

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

**RSA No.05/2007**

Mst. Akhtar Bibi

*versus*

Syed Arsalan Haider & 2 others.

Appellant by: Ms. Robina Shaheen, Advocate.

Respondents by: Mr. Shahid Munir, Advocate for  
Respondent No.1.

Date of Hearing: 05.11.2019.

**MOHSIN AKHTAR KAYANI, J:** Through this regular second appeal, the appellant has called in question judgment dated 12.12.2006 of the learned District Judge, Islamabad, whereby appeal filed by the appellant against the order of the learned Civil Judge, 1<sup>st</sup> Class, Islamabad dated 18.01.2005 has been dismissed.

2. Brief facts referred in the instant appeal are that Syed Arsalan Haider (*hereinafter referred to as "Respondent No.1"*) filed a suit for specific performance of contract dated 07.10.1986 against Mst. Akhtar Bibi (*hereinafter referred to as "appellant"*) and during pendency of the said suit, the appellant along with her husband while appearing before the learned trial Court on 10.04.1990 made statement to the effect that a compromise between the parties has been effected and they have no objection if the suit is decreed in favour of respondent No.1. However, on 27.05.1990, the appellant moved an application under Section 151 CPC in the aforesaid civil suit claiming cancellation of her earlier recorded statement of compromise dated 10.04.1990 on the grounds that on the assurance of respondent No.1 that he will pay market value of her plot, she recorded her statement in favour of respondent No.1, but respondent No.1 failed to honour his commitment. The said application was contested by respondent No.1 and the learned trial Court pursuant to hearing both the parties had dismissed the application vide order dated 15.05.1991, which constrained the appellant to

prefer an appeal before the learned first Appellate Court, who, after hearing the parties, had accepted the appeal vide order dated 11.05.1992 with the directions to the learned trial Court to frame an issue and record evidence with regard to the alleged compromise. Subsequent to remand of the matter, the learned trial Court framed the issue pertaining to the alleged compromise, recorded evidence of both the parties and ultimately dismissed the application filed under Section 151 CPC vide impugned order dated 18.01.2005. The appellant feeling aggrieved thereof preferred an appeal, which also met the same fate of dismissal by the learned District Judge, Islamabad vide impugned judgment and decree dated 12.12.2006. Hence, the instant regular second appeal.

3. Learned counsel for appellant contended that both the Courts below omitted from consideration that the appellant is an illiterate and Pardanasheen lady and in such scenario the onus is upon beneficiary to prove the case; that the learned trial Court passed the impugned order in presence of restraining order passed by the Lahore High Court, Rawalpindi Bench on 26.05.1998; that the learned trial Court recorded statements against the appellant, which is against the law as evidence without cross-examination is no evidence and could not be based to pass a final order or decree; that the order of the learned trial Court was based upon inadmissible evidence, which has not been considered by the learned first Appellate Court, therefore, the impugned order and judgment & decree of both the Courts below may be set-aside and the case may be remanded for decision afresh in accordance with law.

4. Conversely, learned counsel for respondent No.1 by opposing the instant appeal contended that the appellant had recorded her statement on 10.04.1990 with her free will and in order to get more money from respondent No.1 in respect of the plot filed application U/S 151 CPC; that both the Courts below have rightly appreciated the facts and evidence available on record and passed

the impugned order and impugned judgment & decree, which are free from any illegality or irregularity, therefore, the instant appeal may be dismissed.

