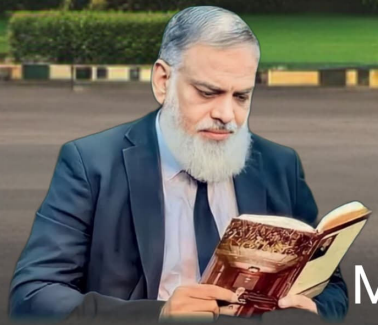
CONTOURS of JUSTICE

Composition, Interpretation & Explanation of
Landmark Judgments of Civil Cases
By Honourable Mr. Justice Shahid Bilal Hassan



Sahibzada
Mian Ashraf Asmi Advocate

ASMI
PUBLICATIONS

The Hon'ble Mr. Justice Shahid Bilal Hassan

Born to a noble family in 1965 at Lahore. Hon'ble Mr. Justice Shahid Bilal Hassan received his early education in Chiniot, District Chiniot, Punjab, Pakistan and thereafter migrated to Uganda, East Africa with his family and completed his secondary education there. During his subsequent sojourn in the heart of Africa, he frequented his visits to Kenya, Tanzania, Egypt and Saudi Arabia abroad and to Lahore in Pakistan till 1982, continuing his

studies and accomplishing his academic benchmarks by completing his degrees in graduation from University of the Punjab in 1985, post graduation in English as his major subject from Government College University in 1988, and LLB from Punjab law College, Lahore affiliated with University of the Punjab in 1993. His lordship had been endowed with versatile potentials that led him to the sports arena as well, excelling in the game of rowing by being in the Lahore Champions' team during his under-graduation tenure.

Prior to his lordship's elevation to the bench as an additional judge of the Lahore High Court on 12.04.2013, His lordship had procured his licenses to practice law and had started as a practicing advocate in the Lower Courts in 1994, in the High Courts of Pakistan in 1996 and subsequently his ascendancy to be an advocate in the Supreme Court of Pakistan in 2009 respectively. During his Practicing span, his lordship established a law firm entitled Bilal and Buqsh, Advocates and Solicitors in Lahore and focused on his areas of expertise as a practicing advocate specifically specializing in civil, criminal and constitutional matters ranging in multidimensional perspective for nearly two decades. His legal profession also encompassed legal advisory as well as teaching, the noblest of any undertakings. The former was extended to many an institution like University of Education and the latter was executed as the visiting faculty of Punjab Law College.

His lordship has actively upheld the sovereignty and autonomous prevalence of rule of law in its entirety throughout his professional carrier, which is well exhibited in his professional achievements and associations. His lordship has been the Secretary Lahore Bar Association (2000-01); Executive Member, Lahore High Court Bar Association (1997-2003); Member, Punjab Bar Council (2005-10); Member Executive, Punjab Bar Council (2005-06, 2009-10); Life Member, Lahore Bar Association, Lahore; Life Member Lahore High Court Bar Association, Lahore; Life Member, Supreme Court Bar Association of Pakistan. Hon'ble Mr. Justice Shahid Bilal Hassan has also authored two books namely; ***Suits and Defenses*** published in 2008, and ***Appeal, Revision and Review of the Judgment*** published in 2010 respectively.

His lordship is happily married and bestowed with three offspring.

Preface.

It is with great pleasure and honor that I present this remarkable compilation of landmark judgments in civil cases authored by the distinguished jurist, Mr. Justice Shahid Bilal Hassan, of the Lahore High Court, Lahore. This comprehensive anthology, meticulously compiled by the esteemed Ashraf Asmi, Advocate, provides a valuable repository of legal wisdom and insight derived from the judicious pronouncements of one of the leading jurists of our time.

The realm of civil law is dynamic and ever-evolving, requiring legal practitioners to stay abreast of the latest jurisprudential developments. In this context, the present compilation serves as an invaluable resource for lawyers, judges, academicians, and all those keen on understanding the intricacies of civil law. Mr. Justice Shahid Bilal Hassan's judgments, marked by erudition and analytical precision, encapsulate the essence of legal reasoning, thereby providing a beacon for those navigating the complex terrain of civil litigation.

Ashraf Asmi, Advocate, has undertaken the commendable task of distilling the crux of each judgment, presenting readers with a succinct yet comprehensive analysis of the legal principles and issues discussed therein. This book not only serves as a tribute to the juristic acumen of Mr. Justice Shahid Bilal Hassan but also as an indispensable guide for legal professionals seeking a deeper understanding of the nuances of civil law.

The compilation is structured systematically, with each chapter dedicated to a specific judgment, allowing readers to delve into the intricacies of individual cases. The inclusion of the key issues addressed in each judgment enhances the practical utility of this compilation, transforming it into a ready reference for legal research and practice. Furthermore, the meticulous organization of the content facilitates a nuanced exploration of the evolving legal landscape as shaped by Mr. Justice Shahid Bilal Hassan's pronouncements.

The book not only captures the legal brilliance of Mr. Justice Shahid Bilal Hassan but also provides readers with a panoramic view of the jurisprudential trends that have shaped civil law in our jurisdiction. As we navigate an era marked by legal complexities and evolving societal dynamics, the insights offered by this compilation are indispensable for anyone seeking to comprehend the judicial thought process underpinning civil jurisprudence.

In conclusion, I extend my heartfelt appreciation to Ashraf Asmi, Advocate, for his dedication and diligence in bringing forth this invaluable compilation. This book stands as a testament to the enduring impact of Mr. Justice Shahid Bilal Hassan's contributions to the field of civil law, and it is my sincere hope that it will serve as

a source of inspiration and knowledge for generations of legal practitioners to come.

In the realm of legal scholarship, the significance of precedent-setting decisions cannot be overstated. These decisions, often encapsulating the crux of complex legal issues, serve as pillars upon which the edifice of jurisprudence stands. Ashraf Asmi Advocate, a seasoned legal professional, has meticulously compiled a comprehensive book titled "Landmark Judgements in Civil Cases," showcasing the profound contributions of MR. Justice Shahid Bilal Hassan from the Lahore High Court Lahore.

Overview of the Book:

Ashraf Asmi Advocate's book is a seminal work that delves into the jurisprudential landscape shaped by the erudite judgments of MR. Justice Shahid Bilal Hassan. The compilation focuses exclusively on civil cases, providing readers with an in-depth exploration of the legal intricacies involved in each decision. Through a meticulous selection process, Ashraf Asmi has curated a collection that not only highlights the prowess of the esteemed justice but also serves as an invaluable resource for legal practitioners, scholars, and enthusiasts seeking profound insights into civil law.

Structured Analysis:

The book adopts a structured approach, with each chapter dedicated to a specific judgment authored by MR. Justice Shahid Bilal Hassan. Ashraf Asmi takes readers on a journey through these landmark decisions, unraveling the crux of each case and shedding light on the pivotal legal issues addressed. The narrative is not only accessible to legal professionals but also to those with a keen interest in understanding the evolution of civil law jurisprudence in the Lahore High Court.

In-depth Examination of Judgments:

Ashraf Asmi's compilation goes beyond a mere recitation of judgments; it provides an in-depth examination of the legal reasoning, principles, and precedents cited by MR. Justice Shahid Bilal Hassan in each case. This approach allows readers to grasp the nuances of the decisions, fostering a profound understanding of the legal doctrines that underpin them. The author's insightful commentary adds an extra layer of comprehension, making the book an indispensable guide for both practitioners and academics.

Practical Utility:

The practical utility of the book extends to legal professionals engaged in civil practice, providing them with a valuable reference tool to navigate and argue

cases effectively. Moreover, law students and researchers will find the compilation to be a treasure trove of knowledge, offering a unique perspective on the evolution of civil law in Pakistan.

Conclusion:

"Landmark Judgements in Civil Cases" by Ashraf Asmi Advocate stands as a testament to the rich tapestry of legal wisdom woven by MR. Justice Shahid Bilal Hassan. The book not only pays homage to the jurist's intellectual contributions but also serves as a beacon for those navigating the intricate terrain of civil law. Ashraf Asmi's compilation is poised to become an authoritative resource, contributing significantly to the legal scholarship landscape in Pakistan.

Volume No: 2

INDEX - 2023

Sr No:	Case No:	Description:	References:	LHC Citation	Book Page No:
1	Civil Revision 2413686.2701-16	Jurisdiction of executing court to cancel the mutation sanctioned by judgment debtor after passing decree against him	2015 SCMR 128	2023 LHC 168	1
2	Regular Second Appeal 1015873.46-09	Reasons for decision on each separate issue by trial court	Rule 5 of Order XX, Code of Civil Procedure, 1908 (1982 SCMR 816)	2023 LHC 171	5
3	Regular Second Appeal 1125996.129-10	Obligation of court to amend or frame additional issues after the submission of amended pleading	Order XIV, Rule 1 of the Code of Civil Procedure, 1908. Order XVIII, Rule 2, C.P.C. Order XX, Rule 5, C.P.C. XIV of C.P.C Rule 9, Order VIII, Code of Civil Procedure, 1908 (1987 SCMR 1365) (2003 CLC 1139) (2002 CLC 1085-Lahore)	2023 LHC 295	10
4	Civil Revision 25850/22	Accumulative claim in money suit; Reliance on documents submitted through counsel; Reliance on documents submitted beyond the mandate of Order VII, Rule 14 and Order XIII, Rule 1, CPC	Order VII, Rule 14 and Order XIII, Rule 1 & 2, Code of Civil Procedure, 1908 C.R.No.13114 of 2022 (PLD 2021 Supreme Court 715) (PLD 2020 SC 749) (2007 SCMR 996) (2021 YLR 2310-Lahore). C.R.No.13114 of 2022	2023 LHC 940	16

Sr No:	Case No:	Description:	References:	LHC Citation	Book Page No:
5	Regular Second Appeal 1250070.101-11	Second appeal and its scope; denial of discretionary decree in a suit for specific performance	Section 100 of the Code of Civil Procedure 1908 (1996 SCMR 1729) (PLD 2006 Supreme Court 777) (2008 SCMR 190)	2023 LHC 947	24
6	Regular First Appeal (R.F.A) (Final Decree) 23090/17	Production of attesting witnesses when execution of document admitted; Mandate of Rule 6 of the Order XII, CPC; Comparison of signature by the court with admitted one	Rule 6 of the Order XII, Code of Civil Procedure, 1908. Article 81 & 84 of the Qanun-e-Shahadat Order, 1984. R.F.A.No.78460 of 2017. R.F.A.No.23090 of 2017. (2020 SCMR 197). (2020 SCMR 496) *2015 SCMR 21 (at pg.25)* Article 129(g) of the Qanun-e-Shahadat Order, 1984. (1999 SCMR 85) (1997 SCMR 976).	2023 LHC 1419	30
7	Regular Second Appeal 1626774.65-14	**E**ntitlement of protection to illiterate, rustic and village household lady as available to the Parda observing lady; Scope of appeal u/s 100 of the CPC;	Section 100 & 101 of the Code of Civil Procedure 1908. (2016 SCMR 1225) (PLD 2012 LHR 125). (2021 SCMR 19). (PLD 2022 SC 99). (2015 SCMR 1), (PLD 1969 SC 617) (2013 SCMR 1300).	2023 LHC 1428	40

Sr No:	Case No:	Description:	References:	LHC Citation	Book Page No:
8	Civil Revision 1088324.77-10	Importance of Special clause in general power of attorney for achieving certain object; Equation of statement of scribe and marginal witness; Burden of proof of mutation; Preference in case of inconsistence in findings of courts below	(PLD 1985 Supreme Court 341). (2016 SCMR 1781). (PLD 2011 Supreme Court 241) (2021 SCMR 415) (PLD 2021 Supreme Court 538) (2015 SCMR 1) (PLD 1969 SC 617) (2013 SCMR 1300). (PLD 1985 Supreme Court 341). (2016 SCMR 1781). (PLD 2011 Supreme Court 241) (2021 SCMR 415) PLD 2021 Supreme Court 538) (PLD 2022 Supreme Court 85) (2018 SCMR 139) (2015 SCMR 1) (PLD 1969 SC 617) (2013 SCMR 1300)	2023 LHC 2050	48
9	Regular First Appeal (R.F.A) (Final Decree) 1827108.1228-15	Liability to pay amount of disputed negotiable instrument; Evidence beyond pleadings; Effect of non-production of best witness	Article 129(g), Qanun-e-Shahadat Order, 1984. Order XXXVII, Rules 1 & 2 of CPC sections 29 and 29-A of the Negotiable Instruments Act, 1881. (PLD 2008 SC 82). (PLD 2012 SC 279).	2023 LHC 2059	59

Sr No:	Case No:	Description:	References:	LHC Citation	Book Page No:
10	Civil Revision 22422/23	Criteria for determination of Benami transaction; Initial burden of allegation of Benamidar; Interference into concurrent findings through revision	Section 115 of Code of Civil Procedure, 1908. (1991 SCMR 703) (2023 SCMR 572) (2014 SCMR 1469). (2014 SCMR 161). (2017 SCMR 679). (PLD 2022 Supreme Court 13). (PLD 2022 Supreme Court 21). (PLJ 2023 SC 8).	2023 LHC 2065	66
11	Civil Revision 1332362.265-12	Significance of pleading time, place and names of witnesses to an oral agreement to sell; Right of production of witness of an oral agreement to sell not mentioned in pleadings; Effect of introducing improvements in evidence beyond pleadings; Fate of subsequent agreement to sell if basic & initial oral agreement to sell is not proved; Legal status of possession on the basis of an agreement to sell as against a sale mutation acceded by the vendor	(2013 SCMR 1300) (2015 CLC 157-Lahore) (PLD 2008 SC 82) (PLD 2012 SC 279) (PLD 2010 Supreme Court 965) (PLD 2011 Supreme Court 155) (PLD 2016 Supreme Court 730) (2019 SCMR 74) (2019 SCMR 524) (2021 SCMR 605) (2021 SCMR 642). (2010 SCMR 1630). (2011 SCMR 958) (2020 SCMR 682) (2010 SCMR 1630) (2004 SCMR 1001).	2023 LHC 2222	74

Sr No:	Case No:	Description:	References:	LHC Citation	Book Page No:
12	Civil Revision 42701/22	Onus to prove facts leading to a legal right; Duty of the court to decide question of jurisdiction and limitation if not pleaded by rival party	(2021 SCMR 1986) Section 3 of the Limitation Act, 1908. Article 117 of the Qanun-e-Shahadat Order, 1984. (2021 SCMR 1986). (2009 SCMR 70) (2020 SCMR 214). (2009 SCMR 598). (2005 SCMR 911) (2014 SCMR 1469) (2014 SCMR 161) (2017 SCMR 679) (PLD 2022 Supreme Court 13) (PLD 2022 Supreme Court 21) *(2010 SCMR 1630)* (PLJ 2023 SC 8)	2023 LHC 2234	88
13	Civil Revision 11751/23	Protection under law to an illiterate, rustic and village household lady as compared to a Parda observing lady; Adverse presumption on nonproduction of revenue officer; Circumstances for consideration of constructive possession.	Article 129(g) of Qanun-e-Shahadat Order, 1984. (2016 SCMR 1225). (PLD 2012 Lahore 125). (2021 SCMR 19) (PLD 2022 Supreme Court 99) (2003 SCMR 318). (1991 SCMR 2114) (PLD 1984 SC 95 at page 132) PLD 1991 SC 1051). (PLD 1971 SC 762)	2023 LHC 2242	97

Sr No:	Case No:	Description:	References:	LHC Citation	Book Page No:
13	Civil Revision 11751/23	Protection under law to an illiterate, rustic and village household lady as compared to a Parda observing lady; Adverse presumption on nonproduction of revenue officer; Circumstances for consideration of constructive possession.	*(2014* SCMR 1469) (2014 SCMR 161) (2017 SCMR 679) (PLD 2022 Supreme Court 13) PLD 2022 Supreme Court 21) *(2010 SCMR 1630)* (PLJ 2023 SC 8)	2023 LHC 2242	97
14	Family 56215/19	Bounden duty of court to scrutinize the plaint regarding maintainability; Limitation for recovery of Dower; Power of court to dilate merits of suit barred by limitation	Articles 103 & 104 of the Limitation Act, 1908. (PLD 2001 Supreme Court 128). (1985 CLC 415)	2023 LHC 3656	108
15	Civil Revision 42577/23	Execution of agreement to sell by father of minor on behalf of minor without being appointed as guardian	Section 11 of the Contract Act, 1872. (2011 SCMR 837). (2021 SCMR 1401). (PLD 2022 Supreme Court 13). (PLD 2022 Supreme Court 21). (PLJ 2023 SC 8)	2023 LHC 3877	116
16	Civil Revision 1616206.620-14	Binding effect of subsection 7 of section 42 of the Land Revenue Act 1967; Nature of	Subsection (7) of section 42 of the Land Revenue Act, 1967. Article 95 of the Limitation Act, 1908.	2023 LHC 3883	123

Sr No:	Case No:	Description:	References:	LHC Citation	Book Page No:
16	Civil Revision 1616206.620-14	mutation entry; Structure built on illegal and defective foundation; Duty to prove the original transaction resulted in the entry or attestation of mutation in dispute; Computation of limitation where fraud is alleged	(PLD 2003 Supreme Court 688). (2022 CLC 2063). (1993 SCMR 321) (2010 SCMR 1630) (2004 SCMR 1001) (2020 CLC 1039-Lahore) (2019 CLC 626-Lahore)	2023 LHC 3883	123
17	Civil Revision 62703/23	Dismissal of suit straight away on limitation u/o VII rule 11; Barred by any law includes Law of Limitation; Order VII rule 11 as an exhaustive provision	Order VII, Rule 11(d), Code of Civil Procedure, 1908. (2 0 1 6 SCMR 910). (2000 SCMR 305). (2002 SCMR 338). (1994 CLC 1248). (2021 SCMR 1158). PLD 2016 Supreme Court 872, PLD 2015 Supreme Court 212, 2011 SCMR 8, 2022 CLC 178-Lahore, PLD 2019 Lahore 717, 2019 CLC 497 2018 Law Notes 1256	2023 LHC 4763	131

Sr No:	Case No:	Description:	References:	LHC Citation	Book Page No:
18	Regular First Appeal (R.F.A) (Final Decree) 9388/20	Entitlement to file suit for compensation where criminal prosecution/inquiry ends in clearing opponent; Conditions to prove malicious prosecution; Definition of prosecution; Definition of malice	(PLD 1990 Supreme Court 28). (PLD 1970 Karachi 344). (PLD 2016 SC 478). (PLD 1990 Supreme Court 28). (PLD 2006 Supreme Court 432)	2023 LHC 4770	139
19	Regular First Appeal (R.F.A) (Final Decree) 42140/22	Powers of Court under Rule 1(1), 1(2) of Order XVII CPC; Jurisdiction under Order XVII, Rule 3 CPC	Rule 1(1), 1(2) of Order XVII, Code of Civil Procedure, 1908. Order XVII, Rule 3 Code of Civil Procedure, 1908. (2015 SCMR 1401). (2020 SCMR 300). Section 96 of Code of Civil Procedure, 1908.	2023 LHC 4942	150
20	Civil Revision 63332/23	Necessity of dates and items of particulars in pleadings; Description of immovable property is essential; Interruption in concurrent findings	Section 115 of Code of Civil Procedure, 1908. Order VI, Rule 4 of the Code of Civil Procedure, 1908. Order VII, Rule 3, Code of Civil Procedure, 1908. (2014 SCMR 1469). (2014 SCMR 161). (2017 SCMR 679). (PLD 2022 Supreme Court 13) (PLD 2022 Supreme Court 21) *(2010 SCMR 1630)* (PLJ 2023 SC 8)	2023 LHC 4952	160

Sr No:	Case No:	Description:	References:	LHC Citation	Book Page No:
21	Civil Revision 63085/19	Effect of non-appearance of main witness; Effect of failure of appreciation of evidence	Article 129(g) of the Qanun-e-Shahadat Order, 1984. Section 115 of C.P.C. (PLD 2011 Supreme Court 241) (2016 SCMR 24) (2010 SCMR 1630) (2004 SCMR 1001) (2004 SCMR 1668).	2023 LHC 4958	167
22	Regular Second Appeal 2520313.68-17	Burden to prove General Power of Attorney; Necessity of inquiry of title by subsequent vendee; Erroneous exercise of jurisdiction u/s 100 CPC	Section 100 of the Code of Civil Procedure, 1908. Section 27(b) of the Specific Relief Act, 1877. (PLD 2008 Supreme Court 140). (PLD 2011 SC 296) Civil Appeal No.389 of 2015. (1996 SCMR 1729).	2023 LHC 4964	174
23	Civil Revision 44034/19	Admissibility if Nikahnama in evidence; Imposition of condition 'compensation in lieu of divorce' on husband right to divorce	Section 7(1) of the Muslim Family Laws Ordinance, 1961. Section 105 of the Code of Muslim Personal Laws. (2008 SCMR 186) Article 189 of the Constitution of Islamic Republic of Pakistan, 1973. (2012 CLC 837-Lahore). (2018 CLC 1844-Lahore). (PLJ 2021 Lahore 485) (2022 CLC 24-Lahore)	2023 LHC 5517	186

Sr No:	Case No:	Description:	References:	LHC Citation	Book Page No:
23	Civil Revision 44034/19	Admissibility if Nikahnama in evidence; Imposition of condition 'compensation in lieu of divorce' on husband right to divorce	(1993 SCMR 321) (2010 SCMR 1630) (2004 SCMR 1001) (2020 CLC 1039-Lahore).	2023 LHC 5517	186
24	Civil Revision 1671361.2312-14	Presumption as to belonging to Sunni sect; Setting of strict criteria to determine faith of a person; Effect of fraud on limitation period for a matter involving inheritance matter; Effect of fraud on subsequent superstructure built; Disturbing concurrent finding in exercise of revision jurisdiction u/s 115 CPC	Section 115 of Code of Civil Procedure, 1908. C.R.No.1992 of 2014. (2020 SCMR 254) (2022 SCMR 399). (2009 SCMR 644). (PLJ 2019 Lahore 829) (2014 SCMR 1469) (2014 SCMR 161) (2017 SCMR 679) (PLD 2022 Supreme Court 13) (PLD 2022 Supreme Court 21) *(2010 SCMR 1630)* (PLJ 2023 SC 8) C.R.No.1992 of 2014 C.R.No.2312 of 2014	2023 LHC 5523	193
25	Civil Revision 66655/23	Necessary steps to be performed by purchaser after cut-off date to show bona fide and	Civil Appeal No.1121 of 2018. (2017 SCMR 679) (2014 SCMR 1469)	2023 LHC 5624	204

Sr No:	Case No:	Description:	References:	LHC Citation	Book Page No:
25	Civil Revision 66655/23	readiness to perform his part of agreement; Disturbing concurrent findings of fact in revisional jurisdiction	(2014 SCMR 161) (PLD 2022 Supreme Court 13) (PLD 2022 Supreme Court 21) (PLJ 2023 SC 8) Section 115, Code of Civil Procedure, 1908.	2023 LHC 5624	204
26	Civil Revision 49064/22	Decision rendered on the basis of special oath	Section 115 of C.P.C. C.R.No.37749 of 2019. (2010 Y L R 218-Lahore). (2010 YLR 3283-Lahore). (2009 C L C 241-Peshawar. (2010 CLC 596-Lahore)	2023 LHC 5631	212
27	Civil Revision 176407/18	Presentation of fresh plaint after rejection of plaint under Order VII Rule 11 CPC; Prerequisites to allow withdrawal of suit with permission to file fresh suit; Eventualities where withdrawal of the suit can be allowed with permission to file fresh suit; Preconditions for allowing amendments in plaint; Effect of withdrawal of suit with permission to file fresh suit on setting aside the judgment and decree passed; Withdrawal of suit with permission to file fresh suit gives fresh cause of action; Condonation of delay under section 5 of the Limitation Act 1908; Dismissal of suit under section 3 of the Limitation Act even limitation has not been set up as defense; Power of court to condone delay in filing the suit; Law of limitation as merely a technicality	Rule 11 of Order VII clause (a) to (c). Order XXIII, Rule 1 & 2, C.P.C. Order VI, Rule 17, C.P.C. Section 3 to 25 of the Limitation Act, 1908. (2011 SCMR 345). (PLD 2012 SC 247). (PLD 1985 SC 153) (PLD 1969 SC 167). (PLD 2020 SC 736). (PLD 2016 SC 712) (2013 SCMR 911) (2011 SCMR 8) (PLD 2022 SC 716)	2023 LHC 5635	217

Sr No:	Case No:	Description:	References:	LHC Citation	Book Page No:
28	Family 36355/19	Entitlement of father being natural guardian to custody of female minor after death of minor's mother	Article 199 of Constitution of Islamic Republic of Pakistan, 1973. section 25 of the Guardian & Wards Act, 1890. Para 355 of the Muhammadan Law.	2023 LHC 5642	228
29	Civil Revision 69554/23	Requirement of mandatory application of law of limitation; Consideration of question of limitation by courts at appellate or revisional stage	Section 3 of the Limitation Act. (PLD 2020 Supreme Court 736). (PLD 2015 Supreme Court 212). (2015 SCMR 380). (2006 SCMR 783). (PLD 2010 Supreme Court 705) (1992 SCMR 2435) (PLD 2012 Supreme Court 247) (2007 SCMR 1446). (PLD 1985 SC 153). (2017 SCMR 679) (2014 SCMR 1469) (2014 SCMR 161) (PLD 2022 Supreme Court 13) (PLD 2022 Supreme Court 21) (PLJ 2023 SC 8)	2023 LHC 5645	232

Sr No:	Case No:	Description:	References:	LHC Citation	Book Page No:
30	Civil Revision 1681476.2584-14	Duty to prove the facts if someone desires any court to give judgment as to any legal right or liability dependent on existence of facts; Stating about the particulars of misrepresentation, fraud, breach of trust, default, or undue influence; Accepting evidence not mentioned in pleading; Benefit of shortcoming or discrepancy in evidence; Authority of High Court to undo findings in revisional jurisdiction	Sections 39 & 42 of the Specific Relief Act, 1877. Article 117 of Qanun-e-Shahadat Order, 1984. Order VI, Rule 4 of the Code of Civil Procedure, 1908. Section 115, Code of Civil Procedure, 1908. (PLD 2008 SC 82). (PLD 2012 SC 279). (2023 SCMR 1371). (2022 CLC 1713) (2016 SCMR 24) (2010 SCMR 1630) (2004 SCMR 1001) (2004 SCMR 1668)	2023 LHC 5855	241
31	Regular Second Appeal 195522/18	Relief of specific performance of an agreement to sell pertaining to an immovable property; Effect of non-sending any written notice showing readiness to pay the remaining amount; Interference in the judgment of appellate court	Section 22 of the Specific Relief Act, 1877. Section 100, Code of Civil Procedure, 1908. (PLD 2010 Supreme Court 906). (2006 SCMR 1304). (2019 SCMR 524). (2017 SCMR 1696). (2021 SCMR 7). (2023 SCMR 815). (2023 SCMR 1371).	2023 LHC 5877	259

Sr No:	Case No:	Description:	References:	LHC Citation	Book Page No:
32	Civil Revision 1746023.247-15	Date, time, place along with the names of witnesses in whose presence the agreement to sell reached upon; Contingent Contract; Enforcement of contingent agreement; Mere exhibition of the document; Reliance upon depositions of witnesses based upon hearsay; High Court to undo concurrent findings	Section 31 of the Contract Act, 1872, A "Contingent contract. Section 115, Code of Civil Procedure, 1908. Order 9 Rule 13 C.P.C. (1989 CLC 398) (2016 SCMR 24) (2010 SCMR 1630) (2004 SCMR 1001) (2004 SCMR 1668).	2023 LHC 6112	270
33	Civil Revision 1674300.2401-14	Power of Chief Minister to appoint administrators without approval of cabinet; Legality of order of Allocation of development grants to MNAs and MPAs	Sections 214 and 215 of the Contract Act, 1872. Section 54 of the Transfer of Property Act, 1882. Section 2(h) of the Contract Act, 1872. (PLD 1985 Supreme Court 341) (1992 SCMR 1488) (2001 MLD 2019) (PLD 1996 Peshawar 86) (2022 SCMR 1068) (PLD 2011 Supreme Court 241) Article 129(g) of Qanun-e-Shahadat Order, 1984. (2016 SCMR 1225) (PLD 2012 Lahore 125) (2021 SCMR 19) (PLD 2022 Supreme Court 99) (2016 SCMR 24) (PLD 2015 Supreme Court 137) (2015 SCMR 799) (2010 SCMR 1630) (2004 SCMR 1001 & 1668)	2023 LHC 6374	282

Lahore High Court
Mst. Robina Shehnaz, etc v. Mukhtar Begum, etc.
Civil Revision No. 2701 of 2016
Mr. Justice Shahid Bilal Hassan

Crux of Judgement:

Executing Court is vested with jurisdiction to cancel the mutation sanctioned by the judgment debtor after passing decree against him.

Facts of Case:

The petitioners moved an application before the learned Executing Court for cancellation of mutations which were sanctioned by the judgment debtor after decree and recovery of decretal amount of maintenance allowance. The application was allowed. The respondents being aggrieved preferred an appeal and the same was accepted and application was dismissed. Hence, the instant revision petition has been filed by the petitioners.

Issues In Case:

Whether Executing Court is vested with jurisdiction to cancel the mutation sanctioned by the judgment debtor after passing decree against him?

Analysis of Issues of Case:

Therefore, the learned Executing Court was vested with jurisdiction to undo the said illegal act committed by the deceased (judgment debtor) and rightly cancelled the said mutations by allowing application, filed by the petitioners in this regard.

Stereo. HCJDA 38

JUDGMENTSHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Civil Revision No.2701 of 2016
Mst. Robina Shehnaz, etc. **Versus** Mukhtar Begum, etc.

J U D G M E N T

Date of hearing: ***24.01.2023***

Petitioner(s) by: Malikzada Hameed Ur Rehman, Advocate

Respondent(s) by: Nemo for respondent No.1

Mr. Muhammad Muzammil Qureshi, Advocate for the respondent No.2

***SHAHID BILAL HASSAN-J*:** Succinctly, a decree for recovery of maintenance allowance was passed against Aulad Hussain, deceased on 06.12.2008, which was upheld upto High Court as writ petition was dismissed on 29.06.2010. After dismissal of the writ petition, the judgment debtor transferred his property through mutations No.1859 dated 27.09.2010 and 1871 dated 09.10.2010 on the basis of alleged gift; therefore, the petitioners moved an application before the learned Executing Court for cancellation of said mutations and recovery of decretal amount of maintenance allowance. The said application was resisted by the rival party; however, the learned Executing Court allowed the said application on 09.02.2016. The respondents being aggrieved preferred an appeal and the same was accepted vide impugned judgment dated 04.05.2016 and application ibid was dismissed; hence, the instant revision petition.

2. Heard.

3. The said question has been answered by the Apex Court of the country in a judgment reported as *Amjad Iqbal v. Mst. Nida Sohail and others* **(2015 SCMR 128)**, by holding that:-

> *'The Executing Court through its order dated 14.05.2011 declared such Hiba to be unlawful and such order of the Executing Court appears to have been maintained by the revisional Court. Once the*

Hiba itself was declared to be unlawful, any further transaction on the basis of the said Hiba could only be a nullity in the eye of law for that the donee of the Hiba did not have legal title to the house to sell the same to the petitioner. Both Hiba as well as the purported sale in favour of the petitioner were nothing but sham transactions and its purpose was to ensure that the decree is not satisfied. The decree was nothing but for the maintenance of Resondent No.2's own minor daughter. Unfortunately, the Respondent No.2 in sheer disregard of his parental obligation has indulged in making all these unlawful transactions. What intent the Respondent No.2 had in his mind but to starve his own minor daughter of her basic needs for survival. The Court while exercising parental jurisdiction cannot just sit and be a spectator in this unholy and unlawful conduct of the Respondent No.2.'

In the present case, the deceased judgment debtor Aulad Hussain transferred the property, owned by him through disputed mutations No. 1859 dated 27.09.2010 and 1871 dated 09.10.2010 on the basis of alleged gift, after dismissal of his writ petition by this Court, which seems to be nothing but an attempt to frustrate the decree passed against him. Therefore, the learned Executing Court was vested with jurisdiction to undo the said illegal act committed by the deceased Aulad Hussain and rightly cancelled the said mutations by allowing application, filed by the petitioners in this regard. As such, the learned appellate Court has failed to exercise its vested

jurisdiction as per mandate of law and has committed illegality while passing the impugned judgment dated 04.05.2016, which cannot be allowed to hold field further. Resultantly, the revision petition in hand is accepted, impugned judgment dated 04.05.2016 passed by the learned appellate Court is set aside and order dated 09.02.2016 passed by the learned Executing Court is restored. No order as to the costs.

(Shahid Bilal Hassan)
Judge

Lahore High Court
Mubashar Ahmad Ayaz v. Late (Moulana) Manzoor Ahmad Chinioti
Thorugh L.Rs. etc. R.S.A.No.46 of 2009
Mr. Justice Shahid Bilal Hassan

Crux of Judgement:
It is mandatory for trial court to give reasons for decision on each separate issue unless the issues are interlinked and interconnected.

Facts of Case:
The respondent No. 1 instituted a suit for recovery of damages against the present appellant and respondent No.2, which was duly contested and on application of appellant, two additional issues were framed. The learned trial court decreed the suit but did not give findings on additional issues. Appeal was preferred but it was dismissed, hence, the instant regular second appeal has been filed.

Issues In Case:
Whether it is mandatory for trial court to give reasons for decision on each separate issue?

Analysis of Issues of Case:
According to Rule 5 of Order XX, Code of Civil Procedure, 1908, "In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefor, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit." In the instant case, the learned trial Court framed additional issues 1-A and 1-B on the application of the appellant but while reducing the judgment into writing the learned trial Court totally ignored the said issues, which otherwise go to the root of the case and without deciding the same, the fate of the case cannot be decided finally, because by using word "Shall" the said provision has been made mandatory unless the issues are interlinked and interconnected.

Stereo. HCJDA 38

JUDGMENT SHEET
IN THE LAHORE HIGH COURT,
LAHORE JUDICIAL DEPARTMENT

R.S.A.No.46 of 2009

Mubashar Ahmad Ayaz
Versus
Late (Moulana) Manzoor Ahmad Chinioti thorugh L.Rs. etc.

J U D G M E N T

Date of hearing: ***24.01.2023***

Appellant(s) by: Sh. Usman Karim Ud Din, Advocate

Respondent(s) by: Mr. Muhammad Javid Ur Rehman Rana & Mr. Naseem Noor, Advocates

Nemo for the respondent No.2

SHAHID BILAL HASSAN-J: Succinctly, Manzoor Ahmad Chinioti, late plaintiff instituted a suit for recovery of Rs.50,000,000/- as damages against the present appellant and respondent No.2, which was duly contested by the present appellant and respondent No.2. Out of the divergent pleadings of the parties the learned trial Court framed following **Issues In Case:** -

a. *Whether the suit is barred by limitation? OPD*
b. *Whether the impugned publication is privileged and was in the public interest welfare? OPD-2*
c. *Whether the defendant No.2 published the impugned article, after its publication by defendant No.1. If so, is he not liable to pay damages? OPD-2*
d. *Whether the impugned publication falls within*

the purview of libel and the plaintiff has been defamed, if so, is the plaintiff entitled to damages as prayed for? OPP

On moving an application by the appellant, the learned trial Court framed two following additional issues on 06.06.1996:-

1-A. Whether the suit is not maintainable in its present form? OPD

1-B. Whether the plaintiff has got no cause of action? OPD

Both the parties adduced their evidence. However, the learned trial Court without giving any findings on issues No.1-A and 1-B passed the impugned judgment and decree dated 08.12.2000 holding the late respondent No.1 entitled to Rs.500,000/-, to be paid by the present appellant and respondent No.2 jointly and severally. The appellant challenged the said judgment and decree; however, the learned appellate Court dismissed the appeal on 04.12.2008; hence, the instant regular second appeal.

2. Heard.

3. Rule 5 of Order XX, Code of Civil Procedure, 1908 reads: -

„In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefor, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit. "

In the instant case, the learned trial Court framed additional issues 1-A and 1-B on the application of the appellant but while reducing the judgment into writing the learned trial Court

totally ignored the said issues, which otherwise go to the root of the case and without deciding the same, the fate of the case cannot be decided finally, because by using word "Shall" the said provision has been made mandatory unless the issues are interlinked and interconnected; however, in the instant case the position is otherwise. In judgment reported as *Ali Muhammad v. Muhammad Hayat and others* **(1982 SCMR 816)**, the Apex Court of the country held: -

> *„--- it was observed that the trial Judge was bound to give reasons for his decision on each separate issue and the disposal of issues Nos.1-5 by simply observing that "all these issues have no substantive force in view of findings given under issues No.6" was not a proper decision in accordance with law."*

It was further observed that: -

> *„3. We do not agree. The learned trial Court had disregarded the mandatory provisions of Order XX, rule 5, C.P.C. and, therefore, had acted in exercise of his jurisdiction with material irregularity. The High Court in exercise of its revisional jurisdiction was competent to make such order in the case as it thought fit."*

4. In this view of the matter, without commenting further on merits of the case, may it prejudice case of either side, the appeal in hand is accepted, impugned judgments and

decrees are set aside and the matter is remanded to the learned trial Court with a direction to decide the same afresh after hearing the learned counsel for the parties. The adversaries are directed to appear before the learned trial Court on 14.02.2023, positively.

(Shahid Bilal Hassan)
Judge

Approved for reporting.

Judge

M A. Hassan

Lahore High Court
Muhammad Yousaf (deceased) through L.Rs. v. Naila Shaheen and others
R.S.A. No.129 of 2010
Mr. Justice Shahid Bilal Hassan

Crux of Judgement:
The court is under obligation to amend or frame additional issues after submission of amended plaint and written statement.

Facts of Case:
The appellants through this regular second appeal have assailed judgment and decree of the appellate court whereby appeal against preliminary decree passed in judgment and decree in suit for partition was dismissed.

Issues In Case:
Whether the court is under obligation to amend or frame additional issues after submission of amended plaint and written statement?

Analysis of Issues of Case:
The Court is under obligation to amend or frame additional issues after submission of amended plaint and written statement. The parties have to lead evidence keeping in mind the burden of proof placed upon their shoulders while formulating issues. If the issues framed by the Court are not proper with regard to rival claims of the parties, then the provisions of Order XIV, Rule 1 of the Code of Civil Procedure, 1908 have been defiled. The stage of framing of issues is very important in trial of civil suit because at this stage the real controversy between the parties is summarized in the shape of issues and narrowing down the area of conflict and determination where the parties differ and then parties are required to lead evidence on the said issues. The importance of framing correct issues can be seen from the fact that parties are required to prove issues and not pleadings as provided by Order XVIII, Rule 2, C.P.C. The Court is bound to give decision on each issue framed as required by Order XX,

Rule 5, C.P.C. Therefore, the Courts while framing issues should pay special attention to Order XIV of CPC and give in deep consideration to the pleadings etc. for the simple reason that if proper issues are not framed, then entire further process will be meaningless, which will be wastage of time and energy and would further delay the final decision of the suit.

Stereo. HCJDA 38

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

R.S.A. No.129 of 2010
Muhammad Yousaf (deceased) through L.Rs.
Versus
Naila Shaheen and others

J U D G M E N T

Date of hearing: ***19.01.2023***

Appellant(s) by: M/s Ch. Abdul Majeed and Ch. Ehsan Ul Haq, Advocates

Respondent(s) by: Mr. Irshad Ullah Rana, Advocate

SHAHID BILAL HASSAN-J**:** Brief facts, giving rise to the instant appeal are as such that respondents No.1 to 5 instituted a suit for partition with respect of the suit property against the present appellant and respondent No.6, which was duly contested by the rival party. Out of the divergent pleadings of the parties, the learned trial Court framed issues and evidence of the parties was recorded. The learned trial Court vide impugned judgment and decree dated 17.09.2007 passed preliminary decree in their favour. The appellant(s) being aggrieved preferred an appeal but it was dismissed vide impugned judgment and decree dated 24.02.2010; hence, the

instant regular second appeal.

