

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

**PRESENT:**

Mr. Justice Umar Ata Bandial, CJ  
Mrs. Justice Ayesha A. Malik  
Mr. Justice Syed Hasan Azhar Rizvi

(AFR)

**Civil Petition No.1751-L of 2021**

[Against the order dated 22.09.2021, passed by the Lahore High Court, Lahore  
in Civil Revision No.4220 of 2020]

***Jamshed Ali Shah.***

...Petitioner(s)

**Versus**

***Irshad Hussain Shah and others.***

...Respondent(s)

For the Petitioner(s) : Mr. Shahid Qayyum, ASC

For Respondent No.1 : Mr. Liaqat Ali Malik, ASC

Date of Hearing : 19.07.2023

**ORDER**

**Syed Hasan Azhar Rizvi, J:-** Through this petition for leave to appeal, the petitioner has assailed the order dated 22.09.2021 passed by a learned single Judge of the Lahore High Court, Lahore (*High Court*) by which Civil Revision No.4220 of 2020 filed by him was dismissed.

2. The facts, in brief, necessary for disposal of instant *lis* are that Respondent No.1/Plaintiff (*Irshad Hussain Shah*) filed a suit for specific performance of an agreement and injunction against the petitioner as well as Respondents No.2 to 6 in the Court of Civil Judge, Depalpur (*trial Court*) on the ground that the predecessor-in-interest (*Akbar Ali Shah*) of the petitioner as well as Respondents No.2 to 6, who was the owner of the land,

measuring 56 Kanals and 12 Marlas, sold the subject land to Respondent No.1 *vide* agreement to sell dated 14.11.2006 (*Ex-Pl*) for a consideration of Rs.15,00,000/-. It was agreed between the parties that the suit property would be registered in favour of Respondent No.1, however, Akbar Ali Shah, the predecessor-in-interest of the petitioner and Respondents No.2 to 6, passed away on 23.01.2007. After his death, Respondent No.1 approached to the petitioner and Respondents No.2 to 6 for execution of the agreement to sell, but they declined to do so. Consequently, Respondent No.1 filed a suit for specific performance and injunction. The summons were issued and the defendants were duly served. The petitioner and Respondent No.6, who were minors at the time of filing of the suit, were impleaded through their mother and maternal uncle. Written statements were filed on their behalf and Respondent No.2 to 5 recorded their statements in favour of Respondent No.1 on 08.03.2010 and 05.07.2014, respectively, whereas Respondent No.6 (*Mst. Shaista Batool*) got recorded her statement in favour of Respondent No.1 whereby she waived her right in his favour. Out of divergent pleadings of the parties, issues were framed by the trial Court; evidence of the parties, either oral or documentary, was recorded. *Vide* judgment and decree dated 31.10.2017, trial Court partially decreed the suit and dismissed the same to the extent of Respondent No.6.



3. Being aggrieved, the petitioner assailed the judgment and decree of the trial Court by filing an appeal before the Additional District Judge, Depalpur (*Appellate Court*), which was dismissed with costs *vide* judgment and decree dated 05.11.2019.

4. The petitioner for redressal of his grievance approached the High Court by filing a civil revision which too met the fate of dismissal *vide* impugned order dated 22.09.2021, hence this petition.

5. Learned counsel for the petitioner has argued that Respondent No.1 has failed to prove alleged sale transaction; agreement to sell; payment of sale consideration and transfer of possession thereof; that the impugned order of the High Court is against law and facts as necessary requirements were not proved by Respondent No.1 during the course of the trial; that the evidence adduced by the parties has not been appreciated in its true perspective and that the judgments and decrees of the courts below are the outcome of gross misreading and non-reading of the evidence on the record.

6. Conversely, learned counsel for Respondent No.1 has faithfully defended the decisions rendered by the *fora* below being based on proper appreciation of evidence and as per spirit of law.

7. Heard the learned counsel for the parties at length and scanned the material available on the record with their able assistance. It transpired from the record that Respondent

No.1 claimed to have purchased the land in question from Akbar Ali Shah through agreement to sell dated 14.11.2006 and took possession of land after payment of sale consideration. Akbar Ali Shah has promised to get transfer the subject land in his favour after his return from hajj. Predecessor in interest of the petitioner and Respondents No.2 to 6 came back from hajj on 17.01.2007 and promised Respondent No.1 to get sale mutation attested in his favour on 24.1.2007 however, he passed away on 23.01.2007.

8. Respondent No.1 appeared as PW-1, Muhammad Bota as PW-2 and Syed Mehboob Ijaz Shah as PW-3 (*attesting witnesses of agreement to sell*) and Farooq Ahmed as PW-4, who was son of Ch. Muhammad Ashraf (*stamp vendor and scribe of agreement to sell*). Attesting witnesses of the agreement to sell and stamp vendor proved the sale transaction, execution of sale agreement, payment of sale consideration and delivery of possession. During cross-examination of said prosecution witnesses, no material could be extracted to shatter the veracity of their evidence. All other legal heirs of the deceased Akbar Ali Shah admitted the sale transaction in favour of Respondent No.1. Neither the petitioner nor any other legal heir of Akbar Ali Shah has ever challenged the agreement to sell before any forum. The *onus* to prove that no agreement was executed by Akbar Ali Shah and he had not received any amount of consideration from Respondent No.1 with regard to the suit property was upon the petitioner which he has failed



to discharge. Respondent No.1 has proved the agreement to sell by plausible and cogent evidence before the trial Court.

9. The findings of the trial Court, appellate Court as well as High Court being based on sound and convincing reasoning, found to be in accordance with law and we are in complete agreement with them. All aspects of the matter, either legal or factual, were duly considered and appreciated. Neither any irregularity or infirmity nor any misreading and non-reading has been found by us which could persuade us to interfere in the concurrent findings. Learned counsel for the petitioner has failed to make out a case for grant of leave.

10. For what has been discussed above, this petition being devoid of merit is dismissed. Leave is declined.

**CHIEF JUSTICE**

**JUDGE**

**JUDGE**

Bench-I  
Islamabad, the  
14<sup>th</sup> July, 2023  
APPROVED FOR REPORTING  
Rabbani \*/