declaration, possession through specific performance of agreement, permanent and mandatory injunction.

2. Learned counsel for the petitioner submitted that through an oral agreement dated 25.12.2004, the petitioner agreed to transfer House No.47, Street No.26, Sector F-10/1, Islamabad to respondents No.1 to 3 in exchange of (i) land measuring 48 *Kanals*, 09 *Marlas* owned by respondent No.1, (ii) 11 *Kanals*, 17.5 *Marlas* owned by respondent No.2 and (iii) 69 *Kanals* owned by respondent No.3 in *Mauza Sarai Madhu*, Islamabad; that in fulfillment of his obligations under the said oral agreement, the petitioner, on 12.02.2005, transferred the said house to respondent No.3 who in turn transferred 69 *Kanals* in the petitioner's favour, vide mutation No.1005 attested on 31.07.2008; that

respondents No.1 and 2 breached their obligation by not transferring the remaining 60 *Kanals*, 6.5 *Marlas* in the petitioner's favour; that on 03.10.2011, the petitioner filed a suit for declaration, possession through specific performance of the agreement, permanent and mandatory injunction OR in the alternative a suit for cancellation of allotment of the said house and recovery of possession as well as cancellation of mutation No.1005, dated 31.07.2008; that along with the said suit, the petitioner filed an application for interim injunction; that vide order dated 25.09.2017, the learned civil Court dismissed the said application; and that the petitioner's appeal against the said order was dismissed by the learned appellate Court, vide impugned judgment dated 18.04.2018.

3. Learned counsel for the petitioner further submitted that in pursuance of the oral exchange agreement, the petitioner has already transferred a valuable house in a developed sector of Islamabad in favour of respondent No.3; that respondents No.1 and 2 are under an obligation to transfer 60 *Kanals*, 6.5 *Marlas* in *Mauza Sarai Madhu* in the petitioner's favour; that the learned Courts below concurrently erred by not appreciating that the petitioner had a strong *prima-facie* case and that the balance of convenience was also in his favour; and that if the injunction prayed for by the petitioner was not granted, he would suffer irreparable loss. Learned counsel for the petitioner prayed for the civil revision petition to be allowed and for the concurrent orders passed by the learned Courts below to be set-aside. In making his submissions, learned counsel for the petitioner placed reliance on the judgments reported as 2017 SCMR 98 and 2017 YLR Note 452.

4. On the other hand, learned counsel for respondents No.1 to 3 submitted that an oral agreement of exchange was not executed by his

clients with the petitioner; that the petitioner had not mentioned the time and place of the alleged agreement in the body of the plaint; that the plaint is liable to be rejected under Order VII, Rule 11, C.P.C.; that the suit was instituted by the petitioner; that there is a partnership dispute existing between the petitioner and respondent No.3; and that the concurrent judgments/orders passed by the learned Courts below do not suffer from any jurisdictional infirmity so as to warrant interference in the revisional jurisdiction of this Court. Learned counsel for respondents No.1 to 3 prayed for the revision petition to be dismissed.

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

6. The petitioner seeks the issuance of an injunction with respect to House No.47, Street No.26, Sector F-10/1, Islamabad as well as total land measuring 129 *Kanals*, 6.5 *Marlas*, in *Mauza Sarai Madhu*, Islamabad, on the ground that they were the subject matter of an oral exchange agreement which is alleged to have been breached by respondents No.1 to 3.

7. The petitioner asserts that in fulfillment of his obligations under the oral exchange agreement, he transferred the said house in respondent No.3's favour but respondent No.3 transferred only 69 *Kanals* in *Mauza Sarai Madhu*, Islamabad, in the petitioner's favour, vide mutation No.1005, dated 31.07.2008 but the remaining 60 *Kanals*, 6.5 *Marlas* has, till date, not been transferred. Respondents No.1 to 3, in their written statement, had denied the execution of an oral exchange agreement. Whether or not such an agreement was executed is to be resolved after the recording of evidence. It is well settled that an oral agreement sought to be enforced through a suit required strict proof. In the case of Allah Ditta Vs.

Liaqat Ali (2005 YLR 245), the Hon'ble Lahore High Court has held as follows:-

“7. Controversy regarding proof of agreement written or oral has been put to rest, by holding that a beneficiary of the alleged agreement to sell is not only required to prove the agreement but has also to prove through positive evidence, the bargain and the transaction reflected therein especially after its denial by the persons with whom it is claimed to have been entered. Reference in this behalf can conveniently be made to the judgments in the cases of Janat Bibi v. Sikandar Ali and others (PLD 1990 SC 642), Hakim Khan v. Nazeer Ahmad Lughmani and 10 others (1992 SCMR 1832), Sana Ullah and another v. Muhammad Manzoor and another (PLD 1996 SC 256) and Mst. Rasheeda Begum and 3 others v. Muhammad Yousaf and others 2002 SCMR 1089. The respondents had specifically denied the claimed oral agreement to sell and payment of any sale price thereunder. Now it was for the petitioners to prove not only the agreement but also the bargain and the transaction, in view of the above referred judgments.”

8. Indeed, the petitioner has not even mentioned the date and time of the execution of the said oral exchange agreement and has not even pleaded as to when and in whose presence such an agreement was executed. In the case of Askari Hassan Vs. Bashir Ahmed Jumra (1984 MLD 366), one of the grounds on which the Division Bench of Hon'ble High Court of Sindh, declined the grant of an interim injunction in a suit for specific performance of an oral agreement was that the plaintiff had not even mentioned the specific date on which the said oral agreement was said to have been entered into.

9. The petitioner has also not brought on record the transfer letter with respect to the said house in order to show that the said house was transferred in pursuance of the alleged oral exchange agreement. Therefore, I am of the view that at this stage, the essential ingredient of there being a *prima facie* case for the grant of an injunction is not satisfied. In the case of Muhammad Aslam Vs. Muhammad Khan (1999 SCMR 2268), the Hon'ble Supreme Court

upheld the judgment of the Hon'ble Lahore High Court holding that since the oral agreement claimed by the appellant having been denied by the other side, there did not exist any *prima-facie* case for the grant of a temporary injunction. Law to the said effect was also laid down in the cases of Abdul Khaliq Vs. Muhammad Akhtar (2010 CLC 933), Muhammad Ishtiaq Vs. Abida Parveen (2006 YLR 20), Gul Haider Vs. Muhammad Asad Zia (2003 YLR 913) and Abdul Rehman Vs. Muhammad Siddique (2002 YLR 3155).

10. Since the dispute between the contesting parties is concerning immovable properties, the doctrine of *lis pendens* adequately protects the petitioner.

11. Finding no jurisdictional infirmity in the concurrent judgments/orders passed by the learned Courts below, the instant revision petition is dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Qamar Khan

APPROVED FOR REPORTING.

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