

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Qazi Faez Isa
Mr. Justice Amin-ud-Din Khan

Civil Petition No. 2832/2018

(On appeal against the judgment dated 09.02.2018
passed by the Islamabad High Court, Islamabad,
in C. R. No. 212/2015)

<i>Nazar Hussain and another</i>	...	<i>Petitioners</i>
<u>Versus</u>		
<i>Syed Iqbal Ahmad Qadri (deceased)</i>		
<i>through his L.Rs and another</i>	...	<i>Respondents</i>

For the Petitioners:	Mr. Zulfiqar Ali Abbasi, ASC Syed Rifaqat Hussain Shah, AOR
For Respondent No. 1:	N.R.
For Respondent No. 2:	Mr. M. Nazir Jawwad, ASC Mr. Ahmed Nawaz Chaudhry, AOR (absent)
Date of Hearing:	18.02.2022

ORDER

Qazi Faez Isa, J. The learned counsel submits that the petitioners and Syed Iqbal Ahmad Qadri (**'Mr. Qadri'**), who after his death is now represented by his legal heirs, had entered into an agreement on 14 February 2004 (**'the agreement'**) whereby the petitioners had agreed to buy a two hundred square yards plot (**'the plot'**) after it was allotted to Mr. Qadri in the Federal Government Employees Housing Foundation Housing Scheme (**'the Housing Scheme'**). The agreement stated that ten thousand rupees was paid as *earnest money* out of the total sale consideration of one hundred and seventy thousand rupees. We enquired from the learned counsel as to when the balance sale consideration was paid to Mr. Qadri, and he states that it was not, and instead a suit seeking specific performance of the agreement was filed on 17 March 2007.

2. The learned counsel states that three courts had dismissed the suit of the plaintiff without appreciating the fact that the petitioners were ready, able and willing to pay the balance sale consideration. He further says that Mr. Qadri's denial, that he did not sign the agreement, could not

be accepted since his signature on the agreement was the same as on other admitted documents, which attracted the presumption in Article 84 of the Qanun-e-Shahadat, 1984 (**Qanun-e-Shahadat**).

3. The learned counsel for the respondent No. 2 has filed caveat and supports the impugned judgments. He states that even if, for the sake of argument, it be accepted that the agreement was executed by Mr. Qadri the agreement was in contravention of the applicable terms and conditions of the Housing Scheme launched by the Federal Government Employees Housing Foundation (respondent No. 2) which was exclusively for the benefit of Federal Government employees, and since the petitioners were not government employees they could not get the plot. The agreement, learned counsel submits, was contrary to section 23 of the Contract Act, 1872 (**the Act**) being *opposed to public policy* since the objective of the Housing Scheme was to provide government employees plots at below market rates to enable them to build a house thereon. He further says that a government employee having acquired a plot could only sell it after he had constructed a house on it. However, the agreement negates the very purpose for which the respondent No. 2 was established and defeats the objective of providing government employees the opportunity to get a plot on which they can build a house of their own.

4. We have heard the learned counsel and with their assistance examined the documents on record. There are three concurrent findings dismissing the suit of the plaintiffs-petitioners. The suit was dismissed because the execution of the agreement was not established. We find nothing wrong with this finding. We are also not impressed with the argument that a purported presumption arises under Article 84 of the Qanun-e-Shahadat. Article 84 enables the Court to compare signatures on documents. However, if the Court did not do this it cannot be contended that the Court should have done this or that in not doing so the stated presumption arises. We enquired from the learned counsel whether the purported signature of Mr. Qadri on the agreement was sent with his admitted signatures for forensic examination and it was determined that the signature on the agreement was Mr. Qadri's, but this was not done.

5. A buyer's primary obligation in a contract of sale is to make payment of the balance sale consideration as stipulated in the contract. If the seller refuses to receive payment the buyer must establish that he had the required money which was kept aside for the seller, for instance, by making a pay order or cashier cheque in his name. This would show that the buyer no longer had access to the sale consideration. Alternatively, the buyer could have deposited it in court. The petitioners did neither. If a buyer does not fulfill his primary obligation to secure/tender the sale consideration and files suit, and does so without depositing the sale consideration in court, the buyer is placed in an advantageous position. In this case the agreement is dated 17 March 2004 and the suit was filed on 17 March 2007. And now in 2022, after eighteen years, it would be eminently unfair if the petitioners, the purported buyers, are permitted to pay the same amount to the seller. We can take judicial notice of the fact that over time the price of land in Pakistan has increased and the value of the rupee has continuously depreciated. Therefore, if the suit was to be decreed now it would give an unfair advantage to the petitioners, who would have got the plot for what effectively would have been a lesser price (in real terms) than what the parties had agreed to in the agreement. The respondent No. 1 would have also retained and utilized one hundred and sixty thousand rupees (the balance sale consideration). What the petitioners stated they had paid to Mr. Qadri (the seller) was an abysmal 5.8 percent of the total sale consideration.

6. In our opinion the agreement was also *opposed to public policy* as the respondent No. 2's Housing Scheme was meant to provide land to eligible Federal Government employees. The very purpose of the Housing Scheme is negated if the petitioners, who were not Federal Government employees, can benefit therefrom. And, to do so by putting forward an eligible Federal Government employee to obtain a plot which they are not otherwise entitled to. Those not eligible and entitled to get such plots could also not do indirectly what they could not do directly, by for instance finance the purchase of a plot which would not go to the Federal Government employee. If finance is provided it would constitute a loan agreement, and not a contract for the sale of a plot.

7. Therefore, for the reasons mentioned above leave to appeal is declined and, consequently, this petition is dismissed.

Judge

Judge

Islamabad
18.02.2022
(Farrukh)

Approved for Reporting