

## **JUDGMENT SHEET**

### **IN THE ISLAMABAD HIGH COURT, ISLAMABAD.** **JUDICIAL DEPARTMENT.**

#### **Civil Revision No.210/2014**

Mst. Azra Gulzar versus Muhammad Farooq and another

Petitioner by: Syed Javed Akbar, Advocate.  
Ch. Mushtaq Ahmed Khan, Advocate.

Respondents by: Mr. Tahir Iqbal, Advocate for respondent No.1.  
Barrister Jahangir Khan Jadoon, Advocate for  
CDA/respondent No.2.

Date of Hearing: 21.09.2017.

### **JUDGMENT**

**MOHSIN AKHTAR KAYANI, J:-** Through the instant civil revision the petitioner has assailed the judgment dated 30.06.2014 passed by learned Additional District Judge (East) Islamabad.

2. Brief facts of the instant case are that the petitioner/ Azra Gulzar and respondent No.1/Muhammad Farooq are real sister and brother while the petitioner through her pleadings claims that she is the owner of Plot No.140, situated at Margallah Town, Phase-II, Islamabad (*hereinafter "the Plot"*) which was transferred in the name of respondent No.1, however respondent No.1 had issued a general power of attorney in favour of petitioner and it was agreed that the Plot would be transferred in the name of petitioner being the real owner, though, when petitioner requested respondent No. 1 to transfer the said plot in her name, he, by refusing to transfer the same, cancelled the general power of attorney. This quandary emerged multiple litigations between the parties, however the parties in a suit for specific performance titled "Muhammad Javed versus Azra Gulzar and others" entered into a compromise Exh.P3 before the Court due to which all the litigations were withdrawn. Whereas, respondent No.1 got

recorded his statement to the extent that the Plot belongs to petitioner and he returned the same as well as he is bound to record his statement before the Capital Development Authority, however he refused to acknowledge the same afterward, upon which petitioner filed a fresh suit for specific performance of the statement dated 06.10.2004 got recorded by respondent No.1. The suit was contested by respondent No.1 and after recording of pro and contra evidence of the parties the suit was decreed by the learned Trial Court, however the first Appellate Court dismissed the plaint and reversed the decree. Hence, the instant Civil Revision has been filed against the reverse findings.

3. Learned counsel for petitioner contends that the first Appellate Court has not considered the evidence in its true perspective, rather achieved the findings by interpreting the Section 28 of the Specific Relief Act, 1877 (*hereinafter "the Act"*) and also given the interpretation of the compromise whereby the learned Appellate Court declared that the suit titled "*Muhammad Javed versus Azra Perveen*" is collusive and the statement got recorded by respondent No.1 on 06.10.2005 in favour of petitioner does not amount to perform a contract referred as Exh.P3 and declared the Issue No.1 in negative and dismissed the suit and set aside the decree passed by the learned trial Court. Learned counsel for petitioner further contends that the learned Appellate Court has ignored the proved and admitted facts on record i.e. the admission of execution of a compromise deed and that a statement recorded before the learned trial Court in suit titled "*Muhammad Javed versus Azra Gulzar*" fall within the ambit of Section 12(1) of the Act and there is no bar for the specific performance of a compromise deed in terms of Section 28 of the Act.

4. Conversely, learned counsel for respondent No.1 contended that the learned trial Court has not appreciated the evidence in its true perspective

and the first Appellate Court has rightly passed the decree in accordance with law; that the petitioner in her plaint referred the cause of action accrued to her on 12.11.2004, whereas the alleged statement on the basis of which the petitioner filed a suit for specific performance was recorded on 06.10.2005 and it is not possible that cause of action accrued earlier on the basis of subsequent act; that the statement got recorded before the learned trial Court in suit titled "*Muhammad Javed versus Azra Gulzar*" does not amount to agreement and the same could not be enforced through specific performance; that statement got recorded by respondent No.1 before the learned Civil Court while entering into a compromise Exh.P3 is based upon duress and coercion and the same is not enforceable in terms of Section 28(1) of the Act.

