

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT
ISLAMABAD

Regular First Appeal No.70 of 2013

Bashir Ahmed
VERSUS
Muhammad Isa and others.

Appellant by:	Mr. Muhammad Wajid Hussain Mughal, Advocate
Respondent No.1 by:	Mr. Munir Ahmad Malik, Advocate
Respondent No.2 by:	Ms. Sitwat Jehangir, Advocate Raja Hakeem Aslam, Advocate
Date of Hearing:	17.09.2020.

FIAZ AHMAD ANJUM JANDRAN, J.-Through the instant Regular First Appeal, appellant Bashir Ahmed impugns judgment and decree dated 01.04.2013, passed by the learned Civil Judge 1st Class, Islamabad-West, whereby his suit for specific performance, permanent injunction and recovery of compensation was dismissed.

2. Facts, relevant and necessary for adjudication of the instant appeal are that the appellant filed a suit for specific performance, permanent injunction and recovery of compensation against the respondents with the averments that the respondent No.1, being allottee of a residential plot of category-V, measuring 111.11 sq. yards situated in Sector G-14/1,2,3, Islamabad, entered into an agreement to sell on 30.01.2004 with him against profit of Rs.300,000/-. Respondent No.1 received an amount of Rs.100,000/- at the time of execution of the said agreement; that the appellant deposited seed money with respondent No.2 along with enlistment fee; that the said agreement was revised through a second agreement to sell dated 24.12.2006 whereby respondent No.1 agreed to sell the plot for consideration of Rs.765,000/- and

received an amount of Rs.450,000/-. In addition, the appellant paid an amount of Rs.25000/- as part of cost of land of plot to respondent No.1 and that the respondent No.1 intend to alienate the said plot to the third party which constrained him to file the suit.

3. The suit was contested by the respondents by filing separate written statements. The respondent No.1 in his written statement denied the execution of any sale agreement regarding the plot with the appellant and also the receipt of any sale consideration.

4. The learned trial Court out of the divergent pleadings of the parties framed necessary issues and recorded evidence of the parties. The appellant himself appeared as PW-1 and got examined Raja Javed Iqbal and Mohammad Rasheed as PW-2 and PW-3 respectively while in documentary evidence tendered Ex.P1 to Ex.P5, Mark-A to Mark-F that includes deposit receipt dated 10.03.2004, Ex.P1, agreement to sell Ex.P2 to Ex.P3. On the other hand, respondent No.1 appeared as DW-1 and examined Mohammad Younas, Khurram Tufail and Zaheer Ahmad (Assistant Record Keeper) as DW-2, DW-3 and DW-4 respectively. The documentary evidence tendered by the respondent No.1 comprised of Ex.D1 to Ex.D8, Mark-A to Mark-K and Ex.DW4/1 to Ex.DW4/4 that includes letters issued by the respondent No.2 housing foundation, payment of deposit slip Ex.D5 and the deposit slips. The learned Trial Court after hearing the parties dismissed the suit vide judgment and decree dated 01.04.2013, being assailed through the instant appeal.

5. Learned counsel for the appellant contended that cumulative decision of issues 4 to 8 is in contravention of Order XX Rule 5 of the Code of Civil Procedure (**C.P.C**); that the appellant has successfully discharged onus to prove both the agreement to sell by producing two marginal witnesses and to counter the same, respondent No.1 tendered no evidence; that in case of specific denial of the respondent No.1 qua execution

of the agreements, it was incumbent for the learned trial Court to have recourse of comparison of the signature by the handwriting expert which exercise has not been carried out; that the written statement and the testimony of respondent No.1 are in conflict regarding deposit of the seed money which was deposited by the appellant which fact further substantiates the execution of the two agreements, therefore, the impugned judgment and decree is liable to be set-aside.

6. On the other hand, learned counsel appearing on behalf of respondent No.1 repelled above submissions by contending that the respondent never entered into any agreement to sell with the appellant and this fact has been substantiated through the evidence on record as neither the petitioner purchased the stamp papers of the said sale agreements nor the same contain signature of the respondent No.1 on their back leaf while the signatures on both the agreements were found to be different. According to the learned counsel the testimony of the respondent No.1 went un-rebutted on the material aspects, therefore, the impugned judgment does not call for any interference.

