

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

R.S.A.No.02 of 2018  
Mian Muhammad Akbar Dhareeja  
**Versus**

Muhammad Ramzan Khokhar and others

**Date of Hearing:** 01.02.2021  
**Appellant by:** M/s Habib Ahmed Bhatti and Akhlaq Ahmed Bhatti, Advocates  
**Respondents by:** Malik Tanveer-ul-Hassan, Advocate for respondent No.1

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**MIANGUL HASSAN AURANGZEB, J:-** Through the instant regular second appeal the appellant, Mian Muhammad Akbar Dhareeja, impugns the judgment and decree dated 29.01.2018 passed by the Court of the learned Additional District Judge (East), Islamabad, whereby appeal of respondent No.1 (Muhammad Ramzan Khokhar) against the judgment and decree dated 27.10.2017 passed by the Court of the learned Civil Judge, Islamabad, was allowed, and the suit for specific performance instituted by respondent No.1 was decreed. Vide judgment and decree dated 27.10.2017, the learned Civil Court had dismissed the said suit.

2. The facts essential for the disposal of this appeal are that an agreement to sell in respect of 8 *marlas* of land in *Mouza Mohra Noor*, Tehsil and District Islamabad (“the suit land”) for a total sale consideration of Rs.19,00,000/- was drafted on a non-judicial stamp paper, which was purchased on 11.12.2013 by the appellant whereby the said land was to be sold by him to respondent No.1. This draft agreement was not signed by the appellant. However, respondent No.1 asserts that he had paid Rs.14,00,000/- out of the total sale consideration to the appellant on 16.12.2013 and that a receipt in this regard was issued by the appellant on the reverse of the stamp paper. The appellant, on the other hand, asserts that his signatures appear on the reverse of the stamp paper because he had purchased the same, and that he had neither received an amount of Rs.14,00,000/- from respondent No.1 nor he had issued any receipt. He further asserts that respondent No.1 has played

fraud on the appellant by fabricating a receipt just above where the appellant's signatures appear on the reverse of the stamp paper. The appellant also asserted that respondent No.1 had not been able to discharge the burden of proving the execution of the receipt in accordance with the requirements of Articles 17 and 79 of the *Qanun-e-Shahadat* Order, 1984 ("the 1984 Order"), and that the learned Appellate Court erred by shifting the burden of showing that a receipt had not been issued by the appellant to respondent No.1.

3. Respondent No.1 asserts that in partial performance of the agreement to sell the suit land, the appellant had also delivered possession of the suit land to respondent No.1. The appellant, on the other hand takes the position that respondent No.1 had illegally taken possession of the suit land and against this, F.I.R. No.77, dated 12.05.2014 under Sections 506, 420 and 447 P.P.C. had been lodged on the appellant's complaint against respondent No.1. The appellant also asserted that presently he is in possession of the suit land which was taken from respondent No.1 on the intervention of the police. Respondent No.1 also asserts that a month after the suit for specific performance was filed by respondent No.1, the appellant lodged F.I.R. No.77, dated 12.05.2014 under Sections 506, 420 and 447 P.P.C. at Police Station Bani Gala, Islamabad wherein it was alleged that respondent No.1 had unlawfully occupied the suit land and had fabricated an agreement / receipt. It may however be mentioned that it is not disputed that all the accused nominated in the said F.I.R. have been acquitted.

4. On 10.04.2014, respondent No.1 instituted a suit for specific performance and permanent injunction. The appellant contested the said suit by filing a written statement. Respondent No.1 appeared as PW.1 and gave evidence in support of the pleadings in the plaint. The appellant's special attorney appeared as DW.1 and gave evidence. From the divergent pleadings of the contesting parties, on 10.10.2016, the learned Civil Court framed the following issues:-

*"1. Whether the plaintiff is entitled to a decree for specific performance of agreement as prayed for? OPP*

2. *Whether the plaintiff is entitled to a decree for permanent injunction as prayed for? OPP*
3. *Whether the plaintiff has estopped by his words and conduct to file the instant suit? OPD*
4. *Whether the plaintiff has come to the Court with unclean hands? OPD*
5. *Whether the plaintiff has no cause of action to file the instant suit? OPD*
6. *Relief."*

5. Vide judgment and decree dated 27.10.2017, the learned Civil Court dismissed respondent No.1's suit primarily on the ground that he had not been able to prove the execution of the agreement as well as the receipt of Rs.14,00,000/- by producing witnesses. Respondent No.1 preferred an appeal against the said judgment and decree. Vide judgment and decree dated 29.01.2018, the learned Appellate Court reversed the findings of the learned Civil Court and decreed respondent No.1's suit by holding that the appellant had not been able to discharge the burden of proving that forgery had been committed by respondent No.1, and that possession of the suit land had been delivered to respondent No.1 after the issuance of the receipt. Since the judgments and decrees passed by the learned Courts below were at variance, this Court delved into the process of fact-finding from the material on the record. In the case of Karim Bakhsh Vs. Jindwadda Shah (2005 SCMR 1518), it has been held that when the findings of the two Courts below were at variance, the High Court could appreciate the evidence to determine which of the two decisions was in accordance with the evidence.