5. I have heard the arguments and gone through the record.

6. Perusal of record reveals that appellant Mst. Akhtar Bibi has assailed the judgment and decree dated 18.01.2005, passed by learned Civil Judge 1<sup>st</sup> Class, Islamabad as well as judgment and decree dated 12.12.2006, passed by learned District Judge, Islamabad, whereby R.F.A filed by the appellant was dismissed. Syed Akber Hussain Shah predecessor in interest of appellant was allottee of plot No.805, measuring 30 x 70 situated in Sector I-10/4, Islamabad vide allotment letter dated 21.8.1978 issued by CDA, who entered into agreement to sell with Syed Arsalan Haider/respondent No.1 on 7.10.1986 registered before Sub-Registrar, Islamabad against total sale consideration of Rs.6,00,000/-, whereas Rs.5,98,000/- was paid by respondent No.1 as sale consideration to the allottee Syed Akber Hussain Shah and Rs.2,000/- was left as balance to be paid at the time of transfer of suit plot, which could not be transferred due to loan received by Syed Akber Hussain Shah predecessor in interest of appellant from Housing Building Finance Corporation (HBFC). The predecessor in interest of appellant Syed Akber Hussain Shah has also got issued application for transfer of allotment of plot on 5.10.1987 in favour Syed Arsalan Haider/respondent No.1, which was duly signed, thumb marked and attested and even transfer fee alongwith different dues of CDA have been deposited by respondent No.1. Respondent No.1 cleared the principal loan of HBFC of Rs.80,000/- alongwith markup of Rs.1,25,000/- and the allottee after submission of transfer application in CDA died on 21.12.1987 leaving behind the appellant Mst. Akhtar Bibi and her brother Zaman Shah/respondent No.2, who are defendants No.1 & 2 in the main suit for specific performance of sale agreement dated 07.10.1986.

7. After demise of allottee Syed Akber Hussain Shah, respondent No.1 filed suit for specific performance of agreement to sell dated 7.10.1986 against legal

heirs of late allottee i.e. appellant Mst. Akhtar Bibi and Zaman Shah/respondent No.2, who contested the suit and written statement was filed by appellant Mst. Akhtar Bibi, whereby she denied execution of agreement to sell by her father and even the payment of amount as well as clearance of HBFC on part of Syed Arsalan Haider/respondent No.1. It has specifically been contended by the appellant in written statement that after the death of allottee his attorney took possession of the house from the tenant and amount of Rs.95,000/- was paid by father of respondent No.1/plaintiff (attorney of the allottee) after death of Syed Akber Hussain Shah to the appellant on account of rent collected by him. The allottee has also denied factum of submission of application, whereas brother of appellant Zaman Shah/respondent No.2 has given conceding statement in favour of Syed Arsalan Haider/respondent No.1 vide written statement dated 7.3.1989 while stating that they have no objection for passing of the decree on the claim of Syed Arsalan Haider. CDA/respondent No.3 in its written statement has acknowledged that the suit plot was allotted to Syed Akber Hussain Shah, who appointed Muhammad Shah as attorney, who took over possession of the plot on 19.8.1979 and even permission to mortgage the plot with HBFC was available in the record. The construction agreement between Syed Akber Hussain Shah and Syed Arsalan Haider alongwith application dated 30.4.1986, copy of affidavit regarding sale of plot Rs.6,00,000/- alongwith application dated 12.1.1989 was also referred by CDA in their written statement and even CDA Authorities have acknowledged that the plot was non-transferable, however, application for transfer was submitted in the CDA office but the same was not accepted for non-fulfillment of the requirements. The appellant being defendant No.1 in the main suit has reported CDA that her father died on 21.12.1987 and that she was only legal heir of the deceased as well as owner of the plot. However, during pendency of the civil suit Mst. Akhtar Bibi put appearance before the Court alongwith her husband Ghulam Hussain Shah and counsel

Malik Muhammad Sultan, Advocate on 10.4.1990 and recorded her conceding statement to pass decree of specific performance in the following manner:-

"10-4-1990 بیان ازاں مسماۃ اختر بی بی مد علیہ نمبر 1 حلف۔  
بیان ازاں ملک محمد سلطان ایڈووکیٹ کونسل مد علیہ نمبر 1 بلا حلف۔  
بیان کیا کہ مابین فریقین راضی نامہ ہو گیا ہے۔ دعوی مدعی  
حقوق مدعی و برخلاف مدعا علیہ نمبر 1 ڈگری کیے جانے پر کوئی اعتراض نہ ہے۔  
سکر درست تسلیم کیا۔