7. Learned counsel for respondent No.2/Housing Foundation while adding to above asserted that none of the allottee out of any housing scheme of the foundation can alienate the plot to any third person as there was only an offer of allotment and not the final allotment, therefore, the impugned judgment does not warrant any interference.

8. We have heard the learned counsels for the parties and have gone through the record with their able assistance.

9. At the inception, it is to be seen as to whether the two agreements, Ex.P2 and Ex.P3 are enforceable by law through specific performance.

10. To understand the term '**specific performance**' we have to consult the intent of the legislature behind the enactment i.e. the Specific Relief Act, 1877 ("**Act of 1877**")

through its preamble which says "***to amend the law relating to certain kinds of specific relief obtainable in civil courts.***" It only means and defines "the ***law relating to certain kinds of specific reliefs.***" The preamble signifies to amend the law relating to certain kinds of specific reliefs and in these kinds one is specific performance of contracts, given in Chapter II, Section 12 to 21 of the Act of 1877.

11. As is manifest, emphasis is upon "**Specific**" and to extract the intent of legislature we have to consult its meanings:-

"As per Oxford Dictionary 9th edition: word "specific" means detailed and exact (can you be more specific) (tell me exactly what you want), connected with one particular thing only (children's television programs aimed at a specific age group), (the money was collected for a specific purpose) (children with specific learning difficulties) (in one area only), existing only in one place or limited to one thing (a belief that is specific to this part of Africa).

According to Black's Law Dictionary 11th Edition, the term "Specific" means relating to, or designating a particular or defined thing; explicit, relating to a particular named thing, conformable to special requirements."

12. The essential ingredient to have recourse of relief under the Act of 1877 is that there should be no ambiguity with regard to title of the subject matter. It should be exact, clear, detailed, specific and explicit. It means when there is no title or same is defective, in one way or the other, no agreement can be made on its basis and likewise no specific performance of said agreement can be sought under the Act of 1877.

13. Looking the proposition from another angle, whether the agreements-in-question can be termed as '**contingent contracts**' enforceable through the specific performance under the Act of 1877. Relevant provision of the

Contract Act of 1872 (**Act of 1872**) i.e. Section 31 of the Act of 1872 provides that:-

"Section 31

"contingent contract" *is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.*

The enforcement of contingent contract is mentioned in Section 32 of Act of 1872 in following terms:-

Section 32

Enforcement of contracts contingent on an event happening.-- *Contingent contracts to do or nor to do anything if an uncertain future event happens, cannot be enforced by law unless and until that event has happened.*

If the event becomes impossible, such contracts become void."

14. Now keeping this basic and material legal requirement in mind, we advert to the evidence available on record to ascertain, whether the two agreements do fulfill the above pre-requisites and whether the respondent No.1 was competent to enter into such agreements, whether the appellant can ask for its enforcement by law through specific performance?

15. The evidence on record has been gone through. The two agreements Ex.P2 and Ex.P3 did not contain the exact details of the plot, allegedly alienated to the appellant. Ex.D2 is a provisional offer of allotment of a plot to the respondent No.1, wherein it was specifically mentioned that the final allotment letter will be issued subsequently on payment of complete cost of the land. The respondent No.1 in his statement while appearing as DW-1 denied the execution of the two agreements Ex.P2 and Ex.P3 and signatures thereupon, besides the receipt of any sale consideration. He was subjected to cross-examination but his statement remained unshaken on material aspects. However, he could not establish that seed money of

Rs.25,000/- along with Rs.1,000/- as processing /form fee was paid by him.

16. The careful analysis of the evidence produced by the parties lead to draw conclusion that the respondent No.1 unequivocally denied the execution of the two agreements; it is an admitted position that the stamp papers of the agreements were purchased by the appellant and not by the respondent No.1. It is also observed that no specific/clear details of the plot with exact location, number are mentioned in the two agreements, while the title qua plot in question of the respondent No.1 was not certain rather the same was provisional offer of allotment, that too after execution of alleged agreements to sell.