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

7. It is not disputed that the appellant had purchased the stamp paper on 11.12.2013 for the purpose of executing thereon an agreement to sell the suit land to respondent No.1 for a total sale consideration of Rs.19,00,000/-. Since it is an admitted position that the agreement to sell drafted on the said stamp paper was not signed by the appellant, it is upon respondent No.1 (i.e. the plaintiff) on whom lay the burden of proving that an agreement to sell the suit land was arrived at between the said parties and that in partial

performance of such agreement, Rs.14,00,000/- were paid by respondent No.1 to the appellant and possession of the suit land was delivered to respondent No.1. In the suit, it has specifically been pleaded by respondent No.1 that the terms and conditions of the agreement had been “*verbally settled*.” Since the appellant had denied that a verbal agreement had been arrived at with respondent No.1, it became respondent No.1’s obligation to prove such verbal agreement by producing witnesses. This, respondent No.1, did not do. An oral agreement is as enforceable as a written agreement, provided the same fulfills the requirement of a valid contract. Although an oral agreement is enforceable, its execution is required to be proved by adducing cogent evidence. In the case of Maqsood Ahmad Vs. Salman Ali (PLD 2003 SC 31), it was held that a person entering into an oral agreement had to prove the oral agreement according to the definition of agreement in Section 2(h) of the Contract Act, 1872. In the case of Allah Ditta Vs. Liaqat Ali (2005 YLR 245), it has been held *inter alia* that an oral agreement is required to be proved by the beneficiary through cogent evidence of the bargain, especially after its denial by the other party. In the case of Adin Khan & Giloti Transport Co. Vs. Government of Pakistan, State and Frontier Regions Division (1997 CLC 369), it has been held that an oral agreement, for its proof, required clearest and most satisfactory evidence. Law to this effect has also been laid down in the cases of Qazi Muhammad Saqib Khan Vs. Ghulam Abbas (2003 MLD 131), Muhammad Farooq & Company (Pvt.) Ltd. Vs. Messrs Pakistan Tobacco Company Limited (1997 CLC 520), Government of Pakistan Vs. Kamruddin Valika (1996 CLC 1086), and Khayaban-e-Iqbal (Pvt.) Ltd. Vs. Mustafa Haji Muhammad (1996 CLC 1758).

8. In the case at hand, other than his own self, respondent No.1 did not produce any witness to prove that an oral agreement to sell the suit land had indeed been executed between himself and the appellant or that the latter had received Rs.14,00,000/- as advance payment with the balance amount to be paid at a future date. In the case of Muhammad Nawaz Vs. Muhammad Baran Khan (2013 SCMR 1300), one of the reasons why the Hon'ble Supreme Court upheld

the dismissal of a suit for specific performance of an oral agreement was that the plaintiff had not produced the witnesses in whose presence the oral agreement was arrived at.

9. As regards respondent No.1's stance that the appellant had issued him a receipt for Rs.14,00,000/- on the reverse of the stamp paper, it became obligatory on respondent No.1 to prove that such a receipt had been issued by producing witnesses moreso where the appellant had denied the issuance of such receipt. Since it was respondent No.1 who had asserted the issuance of the receipt dated 16.12.2013 by the appellant, it was for respondent No.1 to have proved this fact. The learned Appellate Court erred by shifting the burden onto the appellant to prove that he had not issued the receipt.

10. In the case at hand, since the draft of the agreement to sell had not been signed by the appellant, the said document could not be looked into for ascertaining the nature of the transaction between the parties. The receipt by itself does not have the essential characteristic to sell. It does not give an accurate description of the property agreed to be sold.

11. Article 17(2) of the 1984 Order provides that unless otherwise provided in any law relating to the enforcement of *hudood* or any other special law, in matters pertaining to financial or future obligations, if reduced into writing, the instrument shall be attested by two men, or one man and two women, so that one may remind the other, if necessary, and evidence shall be led accordingly. In the case at hand, through the receipt alleged to have been issued by the appellant on 16.12.2013, respondent No.1 is attempting to prove that the appellant had received Rs.14,00,000/- from him and Rs.5,00,000/- were to be paid at a future date i.e. 26.12.2013. This document was required to be proved by respondent No.1 in accordance with Article 17(2) of the 1984 Order. Since respondent No.1 failed to produce two male witnesses or one male and two female witnesses to prove the said document, it is my view that the learned Appellate Court erred by decreeing respondent No.1's suit for specific performance.

12. Since respondent No.1 did not discharge the burden of proving that an oral agreement with respect to the suit land had been entered into and since he was also unable to prove the execution of the issuance of the receipt for Rs.14,00,000/- by the appellant in accordance with the requirements of Article 17(2) of the 1984 Order, I am of the view that the learned Appellate Court erred by decreeing respondent No.1's suit for specific performance. Consequently, the instant appeal is allowed; the impugned judgment and decree dated 29.01.2018 passed by the learned Appellate Court is set-aside; and the judgment and decree dated 27.10.2017 passed by the learned Civil Court is restored. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)  
JUDGE

ANNOUNCED IN AN OPEN COURT ON 26/02/2021

(JUDGE)

*Qamar Khan\**

**APPROVED FOR REPORTING**

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