2. Heard.

3. Considering the arguments and going through the record, it is observed that after deletion of properties in terms of order dated 05.01.2005 by allowing amendment in the plaint, the present appellant(s) submitted amended written statement and in reply to para No.1 (On Merits) the appellant(s) pleaded as such:-

> *1. Denied. That the plaintiff is requesting the court for partition of properties of his own choice whereas it is a settled principle of law that all the joint properties are required to be partitioned between the joint co-owner in one suit, but the plaintiff has deliberately on the basis of malafide and creating harassment to defendant No.1 has withdrawn from the claim of other joint property i.e. Gulistan Cinema Gojra and agricultural land. Therefore the suit of the plaintiff is no more a suit for partition and it does not fall in the ambit of partition suit, hence merits dismissal. Further area of the properties as given in the paragraph are not admitted to be correct.in Gulistan Cinema Gojra Defendant No.1 has 2/9th share.*
>
> *As regards House No.2148-B Model Town, Plaintiff No.1 received the consideration of Rs.1,15,000/- in lieu of her share in the said house from Defendant No.1 in presence of witnesses, on 3-4-87 and surrendered her share by way of family settlement in favour of Defendant No.1 in*

1987. Therefore, she is estopped to institute the present suit in respect of the aforesaid house.

Further Defendant No.1 constructed a Kitchen, a room and two quarters and laid floors in the courtyard with chips with the huge expenditure of Rs.3,00,000/- in the year 1987-88. No partition of the house can take place without payment of the aforesaid amounts.'

After submission of amended written statement, the learned trial Court, if anything new was introduced by the defendant(s), may require the plaintiff, obviously on an application, to submit replication by adopting procedure provided under Rule 9, Order VIII, Code of Civil Procedure, 1908, which reads:-

*'**Subsequent pleadings**. No pleading subsequent to the written statement of a defendant other than by way of defence to a set-off shall be presented except by the leave of the Court and upon such terms as the Court think fit, but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time for presenting the same.'*

Reliance in this regard is placed on *Sardar Sakhawatuddin and 3 others v. Muhammad Iqbal and 4 others* **(1987 SCMR 1365)**, *NAMA LIKA SILK INDUSTRIES v. Messrs ULTIMATE DRIVING MACHINE and others* **(2003 CLC 1139)** and *Mst. Najma Yasmin and another v. Mst. Firdous Khalid and 2 others*

(2002 CLC 1085-Lahore).

It is a settled principle of law that no evidence beyond pleadings can be produced and considered. However, the learned trial Court neither called upon the plaintiff to file written statement/replication in answer to the defendants allegations nor bothered to frame additional issues after submission of amended plaint and written statement, which otherwise was necessary, because the above said objection/plea raised by the appellant(s) goes to the root of the case that whether suit for partial partition was maintainable or not. It seems that the learned trial Court was not acquainted with the real myth of framing of issues, because the parties have to lead evidence keeping in mind the burden of proof placed upon their shoulders while formulating issues. The issues framed by the learned trial Court make it vivid that proper issues with regards to rival claim of the parties have not been framed, meaning thereby the provisions of Order XIV, Rule 1 of the Code of Civil Procedure, 1908 have been defiled. Evidence is led after framing of issues. The stage of framing of issues is very important in trial of civil suit because at that stage the real controversy between the parties is summarized in the shape of issues and narrowing down the area of conflict and determination where the parties differ and then parties are required to lead evidence on the said issues. The importance of framing correct issues can be seen from the fact that parties are required to prove issues and not pleadings as provided by Order

XVIII, Rule 2, CPC. The Court is bound to give decision on each issue framed as required by Order XX, Rule 5, CPC. Therefore, the Courts while framing issues should pay special attention to Order XIV of CPC and give in deep consideration to the pleadings etc. for the simple reason that if proper issues are not framed, then entire further process will be meaningless, which will be wastage of time and energy and would further delay the final decision of the suit.

4. For the foregoing reasons, the learned Courts below have failed to adjudicate upon the matter in hand as per mandate of law and have committed material illegality. As such, the appeal in hand is accepted, impugned judgments and decrees are set aside and case is remanded to the learned trial Court with a direction to frame proper issues keeping in view above observations as well as amended pleadings of the parties and record evidence, if intends to be produced by the parties, where-after decide the suit afresh in accordance with law. The adversaries are directed to appear before the learned trial Court on 14.02.2023.

(Shahid Bilal Hassan)
Judge

Approved for reporting.

Judge

M A. Hassan

Lahore High Court
M/s Gulistan Group of Companies v. Mr. Waseem Javed Khand
Civil Revision No.25850 of 2022
Mr. Justice Shahid Bilal Hassan

Crux of Judgement:

i) The accumulative claim in money suit cannot be relied and considered while decreeing the suit and the same must be bifurcated and categorized.
ii) Disputed document submitted through counsel cannot be relied and considered and it must be brought on record through their author or in statement of a witness having nexus with such document.
iii) The documents furnished in evidence beyond the mandate of Order VII, Rule 14 and Order XIII, Rule 1, Code of Civil Procedure, 1908 cannot be relied and considered while decreeing the suit.

Facts of Case:

The respondent/plaintiff instituted a suit for recovery along with interest and costs of damages against the petitioner/defendant, which was duly contested by the petitioner. The trial Court partially decreed the suit. The petitioner being aggrieved preferred an appeal, which was partially accepted and some amount was excluded. The petitioner being aggrieved has filed the instant revision petition whereas the respondent feeling dissatisfied filed the connected revision petition.

Issues In Case:

i) Whether accumulative claim in money suit can be relied and considered while decreeing the suit?
ii) Whether disputed documents submitted through counsel can be relied and considered?
iii) Whether the documents furnished in evidence beyond the mandate of Order VII, Rule 14 and Order XIII, Rule 1, Code of Civil Procedure, 1908 can be relied and considered?

Analysis of Issues of Case:

i) The same must have been bifurcated and categorized as to what amount under which head is being claimed by the respondent;

meaning thereby the pleadings of the respondent are ambiguous…Therefore, the same must not have been considered and relied upon by the learned Courts below.
ii) Moreover, the respondent submitted disputed documents through his counsel, which otherwise must have been brought on record through their author or in statements of witnesses having nexus with such documents… Therefore, the same must not have been considered and relied upon by the learned Courts below.
iii) In addition to the above, the documents furnished in evidence through statement of learned counsel for the respondent are also beyond the documents, presented and relied upon while submitting forms as per mandate of Order VII, Rule 14 and Order XIII, Rule 1, Code of Civil Procedure, 1908. Therefore, the same must not have been considered and relied upon by the learned Courts below.

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Civil Revision No.25850 of 2022

M/s Gulistan Group of Companies
…Versus…
Mr. Waseem Javed Khand

JUDGMENT

Date of Hearing: **07.02.2023**

Petitioner(s) for: Syed M. Bin Yamin, Advocate

Respondent(s) for: In person

SHAHID BILAL HASSAN-J: This single judgment will decide the captioned revision petition as well as connected C.R.No.13114 of 2022, as both are interconnected as well as one and the same judgments and decrees have been called into question.

2. Succinctly, the respondent/plaintiff instituted a suit for recovery of Rs.1,076,008/- alongwith interest and costs of damages against the present petitioner, which was duly

contested by the petitioner. Out of the divergent pleadings of the parties, the learned trial Court framed issues and evidence of the parties in pro and contra was recorded. On conclusion of trial, the learned trial Court vide impugned judgment and decree dated 03.09.2021 partially decreed the suit excluding the claim of gratuity amounting to Rs.160,000/- and compensation amount Rs.97,819/-. The petitioner being aggrieved preferred an appeal, which was partially accepted and amount of cheque worth Rs.294,720/- was also excluded. The petitioner being aggrieved has filed the instant revision petition whereas the respondent feeling dissatisfied filed the connected C.R.No.13114 of 2022.

3. Heard.

4. After going through the plaint, presented by the respondent, it seems necessary to refer the relevant provisions of law governing the presentation of plaint and to state that what kind of particulars and details are necessary to be pleaded. In this regard, Order VII, Rules 1 and 2, Code of Civil Procedure, 1908 are relevant, which are reproduced infra:-

> *'1.* ***Particulars to be contained in plaint****. The plaint shall contain the following particulars—*
>
> *(a) the name of the Court in which the suit is brought;*
>
> *(b) the name, description and place of residence of the plaintiff;*
>
> *(c) the name, description and place of residence of the defendant, so far as they*

can be ascertained;

(d) where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect;

(e) the facts constituting the cause of action and when it arose;

(f) the facts showing that the Court has jurisdiction;

(g) the relief which the plaintiff claims;

(h) where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished; and

(i) a statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of Court-fees, so far as the case admits.

2. ***In money suits***. *Where the plaintiff seeks the recovery of money, the plaint shall state the precise amount claimed:*

But where the plaintiff sues for mesne profits, or for a amount which will be found due to him on taking unsettled accounts between him and the defendant, or for movable in the possession of the defendant, or for debts of which the value he cannot, after the exercise of reasonable diligence, estimate, the plaint shall state approximately the amount or value sued for.'

However, the respondent/plaintiff has not given any detail of his claim and only accumulatively claimed Rs.10,76,008/-. The relevant paragraph is 10 of the plaint, which is reproduced as under:-

> *'10. That the amount claimed by the plaintiff regarding outstanding eligible/agreed misc. allowance/expenses, gratuity, amounting to Rs.10,76,008/- including compensation of 10% are correct and genuine.'*

The same must have been bifurcated and categorized as to what amount under which head is being claimed by the respondent; meaning thereby the pleadings of the respondent are ambiguous. Moreover, the respondent submitted disputed documents through his counsel, which otherwise must have been brought on record through their author or in statements of witnesses having nexus with such documents. In judgment reported as *Mst. Akhtar Sultana v. Major Retd. Muzaffar Khan Malik through his legal heirs and others* **(PLD 2021 Supreme Court 715)**, the Apex Court of the country by reiterating and re-affirming its view rendered in judgments reported as *Manzoor Hussain v. Misri Khan* **(PLD 2020 SC 749)** and *Hameeda Begum v. Irshad Begum* **(2007 SCMR 996)**, has invariably held that:-

> *'This Court has time and again emphasized that the disputed documents cannot be tendered in evidence in statement of the counsel for a party, because such procedure deprives the opposing party to test the authenticity of those documents by exercising his right of cross-examination.'*

A learned Division Bench of this Court has also rendered a judgment on this point, reported as *Muhammad Hussain and*

another v. Province of Punjab through District Officer Revenue, Multan and others **(2021 YLR 2310-Lahore)**.

5. In addition to the above, the documents furnished in evidence through statement of learned counsel for the respondent are also beyond the documents, presented and relied upon while submitting forms as per mandate of Order VII, Rule 14 and Order XIII, Rule 1, Code of Civil Procedure, 1908. Therefore, the same must not have been considered and relied upon by the learned Courts below.

6. Besides, the respondent could not plead as to which car number was in his utilization because no registration number, chasis number was pleaded by him; as against this the D.W.1 categorically deposed during cross examination that Car bearing No.LE-4564 Honda City and Mobile SIM Card No.03028407294 was provided to the respondent during his appointment and duty and all the expenses of the car including petrol were borne by the company. In this view of the matter, the findings of the learned appellate Court to exclude Rs.294,720/- (Ex.P31) are based on sound reasoning. However, both the learned courts below have failed to consider the above discussed shortcomings and lacking of details with respect to claim of the respondent while passing the impugned judgments and decrees, because after excluding the documents rendered in the statement of the learned counsel for the respondent, nothing except oral deposition remain in field, which is not sufficient to

prove the case of the respondent.

7. In view of the above, this Court observes that the learned Courts below have failed to exercise vested jurisdiction as per mandate of law and have failed to construe law on the subject in a judicious manner, which has resulted in commission of material illegality and irregularity. As such, the impugned judgments and decrees cannot be allowed to hold field further. Resultantly, the revision petition bearing No.25850 of 2022 titled "M/s Gulistan Group of Companies v. Mr. Waseem Javed Khand" is allowed, impugned judgments and decrees are set aside and suit of the respondent stands dismissed; consequent whereof the connected C.R.No.13114 of 2022, filed by the respondent stands dismissed. No order as to the costs.

(**Shahid Bilal Hassan**)
Judge

Approved for reporting.

Judge

M.A.Hassan

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Civil Revision No.13114 of 2022

Waseem Javed Khand
…Versus…
M/s Gulistan Group of Companies, etc.

JUDGMENT

Date of Hearing: **07.02.2023**

Petitioner(s) for: In person

Respondent(s) for: Syed M. Bin Yamin, Advocate

SHAHID BILAL HASSAN-J: For the reasons recorded in even dated judgment passed in connected C.R.No.25850 of 2022, the revision petition in hand comes to naught and the same stands dismissed. No order as to the costs.

(**Shahid Bilal Hassan)**
Judge

M.A.Hassan

Lahore High Court
Mubarak Ali v. Zafar Mahmood and others
R.S.A. No.101 of 2011
Mr. Justice Shahid Bilal Hassan

Crux of Judgement:

i) The scope of second appeal is restricted and limited to the grounds which are the decision being contrary to law or usage having the force of law, the decision having failed to determine some material issue of law or usage having the force of law; and a substantial error or defect in the procedure provided by CPC or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon merits.
ii) The discretionary decree in a suit for specific performance can be denied even if it is proved by the plaintiff.

Facts of Case:

The present appellant instituted a suit for specific performance of agreement to sell against the respondents. The learned trial Court vide impugned judgment and decree dismissed suit of the appellant, who feeling aggrieved of the same preferred an appeal but it was dismissed by the first learned appellate Court; hence, the instant regular second appeal.

Issues In Case:

i) What are the grounds for filing second appeal before the High Court and what is its scope?

ii) Whether the discretionary decree in a suit for specific performance can be denied even if it is proved by the plaintiff?

Analysis of Issues of Case:

i) Under Section 100 of the Code of Civil Procedure 1908, a

second appeal to the High Court lies only on any of the following grounds: (a) the decision being contrary to law or usage having the force of law; (b) the decision having failed to determine some material issue of law or usage having the force of law; and (c) a substantial error or defect in the procedure provided by CPC or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon merits. The scope of second appeal is thus restricted and limited to these grounds, as Section 101 expressly mandates that no second appeal shall lie except on the grounds mentioned in Section 100.

ii)It has time and again been held by this Court as well as August Court of the country that even if the plaintiff succeeds in proving his case, the discretionary decree in a suit for specific performance can be denied.***Stereo. HCJDA 38***

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

R.S.A. No.101 of 2011
Mubarak Ali **Versus** Zafar Mahmood and others

J U D G M E N T

Date of hearing: ***14.02.2023***

Appellant(s) by: Mr. Muhammad Mahmood Chaudhry, Advocate

Respondent(s) by: Mr. Kashif Ali Chaudhry, Advocate for the respondent No.1

Respondent No.2 ex parte on 07.12.2021

SHAHID BILAL HASSAN-J**:** Brief facts, giving rise to the instant regular second appeal are as such that on 06.05.2003, the present appellant instituted a suit for specific performance of agreement to sell dated 22.09.2002 regarding land measuring 70-Kanals 07-Marlas situated in Mauza Jago Khurd, Tehsil Phalia, District Mandi Baha-Ud-Din against the respondents. The suit was duly contested by the respondents,

who controverted the averments of the plaint by submitting written statement. Out of the divergent pleadings of the parties the learned trial Court framed issues and evidence of the parties in pro and contra was recorded. On conclusion of trial, the learned trial Court vide impugned judgment and decree dated 29.01.2009 dismissed suit of the appellant, who feeling aggrieved of the same preferred an appeal but it was dismissed vide impugned judgment and decree dated 09.02.2011 by the first learned appellate Court; hence, the instant regular second appeal.

2. Heard.

3. Under Section 100 of the Code of Civil Procedure 1908, a second appeal to the High Court lies only on any of the following grounds:

> *(a) the decision being contrary to law or usage having the force of law;*
> *(b) the decision having failed to determine some material issue of law or usage having the force of law; and*
> *(c) a substantial error or defect in the procedure provided by CPC or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon merits.*

The scope of second appeal is thus restricted and limited to these grounds, as Section 101 expressly mandates that no second appeal shall lie except on the grounds mentioned in Section 100. However, when the impugned judgments and

decrees are read together with the evidence adduced by the parties, it appears that no such ground is available to the appellant, rather it has emerged on record that the appellant was entangled in longstanding litigation with regards to the suit property as special attorney of his wife and mother in law with the respondents, the said period has been counted for more than thirty years and when the appellant remained unsuccessful upto High Court in that round of litigation, he maneuvered and fabricated the alleged receipt dated 22.09.2002 (Ex.P1), which fact was even not disclosed during pendency of writ petition before this Court as the same was dismissed on 02.10.2002. Moreover, a suit for specific performance was also got instituted through one Sultan Ahmad, which was also dismissed upto High Court and it was observed specifically that Sultan Ahmad had forged a receipt in connivance with Mubark Ali, the present appellant.

Apart from the above, the appellant could not plead and prove the original transaction as to when, where and in whose presence the purported transaction of agreement between him and the respondents took place, where-after possession was delivered to him.

Even it does not appeal to prudent mind that when the parties had been at daggers drawn for the last thirty years, what prompted the respondents to enter into agreement to sell with the present appellant, as no evidence in this regard has been led by the appellant. It has time and again been held by this Court

as well as August Court of the country that even if the plaintiff succeeds in proving his case, the discretionary decree in a suit for specific performance can be denied; however, in the present case, the position is otherwise.

4. Pursuant to the above, the learned Courts below have rightly scrutinized and appreciated evidence as well as law on the subject and have reached to a just conclusion while passing the impugned judgments and decrees. No misreading and non-reading of evidence has been committed, rather the impugned judgments and decrees are upto the dexterity and do not call for any interference by this Court. Even otherwise the concurrent findings on facts recorded by learned Courts below, through reappraisal of evidence, cannot be interfered with under section 100 of the C.P.C. and in this regard guideline has been sought from cases reported as *Haji SULTAN AHMAD through Legal Heirs v. NAEEM RAZA and 6 others* **(1996 SCMR 1729)**, *Amjad Sharif Qazi and others v. Salim Ullah Faridi and others* **(PLD 2006 Supreme Court 777)** and *Nazeer Ahmed v. Maqsood Ahmed* **(2008 SCMR 190)**.

In the case of **Nazeer Ahmed** *ibid* the Hon'ble Supreme Court of Pakistan held:

> *'4. It is well settled that a second appeal to the High Court shall lie from every decree passed in appeal by any Court subordinate to a High Court on the grounds: (a) the decision being contrary to law or to some usage having the force of law; (b) the decision having failed to determine same*

material issue of law or usage having the force of law; and (c) a substantial error or defect in the procedure provided by Civil Procedure Code, 1908 or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon merits.

5. From the aforesaid discussion, it would, thus, appear that the scope of second appeal is restricted and limited to the grounds prescribed by law and second appellate Court is not expected to enter into re-appraisal of evidence or to strike down concurrent findings of fact unless the case falls within any of the exceptions described hereinabove……..'

5. Crux of the above discussion is that no infirmity is apparent on the record warranting interference by this Court. Resultantly, while placing reliance on the judgments *supra*, the ular second appeal in hand being devoid of any force and substance stands dismissed. No order as to costs.

(Shahid Bilal Hassan)
Judge

Approved for reporting.

Judge

M A. Hassan

Lahore High Court
Amer Saleem v. Nadeem Akhtar Mirza and another.
R.F.A. No.23090 of 2017
Mr. Justice Shahid Bilal Hassan, Mr. Justice Rasaal Hasan Syed

Crux of Judgement:

i) Where the execution of a document is admitted by the executant himself, the examination of attesting witnesses is not necessary.

ii) It is the mandate of Rule 6 of the Order XII, Code of Civil Procedure, 1908 that where admission as well as no objection on decreeing suit has been pressed then the Court may upon such application make such order, or give such judgment as the Court may think just.

iii) The court can compare the signatures of any party with the admitted ones.

Facts of Case:

This single judgment shall decide the captioned appeal as well as connected appeal having been filed against one and the same impugned judgment and decree wherein the learned trial Court has dismissed both the suits.

Issues In Case:

i) Whether it is necessary to produce attesting witnesses where the execution of a document is admitted by the executant himself?

ii) What is the mandate of Rule 6 of the Order XII, Code of Civil Procedure, 1908?

iii) Whether the court can compare the signatures of any party with the admitted ones?

Analysis of Issues of Case:

i) The simple reading of Article 81 of the Qanun-e-Shahadat Order,

1984 divulges that where the execution of a document is admitted by the executant himself, the examination of attesting witnesses is not necessary. It is a settled principle of law that admitted facts need not to be proved, so production of two attesting witnesses where the execution of a document is admitted is not necessary.

ii) It is the mandate of Rule 6 of the Order XII, Code of Civil Procedure, 1908 that where unequivocal and categorical admission as well as no objection on decreeing suit has been pressed before court then the Court may upon such application make such order, or give such judgment as the Court may think just.

iii) The court can compare the signatures of any party with the admitted ones in exercise of jurisdiction under Article 84 of the Qanun-e-Shahadat Order, 1984.

Stereo. HCJDA 38

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

R.F.A. No.23090 of 2017

Amer Saleem
Versus
Nadeem Akhtar Mirza and another

JUDGMENT

Date of hearing: ***06.03.2023***

Appellant(s) by: Rana Nasarullah Khan, Advocate

Respondent(s)by: Mian Qaiser Kabir, Advocate for respondent No.2

Ch. Muhammad Shafiq Hanif, Advocate for respondent No.1

***SHAHID BILAL HASSAN-J*:** This single judgment shall decide the captioned appeal as well as connected appeal bearing R.F.A.No.78460 of 2017, having been filed against one and the same impugned judgment and decree.

2. Succinctly, the respondent No.1 namely Nadeem

Akhtar is owner of suit land measuring 301-Kanals situated at Village Chattabad, Tehsil & District Hafizabad. Sarfraz Iqbal, respondent No.2 instituted a suit for specific performance of contract on 05.03.2011 against the respondent No.1 alleging therein that respondent No.1 entered into an agreement to sell with him regarding the suit land for a consideration of Rs.18,000,000/- and received Rs.3,000,000/- as earnest money vide document dated 04.02.2009; that period to accomplish the agreement was fixed till 04.03.2011. The respondent No.1 contested the suit and denied the execution of the agreement to sell *ibid* and receipt of any earnest money.

On 14.03.2014, the present appellant namely Amer Saleem also instituted a suit for specific performance of contract against Nadeem Akhtar, respondent No.1 and also impleaded the respondent No.2 namely Sarfraz Iqbal in the array of defendant(s) by maintaining that agreement to sell dated 01.03.2011 was entered into with him by the vendor/ owner for a consideration of Rs.51,000,000/- (five crore ten lac only); that earnest money of Rs.30,000,000/- (three crore only) was paid and period of accomplishment of agreement was fixed till 15.03.2011. The respondent No.1 filed consenting written statement and execution of agreement to sell, receipt of earnest money and sale consideration was admitted. The respondent No.2 contested the suit on different factual and legal grounds by submitting written statement.

Both the suits were consolidated by the learned trial

Court and consolidated issues were framed.

Both the parties adduced their evidence in pro and contra. The learned trial Court, on conclusion of trial dismissed both the suits vide impugned judgment and decree dated 27.03.2017. The agreement to sell dated 04.02.2009 in favour of Sarfraz Iqbal was declared as forged, while the agreement to sell dated

01.03.2011 in favour of the appellant was declared as ante-dated and a counter-blast to the other agreement to sell. The valuation of the agreement to sell of Sarfraz Iqbal was Rs.18,000,000/-, hence, he filed the appeal in the Court of learned District Judge, Hafizabad. The valuation of the agreement to sell in favour of the appellant was Rs.51,000,000/- therefore, he has filed the appeal in hand before this Court. The connected R.F.A.No.78460 of 2017 was initially filed before the District Judge, concerned, which has been consolidated with the instant appeal.

3. Heard.

4. At the inception, it is observed that during course of arguments, the learned counsel appearing on behalf of the respondent No.1 namely Nadeem Akhtar Mirza has submitted duly sworn in affidavit, attested by Oath Commissioner on behalf of Nadeem Akhtar Mirza, contents whereof are reproduced as under:-

Affidavit

of Nadeem Akhtar Mirza S/O Col.Muhamamd Saalam

Baig Mirza, Resident of Village Chatta Dad Tehsil and District Hafizbad. On oath

1. *That the appeal R.F.A.No.23090 of 2017 titled as Aamer Saleem Vs. Nadeem Akhtar etc. against the decree dated 27.03.2017 is pending in the Lahore High Court Lahore and fixed for today i.e. 14.02.2019. I am the respondent No.1.*

2. *That my stance in the trial Court was consenting with the appellant Aamer Saleem. In the appeal, my stance is still the same. I thus state on oath that the appeal of Aamer Saleem may be accepted and his suit as prayed for may be decreed.*

3. *That I am permanently in CANADA and presently in Pakistan. Since I am going back to CANADA and would not be able to attend the Court in person hence, this affidavit may be considered as final and absolute statement by me.*

Verification.

Deponent

Verified on oath at Lahore on this 14th Feb. 2019 that the contents of the contents of above affidavit are true and correct to the best of my knowledge.

Deponent.'

After submission of the said affidavit, when the record maintained by the learned trial Court has been gone through, it has emerged that the said Nadeem Akhtar Mirza, respondent No.1, while submitting his written statement in suit titled

"Aamer Saleem v. Nadeem Akhtar Miza, etc." submitted his conceding written statement having no objection on decreeing the suit in favour of Aamer Saleem and he also submitted written statement in suit titled "Sarfraz Iqbal v. Nadeem Akhtar Mirza, etc." and in reply to para 1-alif (on facts) he denied the entering of agreement to sell dated 04.02.2009 with Sarfraz Iqbal but admitted the execution of agreement to sell dated 01.03.2011 with Aamer Saleem, the present appellant for a consideration and denied that the same is ante-dated. After such a vivid admission on behalf of Nadeem Akhtar Mirza, there was no need to produce the marginal witnesses of the said document, because the case of Aamer Saleem is covered by Article 81 of the Qanun-e-Shahadat Order 1984. The simple reading of Article 81 divulges that where the execution of a document is admitted by the executant himself, the examination of attesting witnesses is not necessary. In this regard reliance is placed on *Muhammad Afzal (Decd.) through L.Rs. and others v. Muhammad Bashir and another* **(2020 SCMR 197)**. Consistent stance of the Nadeem Akhtar Mirza, defendant, remained that he entered into agreement to sell with Aamer Saleem, the appellant and he, even, tendered a sworn affidavit before this Court. It is a settled principle of law that admitted facts need not to be proved, so production of two attesting witnesses in the case of Aamer Saleem was not necessary. In this regard reliance is placed on *Muhammad Rafique and others v. Manzoor Ahmad and others* **(2020 SCMR 496)**, wherein it has been held that:-

> *'Now, the record and in particular the pleadings of parties clearly show that the vendor (i.e. the original contesting defendant) did not deny execution of the agreement to sell. A fact admitted need to be formally proved. Reliance in this regard was correctly sough to be placed on Muhammad Iqbal v. Mehboob Alam 2015 SCMR 21, where (at pg.25) this settled principle of law has been reiterated. Indeed, the cited judgment was also in relation to a suit for specific performance and the* ***admission of the agreement to sell in the written statement****.' (emphasis supplied)*

5. In view of the above, when the stance of the appellant Aamer Saleem was admitted by Nadeem Akhtar Mirza, the learned trial Court ought to have proceeded with the matter as per mandate of Rule 6 of the Order XII, Code of Civil Procedure, 1908, which provides:-

> *'**6. Judgment on admissions**. Any party may, at any stage of a suit, where admission of fact have been made, either on the pleadings, or otherwise, apply to the Court for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties: and the Court may upon such application make such order, or give such judgment as the Court may think just.'*

6. Pursuant to the above discussion and while placing reliance on the judgments supra, we conclude that after unequivocal and categorical admission as well as no objection on decreeing suit of Aamer Saleem by Nadeem Akhtar Mirza,

the original vendor/owner of the disputed land, the impugned judgment and decree to his extent cannot be allowed to sustain further.

7. As far as the suit of the respondent No.2/appellant in connected R.F.A.No.78460 of 2017 namely Sarfraz Iqbal is concerned, it is observed that the said respondent No.2 has miserably failed to substantiate his stance by leading unimpeachable, trustworthy and confidence inspiring evidence as the witnesses produced by him are inconsistent on material points and even both the witnesses are interested ones, because P.W.2 is servant of Sarfraz Iqbal and P.W.3 is his brother in law, so keeping in view the material discrepancies as to proceeding towards the office of Sub-Registrar and managing of remaining sale consideration, their evidence has rightly been discarded by the learned trial Court. Moreover, the respondent No.2 namely Sarfraz Iqbal while appearing in the witness box admitted that he did not manage the remaining sale consideration when he allegedly visited the office of Sub-Registrar. So much so, Sarfraz Iqbal admitted that no receipt for purported payment of huge amount of Rs.3,000,000/- as earnest money was executed; such stance cannot be believed. The alleged agreement to sell in favour of Sarfraz Iqbal is written on plain paper and name of scribe is missing thereon, which speaks volumes about its veracity and the learned trial court has rightly observed that non-production of scribe of the document Ex.P1 amounts to withholding the best available evidence and it may

be inferred that said scribe if had been produced would not have supported the stance of the respondent No.2/appellant in connected appeal namely Sarfraz Iqbal as per Article 129(g) of the Qanun-e-Shahadat Order, 1984.

Even the respondent No.2 did not make any exertion to get the signatures of Nadeem Akhtar Miza, respondent No.1 compared with the admitted one after specific denial of execution of agreement to sell Ex.P1 and making of signatures thereon by him (Nadeem Akhtar Mirza). The learned trial Court has compared the signatures of Nadeem Akhtar Mirza on Ex.P1 with the admitted ones (made on written statement and reply to application) in exercise of jurisdiction under Article 84 of the Qanun-e-Shahadat Order, 1984 and found the same different. When we put a bird's eye view over the disputed document Ex.P1 and admitted signatures of Nadeem Akhtar Mirza, we have found the assessment and comparison made by the learned trial Court to be true and correct. In *Messrs Waqas Enterprises and others v. Allied Bank of Pakistan and 2 others* **(1999 SCMR 85)**, the Apex Court of the country held:-

> *'7. It is settled principle that in certain eventualities Court enjoins plenary powers to itself compare the signature alongwith other relevant material to effectively resolve the main controversy.'*

In this regard further reliance is placed on judgment reported as *Ghulam Rasool and others v. Sardar-Ul-Hassan and another* **(1997 SCMR 976)**.

8. Pursuant to the above, we find no misreading and non-reading of evidence alleged to have been committed by the learned trial Court while non-suiting the respondent No.2/ appellant in connected appeal R.F.A.No.78460 of 2017 namely Sarfraz Iqbal, as he failed to prove his case by leading sound and solid evidence.

9. For the foregoing reasons, the appeal bearing R.F.A.No.23090 of 2017 is allowed, impugned judgment and decree to the extent of dismissal of suit of Aamer Saleem is set aside, consequent whereof the suit of Aamer Saleem is decreed with a direction to deposit the remaining sale consideration Rs.21,000,000/- (two crore 10 lacs only) with the Deputy Registrar (Judicial) of this Court within 30 days, failing which his suit will be deemed to have been dismissed, whereas the connected appeal bearing R.F.A.No78460 of 2017 preferred by Sarfraz Iqbal, while maintaining the impugned judgment and decree, stands dismissed. No order as to the costs.

(Rasaal Hasan Syed)
Judge

(Shahid Bilal Hassan)
Judge

Approved for reporting.

(Rasaal Hasan Syed)
Judge

(Shahid Bilal Hassan)
Judge

M A. Hassan

Lahore High Court
Muhammad Farooq Azam (deceased) through L.Rs and others Mst. Hooran Bibi. R.S.A.No.65 of 2014
Mr. Justice Shahid Bilal Hassan

Crux of Judgement:
i) An illiterate, rustic and village household lady is also entitled to the same protection which is available to the Parda observing lady under the law.

ii) Second appeal shall lie only on the grounds mentioned in Section 100 of the Code of Civil Procedure 1908.

Facts of Case:
This regular second appeal has been filed against the judgment and decree passed by learned appellate Court which has accepted the appeal and consequently dismissed suit of the appellants.

Issues In Case:
i) Whether an illiterate, rustic and village household lady is also entitled to the same protection which is available to the Parda observing lady under the law?

ii) What is scope of appeal under Section 100 of the Code of Civil Procedure 1908?

Analysis of Issues of Case:

i) An old and illiterate lady is entitled to the same protection which is available to the Parda observing lady under the law.

ii) The scope of second appeal is restricted and limited to the grounds mentioned in Section 100 of the Code of Civil Procedure 1908 as Section 101 of the Code of Civil Procedure 1908 expressly mandates that no second appeal shall lie except on the grounds mentioned in Section 100 of the Code of Civil Procedure 1908.

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

R.S.A.No.65 of 2014

Muhammad Farooq Azam (deceased) through L.Rs and others
…Versus…
Mst. Hooran Bibi

JUDGMENT

Date of Hearing: **28.02.2023**

Appellant(s) for: Nemo

Respondent(s) for: Mr. Muhammad Hassan Bodla, Advocate

SHAHID BILAL HASSAN-J: Despite reflection of name of the learned counsel for the appellants in the cause list none has entered appeared on their behalf; therefore, the instant appeal being an old one is going to be decided after hearing learned counsel for the respondent and going through the record.

2. Succinctly, the present appellants instituted a suit for specific performance of agreement to sell dated 15.08.2003 regarding land in dispute, which was duly contested by her/ respondent while submitting written statement and negated the

averments of the plaint. Out of the divergent pleadings of the parties, the learned trial Court framed issues and evidence of the parties was recorded. On conclusion of trial, the learned trial Court decreed the suit in favour of the appellants vide judgment and decree dated 20.12.2012 with direction to deposit the remaining sale consideration within 30 days. The respondent being aggrieved preferred an appeal and the learned appellate Court vide impugned judgment and decree dated 05.09.2013 accepted the appeal and consequently dismissed suit of the appellants/plaintiffs; hence, the instant regular second appeal.

2. Heard.

3. It is an admitted position on record that the respondent is an illiterate, rustic and village household lady. In respect of a transaction germane to property with a pardanasheen, village household and rustic ladies, the Apex Court of the country in a judgment reported as *Phul Peer Shah* v. *Hafeez Fatima* **(2016 SCMR 1225)** has given the parameters and conditions to be fulfilled in a transparent manner and held that:-

> *'In case of a (property) transaction with an old, illiterate/rustic village 'Pardanasheen' lady the following mandatory conditions should be complied with and fulfilled in a transparent manner and through evidence of a high degree so as to prove the transaction as legitimate and dispel all suspicions and doubts surrounding it:-*
>
> *i. That the lady was fully cognizant and was aware of the nature of the transaction and its probable*

consequences;

ii. *That she had independent advice from a reliable source/person of trust to fully understand the nature of the transaction;*

iii. *That witnesses to the transaction were such, who were close relatives or fully acquainted with the lady and had no conflict of interest with her;*

iv. *That the sale consideration was duly paid and received by the lady in the same manner; and*

v. *That the very nature of transaction was explained to her in the language she understood fully and she was apprised of the contents of the deed/ receipt, as the case may be.'*

Moreover, this Court has already held that old and illiterate ladies are entitled to the same protection which is available to the Parda observing lady under the law; reliance is placed on *Muhammad Afzal v. Muhammad Zaman* **(PLD 2012 Lahore 125)**. Furthermore, in *Ghulam Muhammad v. Zahoran Bibi and others* **(2021 SCMR 19)**, the Apex Court of country has held:-

> *'It is settled law that the beneficiary of any transaction involving parda nasheen and illiterate women has to prove that it was executed with free consent and will of the lady, she was aware of the meaning, scope and implications of the document that she was executing. She was made to understand the implications and consequences of the same and had independent and objective advice either of a lawyer or a male member of her*

immediate family available to her.'

The same remained position in judgment reported as *Muhammad Naeem Khan and another v. Muqadas Khan (decd) through L.Rs. and another* **(PLD 2022 Supreme Court 99)**, wherein the Apex Court of the country has invariably held:-

> *'If any such plea is taken then it is a time-honored parameter that in case of a document executed by a pardanashin lady, the burden of proof is on the party who depends on such a deed to persuade and convince that Court that it has been rad over and explicated to her and she had not only understood it but also received independent and disinterested advice in the matter. The aforesaid parameter and benchmark is equally applicable to an illiterate and ignorant woman who may not be a pardanashin lady. If authenticity or trueness of a transaction entered into by a pardanashin lady is disputed or claimed to have been secured on the basis of fraud or misrepresentation, then onus would lie on the beneficiary of the transaction to prove his good faith and the court has to consider whether it was done with freewill or under duress and has to assess further for an affirmative proof whether the said document was read over to the pardanashin or illiterate lady in her native language for her proper understanding.'*

However, in the present case, none of the above said parameters have been met with and no such evidence, showing that the respondent was having an independent advice and was fully

aware and cognizant of the nature of the transaction, was brought on record by the appellants. Moreover, evidence as a whole has to be read and considered by the learned appellate Court in a minute manner, as there are contradictions on material points of purchasing of stamp paper for reducing the agreement to sell Ex.P1 in the depositions of the P.Ws. which have rightly been discussed and highlighted by the learned appellate Court.

Payment of earnest money has also not been proved as P.W.3 deposed that he reached the place after completion of the deal between the parties. Moreover, P.W.2 and P.W.3 are silent about date, time, place, month or year of alleged agreement of sale of the land in question inter se the parties. Apart from the above, it has surfaced on record that the possession was not delivered to the appellants in pursuance of the purported agreement to sell rather the same was with the appellants. Keeping in view all the above facts, especially the factum that the brother of the appellants namely Hashmat Khan used to deposit installments of mortgaged land in the treasury establish and support the stance of the respondent that her thumb impression was obtained on the pretext of depositing the installments of mortgage of land and she has been deprived of the suit property fraudulently by the appellants in this way.

Even for the sake of arguments, it is admitted that the appellant(s) have succeeded in proving their case, it is a settled law that suit can be refused to be decreed even if the agreement

has been proved as it is a discretionary relief and this discretion can be exercised on equitable terms. Since it is discretionary relief and in the present circumstances, the same can be refused because the position in this case is otherwise as the appellants have miserably failed to prove their stance.

4. In addition to the above, under Section 100 of the Code of Civil Procedure 1908, a second appeal to the High Court lies only on any of the following grounds:

> *(a) the decision being contrary to law or usage having the force of law;*
> *(b) the decision having failed to determine some material issue of law or usage having the force of law; and*
> *(c) a substantial error or defect in the procedure provided by CPC or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon merits.*

The scope of second appeal is thus restricted and limited to these grounds, as Section 101 expressly mandates that no second appeal shall lie except on the grounds mentioned in Section 100. However, when the impugned judgments and decrees are read together with the evidence adduced by the parties, it appears that no such ground is available to the appellants.

5. Pursuant to the above, the learned appellate Court has not committed any material illegality and irregularity while passing the impugned judgment and decree rather vested

jurisdiction has rightly been exercised while discussing each and every piece of evidence and construing law on the subject in a judicious manner. Moreover, it is a settled principle, by now, that in case of inconsistency between the findings of the learned trial Court and the learned Appellate Court, the findings of the latter must be given preference in the absence of any cogent reason to the contrary. Reliance is placed on *Amjad Ikram v. Mst. Asiya Kausar and 2 others* **(2015 SCMR 1)**, *Madan Gopal and 4 others v. Maran Bepari and 3 others* **(PLD 1969 SC 617)** and *Muhammad Nawaz through LRs. v. Haji Muhammad Baran Khan through LRs. and others* **(2013 SCMR 1300)**.

6. For the foregoing reasons, the appeal in hand comes to naught; hence, the same is hereby dismissed. No order as to the costs.

(**Shahid Bilal Hassan**)
Judge

Approved for reporting.

Judge

M.A.Hassan

Lahore High Court
Abdul Karim v. Mst. Ruqqia Begum (deceased) through L.Rs. and others.
Civil Revision No.77 of 2010
Mr. Justice Shahid Bilal Hassan

Crux of Judgement:

i) It is necessary that general power of attorney must contain a clear separate clause in order to achieve certain object.

ii) The statement of scribe cannot be equated with the statement of marginal witness.

iii) Mutation is not a deed of title and the burden to prove lies upon the beneficiary of such mutation.

iv) In case of inconsistency between the findings; the findings of learned Appellate Court must be given preference in the absence of any cogent reason to the contrary.