دستخط غلام حسین شاہ و کونسل  
نشان انگوٹھا اختر بی بی

8. The suit was not decided by the Trial Court and application dated 27.5.1990 U/S 151 CPC was filed by the appellant with the claim that fraud has been committed with her by her husband Ghulam Hussain Shah attorney of the appellant and leveled allegations in the application that the consent statement recorded on 10.4.1990 was obtained under misrepresentation and fraud as valuation of the suit plot was neither fixed nor any amount was being paid. The said application was contested by respondent No.1/Syed Arsalan Haider, wherein he has taken specific stance that amount of Rs.50,000/- was being paid to the husband of appellant in presence of two witnesses of the locality namely Syed Sibte-ul-Hassan Shah and Syed Ameer Hussain Shah through agreement Exh.R.1 of Jirga proceedings dated 5.9.1990. Learned Trial Court after hearing learned counsel for the parties rejected the application filed by the appellant U/S 151 CPC vide order dated 15.5.1991. The said order was challenged in appeal by the appellant before District Judge, Islamabad. The appeal was allowed by learned Additional District Judge vide judgment dated 11.5.1992 with the following observations:-

*"For the aforesaid reasons, in my view all the circumstances discussed above, require further probe into the controversy and dispute between the parties with regard to actual terms and conditions of the compromise. Resultantly, this appeal is accepted and the impugned order is set aside and the case is sent back to the learned Trial Court with the direction to frame an issue with regard to the alleged compromise and thereafter the parties should be allowed to adduce their evidence in respect thereof and then to decide this matter in accordance with law and if the version of the appellant is not proved, then obviously the suit shall stand decreed and if it is held otherwise, then either respondent No.1 shall have*

*to comply with such terms of the agreement or if he refuses then the suit shall have to be decided on its own merits in due course. No order is made as to costs of the appeal. Parties are directed to appear in trial court on 19.5.1992."*

9. In view of above observations, the matter was remanded to learned Trial Court to resolve the controversy after recording evidence of the parties as to whether the statement was duly recorded or otherwise, therefore, learned Trial Court framed following issue vide order dated 30.7.1992:-

- "1. What were the terms & conditions of the compromise affected between the parties vide statement recorded on 10.4.1990, if so what is its effect? OP Parties.
2. Relief."

10. The appellant put appearance before learned Trial Court as A.W.1 and recorded the following stance:-

A.W.1"

08-11-03 اخترا بی سائلہ بطور گواہ بر حلف۔

بیان کیا کہ عدالت میں بیان دینے سے ایک روز قبل ارسلان اور اسکا والد میرے گھر آئے۔ اور میرے خاوند کے ساتھ راضی نامہ کی بات کی۔ خاوند نے بتایا کہ مکان کی بازاری قیمت لگا کر مجھے ادا کریں گے۔ عدالت میں بیان دینے کے لیے گئی۔ محمد شاہ نے کہا کہ 5 روز کی مہلت دیں کہ جائیداد کی قیمت لگوا کر رقم دیں گے۔ لیکن پھر رقم ادا نہ کی ہے۔ پھر میں نے کیس کر دیا۔ کیونکہ نہ قیمت لگوائی گئی اور نہ ہی مجھے رقم ادا کی گئی۔"

11. During the course of cross-examination, the appellant recorded the conceding statement before the Trial Court in favour of Syed Arslan Haider/respondent No.1 on the instructions of her husband and she again appeared before the Court as A.W.1 alongwith her husband and stated