5. Arguments heard, record perused.

6. From the perusal of record it has been observed that Azra Gulzar/petitioner, wife of Mian Gulzar Hussain, is the real sister of Muhammad Farooq/respondent No.1, who filed a suit for specific performance of the statement recorded by respondent No.1 before the learned Civil Judge in civil suit titled "*Muhammad Javed versus Azra Gulzar*" and the same was contested by respondent No.1 mainly on the ground that the statement got recorded by him is based upon fraud, misrepresentation and under coercive measures and has no legal effect upon his rights. It has further been pleaded by respondent No.1 that he has neither entered in an agreement with petitioner nor received any sale consideration regarding the affidavit and statement dated 06.10.2005 recorded in the Court of Mr. Amir Saleem Rana, Civil Judge, Islamabad.

7. The brief history illustrated from the available record is that petitioner claims that she purchased the Plot after paying the sale

consideration and she is a Parda-Nashin lady, who got transferred the Plot in the name of her real brother i.e. respondent No.1, who executed an irrevocable power of attorney in her favour. Subsequently, due to certain domestic disputes amongst the parties, respondent No.1 cancelled the power of attorney which resulted into initiation of multiple litigations. It has further been observed from the record that the Plot was sold to one Muhammad Javed by Azra Gulzar, who filed a suit titled "*Muhammad Javed versus Azra Gulzar and Muhammad Farooq*" before the learned Civil Court, Islamabad, however the parties i.e. Azra Gulzar and Muhammad Farooq, entered into a compromise during the proceedings, resultantly, compromise deed Exh.P3 was executed, wherein different cases have been referred therein and parties have given a specific undertaking that they will withdraw their civil and criminal litigations. However, it is necessary to reproduce the content of the relevant portion in order to understand the real controversy and for the same purpose, a pretext is hereby reproduced:

"10- محمد جاوید بنام عذرا گلزار وغیرہ دعوئی استقرار حق و حکم انتہائی دوائی بعدالت جناب عامر سلیم رانا صاحب تاریخ پیشی 14-11-2005۔

(سیریل نمبر ۹۲۱، رعی، مستثنیٰ/فریقین واپس لینے کے پابند ہوں گے اور سیریل نمبر 10 میں مدعا علیہ نمبر 2 محمد فاروق نیچے درج شدہ بیان بابت پلاٹ مارگلہ ٹاؤن دینے کا پابند ہوگا۔)

فریقین ایک دوسرے کے خلاف کسی قسم کی فوجداری، دیوانی و دیگر کوئی بھی کاروائی نہ کریں گے۔ محمد فاروق مارگلہ ٹاؤن والے پلاٹ کے بارے میں بیان دینے کا پابند ہوگا کہ پلاٹ اس نے اپنی بڑی بہن مسماۃ عذرا گلزار کو واپس کر دیا ہے اور دعوئی بعنوان محمد جاوید بنام عذرا گلزار وغیرہ زیر سماعت بعدالت جناب عامر سلیم رانا صاحب ڈگری کیے جانے پر کوئی اعتراض نہ ہے اور سی ڈی اے میں بھی بوقت ضرورت عذرا گلزار یا محمد جاوید مذکور کے حق میں بیان دینے کا پابند ہوگا۔ اور آئندہ کبھی بھی پلاٹ مذکورہ کو کلیم نہ کرے گا۔ فریقین بوقت ضرورت کسی بھی عدالت یا دفتر میں ایک دوسرے کے حق میں بیان دینے کے پابند ہوں گے۔ فریقین میں سے کوئی بھی راضی نامہ کی خلاف

ورزی کرے گا تو زیادتی کرنے والا فریق مبلغ -/30,000,00 روپے بطور ہر جانبہ ادا کرنے کا  
پابند ہوگا۔"

The abovementioned statement was also recorded and confirmed by respondent No.1 separately for the purpose of the Plot through an affidavit Exh.P5, contents of which are hereby reproduced as under:

"ازال محمد فاروق ولد محمد یوسف سکنہ، R-9/1 تحصیل رینالہ خورد، ضلع اوکاڑہ کا  
ہوں اور حلفاً بیان کرتا ہوں:

۱۔ یہ کہ ایک دعویٰ عنوان محمد جاوید بنام عذرا گلزار وغیرہ بعدالت  
جناب عامر سلیم رانا صاحب سول جج درجہ اول اسلام آباد، زیر سماعت  
ہے جس میں مدعی علیہ نمبر 2 ہوں۔

۲۔ یہ کہ میں نے پلاٹ نمبر 140 مارگلہ ٹاؤن نمبر 2، اسلام آباد اپنی بڑی بہن  
مسماۃ عذرا گلزار کو واپس کر دیا ہے۔ یہ کہ آج کے بعد پلاٹ کے بارے میں  
کبھی بھی کوئی کلیم نہ کرونگا۔

