

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

**PRESENT:**

MR. JUSTICE SARDAR TARIQ MASOOD  
MR. JUSTICE MAZHAR ALAM KHAN MIANKHEL  
MR. JUSTICE QAZI MUHAMMAD AMIN AHMED

(AFR)

**Civil Petition No.3367/2018**

(Against the order dated  
23.05.2018 passed by the  
Islamabad High Court, Islamabad  
in C.R. No.401/16)

***Mah Jabeen Ashfaq***

...Petitioner

**VERSUS**

***Noor Mahi and others***

...Respondents

For the petitioner: Mr. Zaheer Bashir Ansari, ASC

For the respondents: N.R.

Date of hearing: 21.02.2022

**JUDGMENT**

**MAZHAR ALAM KHAN MIANKHEL, J.-** The petitioner, being plaintiff No.1A in the main suit, through instant petition under article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973 has questioned the impugned order dated 23<sup>rd</sup> April, 2018 of the learned *Judge-in-Chambers* of the Islamabad High Court, Islamabad whereby the civil revision, filed by the petitioner and respondent No.4 (***Proforma Respondent***), was dismissed by upholding the concurrent findings of dismissal of their suit for specific performance.

2. We have heard the learned counsel for the petitioner and have gone through the available record.

The record of the case would reveal that initially the proforma respondent filed a suit for specific performance of an agreement to sell dated 19<sup>th</sup> June, 1997 and subsequently, the present petitioner was also impleaded as plaintiff No.1A being an alleged purchaser of the suit plot from proforma respondent. The claim of the proforma respondent was categorically denied by respondent No.1 being the allottee of the suit plot by respondent No.3. The respondent No.1 further alleged that he had sold away the plot in favour of respondent No.2 (Abdul Ghaffar Khan). The said transfer was accordingly incorporated in the name of Respondent No. 2 in the record of respondent No.3. It is not out of place to mention here that the suit of the proforma respondent was filed after the transfer of the suit plot in the name of respondent No.2. After recording pro and contra evidence, the suit of the plaintiff was dismissed by the trial Court vide judgment and decree dated 24.11.2010 by holding that the agreement of sale by Respondent No. 1 with the plaintiff/proforma respondent was proved and established on the record and the payment of sale consideration by proforma respondent to respondent No. 1 was also proved, so, burdened the respondent No.1 to pay the double amount of sale consideration to proforma respondent for the reason that the suit plot was sold to respondent No.2, prior to the institution of suit. Both the plaintiffs (petitioner and the proforma respondent) and respondent No.1 filed two separate appeals. The plaintiffs were aggrieved from dismissal of their suit despite the fact that agreement of sale and payment of sale consideration was held to be proved whereas the

respondent No.1 was aggrieved of fixation of amount of Rs.1,000,000/- (the double amount of actual sale consideration allegedly received by respondent No.1).

3. The perusal of the judgment and decree dated 11.6.2016 of the Appellate Court would reflect that the learned Judge without application of his judicial and independent mind dismissed both the appeals in a cursory manner, specially the appeal of respondent No.1 as the payment of sale consideration was not proved by proforma respondent in accordance with the law and despite this important fact burdened the respondent No.1 to pay back the double amount of the sale consideration to proforma respondent.

4. Both the plaintiffs filed civil revision before the Islamabad High Court by questioning the dismissal of their suit for specific performance whereas the respondent No.1 did not question the findings of the Appellate Court though the same were against the facts and the record of the case. Perusal of the impugned judgment would reflect that the learned *Judge-in-Chambers* of the High Court has fully scanned the entire material and the evidence on the record in presence of both the plaintiffs (plaintiff 1A and proforma respondent) and has very rightly observed and held that the proforma respondent has failed to prove the execution of sale agreement with respondent No.1 and has also failed to prove the payment of sale consideration to respondent No.1 and the suit of proforma respondent was also held to be hopelessly time barred. The learned Judge has dismissed the suit for specific performance in toto. When the suit is held to fail for

want of proof and also being barred by time then burdening the respondent No.1 with payment, double the sale consideration actually paid, stands automatically set aside. Though such observations and findings are missing specifically in the judgment impugned herein but it is manifest that when the suit is dismissed in toto, the penalty of double payment also get buried with the suit. Such findings of the High Court, visibly against the proforma respondent, have not been challenged by him which means that the same have attained finality between the parties. So, the proforma respondent, after the findings of the High Court, cannot claim the payment of double sale consideration from respondent No.1. If already received, he is bound to repay the same to respondent No.1. We, in the peculiar circumstances of the case can clarify the judgment impugned before us just to do complete justice between the parties within the contemplation of Article 187 of the Constitution.

5. The status, as apparent from the record, of the present petitioner is the subsequent purchaser of the suit plot from proforma respondent and the success of the petitioner is dependent on the success of proforma respondent. Evidence on the record, led by the proforma respondent, reflects that he bitterly failed to prove the proper execution of the agreement and payment of sale consideration and this very fact has also been admitted by him in his cross-examination. The trial Court and the Appellate was absolutely wrong in their perception by holding that the agreement of sale and payment of sale consideration has been proved by the proforma respondent. Besides the above, the proforma

respondent filed his suit on 1<sup>st</sup> September, 2006 against an alleged sale agreement dated 19.6.1997, after more than nine years which was hopelessly barred by time and he failed to give any plausible reason for this delay in filing his suit. The Courts below, the trial Court and the Appellate Court failed to give any finding on issue No.5 regarding limitation and dealt with this issue in a cursory manner. The record further reflects that the suit plot was lawfully transferred in the name of respondent No.2 and the same was accordingly incorporated in his name in the record of respondent No.3. The present petitioner, falling in the steps of proforma respondent, cannot question the allotment or its sale to respondent No.2 and she, as such, has no cause of action and *locus standi* in this regard. Hence, this petition being meritless is dismissed as such and leave refused.

Islamabad,

21<sup>st</sup> February, 2022

Nasir Khan /-

~~Not~~ approved for reporting'