

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**Present:**

Mr. Justice Qazi Faez Isa  
Mr. Justice Yahya Afridi

**Civil Petition No. 1630 of 2018**

*(Against the order dated 23.01.2018 of the Lahore  
High Court, Rawalpindi Bench passed in  
C.R.No.352/08)*

And

**CMA No.4061 of 2018**

*Muhammad Riaz and others.*

... *Petitioners*

**Versus**

*Mst. Badshah Begum and others.*

... *Respondents*

For the Petitioners:

Mr. M. Munir Paracha, ASC.  
Mr. Mehmood A. Sheikh, AOR.

For Respondent Nos.1-5:

Mr. Tanveer Iqbal, ASC.  
Syed Rifaqat Hussain Shah, AOR.

For Respondent Nos.6-15:

Nemo.

Date of Hearing:

24.02.2021.

**ORDER**

**Qazi Faez Isa, J.** This petition impugns the judgment dated 23 January 2018 of the Rawalpindi Bench of the Lahore High Court, passed in a civil revision whereby the High Court set aside the judgment of the learned Additional District Judge, Rawalpindi ('**ADJ**') and restored the judgment and decree of the learned Civil Judge, Rawalpindi, who had dismissed the suit for specific performance filed by the predecessor-in-interest of the petitioners.

2. Mr. Muhammad Munir Paracha, the learned counsel representing the petitioners, relies on the judgment of the learned ADJ and states that the suit merited to be decreed as the plaintiff had proved the oral agreement entered into between the parties, that is, Khaki Jan (seller) and Karam Khan (purchaser-plaintiff). He further states that the said oral agreement was confirmed by a subsequent written agreement dated 14 November 1977 (exhibit P1). The petitioners are the legal heirs of Karam Khan (buyer) and the contesting respondents are those of Khaki Jan (seller).

3. On the other hand, Mr. Tanveer Iqbal, the learned counsel representing the respondents No. 1 to 5 (the contesting respondents) states that the suit could not have been decreed because the plaint did not mention particulars of the purported oral agreement dated 28 May 1974 nor of the land sought to be purchased and that it was not established that the document dated 14 November 1977 (exhibit P1) was executed by Khaki Jan. He further submits that exhibit P1 also did not provide particulars of the land purportedly sold. Therefore, the purported agreement was void for uncertainty in terms of section 29 of the Contract Act, 1872 and such an agreement could not be specifically enforced as stipulated in section 21(c) of the Specific Relief Act, 1877; reliance was placed on the case of *Muhammad Saleem v Hameeda Begum* (1987 SCMR 624, 629B), a decision by a five-member Bench of this Court.

4. We have heard the learned counsel and with their able assistance examined the documents on record, and have read the plaint. It is correct that the land sought to be purchased is not particularized in the plaint; the witnesses of the said oral agreement (if any) are also not mentioned. The document (exhibit P1) said to have been executed by Khaki Jan on 14 November 1977 states that on 28 May 1974 ten thousand rupees had been received by him as sale consideration for the sale of 5 *kanals* and 9 *marlas* of land (**'the said land'**) at the rate of two thousand rupees per *kanal* and that whenever he (Khaki Jan) had time he would go to the revenue authorities to record the conveyance of the land to Karam Khan. Both sides said much about exhibit P1 which we need not mention here because nothing really turns on the same. The fact remains that the petitioner had alleged that an oral agreement for sale of the said land was made between the parties but the particulars of the land and of the oral agreement were not detailed in the plaint.

5. Order VI of the Code of Civil Procedure, 1908 (**'the Code'**) is titled 'Pleadings Generally' and its Rule 2 states that, '*every pleading shall contain ... a statement in concise form of the material facts on which the party pleading relies for his claim or defence...*' and its Rule 3 that, '*The forms in Appendix A when applicable, and where they are not applicable forms of the like character, as nearly as may be, shall be used for all pleadings*'. With regard to a plaint which seeks specific performance two forms are

prescribed, that is, 'No. 47. Specific Performance (No. 1)' and 'No. 48. Specific Performance (No. 2)' which respectively require that the following particulars should be mentioned in the plaint:

**No. 47. Specific Performance (No. 1):**

(i) 'agreement', (ii) 'immovable property therein described', (iii) 'for the sum of \_\_\_\_ rupees', (iv) the plaintiff has called upon 'the defendant specifically to perform the agreement on his part', (v) 'the plaintiff has been and still is ready and willing specifically to perform the agreement on his part of which the defendant has had notice', (vi) *Facts showing when the cause of action arose and that the Court has jurisdiction*, (vii) 'the value of the subject-matter of the suit for the purpose of jurisdiction is \_\_\_\_ rupees and for the purpose of court fees is \_\_\_\_ rupees.'

**No. 48. Specific Performance (No. 2):**

(i) 'agreement' which 'is hereto annexed', (ii) 'the immovable property described' in the agreement, (iii) the 'tendered' payment, (iv) the 'demanded' transfer of the said property, (v) that the plaintiff 'is still ready and willing to pay the purchase-money of the said property to the defendant' and (vi) 'that the defendant transfers the said property to the plaintiff by a sufficient instrument [*following the terms of the agreement*]'.

6. The plaintiffs in the instant case relied upon an oral agreement. However, the plaintiffs did not set out the particulars of such oral agreement as per either of the prescribed forms (above) or *as nearly as may be* thereto and also did not describe the land which was the subject matter of the agreement. Therefore, the agreement would be *void* for uncertainty in terms of section 29 of the Contract Act, and consequently, it could not be specifically enforced as stipulated by section 21(c) of the Specific Relief Act. Exhibit P1, which was the mainstay of the plaintiffs' suit also did not describe the land. The plaintiff's testimony with regard to exhibit P1 was by way of *tardeedi shahadat* (evidence in rebuttal) and we are informed that this was done in terms of Order XVIII Rule 3 of the Code, however, primary evidence in support of a claim cannot be categorized as evidence in rebuttal.

7. Karam Khan died in the year 1980 and while he lived he did not call upon Khaki Jan to perform the agreement. Karam Khan's legal heirs filed the suit on 19 February 1984, that is, about ten years after the purported

making of the said oral agreement. To overcome the prescribed period of limitation and to avail of the benefit of section 53A of the Transfer of Property Act, 1882 it was alleged that Khaki Jan had put Karam Khan into possession of the said land, but even this is not stated in exhibit P1. Whilst it had come in evidence that the plaintiffs were in possession of some land it was not established that it was pursuant to the said sale or that they were in possession of the said land as its owners. The contesting defendants had stated that they were tenants. Admittedly, Khaki Jan had earlier sold 1 *kanal* of land, whereupon some construction too was raised, and this land is stated to be adjacent to the said land in respect whereof specific performance was sought. It is clarified that this 1 *kanal* of land and the construction on it shall not be interfered with by the contesting respondents. The plaintiffs had failed to prove that possession of the suit land was received pursuant to the said oral sale. Therefore, the suit was barred by limitation and the benefit of section 53A of the Transfer of Property Act would also not extend to the plaintiffs, nor to Karam Khan through whom they claimed.

8. In the circumstances of the case, we are not inclined to grant leave to appeal, which is declined and consequently this petition is dismissed, but with no order as to costs since the High Court had set aside the judgment of the learned ADJ. CMA No. 4061 of 2018 is also dismissed.

Judge

Judge

*Bench-IV*  
Islamabad,  
24 February 2021  
(M. Tauseef)

Approved for Reporting