Facts of Case:

The respondents / plaintiffs challenged the gifts in favour of the petitioner by instituting a suit for declaration and permanent injunction, with the allegations that the power of attorney was fraudulent and deceased was suffering from paralysis and was unable to appoint his attorney. The petitioner contested the suit, learned trial Court dismissed suit of the respondents who being aggrieved preferred an appeal and the learned appellate Court accepted the appeal; hence, the instant revision petition.

Issues In Case:
i) Whether it is necessary that general power of attorney must contain a clear separate clause in order to achieve certain object?

ii) Whether the statement of scribe can be equated with the statement of marginal witness?

iii) Whether mutation is title deed and who is to prove the same?

iv) The findings of which court would be given preference in case of inconsistency in findings of the courts below?

Analysis of Issues of Case:
i) In order to achieve the object it must contain a clear separate clause devoted to the said object, reliance is placed on Fida Muhammad v. Pir Muhammad Khan (deceased) through Legal eirs and others (PLD 1985 Supreme Court 341). When the position is no such separate clause has been mentioned in the purported general power of attorney, the said power of attorney cannot be utilized for effecting a gift by the attorney without intentions and directions of the principal to gift the property, which intentions and directions must be proved on record. Reliance in this regard is placed on Mst Naila Kausar and another v. Sardar Muhammad Bakhsh and others (2016 SCMR 1781).

ii) The statement of scribe cannot be equated with the statement of marginal witness. In this regard reliance is placed on Hafiz Tassaduq Hussain Vs. Muhammad Din through Legal Heirs and others (PLD 2011 Supreme Court 241), Sajjad Ahmad Khan v. Muhammad Saleem Alvi and others (2021 SCMR 415) and Sheikh Muhammad Muneer v. Mst. Feezan (PLD 2021 Supreme Court 538) wherein it has been held:- '14. As regards the scribe he was not shown or described as a witness in the said agreement, therefore, he could not be categorized as an attesting witness.'

iii) Mutation per se is not a deed of title and is merely indicative of some previous oral transaction between the parties; so whenever any mutation is challenged burden squarely lies upon the beneficiary of such mutation to prove not only the mutation but also the original transaction, which he was required to fall back upon. iv) It is a settled principle, by now, that in case of inconsistency between the findings of the learned trial Court and

the learned Appellate Court, the findings of the latter must be given preference in the absence of any cogent reason to the contrary. Reliance is placed on Amjad Ikram v. Mst. Asiya Kausar and 2 others (2015 SCMR 1), Madan Gopal and 4 others v. Maran Bepari and 3 others (PLD 1969 SC 617) and Muhammad Nawaz through LRs. v. Haji Muhammad Baran Khan through LRs. and others (2013 SCMR 1300).

Stereo. HCJDA 38

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Civil Revision No.77 of 2010

Abdul Karim
…Versus…
Mst. Ruqqia Begum (deceased) through L.Rs. and others

JUDGMENT

Date of Hearing: **31.03.2023**

Petitioner(s) for: M/s Muhammad Shahzad Shaukat and Taha Shaukat, Advocates

Respondent(s) for: M/s Malik Noor Muhammad Awan, Ejaz Khalid Khan and Saima Hanif, Advocates for respondents No.1 to 3

Mr. Shahzad Mahmood Butt, Advocate for respondent No.4(a)

M/s Mirza Hafeez Ur Rehman and Mian Ejaz Latif, Advocates for respondents No.4 (c to e)

M/s Muhammad Mahmood Chaudhry and Muhammad Zeeshan, Advocates for

respondent No.4(ii)

Mr. Azmat Ullah Chaudhry, Advocate for respondents No.4(vi to viii)

SHAHID BILAL HASSAN-J: Succinctly, Umar Din, father of the petitioner owned considerable property inclusive of properties in dispute i.e. land measuring 127-Kanals and 14-Marlas, situated in Chak No.125-GB and land measuring 162-Kanals 03-Marlas located in Chak No.119-GB, Tehsil Jaranwala District Faisalabad; that Umar Din executed a registered power of attorney dated 29.09.1994 in favour of Abdul Aziz, his real son, allegedly for the purpose and intent of getting formal gifts in favour of the petitioner, incorporated in the revenue record; that pursuant to the powers vested in him by Umar Din, the said Abdul Aziz got entered and attested mutation No.440 dated 08.02.1995 and mutation No.612 dated 09.02.1995, on the basis of entries in Roznamcha Waqiati. The respondents No.1 to 3/ plaintiffs challenged the said gifts in favour of the petitioner by instituting a suit for declaration and permanent injunction, on 23.04.1995, with the precise allegations that the power of attorney in favour of Abdul Aziz was fraudulent and based on fabrication and it was further contended that Umar Din deceased was suffering from paralysis and was incapacitated, therefore, unable to appoint his attorney. The petitioner alongwith Abdul Aziz, Rasheeda Begum and Amtul Shakoor contested the suit by submitting written statement and controverted the averments of the plaint. Out of the divergent pleadings of the parties, the

learned trial Court framed as many as 12 issues inclusive of "Relief". Both the parties adduced their oral as well as documentary evidence. On conclusion of trial, the learned trial Court vide judgment and decree dated 07.05.2002 dismissed suit of the respondents No.1 to 3, who being aggrieved and dissatisfied preferred an appeal and the learned appellate Court vide impugned judgment and decree dated 21.12.2009 accepted the appeal and set aside the judgment and decree dated 07.05.2002 passed by the learned trial Court; hence, the instant revision petition.

2. Heard.

3. The pivotal document, where-around the whole case revolves, is purported general power of attorney Ex.D2 executed in favour of Abdul Aziz by Umar Din deceased. It is stance of the present petitioner that the said document was executed only to gift out the suit property in favour of the petitioner but recital of the same was not as such rather the said document divulges that it was not executed for a specific purpose of gifting out the suit property to the petitioner. It is wrong to assume that every general power of attorney on account of the said description means and includes the power to alienate/dispose of property of the principal. In order to achieve that object is must contain a clear separate clause devoted to the said object; however, as observed above no such separate clause has been found to have been mentioned in the purported general power of attorney. In this regard reliance is placed on *Fida*

Muhammad v. Pir Muhammad Khan (deceased) through Legal Heirs and others **(PLD 1985 Supreme Court 341)**. When the position is as such, the said power of attorney cannot be utilized for effecting a gift by the attorney without intentions and directions of the principal to gift the property, which intentions and directions must be proved on record, which have not been proved in this case. Reliance in this regard is placed on *Mst. Naila Kausar and another v. Sardar Muhammad Bakhsh and others* **(2016 SCMR 1781)**.

4. Apart from the above, the said document i.e. Ex.D2 has not been proved as per mandate of Article 79 of the Qanun-e-Shahadat Order, 1984, because only one marginal witness namely Abdul Razzaq has been produced as D.W.3 whereas the second marginal witness namely Abdul Hai has not been brought into the witness box for the reasons best known to the petitioner and even no evidence with regards to his inability to appear in the witness box has been produced by the petitioner, so the adverse presumption as per mandate of Article 129(g) of Qanun-e-Shahadat Order, 1984 arises against the petitioner that had the said witness been produced before the Court in witness box, he would not have supported the stance of the petitioner. The statement of scribe cannot be equate with the statement of marginal witness. In this regard reliance is placed on *Hafiz Tassaduq Hussain Vs. Muhammad Din through Legal Heirs and others* (**PLD 2011 Supreme Court 241**), *Sajjad Ahmad Khan v. Muhammad Saleem Alvi and others* **(2021 SCMR 415)** and

Sheikh Muhammad Muneer v. Mst. Feezan **(PLD 2021 Supreme Court 538)** wherein it has been held:-

> *'14. As regards the scribe he was not shown or described as a witness in the said agreement, therefore, he could not be categorized as an attesting witness.'*

Moreover, the D.W.1, Faheem Ashraf Naib Tehsildar, who performed the duty as local commission for recording the statement of Umar Din for the purpose of execution and registration of general power of attorney, deposed that he received an order on 28.09.1994 from Tehsildar but he did not produce any such order during course of his evidence. Furthermore, allegedly the stamp paper was purchased by Umar Din himself (*but this fact stood negated from original general power of attorney when the same was brought on record by de-sealing envelope in presence of learned counsel for the parties and it was found that there was not writing as to who purchased the same*) and the Katchehry was at a distance of half a furlong; had Umar Din been not suffering from any disease or was not paralyzed what thing prevented him from going to the Katchehry for the purpose of execution of the general power of attorney or even execution of the gift mutations i.e. disputed mutations in favour of the petitioner. This fact strengthens the stance of the respondents No.1 to 3 that Umar Din was incapacitated and was suffering from paralyze so he was unable to appoint a general attorney and it seems that whole the story has been maneuvered only to deprive the respondents No.1 to 3 from their rights of

inheritance in the estate of deceased Umar Din.

5. In addition to the above, the petitioner could not lead evidence as to when, where and at what time as well as in whose presence the donor/Umar Din deceased made offer to gift out the property in dispute, which was accepted by him (the petitioner), where-after possession was delivered to be him, which ingredients are necessary to be pleaded and proved especially when the other legal heirs are going to be deprived of, because the same was necessary to be proved by leading cogent and reliable evidence, which is lacking in this case. In this regard reliance is placed on *Faqir Ali and others v. Sakina Bibi and others* **(PLD 2022 Supreme Court 85)**, wherein it has invariably been held that:-

> *'It is trite that a gift in order to be valid and binding on the parties must fulfill three conditions, namely (i) declaration of gift by the donor, (ii) acceptance of gift by the done, and (iii) delivery of possession of the corpus. A valid gift can only be effected orally if the aforenoted prerequisites are complied with and proved through valid and cogent evidence…… It has repeatedly been held that beneficiary of a document is not only bound to prove execution of the document but also to prove the gift by producing cogent and reliable evidence that the three necessary requirements of a valid gift namely, offer, acceptance and delivery of possession have been fulfilled, to the satisfaction of the Court.'*

Moreover, in the said **Faqir Ali case** it has been held that:-

> *'Although stricto sensu, it was not necessary for a donor to furnish reasons for making a gift yet no gift in the ordinary course of human conduct could be made without reason or justification, be it natural love and affection for one or more of his children who may have taken care of the done in his old age and thus furnished a valid basis and justification for the donor to reward such effort on the part of the done by way of making a gift in his/her favour. In the wake of frivolous gifts generally made to deprive female members of the family from benefit of inheritance available to them under Sharia as well as law, the Courts were not divested of the powers to scrutinize the reasons and justification for a gift so that no injustice was done to a legal heir who otherwise stood to inherit from the estate of a deceased predecessor or relative and that the course of inheritance was not bypassed or artificially blocked.' (Underline for emphasis)*

Here, in this case, it is an admitted fact on record that the donor Umar Din was an old aged person and the respondents No.1 to 3 being daughters were not associated with the proceedings of alleged making of gift in favour of the petitioner by purported general attorney Abdul Aziz. No plausible evidence has been brought on record by the petitioner as to enjoying of sound and good health with sound mental health by Umar Din at the time of execution of alleged general power of attorney in favour of Abdul Aziz. Moreover, Umar Din, died on 17.02.1995 after about 8/9 days of making of disputed mutations of gift by his purported attorney in favour of the petitioner, and as observed

above no specific instructions and directions were issued by him (Umar Din) with regards to making of gift in favour of petitioner to the alleged attorney, which fact also casts aspersions about the authenticity and veracity of the disputed mutations especially when the original transaction has not been pleaded and proved by the petitioner. In judgment reported as *Fareed and others v. Muhammad Tufail and another* **(2018 SCMR 139)** the Apex Court has held that:-

> *'--- a done claiming under a gift that excludes an heir, is required by law to establish the original transaction of gift irrespective of whether such transaction is evidenced by a registered deed.'*

6. Mutation per se is not a deed of title and is merely indicative of some previous oral transaction between the parties; so whenever any mutation is challenged burden squarely lies upon the beneficiary of such mutation to prove not only the mutation but also the original transaction, which he was required to fall back upon, which event in this case has not been proved by the petitioner.

7. In view of the above, it can safely be held that when the petitioner could not legally prove the foundational document i.e. general power of attorney in favour of Abdul Aziz, the subsequently disputed mutations pertaining to gift in favour of the petitioner would also collapse. Therefore, the learned appellate Court has rightly cancelled the mutations No.440 dated 08.02.1995 (Ex.P3) and 612 dated 09.02.1995 (Ex.P4).

8. Pursuant to the above, the learned appellate Court has not committed any material illegality and irregularity while passing the impugned judgment and decree rather vested jurisdiction has rightly been exercised while appreciating evidence on record minutely and construing law on the subject in a judicious manner. It is a settled principle, by now, that in case of inconsistency between the findings of the learned trial Court and the learned Appellate Court, the findings of the latter must be given preference in the absence of any cogent reason to the contrary. Reliance is placed on *Amjad Ikram v. Mst. Asiya Kausar and 2 others* **(2015 SCMR 1)**, *Madan Gopal and 4 others v. Maran Bepari and 3 others* **(PLD 1969 SC 617)** and *Muhammad Nawaz through LRs. v. Haji Muhammad Baran Khan through LRs. and others* **(2013 SCMR 1300)**.

9. For the foregoing reasons, the revision petition in hand comes to naught; hence, the same is hereby dismissed. No order as to the costs.

(Shahid Bilal Hassan)
Judge

Approved for reporting.

Judge

M.A.Hassan

Lahore High Court
Sheikh Muhammad Aslam v. Muhammad Ali Nawaz, etc.
R.F.A. No. 1228 of 2015
Mr. Justice Shahid Bilal Hassan

Crux of Judgement:

i) A person is liable only to pay the disputed amount of a negotiable instrument when he signs the same and not otherwise.

ii) Evidence beyond pleadings cannot be considered being inadmissible.

iii) In case of non-production of best witness in circumstances of the case, the adverse presumption as per Article 129(g), Qanun-e-Shahadat Order, 1984 arises against the appellant that had he been produced in the witness box, he would not have supported the stance of the appellant.

Facts of Case:

The appellant instituted a suit for recovery of money on the basis of cheque under Order XXXVII, Rules 1 & 2 of CPC against the respondents. The learned trial Court dismissed the suit; hence, the instant regular first appeal.

Issues In Case:

i) Who is liable to pay the disputed amount of a negotiable instrument?

ii) Whether evidence beyond pleadings is admissible?

iii) What would be effect of non-production of best witness in circumstances of case?

Analysis of Issues of Case:

i) When the sections 29 and 29-A of the Negotiable Instruments Act, 1881 are read together and considered, it can safely be inferred that a person (in this case legal heirs) is liable only to pay the disputed amount of a negotiable instrument when he signs the same and not otherwise.

ii) It is a settled principle of law that a party cannot go beyond the pleadings and if anything is produced or brought on record beyond pleadings the same cannot be considered being inadmissible.

iii) In case of non-production of best witness in circumstances of the case, the adverse presumption as per Article 129(g), Qanun-e-Shahadat Order, 1984 arises against the appellant that had he been produced in the witness box, he would not have supported the stance of the appellant.

Stereo. HCJDA 38

JUDGMENTSHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

R.F.A.No.1228 of 2015

Sheikh Muhammad Aslam
…Versus…
Muhammad Ali Nawaz, etc.

JUDGMENT

Date of Hearing: **04.04.2023**

Appellant(s) for: Mr. Muhammad Shahzad Shaukat, Advocate

Respondent(s) for: Mr. Tahir Mahmood Ahmad Khokhar, Advocate

SHAHID BILAL HASSAN-J: Succinctly, the appellant

instituted a suit for recovery of Rs.5,000,000/- on the basis of cheque under Order XXXVII, Rules 1 & 2, Code of Civil Procedure, 1908 against the respondents. The respondents No.1 to 3 are minors and firstly the suit was instituted against them through Sheikh Muhammad Zafar, real uncle; however, later on, on the application of respondent No.4 amended plaint was submitted and suit against the minors was filed through Mst. Samrana Nawaz, real mother of the minors. The appellant contended that he is real brother of Sheikh Pervaiz Nawaz, who had taken loan from several persons as well as banks. Pervaiz Nawaz had to make repayment of loans to banks and other persons and he asked the appellant that he was going to sell his property and was badly in need of Rs.5,000,000/- as loan; that the appellant in presence of witnesses on 27.09.2007 gave Rs.5,000,000/- him loan and Pervaiz Nawaz issued a cheque No.21951889, MCB Limited, Ayub Chowk Jhang, in favour of the appellant; that on 28.02.2008, Pervaiz Nawaz died and the legal heirs of Pervaiz Nawaz made an assurance to the appellant that the cheque will be honoured on the fixed date but the same was dishonoured when presented in the bank on the fixed date; that the respondents are legal heirs of Pervaiz Nawaz deceased and they are legally and morally bound for the payment of borrowed amount of the dishonoured cheque, for which they were repeatedly asked but they refused; hence, the suit. After seeking leave to appear and defend the suit, the suit was contested by the respondents, who raised preliminary as well as

legal and factual objections. Out of the divergent pleadings of the parties, the learned trial Court framed issues and evidence of the parties in pro and contra was recorded. On conclusion of trial, the learned trial Court vide impugned judgment and decree dated 22.05.2015 dismissed suit of the appellant; hence, the instant regular first appeal.

2. Heard.

3. Purported lender and borrower in this case are real brothers and the present respondents are legal heirs of the borrower of the disputed amount namely Pervaiz Nawaz. Faced with this proposition and scenario, the relevant sections in this regard are 29 and 29-A of the Negotiable Instruments Act, 1881, which provide:-

> ***'29. Liability of legal representative signing.*** *A legal representative of a deceased person who signs*
>
> *his name to a promissory note, bill of exchange or cheque is liable personally thereon unless he expressly limits his liability to the extent of the assets received by him as such.*
>
> ***29-A. Signature essential to liability.*** *No person is liable as maker, drawer, endorser or acceptor of a promissory note, bill of exchange or cheque who has not signed it as such:*
>
> *Provided that where a person signs any such instrument in a trade or assumed name he is liable thereon as if he had signed it in his own name.' (Underline for emphasis)*

When the above provisions of law are read together and considered, it can safely be inferred that a person (in this case

legal heirs) is liable only to pay the disputed amount of a negotiable instrument when he signs the same and not otherwise. In this case, no such occasion is apparent on record, rather it is an admitted fact that the respondents No.1 to 3 are minors and respondent No.4 was living abroad at the relevant time in order to see her parents. Therefore, the respondents are not liable to pay the disputed amount in the light of the above provision of law and the suit against them is not maintainable but this fact has not been considered and was perhaps overlooked by the learned trial Court.

4. Keeping aside the above observation, even then the appellant has miserably failed to prove his stance because he could not plead the names of the witnesses in whose presence the disputed transaction took place and it is a settled principle of law that a party cannot go beyond the pleadings and if anything

is produced or brought on record beyond pleadings the same cannot be considered being inadmissible. In this regard for ready reference the paragraph No.2 of the plaint is relevant, which is reproduced as under:-

2۔ یہ کہ مسمی پرویز نواز نے متعدد افراد اور بنکوں سے قرض برائے کاروبار حاصل کر رکھا تھا جس کی ادائیگی کیلئے برادرم پرویز نواز کو یکمشت رقم کی ضرورت لاحق تھی۔ پرویز نواز نے من مدعی سے اس امر کا اظہار کیا کہ وہ اپنی جائیداد فروخت کر رہا ہے اور وہ جائیداد فروخت ہونے پر من مدعی کو رقم واپس کر دیگا۔ اسی لئے من مدعی اسے قرض مبلغ پچاس لاکھ روپے دے دے۔ لہذا من مدعی نے مورخہ27-09-2007کوبمقام غلہ منڈی جھنگ روبرو گواہان مبلغ پچاس لاکھ روپے ادا کر دیئے اور پرویز نے چیک نمبری 21951889 مورخہ 05-03-2009 ازاں مسلم کمرشل بنک ایوب چوک جھنگ صدر من مدعی کر دیا!

In this view of the matter, the evidence produced by the appellant except his own deposition cannot be relied upon; in this regard reliance is placed on *Sh. Fateh Muhammad v. Muhammad Adil and others* **(PLD 2008 SC 82)** and *Hyder Ali Bhimji v. Additional District Judge Karachi South and another* **(PLD 2012 SC 279)**. Even the same is not worthy of credence, because it is an admitted fact on record that after the demise of Pervaiz Nawaz, all the account books, cheque books, etc. and other things belonging to the business of Pervaiz Nawaz were taken over by the appellant and Sheikh Muhammad Zafar and the appellant has taken a stance that he entered the disputed amount in accounts book but he did not produce the same in evidence. Moreover, it has emerged on record during evidence

that one Ikhlaq Hussain Baluch was employee of Pervaiz Nawaz and after his demise he is serving as Munshi of the appellant but the said Ikhlaq Hussain Baluch, who was best witness in circumstances of the instant case, as he used to keep the account

books of Pervaiz Nawaz, was not produced, so the adverse presumption as per Article 129(g), Qanun-e-Shahadat Order, 1984 arises against the appellant that had he been produced in the witness box, he would not have supported the stance of the appellant.

5. In addition to the above, as observed above, the business of deceased Pervaiz Nawaz including the account books, etc. was taken over by the appellant and Sheikh Muhammad Zafar jointly but the said Muhammad Zafar, while submitting application for leave to appear and defend being guardian ad litem of the minors specifically and in a categorical manner denied the averments of the plaint and stance of the appellant. Had there been any such transaction and entry in accounts book of joint venture, he (Muhammad Zafar) would have consented the stance of the appellant but the position is not as such.

6. Moreover, the appellant has neither produced the memo slip of the bank nor any bank official in support of his stance and only cheque in dispute has been exhibited as Ex.P1, which means that the cheque in dispute was not presented in the Bank. Besides, the learned trial Court has keenly and cautiously compared the ink of signatures and other writing on the disputed cheque Ex.P1 and overleaf signatures as per mandate of Article 84 of the Qanun-e-Shahadat Order, 1984 and has rightly concluded that the ink of signatures differs from the ink of other writing, which strengthen the doubt that the disputed cheque was

managed by the appellant as after death of Pervaiz Nawaz he took over all the accounts books, cheque books and other things of the business of deceased because the respondents No.1 to 3 were minors and respondent No.4 was living abroad and even the respondents are foreign nationals.

7. The compendium of the discussion above is that the learned trial Court has appreciated evidence on record in a true perspective, which otherwise was not necessary if the provisions of sections 29 and 29-A of the Negotiable Instruments Act, 1881 have been kept in mind and adhered to by the learned trial Court, and has reached to a just conclusion that the appellant has failed to prove his case by leading unimpeachable, trustworthy and confidence inspiring evidence. Resultantly, the appeal in hand comes to naught and the same is hereby dismissed with costs throughout.

(**Shahid Bilal Hassan)**
Judge

Approved for reporting.

Judge

Lahore High Court
Muhammad Asif Nawaz, etc v. Muhammad Nawaz, etc. Civil Revision No.22422 of 2023
Mr. Justice Shahid Bilal Hassan

Crux of Judgement:

i) Criteria for determining the question, whether a transaction is a Benami transaction or not, inter alia, the following factors are to be taken into consideration:-

(i) Source of consideration; (ii) From whose custody the original

title deed and other documents came in evidence; (iii) Who is in possession of the suit property; and (iv) Motive for the Benami transaction.

ii) The initial burden of proof is on the party who alleges that an ostensible owner is a Benamidar.

iii) The concurrent findings on record cannot be disturbed in exercise of revisional jurisdiction under section 115 of Code of Civil Procedure, 1908.

Facts of Case:

The petitioners instituted a suit for declaration against the respondents with the averments that the petitioners purchased the disputed house and their father/respondent No.1 was a benamidar. The respondent No.1 transferred the suit house in the name of respondents No.2 and 3 vide registered sale deed. The petitioners prayed for declaratory decree with further prayer to cancel the registered sale deed. The learned trial Court dismissed suit of the petitioners. The petitioners being aggrieved preferred an appeal but the same was dismissed. Hence the instant revision petition has been filed.

Issues In Case:

i) What is the criteria for determining the question, whether a transaction is a Benami transaction or not?

ii) Whether initial burden of proof is on the party who alleges that an ostensible owner is a Benamidar?

iii) Whether concurrent findings on record can be disturbed in exercise of revisional jurisdiction under section 115 of Code of Civil Procedure, 1908?

Analysis of Issues of Case:

i) Criteria for determining the question, whether a transaction is a Benami transaction or not, inter alia, the following factors are to be taken into consideration as elaborated in Muhammad Sajjad Hussain v. Muhammad Anwar Hussain (1991 SCMR 703):- (i) Source of consideration; (ii) From whose custody the original title deed and other documents came in evidence;
(iii) Who is in possession of the suit property; and (iv) Motive for the Benami transaction.

ii) The initial burden of proof is on the party who alleges that an ostensible owner is a Benamidar.

iii) As such, the concurrent findings on record cannot be disturbed in exercise of revisional jurisdiction under section 115 of Code of Civil Procedure, 1908.

Form No. HCJD/-121

ORDER SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Civil Revision No.22422 of 2023
Muhammad Asif Nawaz, etc.
Versus
Muhammad Nawaz, etc.

Sr. No. of order/ proceedings	Date of Order/ proceedings	Order with signature of Judge and that of parties or counsel, where necessary

04.04.2023 Syed Abdul Wakeel Tirmzi, Advocate for the petitioners

Succinctly, the petitioners instituted a suit for declaration against the respondents with the averments that the petitioners purchased the disputed house measuring 10-Marlas and with intent to gratify Allah Almighty get it transferred in the name of their father/respondent No.1 as benamidar and thereafter the petitioners, from their own pocket raised constructions and maintained the house in question; that the respondent No.1 spent most of his life abroad at Maskat and was not in cordial relations with the petitioners; therefore, the respondent No.1 used to live with his brothers at District Bahawalpur on arrival in Pakistan, hence, with intent to blackmail and harass the petitioners, the respondent No.1 transferred the suit house in the name of respondents No.2 and 3 vide registered sale deed No.15140 dated 19.10.2018; that the respondent No.1 was not real owner of the suit house and was only benamidar. The petitioners prayed for declaratory decree with further prayer to cancel the registered sale deed NO.15140 dated 19.10.2018. The respondents contested the suit. Out of the divergent pleadings of the parties, the leaned trial Court

framed issues and evidence of the parties was recorded. On conclusion of trial, the learned trial Court dismissed suit of the petitioners vide impugned judgment and decree dated 24.05.2022. The petitioners being aggrieved preferred an appeal but the same was dismissed vide impugned judgment and decree dated 24.02.2023 by the learned appellate Court; hence, the instant revision petition.

2. Heard.

3. Criteria for determining the question, whether a transaction is a *Benami* transaction or not, inter alia, the following factors are to be taken into consideration as elaborated in *Muhammad Sajjad Hussain v. Muhammad Anwar Hussain* **(1991 SCMR 703)**:-

(i) Source of consideration;
(ii) From whose custody the original title deed and other documents came in evidence;
(iii) Who is in possession of the suit property; and
(iv) Motive for the *Benami* transaction.

The ratio of the said judgment has again been affirmed and reiterated in a recent judgment, by the Apex Court of the country, reported as *Muhammad Yousaf and others v. Muhammad Ishaq Rana (Deceased) through LRs and others* **(2023 SCMR 572)** and it has further observed that:-

> *'----- It goes without saying that the case of benami dispute is not one in which the authenticity of the document is in question, but in such cases*

the execution of the document is an admitted fact and the seeker only intends rectification of the document and wants that in it the name of the Benamidar be deleted and instead his name be written. How can this be done? The determination of this question depends not only on direct oral evidence but also upon circumstances and surroundings of the case concerned. It has been held repeatedly that the burden of proof lies heavily on the person who claims against the tenor of the document or deed to show that the ostensible vendee (owner) was a mere name-lender and the property was in fact purchased only for his benefit. Such burden would be discharged by satisfying the well-known criteria, to wit, (i) source of purchase money relating to the transaction; (ii) possession of the property, (iii) the position of the parties and their relationship to one another, (iv) the circumstances, pecuniary or otherwise, of the alleged transferee, (v) the motive of the transaction, (vi) the custody and production of the title deed and (vii) the previous and subsequent conduct of the parties. Each of the above-stated circumstances, taken by itself, is of no particular value and affords no conclusive proof of the intention to transfer the ownership from one person to the other. But a combination of some or all of them and a proper weighing and appreciation of their value would go a long way towards indicating whether the ownership has been really transferred or where the real title lies.'

The initial burden of proof is on the party who alleges that an ostensible owner is a *Benamidar*. But in the present case, the

petitioners have failed to discharge the onus placed on their shoulders, because it is evident from the record that the petitioners could not produce the agreement with the original owners/sellers so as to establish that in actual they purchased the property out of their own pockets in the year 2003 and got the same transferred in the name of the respondent No.1/their father. Moreover, the petitioners could not substantiate their source of income by producing any proof in this regard. Admittedly, at the time of disputed transaction P.W.1 was aged about 25/26 years and was working as tailor, whereas Tariq Nawaz, petitioner was aged about 12 years and Asif Nawaz was 21 years of age at the relevant time. This shows that the petitioners were not having any sound source of income at the time of purchase of the disputed property, rather admittedly the respondent No.1 remained abroad in order to earn livelihood for upbringing and maintaining the petitioners; however, when the respondent No.1 returned, his relations with his wife i.e. mother of the petitioners turned strained, which culminated in filing of the suit in question. Moreover, the petitioners could not produce the original owners and the attesting witnesses of the document so as to support their stance. Furthermore, the petitioners have also failed to bring on record anything disclosing motive of such *benami* transaction. Mere possession of the disputed property and title document is not sufficient, especially when it is an admitted fact that the respondent No.1 was living abroad, so the possession of the petitioners over the

disputed property and having title document being sons of the respondent No.1 has rightly been adjudged to be on behalf of their father/respondent No.1.

4. The respondent No.1 has established through oral as well as documentary evidence that in actual he purchased the disputed property by spending amount and he has now sold the same to the respondent No.2 namely Muhammad Akmal against consideration of Rs.2,400,000/- through sale deed No.15140. The ownership of the disputed property was recorded in the name of the respondent No.1 in the revenue record.

5. Pursuant to the above, it is held that the learned Courts below have committed no illegality, irregularity and wrong exercise of jurisdiction, rather after evaluating evidence on record have reached to a just conclusion that the petitioners/ plaintiffs have miserably failed to prove their case through trustworthy and reliable evidence. The impugned judgments and decrees do not suffer from any legal infirmity rather law on the subject has rightly been construed and appreciated. As such, the concurrent findings on record cannot be disturbed in exercise of revisional jurisdiction under section 115 of Code of Civil Procedure, 1908. Reliance is placed on judgments reported as *Mst. Zaitoon Begum v. Nazar Hussain and another* (**2014 SCMR 1469**), *CANTONMENT BOARD through Executive Officer, Cantt. Board Rawalpindi v. IKHLAQ AHMED and others* (**2014 SCMR 161**), *Muhammad Farid*

Khan v. Muhammad Ibrahim, etc. **(2017 SCMR 679)**, *Muhammad Sarwar and others v. Hashmal Khan and others* **(PLD 2022 Supreme Court 13)** and *Mst. Zarsheda v. Nobat Khan* **(PLD 2022 Supreme Court 21)** wherein it has been held that :-

> *'There is a difference between the misreading, non-reading and misappreciation of the evidence therefore, the scope of the appellate and revisional jurisdiction must not be confused and care must be taken for interference in revisional jurisdiction only in the cases in which the order passed or a judgment rendered by a subordinate Court is found perverse or suffering from a jurisdictional error or the defect of misreading or non-reading of evidence and the conclusion drawn is contrary to law. This court in the case of Sultan Muhammad and another v. Muhammad Qasim and others (2010 SCMR 1630) held that the concurrent findings of three courts below on a question of fact, if not based on misreading or non-reading of evidence and not suffering from any illegality or material irregularity effecting the merits of the case are not open to question at the revisional stage.'*

Further in judgment reported as *Salamat Ali and others v. Muhammad Din and others* **(PLJ 2023 SC 8)**, it has invariably been held that:-

> *'Needless to mention that a revisional Court cannot upset a finding of fact of the Court(s) below unless that finding is the result of misreading, non-reading, or perverse or absurd appraisal of some*

material evidence. The revisional Court cannot substitute the finding of the Court(s) below with its own merely for the reason that it finds its own finding more plausible than that of the Court(s) below.'

6. For the foregoing reasons, the revision petition in hand comes to naught and the same stands dismissed ***in limine***.

SHAHID BILAL HASSAN
Judge

Approved for reporting.

Judge

M.A.Hassan

Lahore High Court
Ghulam Muhammad v. Muhammad Hayat (Late) through Legal Heirs and others
Civil Revision No. 265 of 2012
Mr. Justice Shahid Bilal Hassan

Crux of Judgement:

i) Pleading the time, place and names of witnesses present at the time of reaching at the oral agreement to sell is sine qua non requisite to prove such agreement in a suit seeking decree for specific performance of such agreement.

ii) The witnesses of oral agreement, produced beyond pleadings, cannot be considered.

iii) If a fact is not pleaded in the plaint, the evidence in this regard will also be considered as an improvement beyond pleadings and same cannot be relied upon while rendering judgment.

iv) When the basic and initial oral agreement is not proved, which was necessary to be pleaded and proved independently, then the subsequent purported agreement to sell has no value in the eye of law.

v) When one has purchased suit property through a sale mutation acceded by the vendor, possession at spot of rival claimant seeking decree for specific performance of oral sale agreement is nothing but an illegal occupation.

Facts of Case:

After consolidated proceedings, suit of respondents claiming decree for specific performance of agreement to sell was decreed and suit of petitioner seeking decree for recovery of possession of suit property was dismissed, which judgment & decree of learned trial court was maintained by the learned appellate Court whilst dismissing relevant appeal. Hence, the instant revision petition.

Issues In Case:

i) What is significance of pleading time, place and names of witnesses to oral agreement to sell in a suit seeking decree for specific performance of such agreement?

ii) Whether a witness of an oral agreement to sell may be produced in evidence even if he is not mentioned in pleadings?

iii) What is effect of introducing improvements in evidence as beyond pleadings by party seeking decree for specific performance of an oral agreement to sell?

iv) What would be fate of subsequent agreement to sell if basic & initial oral agreement to sell is not proved?

v) If one has purchased suit property through a sale mutation acceded by the vendor, what would be status of possession at spot of rival claimant seeking decree for specific performance of oral agreement to sell?

Analysis of Issues of Case:

i) In case of an oral agreement to sell, not only unimpeachable evidence is required to be produced to prove each and every incident of such a transaction, but said details are necessary to be pleaded as well.

ii) No party to a judicial proceeding can be allowed to adduce evidence in support of a contention not pleaded earlier and the decision of a case cannot rest on such evidence.

iii) When no date, time, place or names of witnesses of the oral agreement to sell had been mentioned in the pleadings whilst instituting suit seeking decree for specific performance of oral agreement to sell, then improvements in evidence in relation thereto are considered as beyond the pleadings and are believed to constitute an afterthought attempt to improve the case, which course of action is not permitted by law.

iv) It is imperative that only bona fide oral agreement leads to grant of decree of specific performance. Courts must insist for fulfillment at the earliest of all requirements so as to ensure that an oral agreement is fully proved. Pleading and proving of each and every link and chain of oral transaction is necessary and sine qua non. In view of the above, when the basic and initial oral agreement has not been proved, which was necessary to be pleaded and proved independently, the subsequent events in the shape of purported agreement to sell has no value in the eye of law.

v) It is a settled principle of law that mere an agreement to sell does not create a title, but the same can only be used in order to sue and the same cannot be considered a title document until & unless the same is proved before a Court of competent jurisdiction.

IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Civil Revision No.265 of 2012

Ghulam Muhammad
Versus
Muhammad Hayat (Late) through Legal Heirs and others

JUDGMENT

Date of hearing: ***11.04.2023***

Petitioner(s) by: Mr. Mubeen Ud Din Qazi, Advocate

Respondent(s) by: Rana Rashid Akram Khan, Advocate for legal heirs of respondents No.1 and 2/applicant in CM No.1-C of 2019.

Respondents No.3, 4(1) to 4(3) ex parte on 03.04.2019

***SHAHID BILAL HASSAN-J*:**

C.M.No.1-C of 2019

Through this application, the applicants seek permission to bring on record certain documents. Relying upon contents of the application supported by an affidavit, the same is allowed subject to all just and legal exceptions.

Main Revision Petition

Succinctly, deceased respondents No.1 and 2 namely Muhammad Hayat and Khan Muhammad instituted a suit for specific performance against the present respondent No.3 Muhammad Hayat, respondent No.4 Muhammad Azam and the present petitioner, contending therein that the respondents No.3 and 4 were owners of the disputed property; that a criminal case was lodged against the present respondent No.4/Muhammad Azam and the respondent No.3 was in need

of money; that the respondent No.3 entered into oral agreement dated 06.06.1989 with the respondents No.1 and 2 and sold out the disputed land to them in lieu of Rs.18,000/- per acre; that a stamp paper was also purchased by the respondent No.3 on 05.11.989 for the execution of agreement; that the respondent No.4 was in jail, therefore, the execution of agreement was postponed with the consent of the parties; that at the time of alleged oral agreement the disputed land was mortgaged with agricultural bank; that the respondents No.1 and 2 got deposited Rs.17,824/- in the account of the respondents No.3 and 4 on 06.06.1989; that the possession of the disputed land was handed over to the respondents No.1 and 2; that the respondents No.1 and 2 made improvement over the disputed land; that the respondent No.4 executed a power of attorney No.309 in favour of respondent No.3 on 09.09.1990; that the respondent No.3 executed agreement to sell relating to the disputed land with the respondents No.1 and 2 and received Rs.180,000/- from them; that according to the terms and conditions of the said agreement, the respondents No.3 & 4 had to complete the alleged sale in favour of the respondents No.1 and 2 in the shape of registered sale deed/oral mutation, etc.; that he respondents No.1 and 2 also deposited Rs.10,000/- in the loan account of the respondents No.3 & 4 on 28.06.1992; that they paid Rs.220,068/- to the respondents No.3 & 4 out of total amount of Rs.223,313/-; that on 10.09.1992 the respondents No.3 and 4 were asked to complete the registered sale deed in

favour of the respondents No.1 and 2 after receipt of outstanding amount but they refused; hence, the suit with the prayer that a decree for specific performance may be passed in favour of the respondents No.1 and 2/plaintiffs. They also sought relief in the alternative for recovery of Rs.220,068/- as sale consideration and Rs.75,000/- for improvement made over the suit land as respondents No.3 and 4 had alienated the suit land to the present petitioner/defendant No.3 vide mutation No.330 dated 31.10.1992.

2. The petitioner and respondents No.3 and 4 contested the suit by filing written statement and controverted the averments of the plaint, fully negated the stance taken up by the respondents No.1 and 2. The petitioner also filed a suit for recovery of possession against the respondents No.1 and 2, which was duly contested by them. Both the suits were consolidated and out of the divergent pleadings of the parties, the learned trial Court framed consolidated issues. Both the parties adduced their oral as well as documentary evidence. On conclusion of trial, the learned trial Court vide consolidated judgment and decree dated 21.03.2001 decree suit of the respondents No.1 and 2, whereas dismissed suit of the petitioner.

3. Feeling aggrieved by the same, the present petitioner preferred appeal, which was allowed and case was remanded to the learned trial Court for decision afresh by giving findings on all issues on the basis of evidence on record.

After remand, the learned trial Court vide impugned consolidated judgment and decrees dated 11.04.2007 again decreed suit of the respondents No.1 and 2 and dismissed suit of the present petitioner. The petitioner being aggrieved of the same preferred appeal. The learned appellate Court vide impugned judgment and decree dated 08.10.2011 maintained the above said consolidated judgment and decree and dismissed the appeal; hence, the instant revision petition.