۳۔ یہ کہ اگر عدالت دعویٰ ڈگری کر دے تو مجھے کوئی اعتراض نہ ہوگا۔ اور اگر سی ڈی اے  
میں ضرورت پڑی تو یہی بیان دینے کا بھی پابند ہوں گا۔

۴۔ یہ کہ ضمانت مندرجہ بالا درست تسلیم ہیں اور کوئی امر مخفی نہ رکھا گیا ہے۔"

After the execution of both these documents respondent No.1 got recorded his statement before the learned Civil Court in suit titled "Muhammad Javed versus Azra Gulzar" vide order dated 06.10.2005 with the following words which were referred as Exh.P6:

"کونسل مدعی حاضر، کونسل مدعی علیہ نمبر 2 حاضر، مدعی علیہ نمبر 2 مثل  
حسب درخواست کونسل اصالتاً حاضر، مدعی برآمد ہو کر پیش ہوئی۔ مدعی علیہ  
نمبر 2 محمد فاروق اور کونسل مدعی علیہ نمبر 2 چوہدری محمد جاوید گنجر  
ایڈووکیٹ بیان دینا چاہتے ہیں بیان قلمبند ہے۔

محمد فاروق مدعی علیہ نمبر 2: برحلف کونسل مدعی علیہ نمبر 2 بیان  
کیا گیا ہے کہ دعویٰ ہڈا پلاٹ متدویہ کے متعلق مدعی علیہ نمبر 2 کا مدعی اور مدعی  
علیہ نمبر 1 سے راضی نامہ ہو کر معاملات طے ہو گئے ہیں۔ جو کہ مدعی علیہ نمبر 2 نے  
پلاٹ متدعویہ مدعی علیہ نمبر 1 کو واپس کر دیا ہے۔ پلاٹ متدعویہ کے متعلق

مدعی علیہ نمبر 2 کا کوئی کلیم بقایا نہ رہا ہے۔ اور نہ آئندہ ہوگا۔ مدعی علیہ نمبر 2 کو پلاٹ متدعوئیہ مدعی علیہ نمبر 1 مسماۃ عذرا گلزار کے نام منتقل کرنے یا پلاٹ حذا مدعی کے حق میں ڈگری کیے جانے کا کوئی اعتراض نہ ہے۔ اگر CDA میں سے میرے بیان دینے کی ضرورت پڑی تو CDA میں بیان دینے کا پابند ہوگا۔ بیان حلفی Mark-A پیش کرتا ہوں۔ سن کا درست تسلیم کیا۔

حاضری بدستور

اب مثل تاریخ مقررہ یعنی 05-11-14 کو برائے مناسب حکم پیش ہوں۔

It has further been observed that the counsel for parties put appearance on 13.10.2005 and counsel for plaintiff got recorded his statement with the following words:

“ It is stated that partial payment of Rs.20,00,000/- which was paid to the respondent No.1 has been received by plaintiff. He has no concern whatsoever with the suit property. There is no need to proceed with the instant matter. Suit may be dismissed as withdrawn.

R.O. & A.C.  
13.10.2005.

CIVIL JUDGE 1ST CLASS,  
ISLAMABAD.

ORDER:

In view of above-statement of the learned counsel for the plaintiff, the suit of the plaintiff is hereby dismissed as withdrawn. No order as to costs. File be consigned to the record room after its completion within stipulated period.

Announced.  
13.10.2005.”

8. The abovementioned qualified admissions available on record have been reiterated by respondent No.1 in his testimony as DW-1, however the main issue raised in this case through the divergent pleadings of the parties is whether the statement recorded as Exh.P3 and Exh.P5 is the result of fraud, misrepresentation, duress and coercion. However, it is necessary to discuss the evidence given by respondent No.1 so to understand the true perspective of the case. Essentially, respondent No.1 got recorded his