"میں آج خاوند کے ساتھ آئی ہوں۔ میں اس دن خاوند کے ساتھ گھر واپس نہ گئی تھی۔ از خود کہا کہ خاوند اب بھی مجھ سے ناراض ہے۔ اب ہم اکٹھے ہوئے ہیں۔ بیان والے واقعے کے بعد میرے دو بچے پیدا ہوئے ہیں۔ از خود کہا کہ سید غلام شاہ سے ایک بیٹی ہے۔ میں اپنے خاوند سے راضی نہ ہوں کیونکہ اس نے میرے ساتھ دھوکہ کیا ہے۔ البتہ ہم اکٹھے ہی رہائش پذیر ہیں۔"

12. On the other hand, Syed Arsalan Haider/respondent No.1 appeared as R.W.1 and reiterated the stance from the execution of agreement of 1986, submitted the details of sale consideration of Rs.6,00,000/-, the process for transfer application of the plot in CDA, return of loan of HBFC against suit plot and further stated that Zaman Shah/respondent No.2 brother of the appellant

has given conceding statement, whereas the appellant has appointed Jirga in the *Brotherly* (برادری), whereby additional amount of Rs.50,000/- has been paid through Jirga Members namely Syed Sibte-ul-Hassan Shah and Syed Ameer Hussain Shah son in law of the appellant. He also stated that statement was recorded before the Court of Syed Akhlaq Hussain Shah, upon which the appellant put her thumb impression at the margin of order sheet alongwith signatures of her husband and counsel.

13. Syed Sibte-ul-Hassan appeared as R.W.2 and produced compromise deed Exh.R.1 and acknowledged his signatures alongwith signatures of Ameer Hussain Shah.

14. In view of above referred evidence recorded by learned Trial Court, application U/S 151 CPC was dismissed vide order dated 18.1.2005 for the following reasons:-

- “(a) Appellant Akhtar Bibi (petitioner) appeared as A.W.1 is not trust worthy woman, who has denied her thumb impression available on the order sheet dated 10.4.1990, which was marked in presence of the Court alongwith her husband and counsel.*
- (b) Husband of the appellant was never produced by her before the Court.*
- (c) The fraud alleged by the appellant was not proved as stance taken by the appellant in her application U/S 151 CPC has never been reiterated in examination in chief of A.W.1.*
- (d) The appellant/petitioner has failed to rebut the presumption of correctness available to judicial record of the stated dated 10.04.1990 in any manner.”*

15. After dismissal of application U/S 151, CPC, Trial Court recorded evidence of Syed Arsalan Haider/respondent No.1 as P.W.1, who has produced the documentary evidence allotment letter Exh.P.2, agreement to sell dated 7.10.98 Exh.P.3, possession certificate Exh.P.4 and other documents of CDA regarding the suit plot as Exh.P.5 to Exh.P.9, the clearance of loan of HBFC and even placed challan of Rs.20,000/- of balance sale consideration, which was

deposited in Court account dated 15.6.2000, where-after the Trial Court passed judgment & decree dated 16.5.2000, which was assailed by the appellant in R.F.A No.131/2005 before Lahore High Court, however, the same was transferred to learned District Judge due to enhancement of pecuniary jurisdiction of District Judge. Learned District Judge after hearing learned counsel for the parties dismissed the R.F.A vide judgment & decree dated 12.12.2006.

16. The appellant filed instant R.S.A before Lahore High Court, which was transferred to this Court after its establishment, wherein the appellant has taken stance that both the Courts below have misread important evidence and have not applied mind in accordance with law and that the appellant is illiterate and Parda Nasheen lady belonging to weaker sex of the society was not given due protection and has further raised the plea that she belongs to Fiqa Jahfria and in absence of male issue the property devolves upon the daughter and conceding written statement by her brother was immaterial and her brother never put appearance in the witness box, therefore, her conceding statement cannot be considered valid.