4. Heard.

5. The parameters, in respect of oral agreement, have been settled by the Apex Court of the country in a celebrated judgment reported as *Muhammad Nawaz through L.Rs. v. Haji Muhammad BaranKhan through L.Rs. and others* **(2013 SCMR 1300)** and it has invariably been held that:-

> *'…….. We also hold that although it is not the requirement of law that an agreement or contact of sale of immovable property should only be in writing, however, in a case where party comes forward to seek a decree for specific performance of contract of sale of immovable property on the basis of an oral agreement alone, heavy burden lies on the party to prove that there was consensus ad idem between both the parties for a concluded oral agreement. An oral agreement by which the parties intended to be bound is valid and enforceable, however, it requires for it prove clearest and most satisfactory evidence.'*

The said esteemed judgment was followed by this Court in

Karamdad v. Manzoor Ahmad and 2 others **(2015 CLC 157-Lahore)** and it was further observed that:-

> *'6. The perusal of plaint reveals that respondent/plaintiff did not disclose the name of witnesses before whom the alleged oral sale was struck between the parties. Even no period has been mentioned by the respondent/plaintiff in his plaint for completion of oral agreement to sell. No doubt, an oral agreement to sell is permissible in law, but it has to be proved through credible and un-impeachable evidence.'*

Now, when the facts of the instant case are considered on the touchstone of the two judgments *ibid* it appears that the respondents No.1 and 2 while instituting suit for specific performance have failed to plead time, place and names of witnesses in whose presence the purported oral agreement was reached at between them and the respondent No.3 (Muhammad Hayat). For ready reference, paragraphs No.1 and 2 of the plaint of suit titled "Muhammad Hayat, etc. v. Muhammad Hayat,

etc.", because whole the case stance of the respondents No.1 and 2 rests on these paragraphs, are reproduced infra:-

1۔ یہ کہ اراضی متنازعہ کے مالکان مدعا علیہم تھے۔ مدعاعلیہ نمبر2 ایک فوجداری مقدمہ بجرم 302 میں سزایافتہ تھا۔ اور مدعا علیہم کو فوجداری مقدمہ مذکور کے دفاع کے لئے رقم کی ضرورت تھی۔ مدعاعلیہ نمبر1 نے اپنی ملکیتی اراضی اور اراضی ملکیتی مدعاعلیہ نمبر2 کا سودا بیع بروئے اقرار نامہ معاہدہ بیع زبانی مورخہ 89۔6۔6 کو بالعوض مبلغ 18،000 روپے فی ایکڑ (8 کنال) ہمراہ مدعیان کیا۔ اور معاہدہ اقرارنامہ بیع زبانی مورخہ 89۔6۔6 کو روشنی میں مدعاعلیہ نمبر 1 نے ایک اشٹام مالیتی 4 روپے مورخہ 89۔11۔5 بحق مدعیان بغرض تحریر و تکمیل اقرارنامہ معاہدہ بیع تحریری خرید کیا۔ چونکہ اُس وقت مدعاعلیہ نمبر2 جیل میں تھا۔ اور اشٹام مذکورہ بالا کی ضروری تحریر و تکمیل مدعاعلیہ نمبر2 کی حاضری کے بغیر ممکن نہ تھی۔ اس لئے اشٹام مذکورہ بالا کی تحریر و تکمیل کو مامدعیان اور مدعاعلیہ نمبر1 نے باہمی رضامندی سے اُس وقت تک ملتوی کر دیا جب تک مدعاعلیہ نمبر1 مدعاعلیہ نمبر2 سے مختارنامہ عام بابت اراضی مدعاعلیہ نمبر2 حاصل نہ کرے۔

2۔ یہ کہ اراضی متدعویہ بوقت اقرارنامہ معاہدہ بیع زبانی مورخہ 89۔6۔6 زرعی ترقیاتی بنک برانچ سلانوالی کے پاس آڈر رہن تھی مامدعیان نے حسب منشاء مدعاعلیہ نمبر1 طے شدہ جملہ زر ثمن متنازعہ مبلغ 223،313 روپے میں سے مبلغ 17،824 روپے مورخہ 89۔6۔6 کو مدعاعلیہ نمبر1 کے لون اکاؤنٹ میں بطور بیعانہ جمع کرادیئے۔'

The above reproduced paragraphs are sufficient to reach to a conclusion that the case of the respondents No.1 and 2 has not been pleaded as per requirement of law, because in case of oral agreement not only strong and unimpeachable evidence is required to be produced on each and every incident of such a transaction has to be pleaded, which is lacking in the case of the respondents No.1 and 2 as has been referred above. Therefore,

the evidence of P.W.4 and P.W.5, the alleged witnesses of oral agreement, produced by the respondents No.1 and 2, is nothing but beyond pleadings, which cannot be considered as has been held in judgments reported as *Sh. Fateh Muhammad v.Muhammad Adil and others* **(PLD 2008 SC 82)**, *Hyder Ali Bhimji v. Additional District Judge Karachi South and another* **(PLD 2012 SC 279)**, *Muhammad Wali Khan and another v. Gul Sarwar Khan and another* **(PLD 2010 Supreme Court 965)**. In another case reported as *Mubarak Ali and others v. Khushi Muhammad and others* **(PLD 2011 Supreme Court 155)**, it has been held that no one can be allowed to plead and seek relief from the Courts on a plea not founded and embedded in his pleadings. Another judgment reported as *Combined Investment (Pvt.) Ltd. V. Wali Bhai and others* **(PLD 2016 Supreme Court 730)**, can also be referred, which pronounces that none of the parties to a judicial proceeding can be allowed to adduce evidence in support of a contention not pleaded by it and the decision of a case cannot rest on such evidence. Pleading and proving of each and every link and chain of oral transaction is necessary and sine qua non. In judgment reported as *Moiz Abbas v. Mrs. Latifa and others* **(2019 SCMR 74)**, the

Apex Court of the country has held:-

> *8. We find that no date, time, place or names of witnesses of the alleged oral agreement has been*
>
> *mentioned in the reply to the legal notice, the*

written statement, or the suit filed by the respondent. The learned counsel attempted to argue that the said gaps had been filled by the witnesses of the respondent in their affidavits in evidence. We are not impressed by this argument. These improvements are clearly beyond the pleadings and constitute an attempt to improve the case of the respondents as an afterthought. Such course of action is not permitted by law. These requirements are sine qua non to prove an oral agreement to sell which have been settled by this Court in numerous judgments time and again. These are clearly missing in this case. Suits involving sales based on oral agreement are more susceptible to improvements made by the parties in the evidence and pleadings in order to succeed. It is imperative that all of these requirements spelt out by Courts with a view that only bona fide oral agreement lead to grant of decree, need to be strictly enforced and Courts must insist that these be fulfilled at the earliest so as to ensure that an oral agreement is fully proved and the device of oral agreement is not abused unscrupulous and devious litigants to get decrees by fraud, deceit, skillfully made improvements at different stages the trial.'

Moreover, in judgment reported as *Sheikh Akhtar Aziz v. Mst. Shabnam Begum and others* (**2019 SCMR 524**), it has been held that:-

'The law relating to oral agreement is quite clear, the terms and conditions which were orally agreed have to be stated in detail in the pleadings and have to be established through independent evidence which is neither the case of the appellant nor was it so set up before the lower fora.'

Similar view was reiterated and adopted in judgments reported as *Muhammad Riaz and others v. Mst. Badshah Begum and others* (**2021 SCMR 605**) and *Saddaruddin v. Sultan Khan* (**2021 SCMR 642**).

6. Moreover, as is evident from paragraph No.2 of

the plaint, that the respondents No.1 and 2 pleaded that they deposited Rs.17,824/- in the account of respondent No.3/ defendant No.1 on 06.06.1989 but during evidence it has been deposed that the same was deposited by one Wali Muhammad, son of respondent No.1; when this factum has not been pleaded in the plaint, the evidence in this regard will also be considered beyond pleadings and cannot be relied upon while rendering judgment, as has been held in the above said judgments. Moreover, it is not clear that for what purpose Wali Muhammad deposited the amounts on different times in the loan account of the respondent No.3.

7. In view of the above, when the basic and initial oral agreement has not been proved, which was necessary to be pleaded and proved independently, the subsequent events in the shape of purported agreement to sell dated 10.09.1990 Ex.P4 has no value in the eye of law especially when the respondents No.3 and 4 have specifically negated the same while submitting written statement and their non-appearance in the witness box in peculiar facts and circumstances of the case would not harm the case of the present petitioner, because the respondents No.1 and 2 have to stand on their own legs and any shortcomings or lacunae in the evidence of the petitioner would not be helpful to them and they have to prove their case on the strength of their evidence. In this regard reliance is placed on judgments reported as *Sultan Muhammad and another v. Muhammad Qasim and other* **(2010 SCMR 1630)**, *Anwar Sajid v. Abdul*

Rashid Khan **(2011 SCMR 958)** and *Sultan v. Noor Asghar* **(2020 SCMR 682)**. In addition to this, it is not proved on record that Ex.P4 was ever read over and explained to the parties of the same and no certification in this regard was given by the P.W.6, the alleged scribe of the Ex.P4, disputed agreement. Moreover, the same does not bear the NICs numbers of the witnesses.

8. Besides, the alleged general power of attorney is also dubious because in evidence it has been stated that Deputy Superintendent Jail identified the executant i.e. Muhammad Azam but in the end of the said general power of attorney name of Ch. Muhammad Anwar, Assistant Superintendent Central Jail Mianwali is written whereas the stamp of Deputy Superintendent Central Jail, Mianwali is pasted with signatures as witness of identification, which casts aspersion and doubt. Original record of the said general power of attorney from the concerned Revenue Office has been summoned and gone through, which has been sealed again. Moreover, it is a settled principle of law that an agreement to sell does not create a title rather the same can be used in order to sue and until & unless the same is proved before a Court of competent jurisdiction, the same cannot be considered a title document.

9. As against the above, the petitioner has purchased the disputed property from the respondents No.3 and 4 through the mutation No.330 dated 31.10.1992 against consideration

and the stance of the petitioner has been accepted and acceded to by the respondents No.3 and 4; therefore, he has every right to get possession of the same from the respondents No.1 and 2, whose possession is nothing but that of illegal occupants.

10. Pursuant to the above discussion it is observed that the learned Courts below have failed to adjudicate upon the matter in hand by appreciating law on the subject in a judicious manner; therefore, the Courts below have misread evidence of the parties and when the position is as such, this Court is vested with authority to undo the concurrent findings as has been held in *Sultan Muhammad and another v. Muhammad Qasim and others* **(2010 SCMR 1630)** and *Ghulam Muhammad and 3 others v. Ghulam Ali* **(2004 SCMR 1001)**.

11. The Crux of the discussion above is that the revision petition in hand succeeds, which is hereby allowed, impugned judgments and decrees are set aside and suit of the respondents No.1 and 2 for specific performance of agreement to sell dated 10.09.1990 is dismissed whereby suit of the petitioner for recovery of possession is decreed. No order as to the costs.

(Shahid Bilal Hassan)
Judge

*Approved for reporting***.**

Judge

M A. Hassan

Lahore High Court
Asadullah Khan v. Province of Punjab and others
Civil Revision No. 42701 of 2022
Mr. Justice Shahid Bilal Hassan

Crux of Judgement:
i) The onus to prove those facts lies on a party who takes a plea and desires the Court to pronounce judgment as to his legal right dependent on the existence of facts which he asserts.

ii) The court is duty bound to firstly decide the question of jurisdiction and limitation, even if the same is not pleaded by the rival party.

Facts of Case:
Petitioner through the instant revision petition has challenged the concurrent judgments and decrees of the two Courts below whereby his suit for declaration with consequential relief challenging the alleged gift deed and the subsequent mutation in favour of respondents was dismissed.

Issues In Case:
i) Whether the onus to prove those facts lies on a party who takes a plea and desires the Court to pronounce judgment as to his legal right dependent on the existence of facts which he asserts?

ii) Whether the court is duty bound to firstly decide the question of jurisdiction and limitation, even if the same is not pleaded by the rival party?

Analysis of Issues of Case:
i) In the case of Khalid Hussain v. Nazir Ahmad (2021 SCMR 1986), the Apex Court of the country has held that when a party took a plea and desires the Court to pronounce judgment as to his legal right dependent on the existence of facts which he asserted, then the onus to prove those facts laid on him. Moreover, mere assertion of fraud and misrepresentation is not sufficient rather the same has to be proved by leading confidence inspiring evidence.

ii) It is bounden duty of the learned trial Court to firstly decide the question of jurisdiction and limitation, even if the same is not pleaded by the rival party, as per section 3 of the Limitation Act, 1908.

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Civil Revision No.42701 of 2022

Asadullah Khan **Versus** Province of Punjab and others

JUDGMENT

Date of hearing: ***11.04.2023***

Petitioner(s) by: Mr. Nauman Qureshi, Advocate

Respondent(s) by: Mr. Qamar Zaman Qureshi, Additional Advocate General Punjab for respondent No.1

Rana Muhammad Shafi Khan, Advocate for respondents No.2 & 3

***SHAHID BILAL HASSAN-J*:** Tersely, the present petitioner instituted a suit for declaration with consequential relief against the respondents contending therein that he was owner of land measuring 53-Kanals 16-Marlas vide register record of rights for the year 2010-11 situated at Mauza Wadhoon Tehsil Nowshera Virkan, District Gujranwala; that the petitioner used to cultivate the above said land; that the date of birth of the petitioner is 01.01.1936 and he being 80 years of age has been suffering from various diseases including loss of mind; that the respondent No.2 is real daughter of the petitioner and respondent No.3 is his son in law; that the respondent No.3 in connivance with the respondent No.2 and officials of revenue department illegally and unlawfully got executed gift deed

No.399 dated 11.04.2013 and subsequent mutation No.647 was attested on 18.06.2013; that the petitioner time and again asked the respondents to get cancelled the said gift deed and mutation but they refused; hence, the suit. The suit was contested by the respondents No.2 and 3, whereas the respondent No.1 was proceeded against ex parte. Divergence in pleadings of the parties was summed up into issues by the learned trial Court and evidence of the parties, oral as well as documentary, was recorded. On conclusion of trial, the learned trial Court vide impugned judgment and decree dated 05.04.2022 dismissed suit of the petitioner. Being dissatisfied, the petitioner preferred an appeal but result remained the same vide impugned judgment and decree dated 17.05.2022; hence, the instant revision petition challenging the vires and legality of the impugned judgments and decrees passed by the learned Courts below.

2. Heard.

3. Article 117 of the Qanun-e-Shahadat Order, 1984 provides that:-

> *'**117. Burden of proof:** (1) Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.*
>
> *(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.'*

In the present case, the petitioner pleaded and took a stance that he being 80 years of age had been suffering from various

diseases including loss of mind, so he was under bounden duty in view of the above provision of law to prove the same by producing cogent, trustworthy and confidence inspiring evidence but nothing in the shape of medical prescriptions or medical history was brought on record by him. In this view of the matter, the learned Courts below have rightly concluded that the present petitioner has failed to prove his stance with regards to suffering from various diseases including loss of mind/ memory loss, especially when a week prior to the attestation of the disputed gift deed Ex.P1/Ex.D2, the present petitioner also executed a gift deed No.377 dated 04.04.2013 Ex.D1 in favour of his son Rizwan Asad; therefore, it can safely be concluded that the petitioner was hale and healthy at the time of executing of disputed gift deed in favour of the respondent No.2. In this regard reliance is placed on *Khalid Hussain v. Nazir Ahmad* **(2021 SCMR 1986)**, wherein the Apex Court of the country has held that when a party took a plea and desires the Court to pronounce judgment as to his legal right dependent on the existence of facts which he asserted, then the onus to prove those facts laid on him. Moreover, mere assertion of fraud and misrepresentation is not sufficient rather the same has to be proved by leading confidence inspiring evidence. Reliance is placed on *Ghulam Ghaus v. Muhammad Yasin* **(2009 SCMR 70)** as has been referred and relied upon by the learned appellate Court. As such, the petitioner has not proved that the respondents No.2 and 3 have committed fraud with him by

taking benefit of his purported illness/mind of loss, especially when the petitioner travelled beyond his pleadings and during cross examination denied his signature and thumb impressions over the gift deed Ex.P1, which otherwise were pleaded to have been obtained fraudulently.

4. As against this, the respondent No.2 by appearing in the witness box as D.W.2 has categorically deposed that the petitioner offered her to gift the suit property, which was accepted by her and thereafter possession was delivered to her. The gift deed Ex.P1 was executed by the petitioner in her favour in presence of marginal witnesses and identifier. The respondent No.2 also produced marginal witnesses Rizwan Asad (D.W.1) (*who otherwise will be beneficiary if the disputed gift deed is cancelled and set aside*), Atta Ullah (D.W.3) who fully supported her stance. Muhammad Razzaq D.W.6 identified the petitioner at the time of registration of the disputed gift deed, who categorically deposed that at that time the petitioner was hale and healthy. Besides, the respondent No.2 produced Sub-Registrar Javed Sarwar, who was an independent witness and deposed in favour of the respondent No.2. Moreover, Patwari Halqa Khurshid Ahmad D.W.5 has also deposed in favour of the respondent No.2 and stated that Asad Ullah appeared before him for issuance of Fard Malkiyat, he chalked out Rapt No.434 dated 18.04.2013 Ex.D3 and issued *Fard*. In this view of the matter, the respondent No.2 successfully proved her case on the touchstone of Articles 17

and 79 of the Qanun-e-Shahadat Order, 1984. The ratio of judgments reported as *Sikandar Hayat v. Sughran Bibi* **(2020 SCMR 214)**, *Taj Muhammad v. Mst. Munawar Jan* **(2009 SCMR 598)** and *Khalid Ahmad v. Abdul Jabbar* **(2005 SCMR 911)**, on this point has rightly been appreciated by the learned appellate Court.

Besides, the fact of delivery of possession has also been established that the same is with the respondent No.2 since the execution of the gift deed Ex.P1 in her favour. Even otherwise, when a donor gifts out property in favour of his near and dear ones, constructive possession is transferred even without physical possession. Moreover, presently the respondent No.2 is in possession of the disputed property. The petitioner could not lead evidence as to how and in what capacity the respondent No.2 is in possession if the possession was not delivered to her, because it is not stance of the petitioner that possession of the disputed property was snatched by respondent No.2.

5. In addition to the above, the question with regards to limitation has also rightly been adjudicated upon because it is bounden duty of the learned trial Court to firstly decide the question of jurisdiction and limitation, even if the same is not pleaded by the rival party, as per section 3 of the Limitation Act, 1908. The suit was instituted after about four years of disputed gift deed No.399 dated 11.04.2013, which is badly barred by limitation because Article 91 of the Limitation Act, 1908 provides that such suit can be instituted within three years

when the fact entitling the plaintiff to have the instrument cancelled or set aside becomes known to him. In this case, the disputed gift deed was a registered document and being a public document the same is considered a notice to the public at large including the present petitioner. Even otherwise, it is settled law that when a Court reaches to a conclusion that the suit is barred by limitation, there is no need to discuss further merits of the case, but the learned Courts below even then have pondered upon and discussed evidence in a minute manner and have reached to a just conclusion.

6. Pursuant to the above, it is held that the learned Courts below have committed no illegality, irregularity and wrong exercise of jurisdiction, rather after evaluating evidence on record have reached to a just conclusion that the petitioner/ plaintiff has miserably failed to prove his case through trustworthy and reliable evidence. The impugned judgments and decrees do not suffer from any infirmity, rather law on the subject has rightly been construed and appreciated. As such, the concurrent findings on record cannot be disturbed in exercise of revisional jurisdiction under section 115 of Code of Civil Procedure, 1908. Reliance is placed on judgments reported as *Mst. Zaitoon Begum v. Nazar Hussain and another* (**2014 SCMR 1469**), *CANTONMENT BOARD through Executive Officer, Cantt. Board Rawalpindi v. IKHLAQ AHMED and others* (**2014 SCMR 161**), *Muhammad Farid Khan v. Muhammad Ibrahim, etc.* (**2017 SCMR 679**), *Muhammad*

Sarwar and others v. Hashmal Khan and others **(PLD 2022 Supreme Court 13)** and *Mst. Zarsheda v. Nobat Khan* **(PLD 2022 Supreme Court 21)** wherein it has been held that :-

> *'There is a difference between the misreading, non-reading and misappreciation of the evidence therefore, the scope of the appellate and revisional jurisdiction must not be confused and care must be taken for interference in revisional jurisdiction only in the cases in which the order passed or a judgment rendered by a subordinate Court is found perverse or suffering from a jurisdictional error or the defect of misreading or non-reading of evidence and the conclusion drawn is contrary to law. This court in the case of Sultan Muhammad and another v. Muhammad Qasim and others (2010 SCMR 1630) held that the concurrent findings of three courts below on a question of fact, if not based on misreading or non-reading of evidence and not suffering from any illegality or material irregularity effecting the merits of the case are not open to question at the revisional stage.'*

Further in judgment reported as *Salamat Ali and others v. Muhammad Din and others* **(PLJ 2023 SC 8)**, it has invariably been held that:-

> *'Needless to mention that a revisional Court cannot upset a finding of fact of the Court(s) below unless that finding is the result of misreading, non-reading, or perverse or absurd appraisal of some material evidence. The revisional Court cannot substitute the finding of the Court(s) below with its own merely for the reason that it finds its own*

finding more plausible than that of the Court(s) below.'

7. For the foregoing reasons, the revision petition in hand comes to naught and the same stands dismissed. No order as to the costs.

(Shahid Bilal Hassan)
Judge

*Approved for reporting***.**

Judge

M A. Hassan

Lahore High Court
Mehboob and others v. Fateh Bibi and another
Civil Revision No.11751 of 2023.
Mr. Justice Shahid Bilal Hassan

Crux of Judgement:

i) An illiterate, rustic and village household lady is entitled to the same protection which is available to the Parda observing lady under the law.

ii) If the revenue officer has not been produced, then adverse presumption under Article 129(g) of Qanun-e-Shahadat Order, 1984 would arise that the best evidence has been withheld.

iii) If the party has claimed to be owner in possession of the property and the same was under his cultivation prior to the impugned mutations then possession of the party would be considered as constructive.

Facts of Case:

Through this civil revision, the petitioners have assailed the impugned judgment and decree passed by the Appellate Court wherein appeal of the respondent No.1 was accepted, consequently the suit filed by the respondent No.1 was decreed.

Issues In Case:

i) Whether an illiterate, rustic and village household lady is entitled to the same protection which is available to the Parda observing lady under the law?

ii) Whether adverse presumption would arise if the revenue officer has not been produced?

iii) Under what circumstances constructive possession can be considered and the party is entitled to consequential relief of possession?

Analysis of Issues of Case:

i) An illiterate, rustic and village household lady is entitled to the same protection which is available to the Parda observing lady under the law.

ii) If the revenue officer has not been produced, who is necessary to be produced and no evidence showing his incapability to appear in the Court has been adduced, then adverse presumption under

Article 129(g) of Qanun-e-Shahadat Order, 1984 would arise that the best evidence has been withheld that if the revenue officer had appeared in the witness box, he would not have supported the stance.

iii) If the party has claimed to be owner in possession of the property and alleges it in the plaint and the property in dispute is an inherited property then possession of the party would be considered as constructive, because the same was under his cultivation prior to the impugned mutations. Therefore, the party is entitled to consequential relief of possession.

Form No: HCJD/C-121

ORDER SHEET

IN THE LAHORE HIGH COURT, LAHORE

JUDICIAL DEPARTMENT

Civil Revision No.11751 of 2023

Mehboob and others Versus *Fateh Bibi and another*

S. No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of parties or counsel, where necessary

08.03.2023 Mr. Wafadadar Hussain Ghanjera, Advocate for the petitioner

Tersely, respondent No.1 filed a suit for declaration, etc. on the ground that she got the suit property as per her share in the inheritance of her deceased father. Father of petitioners is her real brother. Sister of respondent No.1 was managing her land and cultivated the same whereas she herself cultivated the land measuring 43 kanalas bearing 31, 32, khatauni No.129 to 137 situated in Mauza Arrar and land measuring 8 kanalas, khewat No.No.58 to 60 situated in Mauza Sajjoka through her brother/father of the petitioners. Further she has not alienated her land in favour of the petitioners and challenged the mutations No.526 & 788, dated 30.06.2003 on the ground of fraud and misrepresentation. The said suit of the

respondent No.1 was contested by the petitioners by way of written statement. Issues were framed, evidence of parties was recorded and learned trial Court vide judgment and decree dated 08.04.2022 dismissed the suit of the respondent No.1. Being aggrieved of the said judgment and decree, the respondent No.1 preferred an appeal and vide impugned judgment and decree dated 25.01.2023 passed by the learned Appellate Court, appeal of the respondent No.1 was accepted, consequently the suit filed by the respondent No.1 was decreed and impugned mutations No.526 & 788, dated 30.06.2003 stood cancelled. Hence, instant civil revision.

2. Heard.

3. It has been admitted on record by the petitioners that the respondent No.1 is an illiterate, rustic and village household lady and her husband is also illiterate. In respect of a transaction germane to property with a pardanasheen, village household and rustic ladies, the Apex Court of the country in a judgment reported as *Phul Peer Shah v. Hafeez Fatima* **(2016 SCMR 1225)** has given the parameters and conditions to be fulfilled in a transparent manner and held that:-

> *'In case of a (property) transaction with an old, illiterate/rustic village 'Pardanasheen' lady the following mandatory conditions should be complied with and fulfilled in a transparent manner and through evidence of a high degree so as to prove the transaction as legitimate and dispel all suspicions and doubts surrounding it:-*
>
> *i. That the lady was fully cognizant and*

was aware of the nature of the transaction and its probable consequences;

ii. *That she had independent advice from a reliable source/person of trust to fully understand the nature of the transaction;*

iii. *That witnesses to the transaction were such, who were close relatives or fully acquainted with the lady and had no conflict of interest with her;*

iv. *That the sale consideration was duly paid and received by the lady in the same manner; and*

v. *That the very nature of transaction was explained to her in the language she understood fully and she was apprised of the contents of the deed/ receipt, as the case may be.'*

Moreover, this Court has held that old and illiterate ladies are entitled to the same protection which is available to the Parda observing lady under the law; reliance is placed on *Muhammad Afzal v. Muhammad Zaman* **(PLD 2012 Lahore 125)**. Furthermore, in *Ghulam Muhammad v. Zahoran Bibi and others* **(2021 SCMR 19)**, the Apex Court of country has held:-

> *'It is settled law that the beneficiary of any transaction involving parda nasheen and illiterate women has to prove that it was executed with free consent and will of the lady, she was aware of the meaning, scope and implications of the document that she was executing. She was made to understand the implications and consequences of*

the same and had independent and objective advice either of a lawyer or a male member of her immediate family available to her.'

In a judgment reported as *Muhammad Naeem Khan and another v. Muqadas Khan (decd) through L.Rs. and another* **(PLD 2022 Supreme Court 99)**, the Apex Court of the country has invariably held:-

'If any such plea is taken then it is a time-honored parameter that in case of a document executed by a pardanashin lady, the burden of proof is on the party who depends on such a deed to persuade and convince that Court that it has been rad over and explicated to her and she had not only understood it but also received independent and disinterested advice in the matter. The aforesaid parameter and benchmark is equally applicable to an illiterate and ignorant woman who may not be a pardanashin lady. If authenticity or trueness of a transaction entered into by a pardanashin lady is disputed or claimed to have been secured on the basis of fraud or misrepresentation, then onus would lie on the beneficiary of the transaction to prove his good faith and the court has to consider whether it was done with freewill or under duress and has to assess further for an affirmative proof whether the said document was read over to the pardanashin or illiterate lady in her native language for her proper understanding.'

However, in the present case, none of the above said parameters have been met with and no such evidence, showing that the respondent No.1 was having an independent advice and was

fully aware and cognizant of the nature of the transaction, was brought on record by the present petitioners. Moreover, evidence as a whole has to be read and considered, which goes to evince that the petitioners have failed to prove the payment of sale consideration to the respondent No.1, because purportedly the bargain of oral sale was struck in presence of Sardar Bukhsh, Mehta and son of the respondent No.1/plaintiff but none of them were produced in the witness box by the petitioners so as to substantiate their stance. D.W.4 is the Patwari who entered the mutation Ex.D3 and he categorically admitted that the mutation does not bear thumb impressions of Fateh Bibi and even the CNIC of Fateh Bibi is not present on the said mutation. So much so, the revenue officer has also not been produced by the petitioners, who otherwise was necessary to be produced and no evidence showing his incapability to appear in the Court was adduced, therefore, adverse presumption under Article 129(g) of Qanun-e-Shahadat Order, 1984 would arise that the best evidence has been withheld and if the revenue officer had appeared in the witness box, he would not have supported the stance of the petitioners. Apart from this, the report Ex.D1 was not produced by its author, so the same has rightly been adjudged to be inadmissible in evidence by the learned Courts below.

4. So far as the arguments that only declaratory decree was sought by the respondent No.1/plaintiff without seeking possession, therefore, the suit was not maintainable, is

concerned, the said point has already been responded to by the Apex Court of the country in a judgment reported as *Mst. Arshan Bi through Mst. Fatima Bi and others v. Maula Bakhsh through Mst. Ghulam Safoor and others* **(2003 SCMR 318)** and it has been held that:-

> *'The respondent was simply knocked out and deprived of his land on technical grounds. If a party seeking declaration has failed to claim consequential relief, he should not have been non-suited on technical grounds. It has been held time and again by this Court that technicalities shall not create hurdles in the way of substantial justice. Rules and regulations are made to foster the cause of justice and they are not to be interpreted to thwart the same. A heavy duty is cast upon the Courts to do substantial justice and not to deny the same on mere technicalities. Reference in this regard is made to the case of Ch. Akbar Ali v. Secretary, Ministry of Defence, Rawalpindi and another (1991 SCMR 2114), where it was held as under--*
>
> > *In the exercise to do justice in accordance with law the Courts and forums of law cannot sit as mere spectators as if at a high pedestal, only to watch who out of two quarreling parties wins. See the judgment of this Court in the case of Muhammad Azam v. Muhammad lqbal and others (PLD 1984 SC 95 at page 132) and Civil Appeal No.789 of 1990, decided on 26-6-1991 (Syed Phul Shah v. Muhammad Hussain PLD 1991 SC 1051). On the other hand deep understanding and keen observance of*

proceedings is a sine qua non for doing justice in the Constitutional set up of Pakistan. Those Rules of adversary system based merely on technicalities not reaching the depth of the matter are now a luxury of the past. Neither of the parties can be permitted to trap an improperly defended or an undefended or an unsuspecting adversary by technicalities when the demand of justice is clearly seen even through a perfect trap. It will make no difference if the litigant parties are citizens high or low and /or is Government or a State institution or functionary acting as such. "

It has further been held in the said judgment that:-

'The denial of relief to a party simply on the ground that consequential relief vas not claimed would, in no circumstances, advance the cause of justice.

It has been held time and again that the natural result of declaration would be that consequential relief has to be given by the Court even if it is of claimed. The trial Court in such like circumstances may call upon a party to amend the plaint to that extent and direct him to pay court-fee, if any. Reliance in this respect is placed upon the case of Ahmad Din v. Muhammad Shafi and others (PLD 1971 SC 762) where it was observed as under:--

"The contention of the learned counsel for the appellant that the suit could not fail merely by reason of the fact that the consequential relief by way of possession had not been claimed is not altogether

without substance. If his suit was otherwise maintainable and he was otherwise entitled to the relief it was open to the Courts to allow him to amend the plaint by adding a prayer or possession and paying the appropriate ad valorem court-fees and then to grant him relief even though he had not specifically asked for it."

However, in the present case, the perusal of the plaint divulges that respondent No.1 claims herself to be owner in possession and alleges the disputed mutations a result of fraud, without consideration and without change of possession. Moreover, the property in dispute is an inherited property and possession of the present petitioners, if any, would be considered as constructive, because the same was under their cultivation prior to the impugned mutations and would be considered as on behalf of the respondent No.1 because the present petitioners are her nephews i.e. sons of her brother namely Allah Bukhsh; therefore, when she has proved her claim, she is also entitled to consequential relief of possession and mere on the basis of technicalities, she cannot be knocked out.

5. Pursuant to the above, it is held that the learned Courts below have committed no illegality, irregularity and wrong exercise of jurisdiction, rather after evaluating evidence on record have reached to a just conclusion that the petitioners/ defendants have miserably failed to prove their case through trustworthy and reliable evidence. The impugned judgments

and decrees do not suffer from any infirmity, rather law on the subject has rightly been construed and appreciated. As such, the concurrent findings on record cannot be disturbed in exercise of revisional jurisdiction under section 115 of Code of Civil Procedure, 1908. Reliance is placed on judgments reported as *Mst. Zaitoon Begum v. Nazar Hussain and another* (**2014 SCMR 1469**), *CANTONMENT BOARD through Executive Officer, Cantt. Board Rawalpindi v. IKHLAQ AHMED and others* (**2014 SCMR 161**), *Muhammad Farid Khan v. Muhammad Ibrahim, etc.* (**2017 SCMR 679**), *Muhammad Sarwar and others v. Hashmal Khan and others* (**PLD 2022 Supreme Court 13**) and *Mst. Zarsheda v. Nobat Khan* (**PLD 2022 Supreme Court 21**) wherein it has been held that :-

> *'There is a difference between the misreading, non-reading and misappreciation of the evidence therefore, the scope of the appellate and revisional jurisdiction must not be confused and care must be taken for interference in revisional jurisdiction only in the cases in which the order passed or a judgment rendered by a subordinate Court is found perverse or suffering from a jurisdictional error or the defect of misreading or non-reading of evidence and the conclusion drawn is contrary to law. This court in the case of Sultan Muhammad and another v. Muhammad Qasim and others (2010 SCMR 1630) held that the concurrent findings of three courts below on a question of fact, if not based on misreading or non-reading of evidence and not suffering from any illegality or material irregularity effecting the merits of the*

case are not open to question at the revisional stage.'

Further in judgment reported as *Salamat Ali and others v. Muhammad Din and others* **(PLJ 2023 SC 8)**, it has invariably been held that:-

'Needless to mention that a revisional Court cannot upset a finding of fact of the Court(s) below unless that finding is the result of misreading, non-reading, or perverse or absurd appraisal of some material evidence. The revisional Court cannot substitute the finding of the Court(s) below with its own merely for the reason that it finds its own finding more plausible than that of the Court(s) below.'

6. For the foregoing reasons, the impugned judgments and decrees are maintained with further relief of possession in favour of the respondent No.1 and the revision petition in hand being devoid of any force and substance stands dismissed in limine. No order as to the costs.

Approved for reporting.

(SHAHID BILAL HASSAN) JUDGE

Lahore High Court
Adeel Manzar and others v. Mst. Naeem Akhtar and others.
Writ Petition No.56215 of 2019
Mr. Justice Shahid Bilal Hassan

Crux of Judgement:
i) Yes, it is bounden duty of the court to see maintainability of suit upon presentation of the plaint.

ii) Limitation period for recovery of Dower is three years.

iii)Court can dilate merits of the case when the same is barred by limitation subject to sensitivity of the matter.

Facts of Case:
Through the instant writ petition the petitioners have challenged the vires of the impugned judgment and decree passed by the lower courts in which suit for recovery of dower amount filed by the respondent no.1 has been decreed by the trial court against them and subsequently their appeal was dismissed by the appellate court.

Issues In Case:
i) Whether it is bounden duty of the court to see maintainability of suit upon presentation of the plaint?

ii) What is the limitation for recovery of Dower?

iii) Whether court can dilate merits of the case when the same is barred by limitation?

Analysis of Issues of Case:
i) On presentation of a plaint before a Court, it is first and foremost as well as bounden duty of such Court to see whether

the suit is maintainable, not barred under any law and whether the Court has jurisdiction to adjudicate upon the matter or lis before it.

ii) Articles 103 & 104 of the Limitation Act, 1908 relate to the limitation provided under law for filing suit for recovery of Dower of either kind i.e three years of each one...

iii) It is a settled principle of law that when a Court reaches to the conclusion that the suit is barred by limitation, there is no need to dilate upon further on merits of the case; however, keeping in view the sensitivity of the matter in hand it seems appropriate that merits of the case be also dilated upon.

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Writ Petition No.56215 of 2019
Adeel Manzar and others
Versus
Mst. Naeem Akhtar and others

JUDGMENT

Date of hearing: ***16.05.2023***

Petitioner(s) by: M/s Zafar Iqbal Chohan and Sarosh Zafar, Advocates

Respondent(s) by: Mr. Shahid Mehmood Aleem, Advocate

***SHAHID BILAL HASSAN-J*:** Succinctly, on 13.01.2016, the respondent No.1 alongwith her minor daughter respondent No.2 brought a suit seeking a decree for maintenance allowance as well as dower Rs.50,000/- and ten (10) tolas gold ornaments valuing Rs.500,000/-, against the present petitioners, contending therein that respondent No.1/plaintiff married with father of the petitioners on 03.08.2001 and dower was fixed at Rs.50,000/- (prompt) and ten tolas gold ornaments which

remained unpaid; that the respondent No.2 was born out of the said wedlock and was living with the respondent No.1; that Manzar Abbas, father of the petitioners and husband of the respondent No.1 died on 07.03.2010. The respondents No.1 and 2 claimed decree for maintenance allowance at the rate of Rs.10,000/- per month w.e.f. March 2010 to January 2016 (total Rs.1,400,000/- and dower of respondent No.1 i.e. Rs.50,000/- cash and ten tolas gold ornaments apart from future maintenance at the rate of Rs.12,000/- per month per head.

The suit was contested by the present petitioners who while submitting written statement controverted averments of the plaint and prayed for dismissal of the suit.

Out of the divergent pleadings of the parties, the learned trial Court framed issues and evidence of the parties in pro and contra was recorded.

On conclusion of trial, the learned trial Court vide impugned judgment and decree dated 15.09.2018 partially decreed suit of the respondents No.1 and 2, entitling the respondent No.1 to recover dower amount of Rs.50,000/- and 10-tolas gold ornaments, whereas claim of maintenance allowance was refused.

The petitioners being aggrieved of the said judgment and decree preferred an appeal. The learned appellate Court dismissed the appeal vide impugned judgment and decree dated 04.07.2019; hence, the instant constitutional petition has been filed by the petitioners challenging the vires of the impugned

judgments and decrees.

2. Heard.

3. On presentation of a plaint before a Court, it is first and foremost as well as bounden duty of such Court to see whether the suit is maintainable, not barred under any law and whether the Court has jurisdiction to adjudicate upon the matter

or lis before it. In the present case, it has been noticed that the father of the petitioners and respondent No.2 as well as husband of the respondent No.1 breathed his last on 07.03.2010 and there is no dispute between the parties over the said date rather the same is an admitted fact, whereas the respondents No.1 and 2 brought the suit under discussion on 13.01.2016, which means the same has been instituted after nearly about six years of death of Manzar Abbas Bukhari, husband of the respondent No.1 and father of the petitioners as well as respondent No.2. Articles 103 & 104 of the Limitation Act, 1908 relate to the limitation provided under law for filing such suit, which stipulates: -

103. By a Muslim for exigible dower (mu'ajjal)	Three years Three years	When the dower is demanded and refused or (where, during the continuance of the marriage no such demand has been made, when the marriage is dissolved by death or divorce.

104. By a Muslim for deferred dower (mu'wajjal)	Three years	When the marriage is dissolved by death or divorce.

When the above said Articles are read with contents of the plaint, it becomes diaphanous that the suit of the respondents No.1 and 2 was blatantly barred by limitation but this aspect of the case has wrongly been adjudicated upon by the learned appellate Court and by referring first part of the above said Article 103, the learned appellate Court concluded that the suit was within time when during life of the deceased no demand and refusal took place but skipped and left the second part of the said Article, which enunciates that '***when marriage is dissolved by death or divorce***', even then the limitation for filing such suit would be '***three years***' and Article 104 *ibid*. As such, the findings recorded by the learned appellate Court on the point of limitation are not sustainable in view of the above discussion and provision of law, therefore, the same are reversed and it is held at the costs of repetition that the suit of the respondent No.1 for recovery of dower i.e. Rs.50,000/- and ten tolas gold ornaments was barred by limitation and was liable to be dismissed on this score. In this reliance is placed on *Syed Muhammad v. Mst. Zeenat and others* **(PLD 2001 Supreme Court 128)**, wherein it has been held that:-

> *'According to Article 103 of Limitation Act all suits for the decree of prompt dower can be instituted within three years from its demand whereas time prescribed for the suit of deferred dower is three years under Article 104 of the*

Limitation Act.