detailed version as DW-1 whereby he contended that he was living with petitioner in the year 2004 and he never sold the Plot to petitioner and that he winded up his business as the same was taken over by one Muhammad Gulzar after handing over him a cheque of Rs.1,000,000/- which was dishonored and respectively an FIR No.359/2004 was registered, however on the basis of trust he handed over a general power of attorney to petitioner as he was leaving for his hometown Okara from Islamabad. He further stated before the Court that CDA issued a letter of confirmation to him that he had not confirmed and subsequently he cancelled the general power of attorney that was given to petitioner referred as Exh.D1 under objection. However, he further stated that Azra Gulzar, her husband Gulzar Hussain and Muhammad Javed, in connivance with each other prepared a forged agreement in back date i.e. 26.08.2004 and a civil suit tilted "*Muhammad Farooq versus Azra Gulzar and others*" was filed and obtained a status quo order. Furthermore, the said agreement was never registered with any stamp vendor nor even having any record with notary public, even the sale consideration of Rs.2,000,000/- was never given. However, he has produced the copy of the issues regarding the forged agreement framed in that suit, referred as Exh.D2. He further contends that Gulzar Hussain and Azra Gulzar managed different criminal cases against him, including FIR No.331/2005 Exh.D3, Suit No.17/2005, Suit No.81/2004, Suit No.82/2004, Suit No.83/2004, Suit No.15/2005 and Challan of FIR No.44/2005, referred as Exh.D4 to Exh.D9. He also produced a copy of Qalandara dated 05.05.2005. He further contends that Exh.P5 and Exh.P3 dated 06.10.2005 were executed against his wishes as threats were extended to him that if he will not enter into a compromise he will be arrested and involved in different criminal and civil proceedings. He also asserted that petitioner and her husband Gulzar Hussain appeared in trial of FIR

No.44/2004 on 01.07.2006 before the Court of Mr. Sarwar Saleemulllah, learned Additional Session Judge, Lahore and got recorded her statement as PW-3 and she stated before the Court that the Plot was owned by Muhammad Farooq. Lastly, he stated that the statement recorded and affidavit sworn on 06.10.2005 before Mr. Amir Saleem Rana, Civil Judge, Islamabad were obtained under duress and coercion.

9. During the course of cross-examination, Muhammad Farooq as DW-1 admitted the following facts:

"میں نے صرف CDA کے ساتھ معاملات طے کرنے کے لیے مختار نامہ دیا تھا۔ از خود کہا کہ مد علیہ نے جعلی اقرار نامہ محمد جاوید کے نام کیا تھا چونکہ میں نے محمد جاوید کے خلاف کوئی کارروائی اس لیے نہ کی کہ میں اس وقت بہت بے کیسوں میں پھنسا ہوا تھا۔ جب مختار نامہ مذکورہ دیا گیا تھا اس وقت میرے خلاف کوئی مقدمہ مدعیہ یا اس کے شوہر نے نہ کیا تھا۔ اقرار نامہ مورخہ 21-10-2004 کو تیار ہوا تھا اور اس پر پچھلی تاریخ مورخہ 26-08-2004 ڈالی گئی ہے۔"

Similarly, during the course of cross-examination a question has specifically been asked by the petitioner side, referred as:

"سوال: کیا Ex-P/3 کے تحت آپ کے اور میاں گلزار حسین کے درمیان جتنے مقدمات تھے ان کی بابت راضی نامہ ہو گیا تھا؟  
جواب: Ex-P/3 راضی نامہ مجھے فوج داری و دیوانی کروڑوں روپے کے جھوٹے مقدمات میں پھنسا کر لیا گیا تھا اور راضی نامہ کے سیرئیل نمبر 9 پر کیس بعنوان سرکار بنام محمد یوسف وغیرہ نے مدعیہ اور اس کے خاوند نے میرے، میرے والد کو سزا دلوانے کے لیے جھوٹی گواہی دی تھی۔"

The above referred question and answer clearly demonstrate that Muhammad Farooq/DW-1 has not responded the question in its true perspective rather given a weak answer but execution of Exh.P3 was admitted by him. However, he further conceded that:

"Ex-P/3 پر میرے دستخط Ex-P/3/1 ہیں جن کو میں درست تسلیم کرتا ہوں۔ Ex-P/5 پر میرے دستخط ہیں جو Ex-P/5/1 درست تسلیم ہیں۔۔۔۔۔ میں نے مورخہ