17. The grounds raised by the appellant has to be seen in the light of requirements of section 100 CPC as to whether these grounds fall within purview of material question of law, which has not been decided by the Courts below. The requirements of section 100 CPC have been highlighted by this Court in the judgment reported as 2017 C L C 839 [Islamabad] (Naseem Ahmed Khan and others vs. Syed Fahad Ali and others), which are reproduced as under:-

- “(i) When the decision impugned is contrary to law.
- (ii) Failure to determine some material issues of law.
- (iii) Decision based upon undisputed facts, which has not been appreciated by the Courts below on the wrong principle of law.
- (iv) Interpretation and legal effect of any document is also a question of law, which has not been appreciated by the Courts below.
- (v) Failure to appreciate and determine a question of fact, which materially affects the principal issue of the case and



*as a result of said basic question of fact constitutes an error in law.*

- (vi) *Decision based on erroneous reasoning and incorrect exposition of law.*
- (vii) *Decision based upon evidence, which has not been pleaded by the parties in their pleadings and the Courts below have not given any reason for change of plea and evidence and wrongly appreciated the law.*
- (viii) *Courts below have committed error or defect in the procedure, which is of substantial nature and the decision is based upon such defect.*
- (ix) *Question of admissibility of evidence."*

18. While considering the above referred principles, case of the appellant mainly rests upon her statement recorded as A.W.1, when she filed application U/S 151 CPC and challenged her own conceding statement before the Court with the allegations that her husband has committed fraud with specific stance in application U/S 151 CPC, which is reproduced as under:-

"نمبر 3- یہ کہ مورخہ 9/4/90 کو ارسلان حیدر مدعی اور محمد شاہ والد مدعی ہمراہ خاوند سائلہ کے گھر آئے اور مقدمہ ہذا کے متعلق راضی نامہ کی باتیں کرنے لگے اور بالآخر خاوند نے مجھے سمجھایا کہ مدعی اور والد مدعی جائیداد متدعوہ کے عوض سائلہ کو جائیداد ہذا کی بازاری قیمت کے مطابق ادائیگی کر دیں گے اور اس امر کے لئے جائیداد متدعوہ کی بازاری قیمت معلوم کرنا پڑے گی جس کے لئے وقت درکار ہو گا لہذا تم صبح چل کر ارسلان حیدر کے حق میں بیان دے دو کہ مقدمہ مدعی برخلاف مدعا علیہاڈگری ہونے پر کوئی اعتراض نہ ہے۔ خاوند جو کہ سائلہ کی جانب سے مقدمہ ہذا میں مختار خاص بھی ہے کی بات مانتے ہوئے اور خاوند پر اعتماد کرتے ہوئے سائلہ نے 10/4/90 کو عدالت حضور میں یہ بیان دے دیا کہ "ما بین فریقین راضی نامہ ہو گیا ہے اب دعویٰ مدعی بحق مدعی برخلاف مدعا علیہاڈگری ہونے پر کوئی اعتراض نہ ہے"۔ یہاں یہ امر قابل ذکر ہے کہ خاوند نے شرائط راضی نامہ عدالت کے سامنے بیان کرنے سے سختی سے منع کیا تھا۔ اور سائلہ اس امر کو کوئی مصلحت سمجھتے ہوئے شرائط راضی نامہ عدالت میں بیان نہ کر سکی۔

نمبر 4- یہ کہ کیونکہ کو نسل سائلہ سے بھی خاوند خود ہی بات چیت کرتا تھا اور خاوند نے ہی کو نسل سائلہ کو بھی شرائط راضی نامہ سے آگاہ نہ کیا صرف اتنا بتا دیا کہ ما بین فریقین راضی نامہ ہو گیا اور اب مقدمہ مدعی ڈگری ہونے پر اعتراض نہ ہے۔ اس طرح کو نسل سائلہ بھی شرائط راضی نامہ سے بے خبر رہے بیان مورخہ 10/4/90 دستخط کر دیئے۔