4. It is a settled principle of law that when a Court reaches to the conclusion that the suit is barred by limitation, there is no need to dilate upon further on merits of the case; however, keeping in view the sensitivity of the matter in hand it seems appropriate that merits of the case be also dilated upon. We proceed with the contents of the Nikahnama, which has been brought on record as Ex.P4 and relevant part of the matter in issue is column No.17, which reads:-

17۔ **خاص شرائط اگر کوئی ہوں۔** (1) دس تولے سونا بصورت زیورات جس کی مالیت مبلغ ساٹھ ہزار 60،000 روپے ہے دلہن نعیم اختر کی ملکیت ہونگے۔'

The above wording, shown and written in present form, clearly divulges that the said ten tolas gold ornaments were well available at the time of Nikah between the respondent No.1 and deceased Syed Manzar Hussain and were handed over to the respondent No.1. Moreover, at the time of marriage of the respondent No.1 with the deceased Syed Manzar Hussain, the present petitioners, as they were minors, were nurtured and nourished by the respondent No.1 beside their father, meaning thereby the respondent No.1 was having control over them as mother (though step) and after death of Syed Manzar Hussain, the respondent No.1 was employed under section 17-A of the Punjab Civil Servants (Appointment & Conditions of Service) Rules, 1974, whereas she has also been receiving share of pension for herself and for her daughter/respondent No.2.

Moreover, it has come on record that the property left by Manzar Hussain devolved upon his legal heirs as per their shares. The silence of the respondent No.1 for a considerable period of six years after death of deceased for not demanding any claim of dower despite the fact that the legacy of the deceased devolved upon his legal heirs also casts aspersion about her claim. Had the deceased not paid her dower during his life time, she would not have been quiet at the time of devolution of his legacy upon his legal heirs as well as at the time of execution of inheritance mutation, etc. All this shows that the deceased had already paid dower to the respondent No.1 in his life time

that is why the respondent No.1 remained silent and later on due to certain incidents in between the parties, the respondents No.1 and 2 instituted the suit, that too, after expiry of period of limitation provided under the law.

5. In addition of the above, the dower money is a debt payable to a wife and she is within her legal right to even press for its payment. Even in those cases where claim for recovery of debts gets barred under the law, the only consequence which follows is that the aid of the Courts cannot be invoked for its recovery but the debt itself does not become extinct so that it may be available for purposes of adjustment out of Court and can even be paid with the consent of the parties as has been held in *Muhammad Mumtaz v. Mst. Parveen Akhtar* **(1985 CLC 415)**, but here in this case, the respondent

No.1 has miserably failed to prove that the deceased Manzar Hussain did not pay the dower, as settled at the time of Nikah, to her, therefore, there does not arise any question of debt upon the estate of the deceased.

6. For the foregoing discussion and reasons, it is held that the learned Courts below have failed to construe law on the subject and without applying judicious mind proceeded to pass the impugned judgments and decrees, which are not sustainable in the eye of law. The learned Courts below have failed to exercise vested jurisdiction as per mandate of law; therefore, the constitutional petition in hand is allowed, impugned judgments and decrees are set aside, consequent whereof the suit instituted by the respondents No.1 and 2 being barred by limitation as well as on merits stands dismissed. No order as to the costs.

(SHAHID BILAL HASSAN)
Judge

Announced in open Court on_____.

Judge

Approved for reporting.

Judge

M.A.Hassan

Lahore High Court
Muhammad Nadir Khan (deceased) through L.Rs v.
Muhammad Usama and others
Civil Revision No.42577 of 2023
Mr. Justice Shahid Bilal Hassan

Crux of Judgement:
Father of minors cannot execute agreement to sell on behalf of minors without being appointed as guardian.

Facts of Case:
The petitioners instituted a suit for specific performance on the basis of agreements to sell against the respondents No.1 to 3/defendants with regards to the suit property. On the other hand, the respondents No.1 and 2 instituted suit for possession with permanent injunction and recovery of rent against the present petitioners and respondent No.4. The trial Court dismissed suit for specific performance of the petitioners and decreed suit for possession of the respondents No.1 and 2. The petitioners being aggrieved preferred two separate appeals which were dismissed, hence, the instant revision petition.

Issues In Case:
Whether father of minors can execute agreement to sell on behalf of minors without being appointed as guardian?

Analysis of Issues of Case:

There is no denial to the fact that disputed property is owned by the respondents No.1 and 2 who at the relevant time of purported agreements to sell were minors and respondent No.4 though was father but was not appointed as guardian of the said minors and no permission was accorded to him to sell out the property of the minors or enter into any kind of agreement on behalf of the minors by the Court of competent jurisdiction; therefore, he was not competent to enter into alleged agreements to sell on behalf of the minors. Under section 11 of the Contract Act, 1872 the minor disqualifies from entering into any contract, for disposal of his property, without appointment of a guardian by a Court of competent jurisdiction and if any such contract is entered the said transaction is void ab-initio and does not have any binding force.

Form No.HCJD/C-121

ORDER SHEET
IN THE LAHORE HIGH COURT,
LAHORE JUDICIAL DEPARTMENT

Civil Revision No.42577 of 2023
Muhammad Nadir Khan (deceased) through L.Rs.
Versus
Muhammad Usama and others

Sr. No. of order/ proceedings	Date of order/ Proceedings	Order with signatures of Judge, and that of parties of counsel, where necessary
	22.06.2023	Mian Muhammad Habib, Advocate for the petitioners

Precisely, the petitioners instituted a suit for specific performance on the basis of purported agreements to sell dated 28.10.2010 and 10.01.2011 against the respondents No.1 to 3/defendants with regards to the suit property. On the other hand, the respondents No.1 and 2 instituted suit for possession with permanent injunction and

recovery of rent against the present petitioners and respondent No.4. Both the parties contested the suit filed against them by submitting written statements. The learned trial Court consolidated both the suits and out of the divergent pleadings of the parties the consolidated issues were framed. Both the parties adduced their oral as well as documentary evidence. On conclusion of trial, the learned trial Court dismissed suit for specific performance of the petitioners and decreed suit for possession of the respondents No.1 and 2 vide impugned consolidated judgment and decree dated 18.06.2022. The petitioners being aggrieved preferred two separate appeals. The learned appellate Court vide impugned consolidated judgment and decree dated 24.05.2023 dismissed both the appeals; hence, the instant revision petition.

2. Heard.

3. There is no denial to the fact that disputed property is owned by the respondents No.1 and 2 who at the relevant time of purported agreements to sell were minors and respondent No.4 though was father but was not appointed as guardian of the said minors and no permission was accorded to him to sell out the property of the minors or enter into any kind of agreement on behalf of the minors by the Court of competent jurisdiction; therefore, he was not competent to enter into alleged agreements to sell on behalf of the minors. Section 11

of the Contract Act, 1872 enunciates that who may enter into contract, which reads:-

> *„Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject."*

Meaning thereby, the minor disqualifies from entering into any contract, for disposal of his property, without appointment of a guardian by a Court of competent jurisdiction and if any such contract is entered the said transaction is void ab initio and does not have any binding force. In this regard reliance has rightly been placed on *Abdul Ghani and others v. Mst. Yasmeen Khan and others* **(2011 SCMR 837)**, wherein the Apex Court of country invariably held that:-

> *„It is well settled by now that "any contract or transaction entered into with minor was void ab initio for minor could not give consent to create any binding contract. Principle of estoppel was also inapplicable in minor"s case. Transaction reflected in specified mutation sanctioned during minority of minor female was void ab initio for being unauthorized, therefore, on basis thereof vendees named in such mutation did not acquire any right or title in land in question."*

In the said judgment it has further been held:-

> *„The provisions as enumerated in section 11 of the Contract Act, 1872 would make minor incompetent to enter into any contract, therefore, contract by*

minor was void ab initio and not merely voidable. Such contract would have no existence in the eye of law and was incapable of satisfaction or confirmation. Law forbids enforcement of such transaction even if minor were to ratify the same after attaining majority."

The said ratio has been reiterated by the Hon'ble Supreme Court in judgment reported as *Yar Muhammad Khan and others v. Sajjad Abbas and others* **(2021 SCMR 1401)** and it has further been held that:-

„To protect minors and their interests a minor cannot enter into an agreement nor grant a power of attorney to do so. Section 11 of the Contract Act, 1872 explicitly stipulates that only those who are „of the age of majority according to the law to which he is subject" are „competent to contract"; the law is the Majority Act, 1875 section 3 whereof stipulates eighteen years as the age of majority."

In this view of the matter, when the alleged agreements were entered into the respondents No.1 and 2 were minors and the respondent No.4 was not competent to enter into any such agreement on their behalf; therefore, the said agreements are void ab initio and on the basis of the same, no suit can be instituted as no right or title has been created in favour of the petitioners.

4. In addition to the above, the petitioners instituted the suit against the minors/respondents No.1 and 2 by mentioning the name of Muhammad Bashir being guardian but

the said Muhammad Bashir was not arrayed as party despite the fact that purportedly he entered into agreements to sell in question with the petitioners on behalf of the minors and even the said person was not produced as witness by the petitioners so as to establish the factum of entering into alleged agreements to sell. Therefore, the learned appellate Court has rightly recorded findings that law debars filing of suits against the minors without next friend or guardian appointed by the Court and in the situation even suit of the plaintiffs/petitioners is not maintainable.

5. Apart from the above, the witnesses produced by the petitioners have not disclosed and deposed that time, day and mode of payment alongwith description of the amount as mentioned in the disputed agreements to sell (Ex.P1) and (Ex.P3).

6. Pursuant to above discussion, learned Courts below have rightly adjudicated upon the matter in hand and have not committed any illegality or irregularity warranting interference by this Court in exercise of revisional jurisdiction under section 115, Code of Civil Procedure, 1908. In judgments reported as *Muhammad Sarwar and others v. Hashmal Khan and others* **(PLD 2022 Supreme Court 13)** and *Mst. Zarsheda v. Nobat Khan* **(PLD 2022 Supreme Court 21)**, the Apex Court of the country has candidly held:-

> *„There is a difference between the misreading, non-reading and misappreciation of the evidence*

> *therefore, the scope of the appellate and revisional jurisdiction must not be confused and care must be taken for interference in revisional jurisdiction only in the cases in which the order passed or a judgment rendered by a subordinate Court is found perverse or suffering from a jurisdictional error or the defect of misreading or non-reading of evidence and the conclusion drawn is contrary to law."*

However, in the present case, as observed above, the learned Courts below has appreciated and construed law on the subject in a judicious manner and have not committed any error, rather the order and judgment are upto the dexterity; thus, the same are upheld.

Further in judgment reported as *Salamat Ali and others v. Muhammad Din and others* **(PLJ 2023 SC 8)**, it has invariably been held that:-

> *„Needless to mention that a revisional Court cannot upset a finding of fact of the Court(s) below unless that finding is the result of misreading, non-reading, or perverse or absurd appraisal of some material evidence. The revisional Court cannot substitute the finding of the Court(s) below with its own merely for the reason that it finds its own finding more plausible than that of the Court(s) below."*

7. As a sequel of above discussion and while placing reliance on the judgments *supra*, the instant civil revision being devoid of any force and substance stand dismissed *in limine*.

(Shahid Bilal Hassan)
Judge

Approved for reporting.

Judge

M A. Hassan

Lahore High Court
Muhammad Younis and others v. Mst. Dolat Bibi and others
Civil Revision No.620 of 2014
Mr. Justice Shahid Bilal Hassan

Crux of Judgement:

i) Subsection (7) of section 42 of the Land Revenue Act, 1967 binds the Revenue Officer, who is going to attest the mutation, to ensure the presence of a person whose right is going to be acquired by such transaction and said provision of law also requires the identification of such person by two respectable persons.

ii) The mutation entry is not a document of title.

iii) The entire structure built on illegal and defective foundation would have no value in the eyes of law.

iv) Once a mutation is challenged, the party relies on such mutation is bound to revert to the original transaction and to prove such original transaction which resulted in the entry or attestation of such mutation in dispute.

v) While seeking some relief, if fraud is alleged, the period of limitation will be three years which will commence to be computed from the date of knowledge.

Facts of Case:
The petitioners through a suit for declaration along with permanent injunction assailed the mutations on the ground that they are against law and facts, ineffective upon the rights of petitioners and are liable to be cancelled. The trial Court after giving issue-wise findings dismissed the suit. The petitioners being aggrieved preferred an appeal but the same was dismissed vide impugned judgment and decree; hence, the instant revision petition.

Issues In Case:
i) Whether Subsection (7) of section 42 of the Land Revenue Act, 1967 binds the Revenue Officer, who is going to attest the mutation, to ensure the presence of a person whose right is going to be acquired by such transaction and said provision of law also requires the identification of such person by two respectable persons?

ii) Whether mutation entry is a document of title?

iii) Whether the entire structure built on illegal and defective foundation would have any value in the eyes of law?

iv) Once a mutation is challenged whether the party relies on such mutation is bound to revert to the original transaction and to prove such original transaction which resulted in the entry or attestation of such mutation in dispute?

v) Whether while seeking some relief, if fraud is alleged, the period of limitation will be three years which will commence to be computed from the date of knowledge?

Analysis of Issues of Case:
i) Subsection (7) of section 42 of the Land Revenue Act, 1967 binds the Revenue Officer, who is going to attest the mutation, to

ensure the presence of a person whose right is going to be acquired by such transaction. The said provision of law also requires the identification of such person by two respectable persons.

ii) It is a settled principle of law that mutation entry is not a document of title, which by itself does not confer any right, title or interest.

iii) It is also a well settled law that if the foundation is illegal and defective then entire structure built on such foundation would have no value in the eyes of law.

iv) It is a settled principle of law that once a mutation is challenged the party that relies on such mutation(s) is bound to revert to the original transaction and to prove such original transaction which resulted in the entry or attestation of such mutation(s) in dispute.

v) Article 95 of the Limitation Act, 1908 provides that while seeking some relief, if fraud is alleged, the period of limitation will be three years which will commence to be computed from the date of knowledge.

Stereo. HCJDA 38

JUDGMENT SHEET

IN THE LAHORE HIGH COURT,
LAHORE JUDICIAL
DEPARTMENT

Civil Revision No.620 of 2014
Muhammad Younis and others
Versus
Mst. Dolat Bibi and others

JUDGMENT

Date of hearing: ***22.06.2023***

Petitioner(s) by: Sardar Muhammad Ramzan, Advocate

Respondent(s) by: Mr. Sohail Shafique and Ms. Ambar Abid, Advocates for respondents No.1, 2(ii) to 2(vii)

Mr. Muhammad Farooq Ahsan, Advocate vice counsel for respondents No.2-vii(a)(b)

M/s Mian Abdul Aziz and Fazal Ur Rehman, Advocates for respondent No.3

Respondents No.2(i)(iv) ex parte

***SHAHID BILAL HASSAN-J*:** Succinctly, the petitioners instituted a suit for declaration alongwith permanent injunction maintaining therein that about 20 years ago petitioners No. 1 & 2 borrowed some amount from Musawar Hussain respondent for their personal use who asked them to pledge their land measuring 14-kanals with his wife respondent No. 1. In this way pledge mutation No.234 was attested on 31.07.1986 in favour of respondent No.1. Muhammad Younis petitioner again borrowed some amount for which additional pledge mutation No.247 dated 07.02.1987 was attested. Later on, when the petitioners asked the respondents to receive amount on 10.11.1988 and get the land redeemed, respondent No.2 got

attested one mutation for redemption and two mutations of sale in collusion with the revenue department in his favour and on 27.03.1990 respondent No.2 through another sale mutation transferred 2-kanals land in favour of Muhammad Iqbal respondent No.3 who alienated the same to respondent No.1

vide mutation No.415 dated 24.08.1995. It is maintained that respondents have committed fraud with the petitioners, therefore, all the mutations are against law and facts, ineffective upon the rights of petitioners and are liable to be cancelled. The petitioners came to know about the alleged fraud three months before filing of the suit upon checking the revenue record. The contents of plaint were controverted by respondents No.1 and 2 by filing of written statements and raised preliminary as well as legal objections. However respondent No.3 did not appear and he was proceeded ex-parte vide order dated 18.10.2006. The learned trial Court, out of the divergent pleadings of the parties, framed as many as eight (8) issues including "Relief". The petitioners produced Muhammad Younis (PW-1), Muhammad Sharif (PW-2), Abdul Ghafoor (PW-3), Abdul Ghafar (PW-4) and Zulfiqar (PW-5). The petitioners also produced documentary evidence in the shape of exhibits P-1 to P-15. The respondents produced Ghulam Sarwar (DW-1), Abdul Haque (DW-2), Ghulam Murtaza (DW-3), Nawab Din (DW-4), Khadim Hussain (DW-5), Musawar Hussain (DW-6), Zafar Ali

Girdawar (DW-7) and Muhammad Ishaque (DW-8). In documentary evidence they produced exhibits D-1 to D-12. The learned trial Court after giving issue-wise findings vide impugned judgment & decree dated 26.11.2009 dismissed the suit. The petitioners being aggrieved preferred an appeal but the same was dismissed vide impugned judgment and decree dated 26.06.2010; hence, the instant revision petition.

2. Heard.

3. Subsection (7) of section 42 of the Land Revenue Act, 1967 binds the Revenue Officer, who is going to attest the mutation, to ensure the presence of a person whose right is going to be acquired by such transaction. The said provision of law also requires the identification of such person by two respectable persons. However, in the instant case, neither the disputed sale mutations carry signatures or thumb impressions of the vendors/petitioners nor the petitioners/vendors were identified at the time of attestation of the mutation and even Sarfraz Lumberdar was not produced by the respondents. All these facts establish the non-appearance of the petitioners and non-identification at the time of attestation of the disputed sale mutations; therefore, it can safely be held that the disputed sale mutations were attested in violation of sub-section (7) of Section 42 of the Act *ibid*.

4. In addition to the above, it is a settled principle of law that mutation entry is not a document of title, which by itself does not confer any right, title or interest, and the burden of proof lies upon the person, in whose favour it was attested to establish the validity and genuineness of transfer in his/her favour. It is also a well settled law that if the foundation is illegal and defective then entire structure built on such foundation would have no value in the eyes of law. It is a settled principle of law that once a mutation is challenged the party that relies on such mutation(s) is bound to revert to the

original transaction and to prove such original transaction which resulted in the entry or attestation of such mutation(s) in dispute. However, in the present case, the respondents have miserably failed to plead and prove the time, date, place and names of witnesses in whose presence such original transaction of sale took place inter se the petitioners and respondents because the written statement of the respondents is silent in this regard. When the position is as such, it can safely be held that the respondents have miserably failed to establish their case that the disputed mutations were sanctioned legally. Reliance in this regard is placed on *Muhammad Akram and another v. Altaf Ahmad* **(PLD 2003 Supreme Court 688)** and *Province of Sindh through Secretary and 2 other v. Rahim Bux and others* **(2022 CLC 2063)**.

5. Apart from the above, the respondents have failed to establish by leading unimpeachable and confidence inspiring evidence that the possession of the suit property was delivered

in pursuance of the disputed sale mutations, rather it is admitted and established fact on record that the possession was with them in pursuance of purported pledge mutation and not being owner of the suit land. This fact is also an admitted one that the respondent No.2 (deceased) was a Patwari of the area, so if for the sake of arguments it is admitted that the respondents are in possession of the suit property, it cannot be ruled out that the respondent No.2 managed the entry of possession in Khasra Girdawri against the physical possession at spot. In this view of

the matter, it can be said the disputed sale mutations in favour of the respondents are result of collusion with the revenue staff.

6. Article 95 of the Limitation Act, 1908 provides that while seeking some relief, if fraud is alleged, the period of limitation will be three years which will commence to be computed from the date of knowledge. The date of knowledge in the present case, as per version of the petitioners/plaintiffs is three months prior to the institution of the suit, which could not be rebutted by the other side through solid and cogent evidence rather only evasively denied while submitting written statement and it is a settled principle of law that evasive denial is not a denial. Therefore, in the light of Article 95 of the Act *ibid*, the suit instituted by the petitioners was well within time.

7. Pursuant to the above discussion it is observed that the learned Courts below have failed to adjudicate upon the matter in hand by appreciating law on the subject; thus, the

Courts below have misread and non-read evidence of the parties and when the position is as such, this Court is vested with ample jurisdiction and authority to undo the concurrent findings in exercise of revisional jurisdiction under section 115, Code of Civil Procedure, 1908 as has been held in *Mst. Nazir Begum v. Muhammad Ayyub and another* **(1993 SCMR 321)**, *Sultan Muhammad and another v. Muhammad Qasim and others* **(2010 SCMR 1630)**, *Ghulam Muhammad and 3 others v. Ghulam Ali* **(2004 SCMR 1001)** and *Muhammad Khubaib v.*

Ghulam Mustafa (deceased) through LRs **(2020 CLC 1039-Lahore)**.

8. For the foregoing reasons and while placing reliance on the judgments supra as well as judgment reported as *Muhammad Ali v. Sohawa (deceased) through L.Rs. and others* **(2019 CLC 626-Lahore)**, the revision petition in hand is allowed, impugned judgments and decrees passed by the learned Courts below are set aside, consequent whereof suit instituted by the petitioners is decreed as prayed for. No order as to the costs.

(SHAHID BILAL HASSAN)
Judge

Approved for reporting.

Judge

M.A.Hassan

Lahore High Court
Muhammad Yasin v. Muhammad Ismail etc. Civil Revision No.62703 of 2023
Mr. Justice Shahid Bilal Hassan

Crux of Judgement:

i) The mandate of law as contained in Order VII, Rule 11 of the Code of Civil Procedure, essentially requires the Court to reject the plaint without recording evidence, which from its contents appears to be barred by limitation.

ii) The expression 'barred by any law' includes the law of limitation.

iii) Order VII, Rule 11 of C.P.C., is not an exhaustive provision of law.

Facts of Case:

The petitioner instituted a suit for declaration, cancellation of documents and perpetual injunction against respondents/defendants, plaint whereof was rejected by the learned trial Court under Order VII, Rule 11(d) of Code of Civil Procedure,1908. Appeal against the said order was dismissed vide impugned judgment and decree; hence, the instant revision petition.

Issues In Case:

i) Whether Order VII, Rule 11 of the Code of Civil Procedure, essentially requires the Court to reject the plaint without recording evidence if it simply appears from its contents to be barred by limitation?

ii) Whether the expression 'barred by any law' includes the law of limitation?

iii) Is Order VII, Rule 11, C.P.C., is an exhaustive provision of law?

Analysis of Issues of Case:

i) The question of limitation being a mixed question of law and facts ought to have been decided after recording evidence. However, no evidence is required to be recorded where plain reading of the plaint clarifies that the suit is patently barred by limitation. Only relevant facts need to be looked into for deciding an application under Order VII, Rule 11 of C.P.C., are the averments in the plaint and other material available on record, which on its own strength is legally sufficient to completely refute the claim of plaintiff.

ii) The bar of limitation is traceable to the Limitation Act, therefore, the expression 'barred by any law' includes the law of limitation. The clause (d) of Order VII, rule 11 of C.P.C., is applicable where the suit is time-barred.

iii) A suit may be specifically barred by law under the vivid terms of clause (d) of Rule 11, Order VII of the Code of Civil Procedure, 1908, but even in a case where a suit is not permitted by necessary implication of law in the sense that a positive prohibition can be spelt out of legal provisions, the Court has got an inherent jurisdiction to reject the plaint at any stage of trial and in such a situation formality should be avoided to reject it.

ORDER SHEET
IN THE LAHORE HIGH COURT,
LAHORE JUDICIAL DEPARTMENT

Civil Revision No.62703 of 2023
Muhammad Yasin …Versus… Muhammad Ismail, etc.

Sr. No. of order/ proceeding	Date of order/ Proceeding	Order with signatures of Judge, and that of Parties or counsel, where necessary

26.09.2023 Mian Shah Abbas, Advocate for the petitioner

Precise facts of the case are that the petitioner herein instituted a suit for declaration cum cancellation of documents and perpetual injunction against respondents/defendants. Respondents/defendants No.1 to 4, 6, 8 and 9 appeared before the learned trial Court and contested the suit by filing written statement. The learned trial Court vide impugned order and decree dated 17.12.2022 rejected the plaint of suit under Order VII, Rule 11(d), Code of Civil Procedure, 1908. Appeal preferred by the petitioner against the same was dismissed vide impugned judgment and decree dated 13.07.2023; hence, the instant revision petition.

2. Heard.

3. In this case, admittedly the dispute regarding the disputed mutation has already been raised before the competent forum in 2002 by way of application for inquiry which was concluded in 2003 vide inquiry report dated 01.12.003, wherein it was determined that the disputed mutation was genuinely entered into and executed by the

concerned parties; it was further determined in the said inquiry that the present petitioner is a fake person and has no concern with the disputed property. Meaning thereby the matter remained sub-judice before the competent forum and the petitioner was well aware of all the proceedings but he kept mum after report of the above said inquiry because adverse remarks were passed against him and he did not challenge the same before any forum further. Moreover, the petitioner did not disclose the date of knowledge and source of information of alleged fraud, which were essential and necessary to be pleaded in the plaint as required by Order VI, Rule 4, Code of Civil Procedure, 1908. The suit ought to have been filed within six years from the date of arising of cause of action or from the date of knowledge, but it has been instituted after about 21 years of above said inquiry proceedings, which ended in the year 2003. In such scenario, the suit of the petitioner was badly barred by limitation which has rightly been adjudged and the petitioner has rightly been non-suited. A three members Bench of the Apex Court of country while dealing with a case reported as *Agha Syed Mushtaque Ali Shah v. Mst. Bibi Gul Jan and others* **(2016 SCMR 910)**, has invariably held:-

> *'22. ---------- that the question of limitation being a mixed question of law and facts ought to have*

been decided after recording evidence, we may observe that it is only in cases where determination as to when the cause of action for the suit arose, is dependent upon a certain factor, situation, happening or occurrence, existence, extent and the nature whereof could only be ascertained after recording evidence, that the question of limitation needs to be determined after such evidence. However, where on the plain reading of the plaint, as in the present case, it can be clearly seen that the suit is patently barred by limitation, no evidence is required. In fact to plead that a plaint cannot be rejected, for the suit being barred by limitation/law, without recording evidence, is to plead against the mandate of law as contained in Order VII, Rule 11 of the Code of Civil Procedure, which essentially requires the Court to reject the plaint which appears from its contents to be barred by limitation.'

Furthermore, in judgment reported as *Maulana Nur-Ul-Haq . Ibrahim Khalil* **(2000 SCMR 305)**, the Apex Court of the country held:-

'6. The first point for determination is whether the plaint can be rejected under Order VII, rule 11(d), C.P.C. if the suit is time-barred. The answer is in the affirmative. The contention raised by the learned counsel for the petitioner is too naïve to prevail. The bar of limitation is traceable to the Limitation Act, therefore, it goes without saying that the expression 'barred by any law' includes the

law of limitation. However, there is no need to

discuss this point any further as it stands resolved by the judgment of this Court reported as Mumtaz Khan v. Nawab Khan and 5 others 2000 SCMR 33, wherein it has been held that clause (d) of Order VII, rule 11, C.P.C. is applicable where the suit is time-barred, and Hakim Muhammad Buta and another v. Habib Ahmed and others (PLD 1985 SC 153) wherein it has been observed that if from the statement in the plaint the suit appears to be barred by limitation the plaint shall have to be rejected under Order VII, rule 11, C.P.C.'

4. In this view of the matter, both the Courts below have accurately rejected the plaint under Order VII, Rule 11, C.P.C. The relevant facts need to be looked into for deciding an application under Order VII, Rule 11, C.P.C. are the averments in the plaint, however, besides averments made in the plaint other material available on record which on its own strength is legally sufficient to completely refute the claim of plaintiff can also be pondered into for the purpose of rejection of the plaint. Reliance may be placed on judgment reported as *S.M. Sham Ahmad Zaidi through Legal Heirs v. Malik Hassan Ali Khan (Moin) through Legal Heirs* **(2002 SCMR 338)**. Moreover, if a party who approaches the Court, with mala fide intention by concealing material facts, which if brought before the Court, the plaintiff would have been out of Court for having no cause of action and also in a situation that defendants brought any such fact in the notice of the Court the same can also be judiciously pondered upon while deciding an application under Order VII,

Rule 11, C.P.C. because a plaintiff should not be allowed to grind the other party into a false and frivolous litigation. The basic objective and aim of Order VII, Rule 11, C.P.C. is that an incompetent suit should be laid to rest at its inception so that no further time is allowed to be wasted over what is bound to collapse. A suit may be specifically barred by law and in such an event, the matter would come under the vivid terms of clause (d) of Rule 11, Order VII of the Code of Civil Procedure, 1908 but even in a case where a suit is not permitted by necessary implication of law in the sense that a positive prohibition can be spelt out of legal provisions, the Court has got an inherent jurisdiction to reject the plaint at any stage of trial and in such a situation formality should be avoided to reject it, thus, Order VII, Rule 11, C.P.C. is not exhaustive. The Court in exercise of inherent jurisdiction can nip the frivolous litigation in the bud. It is the duty of the Court to thoroughly examine the plaint at the very inception so that the parties could be saved from the agony of frivolous litigation in order to save the precious time of the court because a Court should not behave like a silent observer that a party can capture the whole system of justice for an indefinite time in order to rescue the prevailing judicial system which is already at the prime of criticism. Reliance in this regard is placed on judgment reported as *Haji Muhammad and another v. Government of the Punjab through Collector, District Kasur and another* (**1994 CLC 1248**).

5. Besides, it is now settled principle that limitation

runs even against a void order and if for the sake of arguments, it is admitted that the petitioner did not associate the proceedings before the revenue hierarchy, he was bound to explicitly plead the date of his knowledge of alleged fraud, which is lacking in this case, so it cannot be said that here in this case the limitation is a mixed question of law and facts. Reliance is placed on judgment reported as *Muhammad Sharif and others v. MCB Bank Limited and others* **(2021 SCMR 1158)**, wherein it has been held that:-

> *'5. The law is by now settled that limitation against a void order would run from the date of knowledge which has to be explicitly pleaded. In the instant case, in all the objection petitions that were filed, the petitioners did not state the date when they obtained knowledge of the alleged void order. In these circumstances, the petitioners cannot legally take this stance and that too at this belated stage.'*

6. In addition to the above, the learned appellate Court has rightly appreciated the ratio of judgments reported as PLD 2016 Supreme Court 872, PLD 2015 Supreme Court 212, 2011 SCMR 8, 2022 CLC 178-Lahore, PLD 2019 Lahore 717, 2019 CLC 497 and 2018 Law Notes 1256, on the subject because if the limitation is reckoned as mere a technicality, it would amount to deprive the opposite party of a favour which the law has unequivocally extended to it due to prevailing of certain circumstances.

7. The crux of the above discussion is, the reasoning

recorded by both the Courts below is just in accordance with the spirit of the law on the subject and does not require any interference by this Court, as no illegality and irregularity has been committed; therefore, finding no adverse occasion in the impugned judgments and decrees, the same are maintainable, consequent whereof the instant revision petition being without any force and substance stands dismissed ***in limine***.

(Shahid Bilal Hassan)
Judge

Approved for reporting.

Judge

M.A.Hassan

Lahore High Court
Ch. Zafar Muhammad Iqbal v. Mst. Kausar Parveen and others
R.F.A. No.9388 of 2020
Mr. Justice Shahid Bilal Hassan, Mr. Justice Rasaal Hasan Syed

Crux of Judgement:

i) Every criminal prosecution/inquiry which ends in the clearing of opponent is not per-se entitle the opponent to file a suit for

compensation.

ii) Necessary conditions to prove the case of malicious prosecution are mentioned under analysis No. ii.

iii) The term 'prosecution' as "a criminal proceeding in which an accused person is tried" and to be actionable as a tort, the prosecution must have been malicious and terminated in favour of the plaintiff.

iv) Jealousy and grudges do not amount to reasonable cause to prove malicious prosecution.

v) The term 'malice' means a wrongful intention and institution of a criminal or civil proceeding for an improper purpose and without probable cause.

Facts of Case:

The appellant instituted a suit for recovery of damages on the basis of malicious prosecution, against the respondents by maintaining that defendants/ respondents filed miscellaneous applications by creating fictitious, fabricated and bogus occurrence and the respondents got lodged case FIR against the appellant. The learned trial Court vide ex- parte judgment and decree dismissed suit of the appellant. Hence, the instant appeal has been filed.

Issues In Case:

i) Whether every criminal prosecution/inquiry which ends in the clearing of opponent is per-se entitle the opponent to file a suit for compensation?
ii) What are necessary conditions to prove the case of malicious prosecution?
iii) How term prosecution can be defined for actionable for tort?
iv) Whether jealousy and grudges amount to reasonable cause to prove malicious prosecution?
v) How term malice can be defined to prove malicious prosecution?

Analysis of Issues of Case:

i) It is, by now, a settled law that every criminal prosecution/inquiry which ends in the clearing of opponent will not per-se entitle the opponent to file a suit for compensation. Successful proceedings initiated under this law required that the original proceedings must have been malicious and without cause. There is no cavil to the fact that every person in the society had a right to set in motion Government and Judicial machinery for protection of his rights but said person should not infringe the corresponding rights of others by instituting improper legal proceedings in order to harass by unjustified litigation.

ii) In a reported case titled Muhammad Akram v. Mst. Farman Bibi (PLD 1990 Supreme Court 28), Hon'ble Supreme Court has reckoned conditions that have to exist for an action for malicious prosecution to be successful. The first two of these conditions are required for the issue of maintainability whereas the remaining three are to be proved; furthermore, the said conditions must exist conjointly. These conditions are as follows: • i) That the plaintiff was prosecuted by the defendant; • That the prosecution ended in plaintiff's failure; • That the defendant acted without reasonable and probable cause; • That the defendant was actuated by malice; • That the proceeding had inferred with plaintiff's liberty and had also affected her reputation; and finally, • That the plaintiff had suffered damages.

iii) Touching to the first requirement that is the initiation of the criminal prosecution. Black's Law Dictionary defines the term 'prosecution' as "a criminal proceeding in which an accused person is tried". A prosecution exists where criminal charge is made before a judicial officer or tribunal. A malicious prosecution is an abuse of the process of the Court by wrongfully setting the law in motion on a criminal charge. To be actionable as a tort, the prosecution must have been malicious and terminated in favour of the plaintiff. The mere filing of a complaint before the police authorities on the basis of allegation was not a "legal wrong".

iv) Another ingredient is to see that whether the initiation of the prosecution was with a reasonable and probable cause. The circumstances between the parties are to be taken into consideration in order to determine the state of mind of the prosecutor and the defendant. However, jealousy and grudges held by defendants against plaintiffs will not amount to reasonable cause.

v) The next and striking ingredient for the action for compensation is that the criminal prosecution should have been initiated with malice. Black's Law Dictionary has defined the term 'malice' as wrongful intention. The term 'malice' has been elaborated and defined in the authoritative judgment reported as, Abdul Rasheed v. State Bank of Pakistan (PLD 1970 Karachi 344) … The term 'malicious prosecution' is defined in Black's Law Dictionary as "The institution of a criminal or civil proceeding for an improper purpose and without probable cause. In a case reported as Muhammad Yousaf v. Abdul Qayyum (PLD 2016 SC 478), the Apex Court of the country has defined malicious prosecution as "a tort which provides redress to those who have been prosecuted 'without reasonable cause' and with 'malice'....".

Stereo. HCJDA 38

JUDGMENTSHEET

IN THE LAHORE HIGH COURT, LAHORE

JUDICIAL DEPARTMENT

R.F.A. No.9388 of 2020
Ch. Zafar Muhammad Iqbal
Versus
Mst. Kausar Parveen and others

J U D G M E N T

Date of hearing: *25.09.2023*

Appellant(s) by: Mr. Masood Ahmad Zafar, Advocate

Respondent(s) by: Rai Shaukat Ali, Advocate

***SHAHID BILAL HASSAN-J*:** Succinctly, the present appellant instituted a suit for recovery of Rs.62,500,000/- on the basis of malicious prosecution, against the respondents by maintaining that he belongs to a very respectably family having good reputation/character in society as well as qualified person; that Mst. Kausar Parveen alongwith other defendants/ respondents filed miscellaneous applications by creating fictitious, fabricated and bogus occurrence; that respondents got lodged FIR No.345 of 2017 against the present appellant by mentioning a false and fabricated occurrence under sections 506-B/379 PPC at Police Station, Saddar Pattoki, whereas no such occurrence took place; that after detail investigation by the concerned authorities, a cancellation report was prepared which was submitted to the concerned Area Magistrate, who agreed with the same and discharged the present appellant. The other miscellaneous applications were also dismissed by the concerned authorities; that due to above mentioned applications the present appellant suffered mental agony and torture; that the

said allegations affected the honour and reputation of appellant's family; that due to such mala fide applications, the appellant suffered irreparable loss to his health and business; therefore, he claimed damages on the basis of malicious prosecution. The respondents/defendants were summoned but despite service they did not appear before the learned trial Court, so they were proceeded against ex parte on 21.02.2018. The appellant produced his ex parte evidence, oral as well as documentary. The learned trial Court vide impugned ex parte judgment and decree dated 03.01.2020 dismissed suit of the appellant; hence, the instant appeal.

2. The learned counsel for the petitioner has argued that learned Court below has wrongly decided the case against appellant and has failed to appreciate the material available on record in true perspective; that the appellant has proved his case by leading cogent and convincing evidence but even then he has been non-suited; that impugned judgment and decree passed by learned Court below is the result of misreading and non-reading of evidence on record; that the learned Court below has committed illegality and material irregularity while passing the impugned judgment and decree; that the impugned judgment and decree is against the law and facts of the case, therefore, same is liable to be set-aside by allowing the appeal in hand.

3. On the other hand, the learned counsel, representing the respondents has supported the impugned judgment and decree and has prayed for dismissal of the appeal in hand.

4. Heard.

5. Undeniably, in the plaint, the appellant/plaintiff

has prayed for award of damages on account of leveling of false allegations against the respondents in the FIR lodged against the appellant, with malice and due to this an inquiry was conducted which ended in favour of the appellant as cancellation report was prepared, which was submitted before the learned Area Magistrate, who agreed with the same and the appellant was discharged; however, it is, by now, a settled law that every criminal prosecution/inquiry which ends in the clearing of opponent will not per-se entitle the opponent to file a suit for compensation. Successful proceedings initiated under this law required that the original proceedings must have been malicious and without cause. There is no cavil to the fact that every person in the society had a right to set in motion Government and Judicial machinery for protection of his rights but said person should not infringe the corresponding rights of others by instituting improper legal proceedings in order to harass by unjustified litigation. In a reported case titled *Muhammad Akram v. Mst. Farman Bibi* **(PLD 1990 Supreme Court 28)**, Hon'ble Supreme Court has reckoned conditions that have to exist for an action for malicious prosecution to be successful. The first two of these conditions are required for the issue of maintainability whereas the remaining three are to be proved; furthermore, the said conditions must exist conjointly. These conditions are as follows:

- i) *That the plaintiff was prosecuted by the defendant;*
- *That the prosecution ended in plaintiff's failure;*
- *That the defendant acted without reasonable and probable cause;*
- *That the defendant was actuated by malice;*
- *That the proceeding had inferred with plaintiff's liberty and had also affected her reputation; and finally*
- *That the plaintiff had suffered damages.*

This precedent has further been reiterated invariably in case of *Niaz and others Vs. Abdul Sattar and others* **(PLD 2006 Supreme Court 432)**.