06-10-05 کو محمد جاوید بنام مسماۃ عذرا گلزار کے مقدمہ میں بعدالت جناب عامر سلیم رانا صاحب کی عدالت میں بیان دیا تھا۔۔۔۔۔ بیان مورخہ 06-10-05 مقدمہ "محمد جاوید بنام مسماۃ عذرا گلزار وغیرہ" کی نیچے میرے دستخط و نشان انگوٹھا ضبط ہیں جو کہ Ex-P/7 ہیں۔ میں نے اپنے بیان مورخہ 06-10-05 کو چیلنج نہ کیا ہے۔۔۔۔۔ یہ درست ہے کہ مقدمہ ہذا کے علاوہ مدعیہ اور اس کے حوالہ کا کوئی کیس آج کل میرے خلاف موجود نہ ہے۔۔۔۔۔ یہ درست ہے کہ میاں گلزار حسین کے کیئے ہوئے مقدمات میں آخری مقدمہ 2005 میں واپس ہو گیا تھا۔ میں نے 2005 سے لے کر آج تک اس بابت کوئی کارروائی نہ کی ہے۔۔۔۔۔ یہ درست ہے کہ Ex-P/3 راضی نامہ مابین میاں گلزار حسین و فاروق میں نے مقدمہ سرکار بنام محمد یوسف وغیرہ FIR No.44/05 بعدالت جناب سرور سلیم اللہ کے مورخہ 06-07-01 کو پیش کیا تھا۔"

10. In view of above referred position, the main issue which revolves around the entire pleadings is Issue No.1 as to whether the plaintiff is entitled for the decree for specific performance of the contract as prayed for. Whereas, it is evident from the available record discussed above and the evidence given by Muhammad Farooq/respondent No.1, that he admitted the following factors:

- a) Plot 140, Margallah Town, Phase-II, measuring 200 sq yards is in his name.
- b) Given a general power of attorney in favour of Azra Gulzar regarding the Plot which was registered and submitted in the CDA.
- c) The power of attorney was cancelled by Muhammad Farooq and this fact was also referred in the written statement that, "*the CDA vide letter dated 16.06.2004 asked the answering defendant for confirmation of said power of attorney. As the address of the answering defendant was that of the plaintiff in the official record therefore the same was diverted by the plaintiff to the answering defendant.*"

This means that the *bona fide* of petitioner is apparent and she herself send the letter to respondent No.1 regarding confirmation. However, there are some key factors being admitted by respondent No.1, such as:

- (i) DW-1/Muhammad Farooq executed Exh.P3 and admitted his signature Exh.P3/1, this means that the compromise agreement has been acknowledged and the terms referred in the agreement i.e.

"محمد فاروق مارگلہ ٹاؤن والے پلاٹ کے بارے میں بیان دینے کا پابند ہوگا اور پلاٹ اس نے اپنی بڑی بہن مسماۃ عذرا گلزار کو واپس کر دیا ہے۔ آئندہ کبھی بھی پلاٹ مذکورہ کو کلیم نہ کرے گا۔"

- (ii) Exh.P5 has been admitted and its execution was also admitted as Exh.P5/1 by Muhammad Farooq/DW-1. The fragment of which is reproduced as under:

"یہ کہ میں نے پلاٹ نمبر 140، مارگلہ ٹاؤن نمبر 2، اسلام آباد اپنی بڑی بہن مسماۃ عذرا گلزار کو واپس کر دیا ہے۔ یہ کہ آج کے بعد پلاٹوں کے بارے میں کوئی بھی کلیم نہ کرے گا۔"

- (iii) Muhammad Farooq also acknowledged in his written statement that, *"the plaintiff and her husband Mian Gulzar Hussain by misrepresentation, fraud got the said power of attorney and also got the original allotment letter and other correspondence on the pretext that the same might be required by the CDA."*

- (iv) This very fact acknowledges that original allotment and title record is available with Azra Gulzar.

- (v) Muhammad Farooq also acknowledged the statement recorded by him before the Civil Court referred as Exh.P6 in order sheet dated 06.10.2005 recorded by Mr. Amir Saleem Rana, Civil Judge, Islamabad whereby he stated that:

"مدعا علیہ نمبر 2 کو پلاٹ مستدعیہ مدعا علیہ نمبر 1 مسماۃ عذرا گلزار کے نام منتقل کرنے یا پلاٹ ہذا مدعی کے حق میں ڈگری کیے جانے کا کوئی

اعتراف نہ ہے۔ اگر CDA میں سے میرے بیان دینے کی ضرورت  
 پڑی تو CDA میں بیان دینے کا پابند ہوگا۔"

