

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT: Mr. Justice Qazi Faez Isa
Mr. Justice Sardar Tariq Masood

Civil Petition No. 634/2020

(On appeal against the judgment dated 05.12.2019 passed by Peshawar High Court, D.I. Khan Bench in C.R. No. 102-D/2015)

Muhammad Shafiq Ullah & others

Versus

Allah Bakhsh (decd.) thr. LRs & others	Respondents
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For the Petitioners: Mr. Muhammad Younis Thaheem, ASC
Mr. Ahmed Nawaz Chaudhary, AOR
(Absent)

Respondents: Not represented

Date of Hearing: 25.03.2021

ORDER

Qazi Faez Isa, J. Matiullah, filed a suit for specific performance of an oral contract stated to have been made on 11 April 1997, for the sale of thirty *kanals* and seventeen *marlas* of land, for a total sale consideration of Rs.463,750 (four hundred and sixty-three thousand, seven hundred and fifty rupees), and stated that part-payment of an amount of Rs.100,000 (one hundred thousand rupees) was made on 14 April 1997 and Rs.70,000 (seventy thousand rupees) was made on 8 July 1997. The plaint did not state when the balance amount of sale consideration was to be paid. The said land formed part of the estate inherited by Matiullah and respondent Nos. 4 to 10 who are the step brothers and sisters of Matiullah; their common father was Hakim Zahoor-ud-Din. In response to our query the learned counsel states that Hakim Zahoor-ud-Din's date of death is not on record. The suit also sought cancellation of sale mutation No. 5374, which was in

respect of the same land sold by the respondent Nos. 4 to 10 to respondent Nos. 1, 2 and 3 (hereinafter '**the purchasers**'). The date of this sale mutation, the learned counsel states in reply to our question, is not on record.

2. The learned counsel submits that once respondent Nos. 4 to 10 had agreed to sell the said land to the petitioner and received part-payment of the sale consideration they could not have sold the same land to the purchasers. We inquired from the learned counsel whether the balance sale consideration was tendered, and if the sellers had refused to receive the same, was it deposited in court and the learned counsel replies that since the learned Judge had not ordered its deposit therefore it was not deposited, but added that the petitioners are ready to pay/deposit the same.

3. Before Matiullah could testify in support of his claim, he passed away; the petitioners herein are his legal heirs. The suit was dismissed, appeal against the same was also dismissed and so too the civil revision. Therefore, it is against three concurrent judgments that the instant petition has been filed.

4. The main contest was between the petitioners and the purchasers. The respondent Nos. 4 to 10 executed a power of attorney in favour of Allah Bakhsh (respondent No. 1) who defended the suit on his own behalf and also on behalf of the other respondents. The purchasers had bought the said land before the suit was filed. The petitioners could not establish that the purchasers were aware of the contract which the petitioners purportedly had entered into with respondent Nos. 4 to 10.

5. Long before the promulgation of the Contract Act, 1872, the Transfer of Property Act, 1882 and the Evidence Act, 1872 (replaced by the Qanun-e-Shahadat, 1984) the Holy Qur'an had prescribed that such contracts should be in writing (*Al-Baqarah* (2) verse 282), yet it is surprising that many Muslims even after fourteen centuries do not abide by this important instruction of their religion. An oral contract, by its very nature, is difficult to

establish. Since the terms of an oral contract are not self-evident, the plaint seeking the enforcement of an oral contract must set forth the contract's requisite ingredients, including when the sale consideration and/or its balance is to be paid, which the plaint did not disclose. Therefore, the suit could have been dismissed on this ground alone.

6. Admittedly, neither Matiullah nor his legal heirs (the petitioners herein) tendered the balance sale consideration to the sellers (respondent Nos. 4 to 10) nor deposited the same in court, if they had refused to receive it. Not paying the balance of the sale consideration constituted violation of an '*essential term of the contract that on his (buyer's) part remains to be performed*' (clause (b) of section 24 of the Specific Relief Act). Therefore, for this reason too the specific performance of the purported contract could not be enforced. Matiullah and the petitioners also did not demonstrate that they were ready, able and willing to perform their obligation to make payment of the balance sale consideration. We also want to disabuse the oft repeated contention that a buyer is only required to tender sale consideration, or the balance thereof, if so ordered by the court. A buyer who seeks the specific performance of a contract must perform or demonstrate that he is ready to perform the essential terms thereof, which would include the payment of sale consideration.

7. The suit was also filed after the said land had already been sold to a third party, that is, to the purchasers. Therefore, the petitioners could not seek the protection provided by section 52 of the Transfer of Property Act.

8. On our query, we were informed that the purchasers were not related to respondent Nos. 4 to 10. The purchasers had bought the said land from its ostensible owners. It was not suggested that the purchasers had not paid the market price for the said land. Therefore, the purchasers had bought the said land for consideration and '*in good faith*' in terms of section 41 of the

Contract Act and were protected by clause (b) of section 27 of the Specific Relief Act.

9. In view of the aforesaid, we need not concern ourselves with the divergent contentions of the parties with regard to the payment of one hundred and seventy thousand rupees. Moreover, there are three concurrent findings of fact against the petitioners. Therefore, we are not inclined to grant leave which is accordingly declined and, consequently, this petition is dismissed.

Judge

Judge

Bench-IV
ISLAMABAD
25.03.2021
(Atif)

Approved for reporting.