نمبر 5- یہ کہ مقدمہ ہذا میں تاحال کاروائی راضی نامہ کی تکمیل نہ ہوئی اور مقدمہ ہذا اب برائے غور و زیر کاروائی مقرر 8/7/90 مقرر ہے۔

نمبر 6- یہ کہ خاوند ہمراہ مدعی والد مدعی ملکر سائلہ کو تقریباً ڈیڑھ ماہ سے ٹال مٹول کر رہے ہیں اور ابھی تک سائلہ کو مدعی یا والد مدعی کے جانب سے کسی بھی قسم کی ادائیگی نہ ہوئی ہے۔

نمبر 7- یہ کہ اب سائلہ کے علم میں یہ بات ہو چکی ہے کہ خاوند مسی غلام حسین شاہ نے ہمراہ مدعی والد مدعی ساز باز کر کے دھوکہ سے عدالت حضور میں مورخہ 10/4/90 کو بیان بحق مدعی دلوا دیا ہے اور اب جائداد متدعوہ کی قیمت کی ادائیگی کے متعلق لٹ و لعل سے کام لے رہے ہیں اور سائلہ کی جائداد بغیر کسی معاوضہ کے ہضم کرنے کے درپہ ہیں۔

نمبر 8- یہ کہ بیان سائلہ 10/4/90 عہد آئہ تھا بلکہ سائلہ کو جھانسد دیکر اور دھوکہ دہی سے عدالت میں بیان دینے پر راضی کیا گیا اگر سائلہ کو ان تمام واقعات کا پہلے سے علم ہو جاتا تو سائلہ کبھی بھی اس قسم کا بیان نہ دیتی۔

نمبر 9- یہ کہ خاوند اور مدعی والد مدعی نے ملکر سائلہ کو دھوکہ دیا ہے اگر بیان مورخہ 10/4/90 منسوخ نہ فرمایا گیا اور مقدمہ ہذا کا فیصلہ بر واقعات نہ کیا گیا تو اس سے سائلہ اپنے قیمتی اور جائز حق سے محروم ہو جائے گی جو کہ انصاف اور قانون کے بنیادی تقاضوں کے منافی ہو گا۔"

19. The above referred stance taken in application U/S 151 CPC is to be considered as main plea in terms of Order VII Rule 1(e) & (f) and issue has been framed on this particular allegation after post remand proceedings in the first round. The above referred Paras of the application have to be considered in terms of Order VI Rule 4 CPC, in which the appellant has alleged misrepresentation, fraud and undue influence but when the appellant recorded her statement as A.W.1 in support of her contention in the application before Trial Court dated 08.11.2003, she had not uttered a single word/fact regarding question of fraud, misrepresentation or undue influence against her husband Ghulam Hussain Shah and as such another principle of departure in terms of Order VI Rule 7 CPC comes into play, whereby no one is allowed to depart from his own pleadings except by way of amendment and if any departure has been made inconsistent with previous pleadings, the same shall not be considered and ignored. Reliance is placed upon 2019 CLC 1096 Quetta (Syed Abdul Manan vs. Malik Asmatullah), 2018 CLC 1702 Islamabad (Mst. Parvez Akhtar vs. Raja Shoaib Malal), and 2017 SCMR 902 (Malik Bahadur Sher Khan vs. Haji Shah Alam).

20. It is trite law that where matter is not pleaded in manner upon which issue was framed, the same has to be considered against the person, who has raised/taken the plea. The entire onus was upon the appellant to prove

particular fact of fraud, which has not been justified in any manner, which was required in this case. Similarly, the appellant has not confronted her husband as well as her counsel Malik Muhammad Sultan, Advocate through any manner regarding these facts, which have been referred in the application U/S 151 CPC, which otherwise proves that she has withheld the best available evidence in terms of Article 129(g) of the Qanun-e-Shahadat Order, 1984 as if these two witnesses were produced, they might be unfavourable to the appellant in this matter. Reliance is placed upon 2019 SCMR 1095 (Naveed Akram vs. Muhammad Anwar). Similarly, Article 117 of Qanun-e-Shahadat Order, 1984 places heavy onus upon the appellant to prove these facts, which have been asserted in the application of fraud and no other person can prove these facts and in terms of Article 118 of Qanun-e-Shahadat Order, 1984 if a person whom burden of proof lies has failed to discharge his onus, his or her claim is liable to be dismissed.