11. Despite the above referred qualified admissions, there is no chance left to assume that all these statements, which were recorded by learned Civil Judge in presence of the learned counsel for the parties, including the learned counsel for respondent No.1, were recorded under duress and coercion. It has further been observed from the record that respondent No.1, despite his plea that he was under duress and coercion and the other side had managed the compromise deed Exh.P3 and Exh.P5 through misrepresentation and fraud, never raised any such question independently through any civil or criminal proceedings nor filed any application before any competent authority for denial of his statement except when the instant suit was filed by Azra Gulzar, only then he has taken the stance in his written statement but the entire evidence clearly demonstrates that he has not brought any circumstances on record through which it can be proved that he was under duress and coercion, especially when nine other cases referred in Exh.P3 have been withdrawn by Gulzar Hussain and even the criminal case, which he referred as "*The State versus Muhammad Yousaf registered as Case No.4/2005*" was also settled between the parties and not a single criminal or civil suit is in the field rather all have been withdrawn. Hence, it can safely be concluded that Azra Gulzar, the petitioner, and her husband Mian Gulzar Hussain have complied with the terms of agreement and respondent No.1 has taken a blated plea in order to deprive them from their rights.

12. The above details of the suit persuaded this Court to dilate upon the issue of Section 12 of the Act whereas the law on the subject clearly demonstrates that when, "act agreed to be done is in the performance, wholly or partly, of a trust;" such kind of agreements can be specifically

performed and enforceable under law, however respondent side has taken a plea that when any agreement has been executed under duress and coercion, the same cannot be performed or enforced. In order to dilate upon the issue, Section 28 of the Act has been reproduced as under:

*"28. Specific performance of a contract cannot be enforced against a party thereto in any of the following cases:-*

- a) if the consideration to be received by him is so grossly inadequate, with reference to the state of things existing at the date of the contract, as to be either by itself or coupled with other circumstances evidence of fraud or of undue advantage taken by the plaintiff;*
- b) if his assent was obtained by the misrepresentation (whether willful or innocent), concealment, circumvention or unfair practices, of any party to whom performance would become due under the contract, or by a promise of such party which has not been substantially fulfilled;*
- c) if his assent was given under the influence of mistake of fact, misapprehension or surprise: Provided that, when the contract provides for compensation in case of mistake, compensation may be made for a mistake within the scope of such provision, and the contract may be specifically enforced in other respects if proper to be so enforced."*

13. The above referred provisions of the Act clearly provides an exception regarding the performance of any agreement, especially when any assent was obtained by misrepresentation or concealment, however from the detailed evidence of the parties it has been observed that respondent No.1 while appearing as DW-1 has only reiterated his own stance that he was compelled under duress and coercion while recording of Exh.P3 and Exh.P5 but he has never produced any independent witness to substantiate this very claim nor he ever filed any application before the learned trial Court to deny his statement Exh.P6 recorded before Mr. Amir Saleem Rana, Civil Judge, Islamabad.

14. It is settled proposition of law that compromise between the parties can be equated to a valid contract and breach whereof would give rise to a

fresh cause of action, reliance is placed upon 2009 SCMR 1268 (Peer Dil vs. Dad Muhammad). It is also settled law that a breach of a contract to transfer immovable property cannot be adequately relieved by compensation in money, although the matter has been referred in Exh.P3 that in case, parties have not complied with the terms, a compensation of Rs.3,000,000/- will be paid but the most important factor which is apparent that Azra Gulzar and Mian Gulzar Hussain have withdrawn all the criminal and civil cases and the only statement which is referred by respondent No.1 is that he has acknowledged the status of Azra Gulzar as the absolute owner of the Plot and he has returned the same to Azra Gulzar, therefore, in my estimation, the agreement Exh.P3 has duly been performed therein then and nothing has been left. However, there is an exception if Azra Gulzar or Mian Gulzar Hussain refuse to withdraw any civil suit, then respondent No.1 could claim the compensation but in present case, the original document of the title of the Plot was already in possession of Azra Gulzar which has been acknowledged by respondent No.1 in his written statement and even he has not given any justification as to what kind of threats he was receiving while recording his statement of a compromise.

