

Stereo. HCJDA-38

**JUDGMENT SHEET**  
**IN THE LAHORE HIGH COURT LAHORE**  
**JUDICIAL DEPARTMENT**  
**Civil Revision No.891 of 2011**  
Zaka Ullah etc.

Versus

Manzoor Hussain (deceased) etc.

**JUDGMENT**

<b>DATE OF HEARING</b>	<u>08.12.2015</u>
<b>PETITIONERS BY</b>	<u>Mirza Hafeez ur Rehman, Advocate.</u>
<b>RESPONDENT No.1 (1-A to 1-G)</b>	<u>Mian Subah Sadiq Klasson, Advocate.</u>

**ALI BAQAR NAJAFI, J.-** This civil revision is directed against the concurrent findings of fact recorded by the courts below whereby the suit of the petitioners for specific performance of the agreement dated 01.09.2004 in respect of 11 Kanals 8 Marlas for a consideration of Rs.3,42,000/- was dismissed on the ground that the said document was not proved on the basis of the two witnesses.

2. Brief facts giving rise to the filing of this revision petition are that on 01.09.2004 an agreement was executed between the petitioners and Manzoor Hussain, the predecessor of respondents No.1-A to 1-G, in respect of 11 Kanals 8 Marlas of agricultural land situated in Chak No.286/G.B., Tehsil and District Toba Tek Singh in the presence of Khalid Javaid son of Muhammad Sadiq and Zawar Hussain son of Muhammad Bakhsh (PW4). An amount of Rs.3,42,000/- was also paid and the possession of the property was handed over to the petitioners. As the property was

mortgaged with the Agricultural Development Bank of Pakistan, therefore, it was also agreed that the same will be redeemed within 6 months and the registered sale deed will be executed in favour of the petitioners. Upon his failure, a suit for specific performance of the agreement was filed by the petitioners on 12.06.2006. The suit was resisted by filing the written statement upon which the followings issues were framed:-

### **ISSUES**

1. Whether Manzoor Hussian deceased predecessor in interest of defendant No.1-A to 1-G agreed to sell property measuring 11 kanals 8 marlas out of khewat No.283/279 khatooni No.681 rectangle No.53 situated in the area of Chak No.286/GB, Toba Tek Singh at the rate of Rs.2,40,000/- per acre vide agreement dated 1.9.2004? OPP
2. Whether the plaintiffs paid Rs.3,42,000/- as consideration to Manzoor Hussain and the possession of killa No.14/2 measuring 4 kanals 9 marlas, 15/2 measuring 2 kanals , killa No.16/1 measuring 3 kanals 11 marlas killa No.16/2 measuring 5 kanals 7 marlas was delivered to the plaintiffs by the predecessor in interest of the defendant? OPP
3. Whether plaintiff has no cause of action and locus standi to institute the suit? OPD
4. Whether suit is not maintainable in its present form? OPD
5. Whether suit is bad due to misjoinder of parties? OPD
6. Whether suit is false, frivolous, vexatious and the same is liable to be dismissed with special costs? OPD
7. Whether the impugned agreement is false, baseless result of forgery, without consideration and the same is liable to be cancelled? OPD
8. Relief.

The learned trial court while giving its finding on issue No.1 observed that the said agreement Exh.P1 was attested by Khalid

Javaid and Zawar Hussain but only Zawar Hussain was produced as PW4 and the second witness Khalid Javaid was not produced without any explanation of either summoning him through the process of the court, therefore, the said document is not proved under Article 17 and 79 of the Qanun-e-Shahadat Order, 1984. It was also observed that PW2/Muhammad Munir Arshad was a scribe who even admitted that the document did not contain either his name or his signatures. It was also observed that the witness did not prove the payment of consideration for the said transaction and issue No.2 was also decided against the petitioners. The learned appellate court concurred with the findings of the learned trial court and upheld the reasons given by it. Hence this civil revision.

3. Mirza Hafeez-ur-Rehman, Advocate, learned counsel for the petitioners contends that a document can be proved by two witnesses who attested the document and not by the two marginal witnesses. Adds that PW4/Zawar Hussain is as good as any other witness of the document despite being a vendor. He places reliance upon Mst. SAKINA BIBI and another versus MUHAMMAD ANWAR alias MUJAHID and others (PLD 2007 Lahore 254) and SANA ULLAH and another versus MUHAMMAD MANZOOR and another (PLJ 1996 SC 526) and prays for setting aside of the two judgments passed by the two courts below.

4. Conversely, Mian Subah Sadiq Klasson, Advocate, learned counsel for the legal heirs of Manzoor Hussain/respondent No.1 (1-A to 1-G), however, contends that the agreement to sell Exh.P1 was required to be proved by Khalid Javaid, the other marginal witness and that stamp vendor/scribe cannot be substituted for other marginal witness. Further contends that even the name of Muhammad Munir Arshad/PW2, the alleged vendor, is not mentioned anywhere in the plaint or in the alleged agreement to sell, Exh.P1, therefore, he cannot be considered as a witness of the document. The date of the execution was not mentioned on the document Exh.P1 and Article 17 of the Qanun-e-Shahadat Order, 1984 duly applies requiring the proof of a document by two witnesses. Places reliance upon Hafiz TASSADUQ HUSSAIN versus MUHAMMAD DIN through Legal Heirs and others (PLD 2011 SC 241) and also submits that the judgment cited by the learned counsel for the petitioners in the case of Mst. SAKINA BIBI and another versus MUHAMMAD ANWAR alias MUJAHID and others (PLD 2007 Lahore 254) does not relate to an agreement to sell as it deals with the case of a will.