21. The appellant has very weak case on factual side when principal agreement Exh.P.3, which was registered with Sub-Registrar, Islamabad regarding suit plot between father of the appellant Syed Arsalan Haider/respondent No.1 was registered instrument and as such no other evidence was produced through which rebuttable presumption can be visible on record.

22. Respondent No.1 has produced overwhelming evidence in ex-parte evidence, whereas the appellant never put appearance on the date i.e. 6.4.2000, when evidence of Syed Arsalan Haider/respondent No.1 was recorded, therefore, at this stage any plea or question regarding very basics of the agreement to sell cannot be raised. The appellant herself negated the plea of fraud committed by her husband, when she acknowledged in cross-examination that now she has settled with her husband and previously when she recorded her conceding statement before the Trial Court dated 9.4.1990, she has left her husband but subsequently she again settled with her husband and having two

children, this shows conduct of the appellant, who in order to grab extra amount from respondent No.1 raised plea of fraud committed by her husband and forced respondent No.1 into multiple litigations from 09.04.1990 till date despite overwhelming evidence, which suggests and proves that predecessor in interest of the appellant namely Syed Akber has sold out the plot to respondent No.1 and received Rs.598,000/- through registered instrument before the Sub-Registrar, handed over all record, even the general power of attorney in favour of Muhammad Shah was delivered. The transfer application submitted by the predecessor in interest of the appellant in CDA record further confirms that every step was taken by the deceased father of the appellant in order to transfer the property, especially when the house was constructed by respondent No.1, possession is with respondent No.1 and same was acknowledged by CDA in their written statement. All these facts suggest that there is no factual dispute and the appellant has gone out of her own plea raised in application U/S 151 CPC and failed to establish fraud, misrepresentation and undue influence claimed by her. This Court is under legal obligation to go through the question of law as required in terms of Section 100 CPC, whereby certain pre-conditions have been highlighted in case reported as 2017 CLC 839 Islamabad (Naseem Ahmad Khan vs. Syed Fahad Ali etc.), wherein it has been held as under:

*“25. From the above referred precedents of Hon'ble Supreme Court as well as High Courts, following legal principles emerge that second appeal shall lie:--*

- (i) When the decision impugned is contrary to law.*
- (ii) Failure to determine some material issues of law.*
- (iii) Decision based upon undisputed facts, which has not been appreciated by the Courts below on the wrong principle of law..*
- (iv) Interpretation and legal effect of any document is also a question of law, which has not been appreciated by the Courts below.*
- (v) Failure to appreciate and determine a question of fact, which materially affects the principal issue of the case and as a result of said basic question of fact constitutes an error in law.*
- (vi) Decision based on erroneous reasoning and incorrect exposition of law.*

- (vii) *Decision based upon evidence, which has not been pleaded by the parties in their pleadings and the Courts below have not given any reason for change of plea and evidence and wrongly appreciated the law.*
- (viii) *Courts below have committed error or defect in the procedure, which is of substantial nature and the decision is based upon such defect.*
- (ix) *Question of admissibility of evidence."*

While considering the above referred principles, no question of law as claimed by the appellant is made out and as such, both the Courts below have rightly decreed the suit in favour of Syed Arsalan Haider/respondent No.1 without any factual or legal defect.

23. For the foregoing discussion, the instant regular second appeal bears no merits, therefore, the same is hereby **DISMISSED**.

(MOHSIN AKHTAR KAYANI)  
JUDGE

Announced in open Court on: **09.12.2019**.

JUDGE

R. Anjam.