15. Additionally, it is also settled proposition of law that agreement recorded by Court of law is a valid agreement and the undertaking given during the pendency of a suit has a binding effect, reliance in this regard is respectively placed upon 2009 YLR 105 (Abdul Latif vs. Mehboob Alam) and PLJ 2008 Pesh 111 (Mst. Nusrat Begum vs. Muhammad Iqbal Khan and 10 others). Similar view has also been given in 1995 SCMR 766 (Hassan Masud Malik vs. Dr Muhammad Iqbal and others), 1994 SCMR 360 (Munir Ahmed vs. Shahid Mahmood and 2 others), 2016 CLC 1451 [Islamabad] (Muhammad Rafique vs. Farida Khan and others),

2003 CLC 1306 [Lahore] (Khaavir Saeed Raza vs. Wajahat Iqbal) and PLD 2012 Peshawar 156 (Hafiz Muhammad Younis vs. Mst. Shaheen Qureshi and 2 others).

16. It has further been observed from different pronouncements of the superior Courts that consideration is the factor through which an agreement has to be proved and in this case, both the parties are closely related to each other and they have settled their consideration for withdrawal of their cases against each other in order to reconcile and settle the family disputes. All these factors are apparent from Exh.P3, however there is no bar that consideration may be moved from a third party as referred in AIR 1939 Patna 477 (Raja Shiba Prasad Sindh vs. Tincouri Banerji and another). The ingredients of the valid contract are offer & acceptance and consideration & enforceability, whereas in present case, parties have entered into a compromise including the statement got recorded by respondent No.1 before the Court of law and a written representation referred as Exh.P3 and Exh.P5, wherein he categorically admitted that the Plot belongs to Azra Gulzar and he has no claim whatsoever against the said Plot, therefore, there is no need of signatures of Azra Gulzar on the said document as her husband Mian Gulzar Hussain, who is party in 9 other cases with Muhammad Farooq and his family members, is there to sign and as it is admitted between the parties that Azra Gulzar is a Parda Nashin lady, in such eventuality signatures of the parties is not necessary for a valid contract and offer & acceptance could also be employed from the conduct of the parties. Reliance in this regard is placed upon 2017 SCMR 98 (Muhammad Sattar vs. Tariq Javaid).

17. It is surfaced from record that respondent No.1 has never filed any application against the orders passed by Mr. Amir Saleem Rana,

Civil Judge, Islamabad, where the statement of respondent No.1 was recorded and placed upon record as Exh.P6, therefore, the presumption of truth is always attached to the judicial proceedings, especially when the same has not been denied and acknowledged by respondent No.1. Reliance is placed upon 2002 SCMR 1336 (Muhammad Ramzan vs. Lahore Development Authority) and 2004 SCMR 964 (Fayyaz Hussain vs. Akbar Hussain).

18. In view of above referred factors and overwhelming evidence which leans in favour of petitioner, it further proves that the plot in question was transferred in the name of respondent No.1 by petitioner and respondent No.1 has returned the same as he stated before the Court as well as in the agreement and also acknowledges its execution before the Court, however respondent No.1 has not produced any witness to deny the execution of the contract/agreement Exh.P3 and Exh.P5 and even for that matter the proceedings before the Court, Exh.P6.

19. I have gone through the judgment passed by the learned Appellate Court, whereby the learned Appellate Court while ignoring the qualified admissions of respondent No.1, also ignored Exh.P3, Exh.P5 and Exh.P6, which are the key documents though the same were duly acknowledged by respondent No.1 in his testimony. However, the learned Appellate Court while addressing the issue in a very precise manner, referred details in the Para-15 of the impugned judgment, which for illustration is hereby produced as under:

*"15. Furthermore, the appellant recorded the statement dated 06.10.2005 in a suit titled "M. Javaid...vs....Azra Gulzar". The subject suit was instituted on the pretext that Javaid is purchaser of the alleged plot from Azra Gulzar. However, after recording his statement by appellant instead to proceed with the decree of suit in his favour he rather opted to withdraw the suit, therefore, Javaid withdraw the suit does not tantamount to performance to a contract allegedly- entered vide a*

*compromise deed Ex.P3. Since it is nowhere mentioned that Javaid in pursuance of a compromise deed Ex.P3 between appellant and respondent No.1 husband had withdrawn the suit and if it is admitted that Javed had withdrawn the suit on the pretext of compromise deed of appellant and her husband than, it means Javed brought collusive suit, with respondent No.1 in order to get favourable statement dated 06.10.2005 from appellant in favour of respondent No.1, therefore, issue No.1 is answered in negative. Both of the parties had addressed their arguments to the extent of issue No.1, therefore there is no need to address the rest of the issues, even otherwise, in the light of the discussion on issue No.1 rest of the issues are become redundant."*

