

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Civil Revision No. 360/2014.

Gulshan Bibi

Versus

Mubashar Ahmad, etc.

Petitioner by: Rana M. Irshad Khan, Advocate.

Respondents No.1 & 2 by: Malik A. Latif Khokhar, Advocate.

Date of Decision: 27.01.2020.

MOHSIN AKHTAR KAYANI, J:- Through this Civil Revision, the petitioner has called in question the judgment dated 08.10.2013, passed by learned Additional District Judge (West), Islamabad, whereby appeal filed by petitioner against judgment & decree dated 22.12.2012, passed by learned Civil Judge 1st Class (West), Islamabad was dismissed.

2. Learned counsel for the petitioner contends that petitioner filed a suit for recovery of Rs.7,12,000/- with declaration and permanent injunction against respondents No.1 to 3 mainly on the ground that respondents No.1 & 2 are the neighbours of petitioner who persuaded the petitioner for sale and purchase of plots in Jammu & Kashmir Society at the initial stage, however, after the sale of first plot respondent No.1 informed that there are three other plots (two from Bankers city and one from Education city) are available which were purchased by the petitioner against sale consideration of Rs.2,69,000/-; that files which were purchased were not be the source of profit as claimed by respondent No.2 and petitioner after paying the total amount of Rs.3,56,000/- against plot files purchased the same, however, agreed profit was not given by the respondents and even assurance given by the respondents regarding genuineness of the files

was not confirmed, hence, suit for recovery of Rs.7,12,000/- was filed by the petitioner.

3. Conversely, learned counsel for respondents contends that respondents contested the suit by denying the factum of fraud and took the stance that in the year 2007 property rates were decreased and market was crashed, whereupon the petitioner exerted the pressure upon respondents and a *Jirga* was convened on 07.06.2007 but Reconciliatory Committee exonerated the respondents after recording of the statements.

4. Arguments heard, record perused.

5. Perusal of record reveals that the entire dispute revolves around the fraud committed by respondents No.1 & 2, who have allegedly sold out three files (two from Bankers city and one from Education city), which were not sold out in the market due to lower prices in the market as claimed by the petitioner, who has paid Rs.3,56,000/- as sale consideration. The suit was contested between the parties and issues were framed, however, respondents failed to put appearance, therefore, they were proceeded *ex-parte* and testimony of petitioner was recorded on 21.10.2016 as PW-1, who reiterated her stance referred in the plaint. The allegation that files which were sold out to the petitioner could not be transferred and on suspicion the files were verified which were found bogus, therefore, respondent No.1 Mubashar Ahmad was contacted for return of amount but he refused.

5. The petitioner while appearing as PW-1 produced allotment file of Education city dated 05.01.2005 as Ex.P1 containing 11 pages, allotment letter of Bankers city dated 11.03.2005 as Ex.P2 and Ex.P3 dated 12.03.2005 comprising of 09 pages. The respondents have not appeared, as a result whereof *ex-parte* judgment and decree was passed.

6. I have gone through the findings given by the trial Court whereby issues No.1 & 2 which deal with the claim of petitioner being plaintiff regarding entrustment of money decree as cause of action and *locus-standi* was settled in Para-9 to 12 of the impugned judgment & decree dated 22.12.2007, as such learned trial Court dismissed the suit mainly on the ground that parties have failed to justify their relationship of payment rather no proof of payment was placed on record by the petitioner. Learned trial Court after recording of detailed evidence dismissed the suit wherein petitioner filed appeal which was also dismissed through impugned judgment dated 08.10.2013. Following factors are required to be determined through evidence:-

- a. *Relationship of the parties.*
- b. *Payment of sale consideration of Rs.3,56,000/- to respondents.*
- c. *Transfer of original record (allotment files to the petitioner).*
- d. *Terms of agreement regarding sale and purchase of the allotted files.*
- e. *Verification of files from its office (Bankers city and Education city).*

7. Surprisingly petitioner while appearing as PW-1 has only recorded her stance without discharging the onus which is required to be discharged in terms of Article 117 of *Qanun-e-Shahadat* Order, 1984 as the petitioner desired that Civil Court will give its judgment qua her legal rights in her favour and as such the requirement laid down in the law that plaintiff has to prove his case from his own evidence and cannot seek benefits from weaknesses in the defendant's case. Whoever desires any court to give judgment as to any legal right or liability dependent on existence of facts, which he asserts, must prove that those facts exist. Reliance is placed upon 2007 MLD 1683 (Lalzada Vs. Mian Tauheedullah).

8. The initial onus to prove the execution of document i.e. Ex.P1 to P3 is upon the petitioner/plaintiff who could not justify the delivery of those files,

even not a single document qua the verification from Bankers city office is visible on record.

9. In view of above situation and the available record, I have gone through the judgment of trial Court whereby findings on issues No.1 & 2 have been given against the petitioner, although trial Court has not given the judgment in detail but learned Appellate Court in the impugned judgment dated 08.10.2013 has categorically discussed the principle of law "*Caveat Emptor*" whereby a buyer is under obligation to be careful and caution should have been applied while purchasing anything. This aspect left nothing in favour of petitioner who is unable to discharge her onus. It is settled law that concurrent findings of fact rendered by the courts below could not be interfered on factual side. Reliance is placed upon 2016 SCMR 24 (Nazim-ud-Din and others Vs. Sheikh Zia-ul-Qamar and others). The minimum requirement of law is visible from record and no illegality has been observed, nor petitioner has demonstrated any such issue in any manner especially when she herself failed to discharge her onus. Hence, instant civil revision is misconceived and the same is hereby dismissed.

(MOHSIN AKHTAR KAYANI)
JUDGE

Zahid