6. Touching to the first requirement that is the initiation of the criminal prosecution. Black's Law Dictionary defines the term 'prosecution' as "a criminal proceeding in which an accused person is tried". A prosecution exists where criminal charge is made before a judicial officer or tribunal. A malicious prosecution is an abuse of the process of the Court by wrongfully setting the law in motion on a criminal charge. To be actionable as a tort, the prosecution must have been malicious and terminated in favour of the plaintiff. The mere filing of a complaint before the police authorities on the basis of allegation was not a "legal wrong". Another ingredient is to see that whether the initiation of the prosecution was with a

reasonable and probable cause. The circumstances between the parties are to be taken into consideration in order to determine the state of mind of the prosecutor and the defendant. However, jealousy and grudges held by defendants against plaintiffs will not amount to reasonable cause. The next and striking ingredient for the action for compensation is that the criminal prosecution should have been initiated with malice. Black's Law Dictionary has defined the term 'malice' as wrongful intention. The term 'malice' has been elaborated and defined in the authoritative judgment reported as, *Abdul Rasheed v. State Bank of Pakistan* **(PLD 1970 Karachi 344)**. The operative para No.7 is relevant and for ready reference is reproduced hereunder:-

> *"7. The term "malice", in a prosecution of the nature which is before me, has been held not to be spite or hatred against an individual but of 'malus animus' and as denoting the working of improper and indirect motives. The proper motive for a prosecution is the desire to secure the ends of justice. It should, therefore, be shown that the prosecutor was not actuated by this desire but by his personal feelings-See Mitchell v. Jenkins ((1833) 5 B & Ad 588); Pike v. Waldrum ((1352) 1 Lloyd's Rep. 431) and Stevens v. Midland Counties Ry. ((1854) 10 Ex. 352). Further, malice should be proved by the plaintiff affirmatively:- Abrath v. N. A Ry. ((1886) 11 A.C 247). Malice may sometime be inferred from absence of reasonable and probable cause, but this rule has no general application and there may be cases where it would*

be appropriate not to infer malice from unreasonableness. Further, if reasonable and probable cause is proved, the question of malice becomes irrelevant, and also defect of want of reasonable and probable cause cannot be supplied by evidence of malice-See Turner v. Ambler ((1847) 10 Q B 252) ; Mitchell v. Jenkins; Brown v. Hawkes ((1891) 2 Q B 718) and Herniman v. Smith ((1938) A C 305). It would be proper here to quote the following observation of Denning, L. J. (as he then was) in Tempest v. Snowden ((1952) 1 K B 130) "Even though a prosecutor is actuated by the most express malice, nevertheless he is not liable so long as there was reasonable and probable cause for the prosecution." The same rule has been applied by the Courts in India and Pakistan. Several decisions on this point were brought to my notice by Mr. Fazeel. The first case on this point is the decision of the High Court, Lahore, in Abdul Shakoor v. Lipton & Co. (AIR 1924 lah. 1) where it was held that in suits for malicious prosecution, proof of the existence of malice itself is not sufficient but should be accompanied by proof of absence of reasonable and probable cause. The Lahore High Court reiterated this view in Nur Khan v. Jiwandas (AIR 1927 Lah. 120) and Gobind Ram v. Kaju Ram (AIR 1939 Lah. 504). The same view prevailed with the High Court of Madras in V.T. Srinivasa Thathachariar v. P. Thiruvenkatachariar (AIR 1932 Mad 601). This view also found approval of the Judicial Committee of the Privy Council in Balbhaddar Singh v. Badri Sah (AIR 1926 PC 46) and in Raja Braid Sunder Deb and others v. Bamdeb Das and others (AIR 1944 PC 1) in which

last case it was further observed that malice cannot be inferred from the anger of the prosecutor."

The term 'malicious prosecution' is defined in Black's Law Dictionary as "The institution of a criminal or civil proceeding for an improper purpose and without probable cause. In a case reported as *Muhammad Yousaf v. Abdul Qayyum* **(PLD 2016 SC 478)**, the Apex Court of the country has defined malicious prosecution as "a tort which provides redress to those who have been prosecuted 'without reasonable cause' and with 'malice'....".

7. It is evident from the perusal of above mentioned judgments, passed by the August Court of the country that suit of the plaintiff(s) for recovery of damages on the basis of malicious prosecution was not decreed even in those cases where the plaintiff(s) were discharged and even where the proceedings under section 182 of P.P.C. were initiated against the defendants/complainants. In view of the above discussion, it is evident that basic ingredients to establish and prove a case for recovery of an amount as damages for malicious prosecution, are not established in the instant case, and in absence of said ingredients, the suit of the appellant/plaintiff cannot be decreed in his favour as in the instant case only an FIR was lodged or certain other miscellaneous applications were filed, wherein no malice was found on the part of the respondents. The litigation between the parties over drainage of waste water is admitted

which shows that hostility occurs between the parties. The stance of the appellant has not been proved by him through cogent and confidence inspiring evidence. Neither consistent trial was made nor the appellant was arrested by the police, therefore, the appellant has failed to prove any dishonor and mental as well as financial loss, alleged to have been caused to him via lodging of FIR *ibid* or filing of miscellaneous applications.

8. In view of the above, the appeal in hand fails, which is hereby dismissed with no order as to the costs.

(Rasaal Hasan Syed)
Judge

(Shahid Bilal Hassan)
Judge

Approved for reporting.

Judge

M.A.Hassan

Raza Khan. v Malik Muhammad Munir, etc.
R.F.A.No.42140 of 2022.
Mr. Justice Shahid Bilal Hassan, Mr. Justice Rasaal Hasan Syed

Crux of Judgement:
i) The trial Court has been vested with powers to adjourn the case on showing sufficient cause and to fix a day for further hearing of the suit subject to costs.

ii) The court must invoke jurisdiction under Order XVII, Rule 3 Code of Civil Procedure, 1908 where last opportunity is granted and the party has been warned of consequences.

Facts of Case:
Through this regular first appeal, the petitioner has challenged the vires of judgment and decree passed by trial court while dismissing the suit of the appellant for want of evidence invoking jurisdiction under Order XVII, Rule 3, Code of Civil Procedure, 1908.

Issues In Case:
i) What are the powers of Court under Rule 1(1), 1(2) of Order XVII, Code of Civil Procedure, 1908?

ii) Under what circumstances, the court must invoke jurisdiction under Order XVII, Rule 3, Code of Civil Procedure, 1908?

Analysis of Issues of Case:
i) Under Rule 1(1) of Order XVII, Code of Civil Procedure, 1908, the trial Court has been vested with powers to adjourn the case on showing sufficient cause by either of the party and from time to time adjourn the hearing of the suit and Rule 1(2) of the said Order empowers the Court seized of the matter to fix a day for further hearing of the suit subject to costs occasion by the adjournment.

ii) Where last opportunity to produce evidence is granted and the party has been warned of consequences, the court must invoke jurisdiction under Order XVII, Rule 3, Code of Civil Procedure, 1908 and enforce its order unfailingly and unscrupulously without exception.

Stereo. HCJDA 38

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

R.F.A.No.42140 of 2022

Raza Khan **Versus** Malik Muhammad Munir, etc.

JUDGMENT

Date of hearing: ***03.10.2023***

Appellant(s): by: Mr. Muhammad Arslan Ayaz, Advocate

Respondent(s) by: Mr. Zabih Ullah Nagra, Advocate for respondent No.1

Mr. Sarfraz Akhtar, Advocate for respondents No. 2 and 3

***SHAHID BILAL HASSAN-J*:** The facts, in precision, are as such that the respondent No.1 being owner in possession of land measuring 38-Kanals, out of land measuring 303-Kanals 1-Marla, falling in Khewat No.64, Khatuni No.70, total 48-Qatas, Salam Khata of village Aasal Lakhowal, Tehsil Raiwind, District Lahore, entered into agreement to sell dated 11.02.2014 with the present appellant for a consideration of Rs.61,750,000/-, out of which Rs.32,000,000/- was paid by the appellant to the respondent No.1 whereas the remaining amount was to be paid at the time of execution of the sale deed. However, on refusal by the respondent No.1 to execute the sale deed, the appellant instituted suit for specific performance of agreement to sell against the respondents. The respondents No.1 to 3 contested the suit by submitting written statement and also filed an application under Order VII, Rule 11, Code of

Civil Procedure, 1908; however, the said application was dismissed by the learned trial Court on 24.02.2018. During pendency of the suit, the respondents No.1 to 3 further alienated the suit property to the third party. The appellant filed an application under Order I, Rule 10, Code of Civil Procedure, 1908 but the same was dismissed on 12.06.2021. The appellant assailed the said order by filing C.R.No.40943 of 2021 before this Court, wherein further proceedings before the learned trial Court were stayed vide order dated 25.06.2021; however, on 24.02.2022, the revision petition of the appellant was dismissed by this Court. The proceedings in the suit were initiated and ultimately the suit of the appellant was dismissed for want of evidence while invoking jurisdiction under Order XVII, Rule 3, Code of Civil Procedure, 1908 by the learned trial Court vide impugned judgment and decree dated 20.05.2022, which has culminated in filing of the appeal in hand.

2. Learned counsel for the appellant has argued that the impugned judgment and decree is against law and facts of the case; that the same is based on biased approach and against the norms of legal procedure; that on different dates the appellant produced the witnesses but on one pretext or the other their evidence could not be recorded; that the impugned judgment and decree lacks judicial wisdom, misapplication of judicious mind and misuse of power; that the learned trial Court has failed to construe law on the subject and has passed the impugned judgment and decree in a hasty manner, which has

resulted in miscarriage of justice; therefore, the same is not sustainable in the eye of law and liable to be set aside by allowing the appeal in hand.

3. Naysaying the above submissions, the learned counsels representing the respondents have argued that the appellant failed to produce his complete set of evidence despite availing of many opportunities, counted as 35 in number, including more than five last and final opportunities; therefore, the learned trial Court has rightly exercised jurisdiction vested upon it under Order XVII, Rule 3, Code of Civil Procedure, 1908 and has rightly non-suited the appellant. Prayer for dismissal of the appeal in hand has been made.

4. We have keenly and patiently heard learned counsel for the parties and with their able assistance have gone through the record.

5. Considering the arguments and perusing the record, made available, as well as going through the impugned judgment and decree passed by the learned trial Court, it becomes diaphanous and vivid that after framing of issues on 01.11.2018, on different dates the appellant/plaintiff was directed to produce his evidence, however, despite affording many opportunities he failed to produce his complete evidence and on 29.09.2020 only examined P.W.1 whereas cross examination upon the said P.W. was not conducted as complete set of evidence was not produced by the appellant. On 15.10.2020, the appellant filed an application under Order I,

Rule 10, Code of Civil Procedure, 1908, which was dismissed on 12.06.2021 by the learned trial Court. Revision petition before this Court was filed wherein proceedings before the learned trial Court were held in abeyance on 25.06.2021; however, the said revision petition was dismissed on 24.02.2022. On 20.05.2022, additional issue was framed on filing of application by the appellant. The record shows that the appellant was afforded with five last and final opportunities for production of his evidence i.e. on 03.01.2019, 06.01.20202, 22.09.2020, 25.04.2022 and 27.04.2022 the adjournment was granted with costs and warning as to application of penal provision under Order XVII, Rule 3, Code of Civil Procedure, 1908, but even then the appellant failed to avail the same, which shows his adamant attitude towards the orders of the learned trial Court.

Under Rule 1(1) of Order XVII, Code of Civil Procedure, 1908, the trial Court is vested with powers to adjourn the case on showing sufficient cause by either of the party and from time to time adjourn the hearing of the suit and Rule 1(2) of the said Order empowers the Court seized of the matter to fix a day for further hearing of the suit subject to costs occasion by the adjournment. For ready reference the said provision of law is reproduced as under:-

> *'1. Court may grant time and adjourn hearing. (1) The Court may, if sufficient cause is shown, at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn*

the hearing of the suit.

(2). Costs of adjournment. In every such case the Court shall fix a day for the further hearing of the suit, and may make such order as it thinks fits with respect to the costs occasion by the adjournment:

Provided that, when the hearing of evidence has once begum, the hearing of the suit shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the hearing beyond the following day to be necessary for reasons to be recoded.'

In the present case, the learned trial Court used the discretion in favour of the appellant many a time by granting him adjournments for production of complete evidence but he failed to catch up the said leniency shown to him by the learned trial Court and even he himself did not jump into the witness box so as to record his statement. The above picture of affairs makes it crystal clear that how the appellant pursued his case and also shows his disobedience and indifferent demeanour towards the orders of the Court; thus, such like indolent person cannot seek favour of law, because law favours the vigilant and not the indolent. In this regard reliance is placed on judgment reported as *Rana Tanveer Khan v. Naseer-Ud-Din and others* **(2015 SCMR 1401)**, wherein it has been unequivocally held:-

'…… it is clear from the record that the petitioner had availed four opportunities to produce his evidence and in two of such dates (the last in the chain) he was cautioned that such opportunities granted to him at his request shall be

that last one, but still on the day when his evidence was closed in terms of Order XVII, Rule 3, C.P.C. no reasonable ground was propounded for the purposes of failure to adduce the evidence and justification for further opportunity, therefore, notwithstanding that these opportunities granted to the petitioner were squarely fell within the mischief of the provisions ibid and his evidence was rightly closed by the trial court. As far as the argument that at least his statement should have been recorded, suffice it to say that the eventuality in which it should be done has been elaborated in the latest verdict of this Court (2014 SCMR 637). From the record it does not transpire if the petitioner was present on the day when his evidence was closed and/or he asked the court to be examined; this has never been the case of the petitioner throughout the proceedings of his case at any stage; as there is no ground set out in the first memo of appeal or in the revision petition.'

It was further held that:-

'2. ... Be that as it may, once the case is fixed by the Court for recording the evidence of the party, it is the direction of the court to do the needful, and the party has the obligation to adduce evidence without there being any fresh direction by the court, however, where the party makes a request for adjourning the matter to a further date(s) for the purpose of adducing evidence and if it fails to do so, for such date(s), the provisions of Order XVII, Rule 3, C.P.C. can attract, especially in the circumstances when adequate opportunities on the request of the party has been availed and caution is also issued on one of such a date(s), as being the

last opportunity(ies).'

While affirming the above said view, the Apex Court of country in a judgment reported as *Moon Enterpriser CNG Station, Rawalpindi v. Sui Northern Gas Pipelines Limited through General Manager, Rawalpindi and another* **(2020 SCMR 300)** has invariably and vividly further held that:-

> *'4. …… It is unfortunate that the prevailing pattern in the conduct of litigation in the Lower Courts of Pakistan is heavily permeated with adjournments which stretch, what would otherwise be a quick trial, into a lengthy, expensive time-consuming and frustrating process both for the litigant and the judicial system. While some adjournments are the consequences of force majeure, most are not. To cater for the later and to discourage misuse, the C.P.C. through Order XVII, Rule 3 has provided the Court with a curse of action that checks such abuse.'*

In the said judgment, it was further held:-

> *'6. A bare reading of Order XVII, Rule 3, C.P.C. and case law cited above clearly shows that for Order XVII, Rule 3, C.P.C. to apply and the right of a party to produce evidence to be closed, the following conditions must have been met:-*
>
> *i. at the request of a party to the suit for the purpose of adducing evidence, time must have been granted with a specific warning that such opportunity will be the last and failure to adduce evidence would lead to closure of the right to produce evidence;*

and

ii. *the same party on the date which was fixed as last opportunity fails to produce its evidence.*

In our view it is important for the purpose of maintaining the confidence of the litigants in the court systems and the presiding officers that where last opportunity to produce evidence is granted and the party has been warned of consequences, the court must enforce its order unfailingly and unscrupulously without exception. Such order would in our opinion not only put the system back

on track and reaffirm the majesty of the law but also put a check on the trend of seeking multiple adjournments on frivolous grounds to prolong and delay proceedings without any valid or legitimate rhyme or reason. Where the Court has passed an order granting the last opportunity, it has not only passed a judicial order but also made a promise to the parties to the lis that no further adjournments will be granted for any reason. The Court must enforce its order and honor its promise. There is absolutely no room or choice to do anything else. The order to close the right to produce evidence must automatically follow failure to produce evidence despite last opportunity coupled with a warning. The trend of granting (Akhri Mouqa) then (Qatai Akhri Mouqa) and then (Qatai Qatai Akhri Mouqa) make a mockery of the provisions of law and those responsible to interpret and implement it. Such practices must be discontinued, forthwith.'

6. In view of the above discussion and observations, when the impugned order, judgment and decree have been passed with jurisdiction and are well within the parameters of law as well as judgments referred above, the same cannot be interfered with at this stage by us in exercise of appellate jurisdiction under section 96 of Code of Civil Procedure, 1908.

7. The crux of the above discussion and reasoning is that the appeal in hand being meritless comes to naught and the same stands dismissed. No order as to the costs.

(Rasaal Hasan Syed) Judge

(Shahid Bilal Hassan) Judge

Approved for reporting.

Judge

M.A.Hassan

Lahore High Court
Qadeer Ahmad Toor v. Mushtaq Ahmad and others
Civil Revision No. 63332 of 2023
Mr. Justice Shahid Bilal Hassan

Crux of Judgement:
i) Yes, it is necessary in all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, default, or undue influence to state its particulars with dates and items necessary in the pleadings.

ii) Yes, where the subject matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it.

iii) Yes, the concurrent findings on record cannot be disturbed in exercise of revisional jurisdiction under section 115 of Code of Civil Procedure, 1908 unless the impugned judgments and decrees suffer from any infirmity or the law on the subject has not rightly been construed and appreciated.

Facts of Case:
The petitioner instituted a suit for declaration with possession through partition along with permanent injunction against the respondents The learned trial Court vide impugned judgment and decree dismissed suit of the petitioner. The appeal preferred by the petitioner against the said judgment and decree was also dismissed vide impugned judgment and decree by the learned appellate Court; hence, the instant revision petition.

Issues In Case:
i) Whether it is obligatory in all cases to state particulars with dates and items necessary in the pleadings?

ii) Whether it is necessary to provide the description of the property in the plaint where the subject matter of the suit is immovable property?

iii) Whether the concurrent findings on record cannot be disturbed in exercise of revisional jurisdiction under section 115 of Code of Civil Procedure, 1908?

Analysis of Issues of Case:

i) Order VI, Rule 4 of the Code of Civil Procedure, 1908 provides that, 'in all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items necessary) shall be stated in the pleadings.' However, the petitioner could not plead and prove by leading confidence inspiring and trustworthy evidence to prove the alleged fraud.

ii) Besides, the petitioner could not describe the detail of property allegedly owned by him, which was necessary and essential as required by Order VII, Rule 3, Code of Civil Procedure, 1908, which reads: - 'Where the subject matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement of survey, the plaint shall specify such boundaries or numbers.'

iii) It is held that the learned Courts below have committed no illegality, irregularity and wrong exercise of jurisdiction, rather after evaluating evidence on record have reached to a just conclusion (..) The impugned judgments and decrees do not suffer from any infirmity, rather law on the subject has rightly been construed and appreciated. As such, the concurrent findings on record cannot be disturbed in exercise of revisional jurisdiction under section 115 of Code of Civil Procedure, 1908

Form No: HCJD/C-121

ORDER SHEET
IN THE LAHORE HIGH COURT,
LAHORE JUDICIAL DEPARTMENT

Civil Revision No. 63332 of 2023
Qadeer Ahmad Toor …Versus… Mushtaq Ahmad and others

Sr. No. of order/ proceeding	Date of order/ Proceeding	Order with signatures of Judge, and that of Parties or counsel, where necessary

02.10.2023 Mr. Mujassam Zarkhaiz Anwar Khan, Advocate for the petitioner

Tersely, the petitioner instituted a suit for declaration with possession through partition alongwith permanent injunction against the respondents with the averments that the suit property in the shape of house and shops measuring 01-Kanal falling in Khewat No.21 was owned and possessed by predecessor in interest of the petitioner namely Allah Ditta Toor and after his demise, the suit property was transferred in the name of Manzoor Ahmad etc. vide mutation No.99 which remained under possession of Manzoor Ahmad; that Manzoor Ahmad deceased with the connivance of the respondent No.1 namely Mushtaq Ahmad transferred property in the name of respondent No.3 namely Muhammad Zeeshan Majeed vide mutation No.1036 dated 12.08.2005, who further alienated the suit property to respondent No.2 namely Mst. Parveen Akhtar through mutation No.1086 dated 30.11.2005 whereas petitioner was owner of three and half marlas in the said commercial and residential property; that the respondent No.2 in order to perpetuate her possession has demolished suit property and has tried to raise commercial constructions in the form of a plaza; that the suit property is adjacent to the cantonment Sialkot and is

precious in nature; that if respondents succeed in raising constructions thereupon, the petitioner will suffer an irreparable loss. The petitioner further averred that respondents No.1 and 2 have been asked to partition the suit property and hand over possession of share of petitioner but they have declined, therefore, the suit with the prayer that a decree of declaration to the effect that petitioner is owner of three and half marlas in suit property alongwith declaration that mutation No.1036 and 1086 are void, based on fraud and ineffective upon the rights of the petitioner may be passed in his favour. The respondents contested the suit by submitting written statement and controverted the averments of the plaint. Out of the divergence of the pleadings, the issues were framed by the learned trial Court and evidence of the parties, oral as well as documentary, was recorded. The learned trial Court vide impugned judgment and decree dated 01.02.2023 dismissed suit of the petitioner. The appeal preferred by the petitioner against the said judgment and decree was also dismissed vide impugned judgment and decree dated 07.09.2023 by the learned appellate Court; hence, the instant revision petition.

2. Heard.

3. Order VI, Rule 4 of the Code of Civil Procedure, 1908 provides that, *'in all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, default,*

or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items necessary) shall be stated in the pleadings.' However, the petitioner could not plead and prove by leading confidence inspiring and trustworthy evidence to prove the alleged fraud, rather it has emerged on record that Manzoor Ahmad sold his share in the property to Muhammad Zeeshan Majeed which was later on sold to Mst. Parveen Akhtar through the disputed mutations.

Besides, the petitioner could not describe the detail of property allegedly owned by him, which was necessary and essential as required by Order VII, Rule 3, Code of Civil Procedure, 1908, which reads:-

> *'Where the subject matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement of survey, the plaint shall specify such boundaries or numbers.'*

In addition to the above, the predecessor in interest of the petitioner was owner of 92-kanals of land but the petitioner has only sought partition of 02-kanals and 01-marla, which has rightly been adjudged to be against the mandate of Order II, Rule 1, Code of Civil Procedure, 1908 by the learned Courts below. Moreover, it is claim of the respondents that the plaza is situated in Khewat No.20 and 21, so the petitioner should have filed application for appointment of local commission for

demarcation purposes but no such exertion was made by the petitioner. The evidence produced by the petitioner is sketchy and not worthy of credence, therefore, the same has rightly been discarded by the learned Courts below.

4. Pursuant to the above, it is held that the learned Courts below have committed no illegality, irregularity and wrong exercise of jurisdiction, rather after evaluating evidence on record have reached to a just conclusion that the petitioner/ plaintiff has miserably failed to prove his case through trustworthy and reliable evidence. The impugned judgments and decrees do not suffer from any infirmity, rather law on the subject has rightly been construed and appreciated. As such, the concurrent findings on record cannot be disturbed in exercise of revisional jurisdiction under section 115 of Code of Civil Procedure, 1908. Reliance is placed on judgments reported as *Mst. Zaitoon Begum v. Nazar Hussain and another* (**2014 SCMR 1469**), *CANTONMENT BOARD through Executive Officer, Cantt. Board Rawalpindi v. IKHLAQ AHMED and others* (**2014 SCMR 161**), *Muhammad Farid Khan v. Muhammad Ibrahim, etc.* (**2017 SCMR 679**), *Muhammad Sarwar and others v. Hashmal Khan and others* (**PLD 2022 Supreme Court 13**) and *Mst. Zarsheda v. Nobat Khan* (**PLD 2022 Supreme Court 21**) wherein it has been held that :-

> *'There is a difference between the misreading, non-reading and misappreciation of the evidence therefore, the scope of the appellate and revisional jurisdiction must not be confused and care must be*

taken for interference in revisional jurisdiction only in the cases in which the order passed or a judgment rendered by a subordinate Court is found perverse or suffering from a jurisdictional error or the defect of misreading or non-reading of evidence and the conclusion drawn is contrary to law. This court in the case of Sultan Muhammad and another v. Muhammad Qasim and others (2010 SCMR 1630) held that the concurrent findings of three courts below on a question of fact, if not based on misreading or non-reading of evidence and not suffering from any illegality or material irregularity effecting the merits of the case are not open to question at the revisional stage.'

Further in judgment reported as *Salamat Ali and others v. Muhammad Din and others* **(PLJ 2023 SC 8)**, it has invariably been held that:-

'Needless to mention that a revisional Court cannot upset a finding of fact of the Court(s) below unless that finding is the result of misreading, non-reading, or perverse or absurd appraisal of some material evidence. The revisional Court cannot substitute the finding of the Court(s) below with its own merely for the reason that it finds its own finding more plausible than that of the Court(s) below.'

5. For the foregoing reasons, the revision petition in hand comes to naught and the same stands dismissed ***in limine***.

(Shahid Bilal Hassan)
Judge

Approved for reporting.

Judge

M.A.Hassan

Lahore High Court
Bilawal Hussain v Mst. Farzana Kausar
Civil Revision No.63085 of 2019
Mr. Justice Shahid Bilal Hassan

Crux of Judgement:
i) The non-appearance of the main witness attracts the adverse presumption of Article 129(g) of the Qanun-e-Shahadat Order, 1984.

ii) High Court can undo the concurrent findings of the lower courts when both have failed in appreciation of law and misread the evidence.

Facts of Case:
The petitioner/defendant has filed the Civil Revision under section 115 of C.P.C, against the decision of lower courts wherein, suit of plaintiff/respondent for possession through specific performance of an agreement to sell with permanent injunction was decreed against petitioner/defendant and his appeal against the decision of the trial court was dismissed.

Issues In Case:
i) Whether non- appearance of main witness attracts the adverse presumption of Article 129(g) of the Qanun-e-Shahadat Order, 1984?

ii) Under what circumstances, High Court can undo the concurrent findings of the lower courts**?**

Analysis of Issues of Case:
i) The non-appearance of the main witness attracts Article 129(g) of the Qanun-e- Shahadat Order, 1984 as the best evidence has been withheld arising out adverse presumption that if the said

witness would have appeared in the witness box, he would not have stood and successful after facing the cross examination.

ii) High Court has been vested with authority and ample power to undo the concurrent findings of lower courts when both have failed to adjudicate upon the matter by appreciating law on the subject and misread the evidence.

Stereo. HCJDA 38

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Civil Revision No.63085 of 2019

Bilawal Hussain **Versus** Mst. Farzana Kausar

JUDGMENT

Date of hearing: ***25.09.2023***

Petitioner(s): by: Mr. Zafar Iqbal Chohan, Advocate

Respondent(s) by: Mr. Munawar Hussain, Advocate

SHAHID BILAL HASSAN-J**:** Succinctly, the respondent instituted a suit for possession through specific performance of an agreement to sell with permanent injunction against the petitioner by maintaining that the petitioner entered into an agreement to sell dated 19.11.2012 with the respondent regarding a shop measuring 12x15 feet situated at Mauza Ajnianwala, Tehsil & District Sheikhupura for a consideration of Rs.1,000,000/-. It was further averred that the whole consideration amount was paid by the respondent, due to close relationship between the parties, the petitioner promised to deliver the possession afterwards; that the respondent had been

asking the petitioner either to execute the sale deed or to return the money but he refused; hence, the suit. The petitioner contested the suit by submitting written statement and controverted the averments of the plaint. Out of the divergent pleadings of the parties, the learned trial Court framed issues and evidence of the parties was recorded in pro and contra. The learned trial Court vide impugned judgment and decree dated 22.01.2019 held the respondent entitled to recover Rs.1,000,000/- from the present petitioner and denied the specific performance of the purported agreement. The petitioner being aggrieved preferred an appeal but the same was dismissed vide impugned judgment and decree dated 28.09.2019 by the learned appellate Court; hence, the instant revision petition.

2. Learned counsel for the petitioner has argued that the impugned judgments and decrees are not sustainable in the eye of law; that the same are against law and facts of the case; that the judgments and decrees are based on surmises and conjectures; that misreading and non-reading of evidence has been committed while passing the impugned judgments and decrees by the learned Courts below; that no authority was conferred upon the attorney by the principal to institute the suit but this aspect of the case has been ignored altogether by the learned Courts below; that the purported agreement to sell does not contain any description of the property/shop in question and is a vague document, therefore, the suit is not maintainable but this fact has been ignored; that the impugned judgments and

decrees have been passed mere on wrong presumptions and assumptions, which is not warranted under law; therefore, material illegalities and irregularities have been committed. As such, by allowing the revision petition in hand, the same may be set aside and suit of the respondent may be dismissed throughout with costs.

3. On the adverse, learned counsel for the respondent has submitted that the respondent has successfully proved her case but even then the decree for specific performance has been denied by the learned Courts below and only the paid amount has been ordered to be returned to her; however, despite that the respondent is satisfied with the decree. He has prayed for dismissal of the revision petition in hand.

4. Heard.

5. The pivotal document in this case is Ex.P2, the purported agreement to sell, perusal of the said document goes to make is diaphanous that there is no mentioning as to how the petitioner owned the disputed property. There is no Khata number, Khasra number, Qilla number or other description of property and only surrounding boundaries have been submitted. No proof of ownership of the petitioner with regards to the disputed property has been submitted rather it has come on record that the petitioner did/does not own the disputed property rather the same is owned by his father. Moreover, the stamp paper on which the alleged agreement to sell was written

does not bear signatures of the vendor overleaf, rather P.W.1 has admitted during cross examination that the stamp paper bears his signature. Furthermore, the P.W.1 who is father of the respondent appeared as attorney of respondent and one of the marginal witness. The respondent has not appeared in the witness box so as to record her evidence and face the cringe-making questions during cross examination. He entrance in the witness box was necessary especially when it was stance of the petitioner that he did not enter into any kind of agreement to sell with the respondent rather he signed certain blank papers for affidavit in respect of settlement of marital dispute arose between the respondent and his brother, as the respondent was his sister in law (wife of his brother) and he did not receive any amount from the respondent in lieu of disputed property, which otherwise was not owned by the petitioner. Non-appearance of the respondent in the witness box strengthens the stance of the petitioner that in actual some family dispute arose between the respondent and brother of the petitioner, due to which brother of the petitioner divorced the respondent and father of the respondent managed and maneuvered the purported agreement to sell only to harm the brother of the petitioner through the petitioner by causing them financial loss. Therefore, the best evidence has been withheld by the respondent, which arises adverse presumption that if she would have appeared in the witness box, she would not have stood and successful after facing the cross examination.

Apart from the above, the P.W.1 in his ancillary statement has made improvements and deposed beyond the pleadings as well as contents of the alleged agreement to sell Ex.P2 by stating that in case of any defect in the title, the petitioner (defendant) bound himself to pay back the amount Rs.1,000,000/-, because the said factum has neither been pleaded nor the same has been narrated in the purported agreement to sell; therefore, the deposition of P.W.1 cannot be relied upon. In addition to the above, P.W.2 is the marginal witness of the purported agreement to sell, who has also failed to narrate the description of the disputed property and even give the detail of its boundaries/surroundings. P.W.3 has nothing to do with the agreement to sell, because his name is not mentioned thereon, so his evidence is nothing but hearsay, therefore, the same cannot be relied upon. Wazir Hussain, the stamp vendor is also not a truthful witness because in examination in chief he stated that sale amount was paid in his presence but during cross examination he admitted that no sale amount was paid in his presence. The said witness (P.W.5) has also admitted that he did not inspect the Fard Milkiat and further stated that the place for which the stamp paper was written, was not owned one.

6. From the accumulative above discussion, it is concluded that the respondent has failed to prove the contents of the purported agreement to sell as per mandate of Article 79 of the Qanun-e-Shahadat Order, 1984 and non-appearance of

the respondent also attracts the adverse presumption of Article 129(g) of the Order, 1984 *ibid*. Reliance is placed on judgment reported as *Hafiz Tassaduq Hussain Vs. Muhammad Din through Legal Heirs and others* (**PLD 2011 Supreme Court 241**). As against this, it seems that the petitioner has been trapped only to cause harm to his brother (ex-husband of the respondent) and the stance taken up by the petitioner seems to be more plausible and cogent as well as appeals to the prudent mind.

7. Pursuant to the above, it is observed that the learned Courts below have failed to adjudicate upon the matter in hand by appreciating law on the subject; therefore, the Courts below have misread evidence of the parties and when the position is as such, this Court is vested with authority and ample power to undo the concurrent findings as has been held in *Nazim-Ud-Din and others v. Sheikh Zia-Ul-Qamar and others* **(2016 SCMR 24)**, *Sultan Muhammad and another v. Muhammad Qasim and others* **(2010 SCMR 1630)**, *Ghulam Muhammad and 3 others v. Ghulam Ali* **(2004 SCMR 1001)** and *Habib Khan and others v. Mst. Bakhtmina and others* **(2004 SCMR 1668)**.

7. The crux of the discussion above is that the revision petition in hand succeeds and the same is allowed, impugned judgments and decrees are set aside, consequent whereof the suit instituted by the respondent stands dismissed. No order as to the costs.

(Shahid Bilal Hassan) Judge

Approved for reporting.

Lahore High Court
Faqir Syed Anwar Ud Din (deceased) through L.Rs. v. Syed Raza Haider and others
R.S.A. No.68 of 2017
Mr. Justice Shahid Bilal Hassan

Crux of Judgement:
i) Beneficiary is under heavy burden to prove the valid execution of the general power of attorney and other sale transactions where the principal is of unsound mind.

ii) Where subsequent vendee conducted no inquiry whatsoever with regards to title of the property, he would not be deemed to have purchased property for value, in good faith and without notice of original contract.

iii) The concurrent findings, on facts, cannot be disturbed when the same do not suffer from any misreading and non-reading of evidence, howsoever erroneous, in exercise of jurisdiction under section 100 of the Code of Civil Procedure, 1908.

Facts of Case:
Through this appeal and connected appeal the appellants assailed the judgments and decrees passed by learned courts below whereby suit against the appellants were decreed by the trial court and their appeals were dismissed by the appellate court.

Issues In Case: i) Whether beneficiary is under heavy burden to prove the valid execution of the general power of attorney and other sale transactions where the principal is of unsound mind?

ii) Where subsequent vendee conducted no inquiry whatsoever with regards to title of the property, whether he would be deemed

to have purchased property for value, in good faith and without notice of original contract?

iii) Whether the concurrent findings, on facts, can be disturbed when the same do not suffer from any misreading and non-reading of evidence, howsoever erroneous, in exercise of jurisdiction under section 100 of the Code of Civil Procedure, 1908?

Analysis of Issues of Case:

i) All the P.Ws. deposed that Mst. Yasmin Begum was of unsound mind before contracting marriage and all the transactions regarding the transfer of property were made while she was suffering from mental illness and being of an unsound mind and was unable to manage herself and that all the transactions germane to transfer of her property were outcome of fraud. The beneficiary was under heavy burden to discharge the onus that all the transactions were performed with free will and consent of the principal but in the present case, it has been established by the respondent No.1 that Mst. Yasmin Begum was not in a position to manage her property. The appellants produced only solitary witness and the said D.W. did not depose a single word regarding the factum that at the time of execution of general power of attorney, Mst. Yasmin Begum was not suffering from mental infirmity and she was of sound mind at that time. It has been established on record that Mst. Yasmin Begum was suffering from epileptic disease from her childhood and was not in a position to manage her property or form a rational judgment as to effect of any contract on her interest. The deceased predecessor of the appellants being beneficiary was under heavy burden to prove the valid execution of the general power of attorney and other sale transactions but he failed in doing so.

ii) So far the claim of the appellant in connected appeal with regards to bona fide purchaser without notice is concerned, it is observed that protection under section 27(b) of the Specific Relief Act, 1877 is not available to him, because simple denial was not sufficient to discharge the onus, rather he should have proved good faith and lack of knowledge after reasonable care. It is a settled law that where subsequent vendee conducted no inquiry whatsoever with regards to title of the property in question, he would not be deemed to have purchased property in question for value, in good faith and without notice of original contract.

iii) Pursuant to above, both the learned Courts have evaluated evidence in true perspective and have reached to a just conclusion, concurrently; as such the concurrent findings, on facts, cannot be disturbed when the same do not suffer from any misreading and non-reading of evidence, howsoever erroneous, in exercise of jurisdiction under section 100 of the Code of Civil Procedure, 1908.

Stereo. HCJDA 38

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE JUDICIAL DEPARTMENT

R.S.A. No.68 of 2017
Faqir Syed Anwar Ud Din (deceased) through L.Rs.
Versus
Syed Raza Haider and others

J U D G M E N T

Date of hearing: ***28.09.2023***

Appellant (s): M/s Chaudhry Muhammad Aslam and Chaudhry Zahid Javaid, Advocates

Respondent (s): Mr. Naveed Ashiq Alvi, Advocate

SHAHID BILAL HASSAN-J: This single judgment shall decide the captioned appeal and connected appeal bearing R.S.A.No.92 of 2017, as in both one and the same judgments and decrees, passed by the learned Courts below, have been challenged.

2. Succinctly, Syed Raza Haider (contestant respondent No.1) claiming to be next friend of his mother Mst. Yasmin, instituted a suit on 06.06.1996 alleging that his mother

i.e. Mst. Yasmin was of unsound mind, unable to manage her affairs on her own and was dependent upon her sister Mst. Nasira Begum (defendant No.2) deceased, predecessor in interest of the respondents No.2(i) to 2(iv), in whose custody she was at the time of filing of the suit and she owned the following property:-

i. *Full owner of Agricultural land measuring 240-kanals 16-marlas in Chak No.37/12-L, Tehsil Chichawatni, District Sahiwal*
ii. *1/9th share in House No.72, Block-C, New Muslim Town, Lahore with land measuring 03-Kanals 17-Marlas and 67 sq.ft. jointly held by the plaintiff and defendants No.1 to 6.*

It was further averred that Faqir Syed Anwar Ud Din, defendant No.1, real brother of the plaintiff in collusion with his four other sisters and a brother i.e. defendant No.2 to 6 had fabricated and forged a general power of attorney dated 14.08.1988 on the basis of which 01-Kanal 07-sq.ft. from property 72-C, Model Town, Lahore was transferred to Ch. Asghar Ali, defendant No.7 through registered sale deed dated 06.02.1989 against a fictitious sale price of Rs.480,000/-; that the plaintiff Mst. Yasmin was not paid a single penny; that the defendant No.7 had further alienated and transferred the said property to Muhammad Azeem Sheikh, defendant No.8, through a registered sale deed, the details whereof were unknown to the plaintiff. It was further contended that plaintiff Mst. Yasmin had never appeared before the revenue officer for executing the General Power of Attorney dated 14.08.1988,

which document was null and void; that transfer of plaintiff's land measuring 204-Kanals 16-Marlas firstly in favour of her mother namely Mst. Amina Khatoon and secondly to Syed Faqir Anwar Udf Din, defendant No.1, by Mst. Amina Khatoon through different sale mutations was the result of fraud and collusion between the defendant No.1 and defendants No.2 to 6. A declaratory decree in the following terms was sought for:-

i. *That deed of GPA dated 14.08.1988 is the result of fraud, null and void and ineffective upon the rights of the plaintiff.*
ii. *That sale deed executed by defendant No.1 as attorney of plaintiff in favour of defendant No.7 and further transfer via sale deed executed by defendant No.7 in favour of defendant No.8 be declared as fraudulent, hence void upon the rights of the plaintiff.*
iii. *That mutations of alienations in favour of Mst. Amina Khatoon (plaintiff"s mother) and further mutations by Amin Khatoon in favour of defendant No.1 be declared to be null and void, without consideration, hence, not binding on the plaintiff.*

3. The defendant No.1/present deceased appellant and co-defendants No.2, 3,5 and 6 had jointly contested the suit by filing written statement. The defendants No.4 and 7 were proceeded against ex parte. Muhammad Azeem Sheikh, respondent No.8, the subsequent purchaser, submitted separate written statement. During pendency of the suit, Mst. Yasmin

died on 08.06.1997 and was succeeded by her son Raza Haider (respondent No.1) being sole survivor. Out of the divergent pleadings of the parties, the learned trial Court framed as many as 14 issues including "Relief". The parties adduced their oral as well as documentary evidence in support of their respective contentions. The learned trial Court, on conclusion of trial, vide impugned judgment and decree dated 20.09.2014 decreed the suit in favour of the respondent No.1 and against the defendants/appellants. The appellant and co-defendants No.2, 3, 5 and 6 as well as respondent No.8 namely Muhammad Azeem (appellant in connected appeal No.92 of 2017) being aggrieved preferred two separate appeals. The learned appellate Court vide impugned consolidated judgment and decree dated 30.01.2017 dismissed both the appeals; hence, the instant appeal as well as connected appeal bearing R.S.A.No.92 of 2017.

3. Heard.

4. Considering the arguments and going through the record, it is observed that Mst. Yasmin Begum instituted the suit through her son Syed Raza Haider, respondent No.1, as her next friend, with the averments that Mst. Yasmin Begum was mentally retarted person and she also remained under treatment in different hospitals. She was also admitted in mental hospital, Lahore. The document Ex.P6 divulges that Syed Raza Haider filed an application under sections 62/63 of the Lunacy Act, 1912 for ascertainment of unsound mind of Mst. Yasmin

Begum but during pendency of the said application Mst. Yasmin Begum died. All the P.Ws. deposed that Mst. Yasmin Begum was of unsound mind before contracting marriage and all the transactions regarding the transfer of property were made while she was suffering from mental illness and being of an unsound mind and was unable to manage herself and that all the transactions germane to transfer of her property were outcome of fraud. The beneficiary was under heavy burden to discharge the onus that all the transactions were performed with free will and consent of the principal but in the present case, it has been established by the respondent No.1 that Mst. Yasmin Begum was not in a position to manage her property as Ex.P2 explicitly shows that she was admitted in Government Mental Hospital, Lahore on 25.10.1993 and reasons for admission with the history are mentioned as epileptic for the last 28 years in the history sheet. It has further been mentioned in the history sheet that at the time of childhood, she had been suffering from fits. Mst. Yamin Begum was got admitted by her real sister Mst. Nasira Khatoon in the hospital but later on she obtained permission to accompany the patient with her and the same was granted after discharging her on 04.11.1993.