The above referred reasons rendered by the learned Appellate Court are hypothetical in nature whereas no such evidence was ever brought on record and the learned Appellate Court has ignored the fact that the sanctity attached to the judicial proceedings are much higher than the statement of an individual wherein the presumption of truth is always attached to judicial proceedings as held in 2004 SCMR 964 (Fayyaz Hussain vs. Akbar Hussain), but plea taken by the learned Appellate Court is not reflective from the record as there is no independent evidence of collusiveness rather the plea taken by respondent No.1 has not been proved independently as he is bound to prove the issue of duress, coercion, misrepresentation or fraud but he has not requested the learned Trial Court for summoning of Muhammad Javed in the Court so to thrash the issue in such a manner, therefore, the verdict given by the first Appellate Court in Para-15 of the impugned judgment is contrary to law and facts of the case as learned Appellate Court has not discussed the evidence in its true perspective and has not considered the wisdom referred in Section 28 of the Act as there is no duress/coercion available on record.

20. The powers conferred U/S 115 CPC has been invoked in this case, whereas the same is based upon the following two separate conditionalities:



- a. The case has been decided, by the subordinate Court and no appeal should lie.
- b. After fulfillment of above condition the Revisional Court has to see as to whether the subordinate Court has exercised the jurisdiction not vested in it, or failed to exercise jurisdiction vested in it or acted in exercise of its jurisdiction illegally or with material irregularity.

By application of the abovementioned principles, the order passed by the Appellate Court where it has been declared that, "*Javed brought collusive suit, with respondent No.1 in order to get favourable statement dated 06.10.2005 from appellant in favour of respondent No.1.*" is not sustainable in the eye of law, whereas this Court comes to a conclusion that it is not based upon any evidence rather the Court has assumed this very fact without any basis and reversed the findings in appellate jurisdiction, whereas it is the duty of the Revisional Court in terms of Sec. 115 CPC that any findings which are perverse in law or misreading of evidence was found, shows illegality with material irregularity as referred above and in such eventuality the order passed by the Court, which has based its judgment and decree on such assumed facts, has exercised the jurisdiction not vested in it and has given the findings contrary to the record, hence the same amounts to an illegal exercise of jurisdiction.

21. It is settled proposition of law that in case of conflicts of learned Trial Court and Appellate Court, the decision of first Appellate Court was to be preferred in revisional jurisdiction. Reliance is placed upon 1999 CLC 312 Karachi (Ilm-ud-Din vs. Syed Sarfraz Hussain) and 2008 YLR 198 Lahore (Kaneez Bibi vs. Muhammad Ashraf). But the preference of the appellate judgment of the Appellate Court would only be sustainable if the same is not in violation of principles of administration of justice or was not arbitrary or fanciful, where such qualifications are apparent on record the judgment

of the Appellate Court should not be considered, whereas this Court is of the view that Appellate Court has based its findings in the impugned judgment on the basis of material irregularity and exercised the jurisdiction not vested in it and given the same without any basis while assuming the facts which were not on record, whereas the golden principle of violation of principles of administration of justice demands that such illegal exercise could have been rectified by the Revisional Court. In this regard, I am fortified by the judgment and principles laid down in 2008 YLR 61 Lahore (Abdul Majeed vs. Amjad Farooq), PLD 1970 Supreme Court 139 (Shahzada Muhammad Umar Baig vs. Sultan Mehmood Khan), 2000 CLC 500 Quetta (Aasa vs. Ibrahim) and PLD 1996 Karachi 202 (Mir Muhammad alias Miral vs. Ghulam Muhammad).

22. In view of above reasons, the learned Appellate Court has exercised the jurisdiction not vested in it and figured the entire findings of Para-15 on hypothetical assumption which is actually based on no-evidence, therefore, the jurisdiction vested in the learned Appellate Court has not been exercised diligently, hence, the impugned judgment and decree dated 30.06.2014 passed by learned Additional District Judge (East) Islamabad is hereby set aside and the decree passed by the learned trial Court is hereby restored.

(MOHSIN AKHTAR KAYANI)  
JUDGE

Announced in open Court on: 29<sup>th</sup> September, 2017.

JUDGE

Approved for reporting.