5. Arguments heard. File perused.

6. The petitioners' case as put forthwith by Mirza Hafeez-ur-Rehman, Advocate is that the agreement to sell dated 01.09.2004, Exh.P1 was duly executed between the petitioners and the predecessor of the respondents (1-A to 1-G), namely, Manzoor Hussain which was proved on the basis of the statement of

PW4/Zawar Hussain and Muhammad Munir Arshad/PW2 as both witnessed the execution of the document and that the latter despite being a scribe, was a marginal witness. However, the introduction of PW2 as a witness was seriously objected by Mian Subah Sadiq Klasson, Advocate, learned counsel for respondent No.1 (1-A to 1-G) on the ground; firstly, that his name was not mentioned on the document; secondly, he was not a stamp vendor since he did not produce any valid license or any register showing entry of the said stamp paper and thirdly, he has not witnessed the transaction having been completed in his presence.

7. Admittedly, Exh.P1, the alleged sale deed was executed in the presence of Khalid Javaid and Zawar Hussain as two witnesses. Non-production of Khalid Javaid was neither explained by the petitioners nor any serious effort was made to produce him before the court through the process of law. Legally speaking, a document is required to be proved under Article 79 of the Qanun-e-Shahadat Order, 1984, which is reproduced as under:-

**“79. Proof of execution of document required by law to be attested.** If a document is required by law to be attested, it shall not be used as evidence until two attesting witnesses [at] least have been called for the purpose of proving its execution, if there be two attesting witnesses alive, and subject to the process of the Court and capable of giving evidence:

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provision of the Registration Act, 1908, (XVI of 1908) unless its execution by the person by whom it purports to have been executed is specifically denied.”

The competency of a witness has been laid down in Article 17 of Qanun-e-Shahadat Order, 1984 which is also reproduced as under:-

**“17. Competence and number of witness.-(1)**

The competence of a person to testify, and the number of witnesses required in any case shall be determined in accordance with the injunctions of Islam as laid down in the Holy Quran and Sunnah.

(2) Unless otherwise provided in any law relating to the enforcement of Hudood or any other special law,

(a) in matters pertaining to financial or future obligations, if reduced to 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; and

(b) in all other matters, the Court may accept, or act on, the testimony of one man or one woman or such other evidence as the circumstances of the case may warrant.”

A perusal of the above said two provisions of the Qanun-e-Shahadat Order, 1984, clearly demonstrates that except for a will, no document can be used in evidence until it is proved by two attesting witnesses.

8. In the instant case, Zawar Hussain and Khalid Javaid were the two attesting witnesses and mere production of one i.e. Zawar Hussain in evidence as PW4 will not discharge the burden upon the petitioners to prove the said document when its execution was specifically denied by the respondent. Interestingly, neither in the agreement to sell (Exh.P1) nor in the plaint name of Muhammad Munir Arshad was mentioned in any capacity. He himself admitted that though he witnessed the signing of the document but remained ignorant about the payment having been made in his

presence. He claims to be a witness of the signing of the said document by two witnesses, therefore, he cannot be considered as a witness of the transaction mentioned in the document. PW4 though admitted that the payment was made in his presence to Manzoor Hussain yet he does not mention anywhere that Muhammad Munir Arshad was a witness of the document. He just said that some scribe signed the document.

9. A witness cannot be introduced to prove a document unless his name exists on the document, or was referred by any of the witnesses in their statements or was named as such in the plaint, therefore, at least his name was required to be mentioned in the list of witnesses under Order XVI C.P.C. I am afraid, even the statement of Muhammad Munir Arshad cannot support the petitioners as he does not qualify to be a witness on the basis of the above said criteria. If this tendency is allowed to prevail, any person at any time will come forward to be considered as witness to prove any document which will be against the spirit of law relating to the proof of a document. The judgment relied upon by the learned counsel for the petitioners in case of Mst. SAKINA BIBI and another versus MUHAMMAD ANWAR alias MUJAHID and others (PLD 2007 Lahore 254) also supports this point of view. However, I am fortified by the recent judgment of apex Court in case of Hafiz TASSADUQ HUSSAIN versus MUHAMMAD DIN through Legal Heirs and others (PLD 2011 SC 241), where it was held as follows:-

“.....Therefore, in my considered view a scribe of a document can only be a competent witness in terms of Articles 17 and 79 of the Qanun-e-Shahadat Order, 1984 if he has fixed his signature as an attesting witness of the document and not otherwise; his signing the document in the capacity of a writer does not fulfil and meet the mandatory requirement of attestation by him separately, however, he may be examined by the concerned party for the corroboration of the evidence of the marginal witnesses, or in the eventuality those are conceived by Article 79 itself not as a substitute.”

10. Even otherwise, the concurrent findings of fact recorded by the learned courts below cannot be interfered with in the exercise of revisional jurisdiction in the absence of any illegality or glaring irregularity, as a result of which this revision petition has been found meritless and is, therefore, dismissed.

**(ALI BAQAR NAJAFI)**  
**JUDGE**

**Approved for reporting**

**JUDGE**

Hashmi