17. The Hon'ble Supreme Court of Pakistan in a judgment reported **as "Muhammad Miskeen v. District Judge Attock and others" (2020 SCMR 406)** expounded the law in the following terms:-

"Section 22 of the Specific Relief Act clearly lays down that the jurisdiction to decree a suit for specific performance is purely discretionary and the Court is not bound to grant such relief merely because its lawful to do so and further that such discretion of the Court is not arbitrary but is based on sound and reasonable judicial principles. In our opinion the Courts below have totally ignored the law on the subject while decreeing the suit on the basis of an agreement which neither specified the property under sale by metes and bounds nor provided for the sale consideration. The agreement merely states that a sum of Rs.50,000/- was paid in advance towards an unspecified sale price in respect of six marlas of land situated in Kamilpur Syedan Tehsil and District Attock without specifying Khasra numbers, khewat numbers etc. The plaint filed by the respondent Firdos Khan though has prescribed the khasra numbers (without any supporting documentary evidence showing the ownership of the seller in respect of land claimed) but is totally silent regarding the agreed sale consideration. The trial Court without framing any issue to find out the veracity of the plaintiff's claim regarding the claimed land or the

title of the seller believed the statement of plaintiff/respondent No.1 and decreed the suit. The other failure on the part of the Trial Court was to fix the total sale price of the plot on its own ignoring the fact that neither the agreement nor the plaint prescribed the sale price. The trial Court allowed the plaintiff/ respondent Firdos Khan to build a case which was even not pleaded in the plaint. The Court even did not feel it necessary to frame an issue to find out the sale price and placed reliance on totally extraneous documents. In these circumstances, the trial Court ought to have given convincing reasons for decreeing the suit by allowing specific performance and for ignoring all the deficiencies in the agreement as well as in the plaint specially when the relief was discretionary."

18. When the dictum laid down by the Hon'ble Supreme Court of Pakistan is applied to the facts of the case in hand, then it appears that no plot number, metes and bounds of the property in question had been mentioned in the alleged agreement. Although there is a wording in the said agreement Ex.P-3 that said plot is liable to be transferred to the appellant but after examining both the exhibits, failed to find out any description of the said plot. The first ownership document which surfaced in favour of the respondent is Ex.D-2. That too, is a Provisional Offer Letter and the same is dated 12.10.2009, issued after 2-3 years of the alleged sale agreement. Therefore, is totally irrelevant for the purposes of specific performance as per law.

19. In view of above, it is held that the respondent No.1 had no specific title of the plot which could be transferred through the agreements Ex.P2 and Ex.P3 respectively to the appellant. The latter also failed to establish execution of the same for the reasons that the stamp papers for execution of said agreements were purchased by the appellant himself and not by the seller i.e. the respondent No.1 and that both the agreements did not contain the specific particulars of the plot. The two agreements also did not qualify the status of contingent

contracts, to be enforced by operation of law, inter-alia, on account of deficient in terms of Section 32 of the Act of 1872 which makes contingent contract enforceable by law. There is no agreement after issuance of final allotment letter i.e. title document.

20. Thus it is clear that only those agreements are enforceable by law under the Act of 1877, which entail specific, exact and complete details of the land/property, coupled with the consideration, while a contingent contract cannot be enforced by law until the event has happened.

21. The appellant has not been able to make out a case warranting interference in the impugned judgment in absence of any illegality or material irregularity. Consequently, the instant appeal fails and accordingly **dismissed**. However, it has come on record that the appellant has deposited an amount of Rs. 26,000/- (Rupees twenty-six thousand) with the respondent No.2, therefore, the respondent is directed to return the amount alongwith the profit at the bank rate from the date of receipt of the amount till its payment to the appellant.

(MOHSIN AKHTAR KAYANI)
JUDGE

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

A.R.ANSARI

Announced in open Court on 05.11.2020.

JUDGE

JUDGE

Approved for reporting.