5. The appellants produced only solitary witness namely Faqir Syed Anwar Ud Din and the said D.W. did not depose a single word regarding the factum that at the time of execution of general power of attorney, Mst. Yasmin Begum was not suffering from mental infirmity and she was of sound

mind at that time rather it has been deposed in his examination in chief that share of Mst. Yasmin Beugm in the sale amount of the properties was handed over to her elder sister Mst. Nasira Khatoon who had been looking after her sister; this deposition strengthens the stance of the respondent No.1/plaintiff that Mst. Yasmin Begum was not in a condition to manage her properties and all the transactions of transfer as well as execution of

general power of attorney in favour of deceased appellant were executed through fraud and misrepresentation. Section 12 of the Contract Act, 1872 provides that:-

> *„**What is a sound mind for the purposes of contracting**:--- A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.*
>
> *A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.*
>
> *A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.*
>
> *Illustrations*
>
> *(a) A patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals.*
>
> *(b) A sane man, who is delirious from fever or who is so drunk that he cannot understand the terms of a contract or form a rational judgment as to its effect on his interest, cannot contract whilst*

such delirium or drunkenness lasts."

In the present case, it has been established on record that Mst. Yasmin Begum was suffering from epileptic disease from her childhood and was not in a position to manage her property or form a rational judgment as to effect of any contract on her interest, that is why, the amount of her share was handed over to her elder sister Mst. Nasira Khatoon after disposing of the property of Mst. Yasmin Begum by defendant No.1/present deceased appellant. The other discrepancies as to sale of properties in the year 1974 and obtaining of receipt of amount on 11.06.1988 also casts aspersion about the authenticity and veracity of the general power of attorney and sale transactions. The deceased predecessor of the appellants being beneficiary was under heavy burden to prove the valid execution of the general power of attorney and other sale transactions but he failed in doing so. Reliance is placed on *Abdul Hameed through L.Rs.ad others v. Shamasuddin and others* (**PLD 2008 Supreme Court 140**). In view of the above, the learned courts below have evaluated evidence of the parties in a minute manner on this score and have reached to just conclusion; therefore, the findings on this point are maintained and upheld.

6. So far the claim of the appellant in connected appeal bearing R.S.A.No.92 of 2017 with regards to bona fide purchaser without notice is concerned, it is observed that protection under section 27(b) of the Specific Relief Act, 1877

is not available to him, because simple denial was not sufficient to discharge the onus, rather he should have proved good faith and lack of knowledge after reasonable care. Had the appellant in connected appeal namely Muhammad Azeem Sheikh made an inquiry even in a summary manner, he would have come to know that Mst. Yasim Begum was a person of unsound mind and sale in favour of person by defendant No.1, from whom he derived rights was based on fraud and misrepresentation, but there is nothing on record to show making of any such exertion on his behalf. In the case of *Hafiz Tassaduq Hussain v. Lal Khatoon* **(PLD 2011 SC 296)**, it has been invariably held by the Hon'ble Supreme Court that the subsequent vendee has to discharge the initial onus: 1). That he acquired the property for due consideration and thus is a transferee for value, meaning thereby that his purchase is for the price paid to the vendor and not otherwise; 2). There was no dishonesty of purpose or tainted intention to enter into the transaction which shall settle that he acted in good faith or with bona fide; 3). He had no knowledge or notice of the original sale agreement between the plaintiff and the vendor at the time of his transaction with the latter. Moreover, in a recent judgment handed down on 14.10.2021 in Civil Appeal No.389 of 2015 titled ***Bahar Shah and others v. Manzoor Ahmad*** the Apex Court of the country has held:-

> *„7. The presupposition of know-how or prior notice of earlier agreement of the same property stem from calculated abstention from an enquiry*

by the alleged bona fide purchaser. A conscious and purposive circumvention of an enquiry and due diligence which a buyer ought to have made would always communicate a presumption of definite notice. In a position taken as bona fide purchase, it should be established by a fair preponderance of the evidence and the fact of notice may be inferred from the circumstances as well as proved by direct evidence. An honest buyer should at least make some inquiries with the persons having knowledge of the property and also with the neighbors. An equitable interest can be hammered or resisted by a bona fide purchaser for value without notice of the legal interest in the property but it is also significant that Section 27(b) of the Specific Relief Act shields and safeguards the bona fide purchaser in good faith for value without notice of the original contract which is in fact an exception to the general rule. The doctrine of purchaser without notice embodies the maxim that "where equities are equal the law will prevail". Under Section 3 (Interpretation Clause) of Transfer of Property Act 1882, "a person is said to have notice" of a fact when he actually knows that fact, or when, but for willful abstention from an inquiry or search, which he ought to have made, or gross negligence, he would have known it. Explanation II, further expounds that "Any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof."

It is a settled law that where subsequent vendee conducted no

inquiry whatsoever with regards to title of the property in question, he would not be deemed to have purchased property in question for value, in good faith and without notice of original contract.

7. Pursuant to above, both the learned Courts have evaluated evidence in true perspective and have reached to a just conclusion, concurrently; as such the concurrent findings,

on facts, cannot be disturbed when the same do not suffer from any misreading and non-reading of evidence, howsoever erroneous, in exercise of jurisdiction under section 100 of the Code of Civil Procedure, 1908. Reliance is placed on *Haji Sultan Ahmad v. Naeem Raza* **(1996 SCMR 1729)**, wherein it has been held that, *„Concurrent findings, upsetting the concurrent findings of fact as a result of reappraisal of evidence on record is not permissible under section 100, C.P.C."*

8. For the foregoing reasons, while placing reliance on the judgments *supra*, the appeal in hand and connected appeal bearing R.S.A.No.92 of 2017, being devoid of any force and substance stand dismissed. No order as to costs.

(***Shahid Bilal Hassan***)
Judge

Approved for reporting.

Judge

Lahore High Court
Muhammad Awais v. Zahida Parveen
C.R No. 4434 of 2019
Mr. Justice Shahid Bilal Hassan

Crux of Judgement:

i) Nikahnama is per se admissible in evidence.

ii) No condition can be imposed on the husband if he desires to divorce his wife, as per settled principles and norms.

Facts of Case:

Petitioner's right to produce evidence was closed and the learned trial court decreed the suit of respondent/plaintiff, against which petitioner preferred appeal and appellate court dismissed appeal of the petitioner/defendant. Being aggrieved petitioner through this revision petition challenged the judgment and decree passed by appellate court.

Issues In Case:

i) Whether nikahnama is per se admissible in evidence?

ii) Whether any condition such as "compensation in lieu of divorce" may be imposed on husband to exercise his right to divorce?

Analysis of Issues of Case:

i) The Nikahnama is per se admissible in evidence and entries of the same have not been challenged by the petitioner before any forum at the relevant time. Even otherwise, the entries of the Nikahnama have been proved by the respondent by producing oral as well as documentary evidence. As against this, the petitioner could not lead evidence in rebuttal as his right to produce evidence was closed by the learned trial Court and he remained unsuccessful in getting the said order reversed by the higher Courts despite availing of the remedy provided under law. Meaning thereby the evidence of the respondent on this point is unrebutted and even during cross examination, conducted on the P.Ws. the petitioner's side could not shake the veracity of the testimonies of the P.Ws. rather the witnesses remained firm and unscathed.

ii) So far as the claim of the respondent for recover of Rs.500,000/- as compensation in lieu of divorce is concerned, it is observed that in the Holy Quran in Surah Al-Baqra and Surah Talaq the delegation of right of divorce has been described in detail. Similarly, section 7(1) of the Muslim Family Laws Ordinance, 1961 deals with the matter of Talaq. The provision of section 105 of the Code of Muslim Personal Laws also caters this thing that a husband has an absolute right to divorce his wife. In this respect, no condition is described in Shariah as well as in the codified law. Reliance in this regard is placed on judgment reported as *Muhammad Bashir Ali Siddiqui v. Muhammad Sarwar Jahan Begum* (2008 SCMR 186), wherein it has been observed that no condition can be imposed on the husband if he desires to divorce his wife, because the right of divorce has been given by Almighty Allah to the husband and this proposition has been discussed in detail…The principles laid down by the Apex Court of the country in the judgment of *Muhammad Bashir Ali Siddiqui ibid* shall prevail in view of Article 189 of the Constitution of Islamic Republic of Pakistan, 1973.

Stereo. HCJDA 38

JUDGMENTSHEET

IN THE LAHORE HIGH COURT,
LAHORE
JUDICIAL DEPARTMENT

Civil Revision No.44034 of 2019
Muhammad Awais **Versus** Zahida Parveen

J U D G M E N T

Date of hearing: 05.10.2023

Petitioner(s) by: Sardar Abdul Majeed Dogar, Advocate

Respondent(s) by: Mr. Sukrat Mir Basit, Advocate

***SHAHID BILAL HASSAN-J*:** Tersely, the respondent instituted a suit for recovery of gold ornaments weighing 8- tolas and Rs.500,000/- as damages on account of divorce, against the present petitioner. It was maintained that her Nikah was solemnized on 25.11.2008 with the present petitioner and dower amount was fixed at Rs.1,000/-. In column No.17 of the Nikahnama special condition was mentioned that the petitioner/ defendant would give 8-tolas gold ornaments to the respondent/ plaintiff which would be property of the respondent/plaintiff; that it was also mentioned in Nikahnama if that the petitioner/ defendant divorces the respondent/plaintiff, he would pay Rs.500,000/- as compensation. It was averred that the petitioner/defendant divorced the respondent on 15.01.2009; therefore, she instituted suit. The learned trial court dismissed the suit on 12.02.2010. The respondent/plaintiff being aggrieved preferred an appeal, which was accepted on 02.06.2010 and case was remanded to the learned trial Court. The petitioner/defendant challenged the said remand order through writ petition which was accepted by this Court on 25.11.2011 and decision of the learned Judge Family Court was restored. Therefore, the respondent/plaintiff filed a suit for recovery of 8-tolas gold ornaments and Rs.500,000/- before the Civil Court. The

petitioner/defendant contested the suit by submitting written statement. Divergence in pleadings of the parties was summed up into issues and evidence of the respondent/plaintiff was recorded. The petitioner/defendant could not produce evidence so his right to lead evidence was closed and suit of the respondent/plaintiff was decreed vide judgment and decree dated 09.01.2018. The petitioner/ defendant being aggrieved preferred an appeal but the same was dismissed vide impugned judgment and decree dated 11.06.2019; hence, the instant revision petition.

2. Heard.

3. It is claim of the respondent that Nikah inter se the parties was solemnized on 25.11.2008 and at the time of Nikah, the present petitioner agreed to give 8-tolas gold ornaments to the respondent/plaintiff and a stipulation was imposed on the right of divorce of the present petitioner that if he divorces the respondent, he will pay Rs.500,000/- in lieu thereof. Now, the petitioner has divorced the respondent and has not paid the above said gold ornaments and compensation in lieu of divorce therefore, the respondent is entitled to the same. The petitioner/ defendant denied the averments of the plaint and contended that he did not enter into nuptial tie with the respondent with his free will rather his thumb impression was obtained by force.

4. In order to substantiate her claim, the respondent produced Nikah Khawan, witnesses of marriage besides her own deposition in the witness box. All the witnesses have

corroborated the stance of the respondent with regards to the entries made in the Nikahnama germane to gold ornaments and stipulation as well as restriction on right of divorce by the petitioner, which have been mentioned in columns No.17 and 19 of the Nikahnama. The petitioner could not lead evidence as to obtaining of his thumb impression on the Nikahnama by force and under undue influence by the respondent and even the same does not appeal to prudent mind. The Nikahnama is per se admissible in evidence and entries of the same have not been challenged by the petitioner before any forum at the relevant time. Even otherwise, the entries of the Nikahnama have been proved by the respondent by producing oral as well as documentary evidence. As against this, the petitioner could not lead evidence in rebuttal as his right to produce evidence was closed by the learned trial Court and he remained unsuccessful in getting the said order reversed by the higher Courts despite availing of the remedy provided under law. Meaning thereby the evidence of the respondent on this point is unrebutted and even during cross examination, conducted on the P.Ws. the petitioner's side could not shake the veracity of the testimonies of the P.Ws. rather the witnesses remained firm and unscathed. Therefore, it can safely be concluded that the respondent has rightly been held entitled to recover 8-tolas gold ornaments from the petitioner as agreed by him at the time of Nikah with the respondent, by the learned Courts below. As such, the findings of the learned Courts below to this extent are upheld

and maintained.

5. So far as the claim of the respondent for recovery of Rs.500,000/- as compensation in lieu of divorce is concerned, it is observed that in the Holy Quran in Surah Al-Baqra and Surah Talaq the delegation of right of divorce has been described in detail. Similary, section 7(1) of the Muslim Family Laws Ordinance, 1961 deals with the matter of Talaq. The provision of section 105 of the Code of Muslim Personal Laws also caters this thing that a husband has an absolute right to divorce his wife. In this respect, no condition is described in Shariah as well as in the codified law. Reliance in this regard is placed on judgment reported as *Muhammad Bashir Ali Siddiqui v. Muhammad Sarwar Jahan Begum* **(2008 SCMR 186)**, wherein it has been observed that no condition can be imposed on the husband if he desires to divorce his wife, because the right of divorce has been given by Almighty Allah to the husband and this proposition has been discussed in detail. The said view has been adopted in judgment reported as *Mst. Zeenat Bibi v. Muhammad Hayat and 2 others* **(2012 CLC 837-Lahore)** on this point and most recent this view has been reiterated in judgments reported as *Muhammad Asif v. Mst. Nazia Riasat and 2 others* **(2018 CLC 1844-Lahore)**, *Muhammad Sajjad v. ADJ etc.* **(PLJ 2021 Lahore 485)** and *Mujahid Karman v. Mst. Saira Aziz and 2 others* **(2022 CLC 24-Lahore)** by this Court. In *Muhammad Bashir Ali Siddiqui's* case supra, the Apex Court of the country has held that:-

> *'His only contention was that such condition was embodied in the Nikahnama by way of safety and for prolongation of marriage contract, as it would deter both the parties from bringing an end to the marriage contract. This contention to say, the least is absolutely frivolous as it is against the basic principle of law which require the parties to remained in marital ties in a peaceful and tranquil atmosphere and are not required to be bound by stringent conditions to remain in marriage bond.'*

The principles laid down by the Apex Court of the country in the judgment of *Muhammad Bashir Ali Siddiqui ibid* shall prevail in view of Article 189 of the Constitution of Islamic Republic of Pakistan, 1973. Therefore, it is observed without any hesitation that the learned Courts below have failed to adjudge the case on the point of compensation of Rs.500,000/- in lieu of divorce as per settled principles and norms. Therefore, to this extent the impugned judgments and decrees are not sustainable in the eye of law.

6. For the foregoing reasons, it is observed that the learned Courts below have failed to adjudicate upon the matter in hand to the extent of question of compensation in lieu of divorce by appreciating law on the subject; therefore, this Court is vested with ample jurisdiction and authority to undo the concurrent findings in exercise of revisional jurisdiction under section 115, Code of Civil Procedure, 1908 as has been held in *Mst. Nazir Begum v. Muhammad Ayyub and another* **(1993 SCMR 321)**, *Sultan Muhammad and another v. Muhammad*

Qasim and others **(2010 SCMR 1630)**, *Ghulam Muhammad and 3 others v. Ghulam Ali* **(2004 SCMR 1001)** and *Muhammad Khubaib v. Ghulam Mustafa (deceased) through LRs* **(2020 CLC 1039-Lahore)**. Resultantly, the revision petition in hand is allowed partially and impugned judgments and decrees to the extent of awarding compensation in lieu of divorce is set aside, consequent whereof the suit of the respondent to this extent stands dismissed. No order as to the costs.

(Shahid Bilal Hassan)
Judge

Approved for reporting.

Judge

Lahore High Court
Mst. Nawab Bibi (deceased) through L.Rs. v. Hakim Ali and others
Civil Revision No.2312 of 2014
Mr. Justice Shahid Bilal Hassan

Crux of Judgement:

i) Every Muslim in the sub-continent is presumed to belong to Sunni sect, unless 'good evidence' to the contrary is produced by the party contesting the same.

ii) No strict criteria can be set to determine the faith of a person and therefore to pass any finding thereon, the Courts are to consider the surrounding circumstances i.e. way of life, parental faith and faith of other close relatives.

iii) Fraud vitiates the most solemn transaction and in such like position, when question of inheritance is involved, the limitation does not run.

iv) When the foundational transaction is based on fraud and mala fide, the subsequent superstructure built thereon cannot be allowed to stand and ultimately collapses.

v) When impugned judgment and decree does not suffer from any infirmity rather law on the subject has rightly been construed and appreciated then the concurrent findings on record cannot be disturbed in exercise of revisional jurisdiction under section 115 of Code of Civil Procedure, 1908.

Facts of Case:
The learned trial Court vide impugned judgment and decree decreed the suit of the petitioner(s)/plaintiff(s) to the extent of 1/2 share as inheritance from the legacy of the deceased. The petitioner(s)/plaintiff(s) being aggrieved preferred an appeal but the same was dismissed vide impugned judgment and decree; hence, the instant revision petition by petitioner through her legal heirs with the prayer that she is entitled to inherit half property of deceased as sharer and half as return, whereas the petitioners in connected civil revision have prayed for setting aside the impugned judgments and decree and dismissal of the suit of plaintiff.

Issues In Case:
i) Whether every Muslim in the sub-continent is presumed to belong to Sunni sect?

ii) Whether any strict criteria can be set to determine the faith of a person?

iii) Whether fraud vitiates the most solemn transaction and in such like position, when question of inheritance is involved whether limitation does run?

iv) When the foundational transaction is based on fraud and mala fide, whether the subsequent superstructure built thereon can be allowed to stand?

v) Whether the concurrent findings on record can be disturbed in exercise of revisional jurisdiction under section 115 of Code of Civil Procedure, 1908?

Analysis of Issues of Case:
i) Every Muslim in the sub-continent is presumed to belong to Sunni sect, unless 'good evidence' to the contrary is produced by the party contesting the same. The judicial determination of whether the said presumption of faith of a party, positively stands rebutted, would be adjudged by the Court on the principle of preponderance of evidence produced by the parties.

ii) No strict criteria can be set to determine the faith of a person and therefore to pass any finding thereon, the Courts are to consider the surrounding circumstances i.e. way of life, parental faith and faith of other close relatives.

iii) Question of limitation has also rightly been adjudicated upon by the learned Courts below because fraud vitiates the most solemn transaction and in such like position, when question of inheritance is involved, the limitation does not run.

iv) It is a settled principle of law that when the foundational transaction is based on fraud and mala fide, the subsequent superstructure built thereon cannot be allowed to stand and ultimately collapses.

v)The impugned judgments and decrees do not suffer from any infirmity rather law on the subject has rightly been construed and appreciated. As such, the concurrent findings on record cannot be disturbed in exercise of revisional jurisdiction under section 115 of Code of Civil Procedure, 1908.

Stereo. HCJDA 38

JUDGMENTSHEET
IN THE LAHORE HIGH COURT, LAHORE JUDICIAL DEPARTMENT

Civil Revision No.2312 of 2014
Mst. Nawab Bibi (deceased) through L.Rs.
Versus
Hakim Ali and others

JUDGMENT

Date of hearing: 04.10.2023

Petitioner(s) by: Mr. Ijaz Hussain, Advocate

Respondent(s) by: Syed Kaleem Ahmad Khurshid and Sultan Mehmood, Advocates for respondents No.4 to 9

Respondents No.1 to 3 ex parte on

03.10.2016

***SHAHID BILAL HASSAN-J*:** This single judgment shall decide the captioned revision petition and connected C.R.No.1992 of 2014, as both are outcome of one and the same impugned judgments and decrees.

2. Purportedly, Mst. Nawab Bibi was the sole legal heir of her father namely Shera son of Allah Din and being his sole legal heir, she was entitled to inheritance of legacy of the said Shera but the predecessors in interest of the respondents namely Fazal Din, Elahi Bukhsh, Allah Dad, Roshan and Jhanda got incorporated a false, bogus and fraudulent mutation No.80/437 of inheritance of deceased Shera by showing therein that deceased Shera had one brother and one daughter but both had died prior to death of Shera and in the absence of other legal heirs, above said Fazal Din, etc. were entitled to inherit the property of deceased Shera; therefore, the above said inheritance mutation was sanctioned by the revenue officer on 03.12.1955. In 1993, the predecessor in interest of the petitioner(s) namely Mst. Nawab Bibi daughter of Shera came to know about the alleged fraudulent, forged and frivolous mutation of inheritance *ibid* and instituted suit for declaration by challenging the validity of the same. The defendants namely Azmat Bibi, Hakim Ali, Rajoo Bibi, Bashir Ahmad, Nazir Ahmad, Ghafoor and Manzoor submitted their conceding written statements, whereas the defendants No.5 to 9 and defendants No.3-A to 3-C contested the suit. The divergence in

pleadings of the contesting parties was summed up into issues by the learned trial Court. Evidence of the parties in pro and contra was recorded. On conclusion of trial, the learned trial Court dismissed the suit vide judgment and decree dated 21.11.2000. An appeal was preferred by the aggrieved party, which was allowed on 14.06.2001 and case was remanded to the learned trial Court for decision afresh. After remand, the learned trial Court vide judgment and decree dated 19.01.2002 decreed the suit in favour of Mst. Nawab Bibi. Bashir Ahmad, etc. being aggrieved preferred an appeal which was dismissed on 06.01.2003. Revision petition was filed, which was allowed vide order dated 12.03.2012 and the case was remanded to the learned trial Court for decision afresh. The learned trial Court framed additional issue 1-A (Whether the deceased father of deceased plaintiff was Shia by faith? OPP). After this, evidence of the parties was recorded on additional issue. The learned trial Court vide impugned judgment and decree dated 21.02.2013 decreed the suit of the petitioner(s)/plaintiff(s) to the extent of 1/2 share as inheritance from the legacy of the deceased Shera. The petitioner(s)/plaintiff(s) being aggrieved preferred an appeal but the same was dismissed vide impugned judgment and decree dated 02.05.2014; hence, the instant revision petition by Mst. Nawab Bibi through her legal heirs with the prayer that she is entitled to inherit half property of deceased Shera as sharer and half as return, whereas the petitioners in connected C.R.No.1992 of 2014 have prayed for setting aside

the impugned judgments and decree and dismissal of the suit of Mst. Nawab Bibi.

3. Heard.

4. Every Muslim in the sub-continent is presumed to belong to Sunni sect, unless 'good evidence' to the contrary is produced by the party contesting the same. The judicial determination of whether the said presumption of faith of a party, positively stands rebutted, would be adjudged by the Court on the principle of preponderance of evidence produced by the parties. No strict criteria can be set to determine the faith of a person and therefore to pass any finding thereon, the Courts are to consider the surrounding circumstances i.e. way of life, parental faith and faith of other close relatives. Reliance in this regard is placed on *Mst. Chanani Begum (Deceased) through LRs. v. Mst. Qamar Sultan* **(2020 SCMR 254)** and *Abdul Rehman and others v. Mst. Allah Wasai and others* **(2022 SCMR 399)**. Further reliance in this regard can also be placed on judgment reported as *Ghulam Shabbir and others v. Mst. Bakhat Khatoon and others* **(2009 SCMR 644)**. A detailed analysis in this regard, by referring the least precedents rendered by the Privy Council and Courts, has been made by this Court in judgment reported as *Tahira Bibi v. Muhammad Khan, etc.* **(PLJ 2019 Lahore 829)**, which does not need to re-discussed here again as the crux of the observation is that there is no principle of universal application to determine the faith of a person except direct disclosure by words from the mouth of

deceased, circumstantial evidence of the conduct of deceased and opinion of witnesses.

In the present case, the issue No.1-A is pivotal which was framed with regards to faith of the deceased Shera. The deposition of P.W.1 is hearsay as he, during cross examination, deposed that daughter of Shera told him that Shera was Shia by faith, so his evidence has rightly been discarded. P.W.2 namely Haji Ejaz deposed that he did not know Shera and never saw him, so his evidence has also no value in the eye of law. Evidence of P.W.3 is not worthy of credence because admittedly Shera died in 1949 and at that time age of this P.W. has rightly been counted as seven(7) years because he mentioned his age as 71 years at time of recording his evidence. Moreover, his deposition is beyond the pleadings when he deposed that Shera died in the year 1956, whereas the same has been pleaded as 1949. P.W.4 deposed that he did not know Shera. It means that the depositions of all the P.Ws. is based on hearsay and is not based on personal knowledge; therefore, the same is rightly been discarded and disbelieved. When the predecessor in interest of the present petitioners namely Mst. Nawab Bibi has failed to prove that Shera was professing Shia faith during his life time, the ultimate result would be that he was Sunni by faith and the same has rightly been determined and declared as such by the learned Courts below while passing the impugned judgments and decrees.

5. So far as the claim of the petitioners in connected

revision petition is concerned, it is observed that pedigree table prepared by the revenue authority during mutation proceedings, on the information provided by the predecessor in interest of the petitioners, in connected revision petition, which divulges that Shera had a daughter but she was shown to be dead and her name was not disclosed. Meaning thereby the predecessor of the petitioners in connected revision petition knowingly and deliberately did not disclose name of Mst. Nawab Bibi, daughter of the deceased Shera only to deprive her from her lawful right. Therefore, in presence of admission of D.W.1 that

Shera was original owner of the disputed property and Mst. Nawab Bibi was the only daughter and legal heir of the said Shera, the learned Courts below have rightly adjudged that Mst. Nawab Bibi being daughter and legal heir of Shera is entitled to inherit 1/2 of the disputed property, owned by Shera. The findings recorded on this score being based on proper appreciation of evidence are upheld and maintained.

6. Question of limitation has also rightly been adjudicated upon by the learned Courts below because fraud vitiates the most solemn transaction and in such like position, when question of inheritance is involved the limitation does not run. Moreover, when the foundational transaction is based on fraud and mala fide, the subsequent superstructure built thereon cannot be allowed to stand and ultimately collapses. Furthermore, the concurrent/coexisting possession of the deceased petitioner Mst. Nawab Bibi and after her demise, that

of the present petitioners, her successors, would be considered.

7. Pursuant to the above, it is held that the learned Courts below have committed no illegality, irregularity and wrong exercise of jurisdiction, rather after evaluating evidence on record have reached to a just conclusion that the petitioners/defendants have miserably failed to prove their case through trustworthy and reliable evidence. The impugned judgments and decrees do not suffer from any infirmity rather law on the subject has rightly been construed and appreciated. As such, the concurrent findings on record cannot be disturbed in exercise of revisional jurisdiction under section 115 of Code of Civil Procedure, 1908. Reliance is placed on judgments reported as *Mst. Zaitoon Begum v. Nazar Hussain and another* (**2014 SCMR 1469**), *CANTONMENT BOARD through Executive Officer, Cantt. Board Rawalpindi v. IKHLAQ AHMED and others* **(2014 SCMR 161)**, *Muhammad Farid Khan v. Muhammad Ibrahim, etc.* **(2017 SCMR 679)**, *Muhammad Sarwar and others v. Hashmal Khan and others* **(PLD 2022 Supreme Court 13)** and *Mst. Zarsheda v. Nobat Khan* **(PLD 2022 Supreme Court 21)** wherein it has been held that :-

> *'There is a difference between the misreading, non-reading and misappreciation of the evidence therefore, the scope of the appellate and revisional jurisdiction must not be confused and care must be taken for interference in revisional jurisdiction only in the cases in which the order passed or a judgment rendered by a subordinate Court is*

found perverse or suffering from a jurisdictional error or the defect of misreading or non-reading of evidence and the conclusion drawn is contrary to law. This court in the case of Sultan Muhammad and another v. Muhammad Qasim and others (2010 SCMR 1630) held that the concurrent findings of three courts below on a question of fact, if not based on misreading or non-reading of evidence and not suffering from any illegality or material irregularity effecting the merits of the case are not open to question at the revisional stage.'

Further in judgment reported as *Salamat Ali and others v. Muhammad Din and others* **(PLJ 2023 SC 8)**, it has invariably been held that:-

'Needless to mention that a revisional Court cannot upset a finding of fact of the Court(s) below unless that finding is the result of misreading, non-reading, or perverse or absurd appraisal of some material evidence. The revisional Court cannot substitute the finding of the Court(s) below with its own merely for the reason that it finds its own finding more plausible than that of the Court(s) below.'

8. For the foregoing reasons, the revision petition in hand and connected C.R.No.1992 of 2014 come to naught and the same stand dismissed. No order as to the costs.

(Shahid Bilal Hassan)
Judge

Approved for reporting.

Judge

M.A.Hassan

Stereo. HCJDA 38

JUDGMENTSHEET

IN THE LAHORE HIGH COURT, LAHORE JUDICIAL DEPARTMENT

Civil Revision No.1992 of 2014
Bashir Ahmad and others
Versus
Ghulam Sarwar and others

J U D G M E N T

Date of hearing: 04.10.2023

Petitioner(s) by: Syed Kaleem Ahmad Khurshid, Advocate

Respondent(s) by: Mr. Ijaz Hussain, Advocate

***SHAHID BILAL HASSAN-J*:** For the reasons recorded in even-dated judgment passed in connected C.R.No.2312 of 2014, the revision petition in hand comes to naught and the

same stands dismissed. No order as to the costs.

(Shahid Bilal Hassan)
Judge

M.A.Hassan

Lahore High Court
Muhammad Sarwar alias Babar v. Muhammad Yasin (deceased) through L.Rs. & others
Civil Revision No. 66655 of 2023
Mr. Justice Shahid Bilal Hassan

Crux of Judgement:

i) After the cut-off date, it is necessary for the purchaser to send written notice to the other party showing his readiness to pay the remaining amount and asking him to perform his part of the agreement and deposit the remaining sale consideration with the Court.

ii) Concurrent findings, on facts, cannot be disturbed when the same do not suffer from any misreading and non-reading of evidence, howsoever erroneous, in exercise of revisional jurisdiction.

Facts of Case:

The petitioner instituted suit challenging the gift mutation in favour of respondent No.2 and subsequent mutation in favour of respondents No.3 and 4 as well as agreement to sell with the

defendant No.5. The respondent No.5 instituted suit for possession through specific performance. The trial Court decreed the suit of the petitioner/plaintiff in terms of impugned judgment and decree whereas the suit for specific performance etc. filed by the respondent No.5 was decreed as prayed for. The petitioner preferred two appeals against the said consolidated judgment and decree. However, the appellate Court dismissed both the appeals; hence, the instant revision petition.

Issues In Case:

i) Which steps are necessary to be performed by the purchaser after cut-off date to show bona fide and readiness to perform his part of agreement?

ii) Whether the concurrent findings, on facts can be disturbed in exercise of revisional jurisdiction?

Analysis of Issues of Case:

i) Moreover, after cut-off date, the petitioner did not send any written notice to the deceased respondent Muhammad Yasin showing his readiness to pay the remaining amount and asking him to perform his part of the agreement. Furthermore, the suit was filed by him after nine months of the cut-off date but he did not deposit the remaining sale consideration with the Court by moving an application in this regard, which was necessary to show his bona fide and readiness to perform his part of agreement.

ii) Pursuant to above, both the learned Courts have evaluated evidence in true perspective and have reached to a just conclusion, concurrently; as such the concurrent findings, on facts, cannot be disturbed when the same do not suffer from any misreading and non-reading of evidence, howsoever erroneous, in exercise of revisional jurisdiction (…)'There is a difference between the misreading, non-reading and misappreciation of the evidence therefore, the scope of the appellate and revisional jurisdiction must not be confused and care must be taken for interference in revisional jurisdiction only in the cases in which the order passed or a judgment rendered by a subordinate Court is found perverse or suffering from a jurisdictional error or the defect of misreading or non-reading of evidence and conclusion drawn is contrary to law.'(…)'Needless to mention that a revisional Court cannot upset a finding of fact of the Court(s) below unless that finding is the result of misreading, non-reading, or perverse or absurd appraisal of some material evidence. The revisional Court cannot substitute the finding of

the Court(s) below with its own merely for the reason that it finds its own finding more plausible than that of the Court(s) below.'

Form No: HCJD/C-121

ORDER SHEET

IN THE LAHORE HIGH COURT,
LAHORE JUDICIAL DEPARTMENT

Civil Revision No.66655 of
2023 Muhammad Sarwar
alias Babar
…Versus…
Muhammad Yasin (deceased) through L.Rs. &
others

Sr. No. of order/ proceeding	Date of order/ Proceeding	Order with signatures of Judge, and that of Parties or counsel, where necessary

11.10.2023 Mr. Muhammad Umar Maqsood, Advocate for the petitioners

Tersely, the respondent/defendant No.1 namely Muhammad Yasin (deceased) being owner of land measuring 14-Kanals 12-Marlas situated at Behar Sodan, Tehsil Chunian entered into an agreement to sell dated 22.04.2003 with the present petitioner/plaintiff for sale of the said land and received Rs.50,000/- as earnest money, whereas it was settled that the said deceased would transfer the suit property till 30.06.2003 and the remaining consideration amount would be paid at the time of transfer of the suit property in the name of the petitioner; however, allegedly the deceased respondent No.1 with mala fide intention did not fulfill his part of the agreement rather he illegally and unlawfully transferred the suit property and his other land i.e. 19-Kanals in the

name of his wife/respondent No.2 through gift mutation No.1811 dated 29.08.2003 by committing fraud with the petitioner. The respondent No.2 further transferred the land measuring 5-

Kanals through mutation No.1816 dated 17.10.2003 in the name of respondents No.3 and 4 and she also entered into an agreement to sell dated 11.12.2003 with the defendant No.5 regarding the land measuring 13-Kanals; hence, the petitioner instituted suit challenging the above said gift mutation in favour of respondent No.2 and subsequent mutation in favour of respondents No.3 and 4 as well as agreement to sell with the defendant No.5. The respondents/defendants contested the suit. The respondent No.5, on 29.06.2005, instituted suit for possession through specific performance titled "Sardar Muhammad Sadiq v. Surraya Bibi" on the basis of an agreement to sell dated 11.12.2003 germane to land measuring 13-Kanals. The respondent No.2 herein submitted consenting written statement in the said suit. Both the suits were consolidated by the learned trial Court and consolidated issues were framed. Both the parties produced their oral as well as documentary evidence in support of their respective contentions. On conclusion of trial, the learned trial Court vide impugned consolidated judgment and decree dated 27.02.2023 decreed the suit of the petitioner/plaintiff in the terms that Muhammad Sarwar, the plaintiff is entitled to recover amount of earnest money Rs.50,000/- including present KIBOR bank

rate as damages since 22.04.2003 till realization of payment where the suit for specific performance etc. filed by the respondent No.5 Sardar Muhammad Sadiq (deceased) was decreed as prayed for. The petitioner being aggrieved preferred two appeals against the said consolidated judgment and decree. However, the learned appellate Court vide impugned consolidated judgment and decree dated 11.09.2023 dismissed both the appeals; hence, the instant revision petition.

2. Heard.

3. The purported agreement to sell Ex.P1 is time stricken as cut-off date for completion of agreement to sell after payment of remaining sale consideration was fixed as 30.06.2003. The petitioner Muhammad Sarwar (P.W.1) deposed that before the target date he contacted Muhammad Yasin (deceased) and asked him to transfer the land after receiving the remaining sale consideration but the said deceased dilly dallied the matter and sought further time. He further added that on the target date he went to Muhammad Yasin with the remaining consideration amount and asked him to perform his part of the agreement by executing sale deed in his favour. However, the petitioner, in witness box, could not mention the date, time and place regarding the said two transactions when he contacted the deceased defendant Muhammad Yasin. The petitioner did not plead the names of witnesses in plaint nor got them examined on oath. Moreover, after cut-off date, the petitioner did not send any written notice to the deceased

respondent Muhammad Yasin showing his readiness to pay the remaining amount and asking him to perform his part of the agreement. Furthermore, the suit was filed by him after nine month of the cut-off date but he did not deposit the remaining sale consideration with the Court by moving an application in this regard, which was necessary to show his bona fide and readiness to perform his part of agreement. In a judgment passed in Civil Appeal No.1121 of 2018 titled "***Ijaz Ul Haq v. Mrs. Maroof Begum Ahmed and others***" decided on 16.08.2023, the Apex Court of the country has invariably held that:

> *'7. It would be appropriate first to examine how the plaintiff discharged his pleading burden. The law governing this aspect of the matter is provided in Form No.47 and 48 of Appendix-A of the First Schedule to the Code of Civil Procedure, 1908. According to para-2 of Form 47, the plaintiff was to state in the plaint that he had applied to the defendants specifically to perform the contract on their part, but the defendants had not done so. Similarly, per para-2 of Form 48, the plaintiff was required to state in his plaint that on such and such date, he tendered an amount to the defendants and demanded a transfer of the property. Thus, in his suit for specific performance, the plaintiff ought to have pleaded and proved his readiness and willingness to perform his obligations under the contract (Ex.P.3). There is no denying that according to contract condition, the plaintiff was to pay the balance of Rs.6,850,000/- to the defendants on or*

> *before 18th March, 2023, subject to the registration/completion of property transfer documents by the defendants in his favour. The plaintiff did not pay this amount. The plaintiff's stance was that he had been ready to pay the balance, but, defendant No.1 procrastinated the matter and delayed the completion of the transfer documents, which led him to institute the suit. A perusal of the evidence suggests that the plaintiff could not prove his narrative.'*

In the present case, the facts of the case are identical to the above referred judgment of the Apex Court, because in the present case, the petitioner failed to prove his case as well as stance that on the target date he appeared before the Sub-Registrar Chunian and got marked his attendance by submitting written application because he did not produce the said Sub-Registrar or any staff member of his office and even he did not mention in the said application Ex.P2 that he had brought the remaining sale consideration or pay order or draft.

4. Pursuant to above, both the learned Courts have evaluated evidence in true perspective and have reached to a just conclusion, concurrently; as such the concurrent findings, on facts, cannot be disturbed when the same do not suffer from any misreading and non-reading of evidence, howsoever erroneous, in exercise of revisional jurisdiction; reliance is placed on *Muhammad Farid Khan v. Muhammad Ibrahim, etc.* **(2017 SCMR 679)**, Mst. *Zaitoon Begum v. Nazar Hussain and another* (**2014 SCMR 1469**), *CANTONMENT BOARD through*

Executive Officer, Cantt. Board Rawalpindi v. IKHLAQ AHMED and others **(2014 SCMR 161)**, *Muhammad Sarwar and others v. Hashmal Khan and others* **(PLD 2022 Supreme Court 13)** and *Mst. Zarsheda v. Nobat Khan* **(PLD 2022 Supreme Court 21)**, wherein it has been held:-

> *'There is a difference between the misreading, non-reading and misappreciation of the evidence therefore, the scope of the appellate and revisional jurisdiction must not be confused and care must be taken for interference in revisional jurisdiction only in the cases in which the order passed or a judgment rendered by a subordinate Court is found perverse or suffering from a jurisdictional error or the defect of misreading or non-reading of evidence and conclusion drawn is contrary to law.'*

Further in judgment reported as *Salamat Ali and others v. Muhammad Din and others* **(PLJ 2023 SC 8)**, it has invariably been held that:-

> *'Needless to mention that a revisional Court cannot upset a finding of fact of the Court(s) below unless that finding is the result of misreading, non-reading, or perverse or absurd appraisal of some material evidence. The revisional Court cannot substitute the finding of the Court(s) below with its own merely for the reason that it finds its own finding more plausible than that of the Court(s) below.'*

However, in the present case, no such occasion has arisen showing any jurisdictional error or defect rather the findings

recorded by the learned Courts below are upto the dexterity after minute discussion of the evidence, oral as well as documentary. Thus, the impugned judgments and decrees do not call for any interference in exercise of revisional jurisdiction under section 115, Code of Civil Procedure, 1908.

5. For the foregoing reasons, no illegality and irregularity has been committed, rather vested jurisdiction has aptly and justly been exercised by the learned Courts below; therefore, while placing reliance on the judgments *supra* the civil revision in hand being devoid of any force and substance stands dismissed ***in limine***.

(Shahid Bilal Hassan)
Judge

Approved for reporting.

Judge

Lahore High Court
Rehana Shafqat v Afira Butt and others
Civil Revision No.49064 of 2022
Mr. Justice Shahid Bilal Hassan

Crux of Judgement:
A decision rendered on the basis of special oath is not appealable.

Facts of Case:
The petitioner has filed Civil Revision under section 115 of C.P.C, against the decision of lower courts wherein the succession petition was accepted on the basis of special oath offered by the petitioner and accepted by the respondent.

Issue:
Whether a decision rendered on the basis of special oath is appeal- able or not?

Analysis of Issues of Case:

The arrangement for disposal of suit/case as agreed by the parties was a sort of compromise, which was lawful and permissible; therefore, the same cannot be assailed through appeal. Moreover, it is the sweet will of the party to get decided the matter in terms of special oath. Therefore, the offer of special oath must be made voluntarily and accepted by the opposite party. It must not be a result of emotional behaviour or give rise to any void agreement. When a party offers for special oath, then it becomes binding upon him and he cannot resile from the same, and he has to face the consequences of the same.

Stereo. HCJDA 38

JUDGMENTSHEET

IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Civil Revision No.49064 of 2022

Rehana Shafqat **Versus** Afira Butt and others

JUDGMENT

Date of hearing: 24.10.2023

Petitioner(s) by: Rana Muhammad Nawaz, Advocate

Respondent(s) by: Chaudhry Tanveer Zahoor Gujjar, Advocate

SHAHID BILAL HASSAN-J: Tersely, the instant revision petition arises out of the proceedings brought by the present petitioner through an application for issuance of succession certificate about the pensionery benefits, etc. of her deceased husband namely Shafqat Rasool, who was an employee in the Pakistan Telecommunication Company Limited. In the said application, the Pakistan

Telecommunication Company Limited, Public at large and the respondents were impleaded as respondents and it was averred that the deceased Shafqat Rasool had already divorced his second wife i.e. respondent No.1 on 13th December, 2002, therefore, she was not entitled to any pensionery benefits. This claim of the petitioner was resisted by the respondents. Evidence of the parties was recorded. The learned trial Court vide impugned order dated 11.02.2019 held entitled two wives and children for pensionery benefits. The petitioner being aggrieved preferred an appeal. The learned appellate Court modified the order and entitled both wives only for pensionery benefits vide judgment dated 15.05.2019. The petitioner challenged the said order and judgment by filing C.R.No.37749 of 2019, wherein this Court summoned the Secretary Union Council concerned alongwith record and after perusal of record, set aside the judgment dated 15.05.2019 and remanded the case to the learned appellate Court with direction to decide the appeal afresh after taking into consideration the facts. However, the learned appellate Court vide impugned judgment dated 30.06.2022 dismissed the appeal and upheld the decree of the learned trial Court; hence, the instant revision petition.

2. Heard.

3. The legal proposition involved in the present case is that whether a decision rendered on the basis of special oath is appeal-able or not? In this regard, it can safely be observed that arrangement for disposal of suit/case as agreed by the parties

was a sort of compromise, which was lawful and permissible; therefore, the same cannot be assailed through appeal, as held in *RASHID MAHMOOD v. Mst. RASHIDA BEGUM and 2 others* **(2010 Y L R 218-Lahore)**.

Moreover, there is nothing on record to divulge that the petitioner was prompted by the respondents or by the learned trial Court to arrange the disposal of lis on the basis of Special oath, rather it was her sweet will to get decided the matter in terms of Special Oath. Therefore, said offer being made voluntarily and accepted by the respondent No.1 is binding upon the petitioner, as already held by this Court in *TASADUQ HUSSAIN v. ADDITIONAL DISTRICT JUDGE, DISTRICT VEHARI and 2 others* **(2010 YLR 3283-Lahore)**.

When the position was as such, the offer so made by the petitioner to the respondent No.1 is binding upon her and she cannot resile from the same, she has to face the consequence of the same. Reliance can also be placed on *Maulana MUHAMMAD IDREES v. FAZAL SAID KHATTAK and others* **(2009 C L C 241-Peshawar)** and even the petitioner has failed to plead any circumstance which might show that offer made by her was the result of her emotional behaviour or that offer and acceptance had given rise to any void agreement, therefore, she has to bear the result of her offer and the same is binding upon her as was held in judgment reported as *INAYAT HUSSAIN alias INAYATULLAH v. Chaudhry SULTAN AHMAD* **(2010 CLC 596-Lahore)**.

4. Besides, the petitioner took a stance that deceased Shafqat Rasool divorced the respondent No.1 through Talaq-e-Bian on 13.12.2002 but as per observations of the learned appellate Court, there were two divorce deeds of different dates on record of the concerned Union Council: one was issued on 13.12.2002 and other one issued on 03.09.2004 by the deceased Shafqat Rasool in presence of the witnesses namely Muhammad Ilyas son of Mian Ahmad Din and Rana Tariq but the petitioner could not produce both the said witnesses in support of her contention especially after a categorical denial and special oath by the respondent No.1 in pursuance to the offer of the present petitioner. The other aspect of keeping the purported proceedings of issuance of effectiveness certificate of Talaq for a considerable period of seven years also speaks volumes after authenticity and veracity of the same, as the first notice of Talaq was issued on 28.05.2011 and divorce effectiveness certificate was issued on 05.10.2011. Moreover, it is also not clear that on which divorce deed the same was issued, because as observed above the learned appellate Court found two divorce deeds of different dates in the record of Union Council. In this view of the matter, the learned appellate Court has rightly adjudged the matter in hand and has not committed any illegality or irregularity while upholding the order passed by the learned trial Court, warranting interference by this Court in exercise of revisional jurisdiction.

5. For the foregoing reasons, the revision petition in

hand comes to naught and the same stands dismissed. No order as to the costs.

(Shahid Bilal Hassan)
Judge

Approved for reporting.

Judge

M.A.Hassan

Lahore High Court
Muhammad Nawaz and others v. Province of Punjab through Additional Collector and others.
Civil Revision No.176407 of 2018
Mr. Justice Shahid Bilal Hassan

Crux of Judgement:

i) Where plaint is rejected under Rule 11 of Order VII clause (a) to (c), a fresh plaint could be presented by overcoming the defects mentioned therein but where the plaint is rejected under clause (d) of Rule 11 on the ground that the suit is barred by any law, the filing of fresh plaint is not envisaged unless the findings declaring the suit to be barred by any law are reversed.

ii) Order XXIII, Rule 1, C.P.C empowers the Court to allow withdrawal of suit with permission to file a fresh suit, satisfying itself and recording reasons that unless such permission is allowed,

the suit would fail by reason of some formal defect. The Court can also allow such withdrawal on other sufficient grounds as well.

iii) See above

iv) Yes, defect in plaint could be remedied by allowing amendments as prescribed by Order VI, Rule 17, C.P.C, however, before exercising such powers, Court must identify the defect and record its satisfaction that the defect is formal and does not go to the root of the case.

v) Withdrawal of suit with permission to file a fresh would not automatically set aside the judgment and decree which has come against the plaintiff unless the same is set-aside by the Court after due application of mind.

vi) If the permission is granted for filing a fresh suit, then pursuant to Order XXIII, Rule 2, the plaintiff is bound by the law of limitation in the same manner as if the first suit had not been filed, therefore, no fresh cause of action would accrue from the date when such permission was granted by the Court.

vii) Delay under Section 5 of the Limitation Act, 1908 can be condoned where the Court is satisfied that the application seeking condonation of delay discloses "sufficient cause" by accounting for each day of delay occasioned in filing the application, appeal, review or revision.

viii) Courts on the original side while trying a suit as required under section 3 of the Limitation Act, 1908 are bound to dismiss the suit if it is found to be barred by time notwithstanding that limitation has not been set up as defense.

ix) The Court has no power to condone the delay in filing the suit but could exclude time, the concession whereof is provided in sections 4 to 25 of the Limitation Act, 1908.

x) Law of Limitation is not a mere technicality and that once limitation expires, a right accrues in favour of the other side by operation of law which cannot lightly be taken away.

Facts of Case:

Tersely, the petitioners instituted a suit for declaration, alleging therein that they may be declared owner in possession of the suit property and gift mutation and exchange mutation may be declared null and void, result of fraud, misrepresentation and

result of connivance inter se the respondents and revenue officials. The suit was filed on 01.09.2001, however, the same was withdrawn on 29.01.2004 due to some technical defects with permission to file a fresh suit. Then, fresh suit was filed in the year 2006, which was also withdrawn on 30.11.2010 with permission to file a fresh suit. Again, the petitioners instituted suit on 07.04.2012. The respondents filed an application under Order VII, Rule 11, CPC, seeking rejection of the plaint being barred by law of limitation. The learned trial Court accepted the application and rejected the plaint. The petitioners being aggrieved preferred an appeal but the same was dismissed; hence, the instant revision petition.

Issues In Case:

i) Whether fresh plaint could be presented after rejection of plaint under Order VII Rule 11 CPC?

ii) What are the prerequisites to allow withdrawal of suit with permission to file a fresh suit?

iii) What are the eventualities where withdrawal of the suit could be allowed with permission to file a fresh suit?

iv) Whether defect in plaint could be remedied by allowing amendments, if so, what are its preconditions?

v) Whether withdrawal of suit with permission to file fresh suit, have the effect of setting aside the judgment and decree passed against the plaintiff?

vi) Whether withdrawal of suit with permission to file fresh suit gives fresh cause of action?

vii) When delay can be condoned under Section 5 of the Limitation Act, 1908?

viii) Whether court is bound to dismiss barred suit under section 3 of the Limitation Act, 1908 even limitation has not been set up as defense?

ix) Whether the Court has power to condone the delay in filing the suit?

x) Whether law of limitation is merely a technicality?

Analysis of Issues of Case:

i) Perusal of Rule 11 of Order VII, Code of Civil Procedure,

1908, divulges that it envisions four categories where the Court could reject a plaint and the first three are where the deficiencies in the plaint could be redressed. For instance, under clause (a) where the plaint is rejected on the ground that it does not disclose a cause of action, subject to law of limitation, a fresh plaint could be presented by overcoming the defect and disclosing the cause of action. Likewise, under clause (b) where the plaint is rejected on failure(s) of plaintiff to correct the valuation, again subject to law of limitation, the defect could be removed and a fresh plaint could be presented. In the same manner, under clause (c) if the plaint is rejected on failure of the plaintiff to supply the requisite stamp paper, subject to law of limitation, such defect could be remedied by supplying the court fees. However, where the plaint under clause (d) of Rule 11 is rejected on the ground that the suit is barred by any law, the filing of fresh plaint is not envisaged unless the findings declaring the suit to be barred by any law are reversed and, therefore, the withdrawal of the suit could not be allowed with the permission to file a fresh. It would, of course, be unlawful to revive a dead cause without bringing back the suit to life.

ii) In the like manner, Order XXIII, Rule 1, C.P.C., which allows the plaintiff to withdraw his suit or abandon part of his claim, empowers the Court to allow such withdrawal with permission to file a fresh suit. However, such permission is to be granted by the Court after satisfying itself and recording reasons that unless such permission is allowed, the suit would fail by reason of some formal defect. The Court can also allow such withdrawal with permission to file a fresh suit in case where the Court is of the view that there are other sufficient grounds for allowing plaintiff to withdraw his suit with the permission to file a fresh suit.

iii) A case law study shows that the suit may be allowed to be withdrawn in a case where the plaintiff fails to implead necessary party or where the suit as framed does not lie or the suit would fail on account of misjoinder of parties or causes ofaction or where the material document is not stamped or where prayer for necessary relief has been omitted or where the suit has been erroneously valued and cases of like nature.

iv) It is always to be kept in mind that where such defect could be remedied by allowing amendments, the Court should liberally exercise such powers but within the parameters prescribed by Order VI, Rule 17, C.P.C. Besides while exercising powers under this provision the Court must identify the defect and record its satisfaction that the defect is formal and does not go to the root of the case.

v) It is also to be kept in mind that such withdrawal would not automatically set aside the judgment and decree which has come against the plaintiff unless such judgment and decree is set-aside by the Court after due application of mind.

vi) If the permission is granted for filing a fresh suit under Order XXIII, Rule 1, C.P.C., then, pursuant to Order XXIII, Rule 2, the plaintiff is bound by the law of limitation in the same manner as if the first suit had not been filed, therefore, no fresh cause of action would accrue from the date when such permission was granted by the Court.

vii) Cases falling in the first category; Section 5 of the Limitation Act, 1908 is applicable which vests the Court with vast discretion of condoning delay in cases where the Court is satisfied that the application seeking condonation of delay discloses "sufficient cause" by accounting for each day of delay occasioned in filing the application, appeal, review or revision.

viii) On the other hand, the Courts on the original side while trying a suit as required under section 3 of the Limitation Act, 1908 are bound to dismiss the suit if it is found to be barred by time notwithstanding that limitation has not been set up as defense. (…) In fact, the language used in Section 3 of the Act ibid is mandatory in nature and imposes a duty upon the Court to dismiss the suit instituted after the expiry of period provided unless the plaintiff seeks exclusion of time by pleading in the plaint one of the grounds provided in Sections 4 to 25 of the Limitation Act. (…) In cases where limitation is not set up in defense and consequently a waiver is pleaded, the Courts notwithstanding such waiver are bound to decide the question of limitation in accordance with law

ix) The Court has no power to condone the delay in filing the suit but could exclude time, the concession whereof is provided in sections 4 to 25 of the Limitation Act, 1908, only in cases where the plaintiff has set up in the plaint one of such grounds available in the Act such as disability, minority, insanity, proceedings bona fide before a Court without jurisdiction etc. and not otherwise.

x) It has been held in number of judgments by Apex Court of the country that the Law of Limitation is not a mere technicality and that once limitation expires, a right accrues in favour of the other side by operation of law which cannot lightly be taken away.

Stereo. HCJDA 38

JUDGMENTSHEET

IN THE LAHORE HIGH COURT, LAHORE JUDICIAL DEPARTMENT

Civil Revision No.176407 of 2018
Muhammad Nawaz and others
Versus
Province of Punjab through Additional Collector and others

J U D G M E N T

Date of hearing: 24.10.2023

Petitioner(s) by: Rana Muhammad Naeem Khan, Advocate

Respondent(s) by: Mr. Muhammad Imran Bhatti, Advocate for respondents No.2-a(i) to 2(vi), 3 & 6

Mr. Ansar Mehdi Qureshi, Advocate for respondent No.4

Mr. Qamar Zaman Qureshi, Additional Advocate General Punjab

***SHAHID BILAL HASSAN-J*:** Tersely, the petitioners instituted a suit for declaration regarding land measuring 1-Kanal 19-Marlas falling in Khata No.66/61 Min, Khatuni No.93, Khasra No.4/4/1, situated at Chak No.12-A, TDA, Tehsil Darya Khan, District Bhakkar, alleging therein that the petitioners may be declared owner in possession of the suit property and gift mutation No.103 dated 16.07.1999 and exchange mutation No.105 may be declared null and void, result of fraud, misrepresentation and result of connivance inter se the respondents and revenue officials. The suit was filed on 01.09.2001, however, the same was withdrawn on 29.01.2004 due to some technical defects with permission to file a fresh

suit. Then, fresh suit was filed in the year 2006, which was also

withdrawn on 30.11.2010 with permission to file a fresh suit. Again, the petitioners instituted suit on 07.04.2012. The respondents appeared and contested the suit. They filed an application under Order VII, Rule 11, Code of Civil Procedure, 1908 seeking rejection of the plaint being barred by law of limitation. The petitioners submitted reply to the said application. The learned trial Court accepted the application and rejected the plaint vide impugned order and decree dated 17.10.2015. The petitioners being aggrieved preferred an appeal but the same was dismissed vide impugned judgment and decree dated 07.12.2017; hence, the instant revision petition.

2. Heard.

3. Perusal of Rule 11 of Order VII, Code of Civil Procedure, 1908, divulges that it envisions four categories where the Court could reject a plaint and the first three are where the deficiencies in the plaint could be redressed. For instance, under clause (a) where the plaint is rejected on the ground that it does not disclose a cause of action, subject to law of limitation, a fresh plaint could be presented by overcoming the defect and disclosing the cause of action. Likewise, under clause (b) where the plaint is rejected on failure(s) of plaintiff to correct the valuation, again subject to law of limitation, the defect could be removed and a fresh plaint could be presented. In the same manner, under clause (c) if the plaint is rejected on

failure of the plaintiff to supply the requisite stamp paper,

subject to law of limitation, such defect could be remedied by supplying the court fees. However, where the plaint under clause (d) of Rule 11 is rejected on the ground that the suit is barred by any law, the filing of fresh plaint is not envisaged unless the findings declaring the suit to be barred by any law are reversed and, therefore, the withdrawal of the suit could not be allowed with the permission to file a fresh. It would, of course, be unlawful to revive a dead cause without bringing back the suit to life. In the like manner, Order XXIII, Rule 1, C.P.C., which allows the plaintiff to withdraw his suit or abandon part of his claim, empowers the Court to allow such withdrawal with permission to file a fresh suit. However, such permission is to be granted by the Court after satisfying itself and recording reasons that unless such permission is allowed, the suit would fail by reason of some formal defect. The Court can also allow such withdrawal with permission to file a fresh suit in case where the Court is of the view that there are other sufficient grounds for allowing plaintiff to withdraw his suit with the permission to file a fresh suit. A case law study shows that the suit may be allowed to be withdrawn in a case where the plaintiff fails to implead necessary party or where the suit as framed does not lie or the suit would fail on account of misjoinder of parties or causes of action or where the material document is not stamped or where prayer for necessary relief

has been omitted or where the suit has been erroneously valued

and cases of like nature. It is always to be kept in mind that where such defect could be remedied by allowing amendments, the Court should liberally exercise such powers but within the parameters prescribed by Order VI, Rule 17, C.P.C. Besides while exercising powers under this provision the Court must identify the defect and record its satisfaction that the defect is formal and does not go to the root of the case. It is also to be kept in mind that such withdrawal would not automatically set-aside the judgment and decree which has come against the plaintiff unless such judgment and decree is set-aside by the Court after due application of mind. If the permission is granted for filing a fresh suit under Order XXIII, Rule 1, C.P.C., then, pursuant to Order XXIII, Rule 2, the plaintiff is bound by the law of limitation in the same manner as if the first suit had not been filed, therefore, no fresh cause of action would accrue from the date when such permission was granted by the Court. Reference is made to the cases of *Muhammad Saeed Bacha and another v. Late Badshah Amir and others* **(2011 SCMR 345)**.

4. Cases falling in the first category; Section 5 of the Limitation Act, 1908 is applicable which vests the Court with vast discretion of condoning delay in cases where the Court is satisfied that the application seeking condonation of delay discloses "sufficient cause" by accounting for each day of delay occasioned in filing the application, appeal, review or revision.

On the other hand, the Courts on the original side while trying a

suit as required under section 3 of the Limitation Act, 1908 are bound to dismiss the suit if it is found to be barred by time notwithstanding that limitation has not been set up as defense. The Court has no power to condone the delay in filing the suit but could exclude time, the concession whereof is provided in sections 4 to 25 of the Limitation Act, 1908, only in cases where the plaintiff has set up in the plaint one of such grounds available in the Act such as disability, minority, insanity, proceedings bona fide before a Court without jurisdiction etc. and not otherwise. In fact, the language used in Section 3 of the Act *ibid* is mandatory in nature and imposes a duty upon the Court to dismiss the suit instituted after the expiry of period provided unless the plaintiff seeks exclusion of time by pleading in the plaint one of the grounds provided in Sections 4 to 25 of the Limitation Act. Reference can be made to the cases of *Haji Abdul Karim and others v. Messrs Florida Builders (Pvt.) Limited* **(PLD 2012 SC 247)** and *Hakim Muhammad Buta and another v. Habib Ahmad and others* **(PLD 1985 SC 153)**. In cases where limitation is not set up in defense and consequently a waiver is pleaded, the Courts notwithstanding such waiver are bound to decide the question of limitation in accordance with law. Reference can readily be made to the case of *Ahsan Ali and others v. District Judge and others* **(PLD 1969 SC 167)**.

5. It has been held in number of judgments by Apex Court of the country that the Law of Limitation is not a mere

technicality and that once limitation expires, a right accrues in favour of the other side by operation of law which cannot lightly be taken away. Reference can be made to the judgments of this Court in the case of *Asad Ali v. Bank of Punjab* **(PLD 2020 SC 736)**, *Ghulam Qadir v. Abdul Wadood* **(PLD 2016 SC 712)**, *Abdul Sattar v. Federation of Pakistan* **(2013 SCMR 911)** and *Muhammad Islam v. Inspector-General of Police* **(2011** SCMR 8).

6. The present petitioners alleged that fraud revealed upon them in the year 2001 but they subsequently did not avail the remedy of filing suit after withdrawing the earlier suits within period of limitation and the argument that the fresh cause of action would accrue from the date of withdrawal of second suit has no force rather the same is based on miscomprehension of law. As such, the learned Courts below have rightly appreciated law on the subject and have reached to a just conclusion that the suit of the petitioners is barred by limitation. No illegality and irregularity has been committed while passing the impugned judgments and decrees, warranting interference by this Court in exercise of revisional jurisdiction under section 115, Code of Civil Procedure, 1908, which otherwise has a limited scope.

7. For the foregoing reasons and while placing reliance on the judgments supra as well as judgment reported as *Muhammad Anwar (deceased) through L.Rs. and others v. Essa and others* **(PLD 2022 SC 716)**, the revision petition in hand

fails and the same stands dismissed. No order as to the costs.

(Shahid Bilal Hassan)
Judge

Approved for reporting.

Judge

M.A.Hassan

Lahore High Court
Abdul Sattar. v Additional District Judge and others Writ Petition No.36355 of 2019.
Mr. Justice Shahid Bilal Hassan

Crux of Judgement:

Father being natural guardian is entitled to custody of female minor after death of minor's mother.

Facts of Case:

Through this constitutional petition filed under Article 199 of Constitution of Islamic Republic of Pakistan, 1973, the petitioner has challenged the vires of order passed by learned appellate court and trial court whereby his guardian petition as father being natural guardian after death of minor's mother under section 25 of the Guardian & Wards Act, 1890, for custody of minor has been dismissed.

Issue:

Whether father being natural guardian is entitled to custody of female minor after death of minor's mother?

Analysis of Issues of Case:

The father being natural guardian after death of female minor's mother can better look after her interest and can take care of her as well as provide her education. Para 355 of the Muhammadan Law has expressly provided right of custody of male paternal relations in default of female relations and the father being natural guardian stands at top priority among male paternal relations.

Stereo. HCJDA 38

JUDGMENTSHEET
IN THE LAHORE HIGH COURT, LAHORE JUDICIAL DEPARTMENT

Writ Petition No.36355 of 2019
Abdul Sattar Versus Additional District Judge and others

JUDGMENT

Date of hearing: 11.10.2023

Petitioner(s) by: Chaudhry Waseem Ahmad Gujjar, Advocate

Respondent(s) by: Mr. Muhammad Ramzan Joiya, Advocate for respondent No.3

SHAHID BILAL HASSAN-J: Tersely, the petitioner filed a guardian petition under section 25 of the Guardian & Wards Act, 1890, for custody of minor daughter namely

Khadija Fatima against the present respondents No.3 and 4 as well as one Mukhtar Ahmad, which was duly contested by them. Out of the divergent pleadings of the parties, the learned Guardian Judge framed issues and evidence of the parties was recorded. The learned Trial Court vide impugned judgment dated 16.07.2018 dismissed the guardian petition filed by the petitioner. The petitioner being aggrieved of the said judgment preferred an appeal before the Appellate Court but the same was dismissed vide impugned judgment dated 28.01.2019; hence, the instant constitutional petition.

2. Heard.

3. Admittedly, the petitioner is real father of the minor Khadija Fatima, whereas mother of the minor has breathed her last. Respondent No.3 is maternal aunt of the minor and she has her children, thus, she has to look after her own children and it can be assumed that she would have more love, care and affection for her own children than the minor Khadija Fatima, whereas the maternal grandmother of the minor namely Mst. Majeedan Bibi (respondent No.4) has, statedly, died. Therefore, after death of maternal grandmother fresh cause of action has arisen against the respondent No.3. The father being natural guardian after death of minor's mother can better look after her interest and can take care of her as well as provide her education. Moreover, it is not a case that the petitioner is living alone and there is no female inhabitant in his house who could take care of the minor namely Khadija Fatima

and provide her proper guidance at the time of her reaching the age of puberty, which is nearing as the age of the minor is stated to be 10 years. Para 355 of the Muhammadan Law reads:-

> *'355. Right of male paternal relations in default of female relations.—In default of the mother and the female relations mentioned in section 353, the custody belongs to the following persons in the order given below:-*
>
> *(1) the father;*
>
> *(2) nearest paternal grandfather;*
>
> *(3) full brother;*
>
> *(4) consanguine brother;*
>
> *(5) full brother's son;*
>
> *(6) consanguine brother's son;*
>
> *(7) full brother of the father;*
>
> *(8) consanguine brother of the father;*
>
> *(9) son of the father;*
>
> *(10) son of father's consanguine brother;*
>
> *Provided that no male is entitled to the custody of an unmarried girl, unless he stands within the prohibited degree of relation to her.*
>
> *If there be none of these, it is for the Court to appoint a guardian of the person of a minor.'*

4. In this view of the matter, the learned Courts below have failed to consider the peculiar facts of the case in hand and have not exercised vested jurisdiction as per mandate of law while passing the impugned judgments, which has resulted in miscarriage of justice. Therefore, the impugned judgments cannot be allowed to hold field further. Resultantly, by allowing the constitutional petition in hand, the impugned

judgments are set aside, consequent whereof the application filed by the petitioner for custody of the minor namely Khadija Bibi is accepted and the respondent No.3 is directed to handover custody of the minor to the petitioner.

SHAHID BILAL HASSAN
Judge

Approved for reporting.

Lahore High Court
Ghulam Hussain v. Province of Punjab, etc.
Civil Revision No.69554 of 2023
Mr. Justice Shahid Bilal Hassan

Crux of Judgement:

i) The limitation is not a technicality or a hyper technicality and once limitation expires, a right accrues in favour of the other side by operation of law which cannot lightly be taken away.

ii) The question of law of limitation, even if not taken or raised

by the opposite party, could be considered by the Courts even at appellate and revisional stage.

Facts of Case:
The petitioner instituted a suit for specific performance of agreement to sell along with permanent injunction regarding the suit property against the respondents. One of the respondents instituted a suit for declaration, recovery of compensation and possession against the petitioner and others. Both the suits were consolidated and dismissed by the trial court. Separate appeals against the said consolidated judgment and decree were preferred. The appeal preferred by the petitioner was dismissed, hence, the instant revision petition.

Issues In Case:
i) Whether limitation is a mere technicality or the law of limitation requires mandatory application?

ii) If the question of law of limitation is not raised by opposite party to a lis, whether such question may be considered by the Courts at appellate or revisional stage?

Analysis of Issues of Case:
i) The object of the law of limitation and the law itself, prescribing time constraints for each cause or case or for seeking any relief or remedy, is that if no time constraints and limits are prescribed for pursuing a cause of action and for seeking reliefs/remedies relating to such cause of action, and a person is allowed to sue for the redressal of his grievance within an infinite and unlimited time period, it shall adversely affect the disciplined and structured judicial process and mechanism of the State, which is sine qua non for any State to perform its functions within the parameters of the Constitution and the rule of law. And this shows the Imperative adherence to and the mandatory application of such law by nature and is held to mean and serve as a major deterrent against the factors and the elements which would affect peace, tranquility and due order of the State and society.

ii)The law of limitation requires that a person must approach the Court and take recourse to legal remedies with due diligence, without dilatoriness and negligence and within the time provided by the law; as against choosing his own time for the purpose of bringing forth a legal action at his own whim and desire, which would be the misuse of the judicial process and may also cause

exploitation of the legal system and the society as a whole. Therefore, from the mandate of section 3 of the Limitation Act, it is obligatory upon the court to dismiss the cause/lis which is barred by time even though limitation has not been set out as a defence by the other contesting party(s).

Form No. HCJD/C-121

ORDER SHEET
IN THE LAHORE HIGH COURT,
LAHORE JUDICIAL DEPARTMENT

Civil Revision No.69554 of 2023
Ghulam Hussain Versus Province of Punjab, etc.

Sr. No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of parties or counsel, where necessary

23.10.2023 Mr. Moin Qaiser Chughtai, Advocate for the petitioner

Precisely, the petitioner being plaintiff instituted a suit for specific performance of agreement to sell dated 07.05.1991 alongwith permanent injunction regarding the suit property against the respondents/defendants, which was duly contested by the respondent No.3/defendant while submitting written statement. The respondent No.3 also instituted a suit for declaration, recovery of compensation and possession against the petitioner and others. Both the suits were consolidated and out of the divergent pleadings of the parties, the learned trial Court framed consolidated issues. Evidence of the parties in pro and contra was recorded. On conclusion of trial, the learned trial Court vide impugned consolidated judgment and decree dated 24.06.2022 dismissed both the suits. The petitioner and

respondent No.3, being aggrieved and dissatisfied, preferred separate appeals against the said consolidated judgment and decree. The appeal preferred by the petitioner was dismissed vide impugned judgment and decree dated 13.05.2023; hence, the instant revision petition.

2. Heard.

3. It is a settled law that limitation is not a mere technicality or a hyper technicality rather once limitation expires, a right accrues in favour of the other side by operation of law which cannot lightly be taken away as has been held in *Asad Ali and 9 others v. The Bank of Punjab and others* **(PLD 2020 Supreme Court 736)**. Moreover, it is a settled principle of law that question of law even if not taken or raised by the opposite party, could be considered by the Courts even at appellate and revisional stage. In *Dr. Muhammad Javaid Shafi v. Syed Rashid Arshad and others* **(PLD 2015 Supreme Court 212)**, it was invariably held by the August Court of the country that:-

> *„…… From the various dicta/ pronouncements of the superior court, it can be deduced without any fear of contradiction that such law is founded upon public policy and State interest. This law is vital for an orderly and organized society and the people at large, who believe in being governed by systemized law. The obvious object of the law is that if no time constraints and limits are prescribed for*

pursuing a cause of action and for seeking reliefs/remedies relating to such cause of action, and a person is allowed to sue for the redressal of his grievance within an infinite and unlimited time period, it shall adversely affect the disciplined and structured judicial process and mechanism of the State, which is sine qua non for any State to perform its functions within the parameters of the Constitution and the rule of law. The object of the law of limitation and the law itself, prescribing time constraints for each cause or case or for seeking any relief or remedy has been examined by the courts in many a cases, and it has been held to be a valid piece of legislation, and law of the land. It is „THE LAW" which should be strictly construed and applied in its letter and spirit; and by no stretch of legal interpretation it can be held that such law (i.e. limitation law) is merely a technicality and that too of procedural in nature. Rather from the mandate of section 3 of the Limitation Act, it is obligatory upon the court to dismiss the cause/lis which is barred by time even though limitation has not been set out as a defence. And this shows the imperative adherence to and the mandatory application of such law by nature and is held to mean and serve as a major deterrent against the factors and the elements which would affect peace, tranquility and due order of the State and society. The law of limitation requires that a person must approach the Court and take recourse to legal remedies with due diligence, without dilatoriness and negligence and within the time provided by the law; as against choosing his own time for the purpose of bringing forth a

legal action at his own whim and desire. Because if that is permitted to happen, it shall not only result in the misuse of the judicial process of the State, but shall also cause exploitation of the legal system and the society as a whole. This is not permissible in a State which is governed by law and Constitution. And it may be relevant to mention here that the law providing for limitation for various causes/reliefs is not a matter of mere technicality but foundationally of the "LAW" itself. ……"

In this regard, this Court is further fortified by a judgment reported as *United Bank Limited and others v. Noor-Un-Nisa and others* **(2015 SCMR 380)**, wherein it was held:-

„Under section 3 of the Limitation Act, 1908, it is the bounden duty of every Court of law to take notice of the question of limitation even if not raised in defence by the other contesting party(s)."

Earlier to the above said celebrated judgments, the Apex Court of the country dealt with the same proposition in *Almas Ahmad Fiaz v. Secretary Govt. of Punjab etc.* **(2006 SCMR 783)**, *Lahore Development Authority v. Mst. Sharifan Bibi and another* **(PLD 2010 Supreme Court 705)** and *Sardar Anwar Ali Khan and 10 others v. Sardar Baqir Ali through Legal Heirs and 4 others* **(1992 SCMR 2435)**.

4. Now, when on the touchstone of the above ratio, the present case is weighed, it appears that the alleged

agreement to sell was reached at between the parties on 07.05.1991 (Ex.P1), even prior to deriving of ownership by Altaf Hussain as he became owner in possession of the suit property on 11.06.1991, but the suit was instituted on 08.07.2009, after about 18 years, which means the suit of the petitioner was barred by limitation because Article 113 of the Limitation Act, 1908 provides three years for filing such suit from the date fixed for the performance or if no such date is fixed, when the plaintiff has notice that performance is refused; reliance is placed on judgments reported as *Haji Abdul Karim etc. v. Florida Builders (Pvt.) Limited* **(PLD 2012 Supreme Court 247)** and *Atta Muhammad v. Maula Bakhsh etc.* **(2007 SCMR 1446)**.

5. In addition to the above, the entire property allotted to Mst. Shakoori Begum by the Provincial Government through registered deed No.938/1 dated 06.06.1991 under Gujranwala Cantt. Scheme was further transferred by her to respondent No.2 alongwith Ghulam Abbas, Ameer Ali, Ghulam Murtaza sons of Dost Muhammad on the basis of registered sale deed NO.978/1 dated 11.06.1991, which was pre-empted by Muhammad Iqbal and the said suit was decreed in his favour on 07.02.1994; meaning thereby when the alleged agreement to sell Ex.P1 was entered into, the property in dispute was not in ownership of respondent No.2-Altaf Hussain. As such, the learned Courts below while considering law on the subject and facts

of the case have rightly concluded that the suit of the petitioner/plaintiff was badly barred by limitation. In such scenario, if the suit is found to be barred by limitation, then plaint has to be rejected forthwith without resorting to the evidence or framing of any issue. Reliance is placed on *Hakim Muhammad Buta and another v. Habib Ahmed and others* **(PLD 1985 SC 153)**; however, in the instant case, the learned Courts below have minutely dilated upon the evidence of the parties and have also rightly non-suited the petitioner on merits as well. There appears no legal infirmity or illegality in the impugned judgments and decrees warranting interference by this Court in exercise of revisional jurisdiction under section 115, Code of Civil Procedure, 1908. The findings recorded by the learned Courts below are upheld and maintained.

6. Pursuant to above, both the learned Courts have evaluated evidence in true perspective and have reached to a just conclusion, concurrently; as such the concurrent findings, on facts, cannot be disturbed when the same do not suffer from any misreading and non-reading of evidence, howsoever erroneous, in exercise of revisional jurisdiction; reliance is placed on *Muhammad Farid Khan v. Muhammad Ibrahim, etc.* **(2017 SCMR 679)**, Mst. *Zaitoon Begum v. Nazar Hussain and another* **(2014 SCMR 1469)**, *CANTONMENT BOARD through Executive Officer, Cantt. Board Rawalpindi v. IKHLAQ AHMED and others* **(2014 SCMR 161)**,

Muhammad Sarwar and others v. Hashmal Khan and others **(PLD 2022 Supreme Court 13)** and *Mst. Zarsheda v. Nobat Khan* **(PLD 2022 Supreme Court 21)**, wherein it has been held:-

> *„There is a difference between the misreading, non-reading and misappreciation of the evidence therefore, the scope of the appellate and revisional jurisdiction must not be confused and care must be taken for interference in revisional jurisdiction only in the cases in which the order passed or a judgment rendered by a subordinate Court is found perverse or suffering from a jurisdictional error or the defect of misreading or non-reading of evidence and conclusion drawn is contrary to law."*

Further in judgment reported as *Salamat Ali and others v. Muhammad Din and others* **(PLJ 2023 SC 8)**, it has invariably been held that:-

> *„Needless to mention that a revisional Court cannot upset a finding of fact of the Court(s) below unless that finding is the result of misreading, non-reading, or perverse or absurd appraisal of some material evidence. The revisional Court cannot substitute the finding of the Court(s) below with its own merely for the reason that it finds its own finding more plausible than that of the Court(s) below."*

However, in the present case, no such occasion has arisen showing any jurisdictional error or defect rather the findings recorded by the learned Courts below are upto the dexterity

after minute discussion of the evidence, oral as well as documentary.

7. For the foregoing reasons and while placing reliance on the judgments *supra*, the revision petition in hand being devoid of any force and substance stands dismissed ***in limine***.

(Shahid Bilal Hassan)
Judge

Approved for reporting.

Judge

M.A.Hassan

Lahore High Court
Roshan Iqbal v. Nazar Muhammad and others
Civil Revision No.2584 of 2014
Mr. Justice Shahid Bilal Hassan

Crux of Judgement:
i) Whoever desires any Court to give judgment as to any legal right or liability dependent on existence of facts which he asserts, must prove that those facts exist.

ii) It is necessary for the party to state about the particulars of misrepresentation, fraud, breach of trust, default, or undue influence who relies on the same.

iii) The evidence, led by any party regarding the fact which is not mentioned in the pleadings, is not acceptable because a party cannot go beyond its pleadings.

iv) Any shortcoming or discrepancy in the evidence of the rival party cannot extend benefit to the other party.

v) See above in analysis clause.

Facts of Case:
The respondents No.1 to 4 instituted a suit under sections 39 & 42 of the Specific Relief Act, 1877 along with consequential relief. The trial Court decreed the suit in favour of the respondents No.1 to 4 and against the present petitioner and respondent No.5. Appeal was preferred by the petitioner which was accepted and the respondents No.1 to 4 preferred R.S.A., which was accepted with the consent of the counsel for the parties and remanded the case to the appellate Court for decision of appeal afresh. After remand, the learned appellate Court heard the parties' counsel and dismissed the appeal preferred by the present petitioner; hence, the instant revision petition.

Issues In Case:
i) Who is to prove the facts if someone desires any court to give judgment as to any legal right or liability dependent on existence of facts?

ii) Whether it is necessary for the party to state about the particulars of misrepresentation, fraud, breach of trust, default, or undue influence who relies on the same?

iii) Whether the evidence, led by any party regarding the fact which is not mentioned in the pleadings, is acceptable?

iv) Whether any shortcoming or discrepancy in the evidence of

the rival party can extend benefit to the other party?

v) What is the situation when the High Court is vested with authority to undo the concurrent findings while exercising revisional jurisdiction?

Analysis of Issues of Case:

i) Article 117 of Qanun-e-Shahadat Order, 1984 provides that whoever desires any Court to give judgment as to any legal right or liability dependent on existence of facts which he asserts, must prove that those facts exist.

ii) Order VI, Rule 4 of the Code of Civil Procedure, 1908 enunciates that, 'in all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items necessary) shall be stated in the pleadings.'

iii) Any evidence led by the respondents No.1 to 4 pertaining to fraud, purportedly committed by the present petitioner, cannot be considered being inadmissible as the same was not pleaded in their plaint because a party cannot go beyond its pleadings.

iv) It is admitted that certain shortcomings and contradictions took place in the depositions of the witnesses the same are natural and are not too fatal to disbelieve the same. Even otherwise, the party has to stand on its own legs and any shortcoming or discrepancy in the evidence of the rival party cannot extend benefit to the other party.

v) When the Courts below have misread evidence of the parties and the position is as such, High Court is vested with authority and ample power to undo the concurrent findings while exercising revisional jurisdiction under section 115, Code of Civil Procedure, 1908.

Stereo. HCJDA 38

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE

JUDICIAL DEPARTMENT

Civil Revision No.2584 of 2014

Roshan Iqbal Versus Nazar Muhammad and others

JUDGMENT

Date of hearing: ***19.10.2023***

Petitioner(s): Mr. Abdul Qadus Rawal, Advocate

Respondent(s): M/s Sh. Usman Karim Ud Din, Rana Toqeer, Ghulam Abbas Haral and Barrister Faridoon Kamran, Advocates for respondents No.1 to 4

M/s Ch. Abdul Salam, Taqi Hassan and Nusrat Ali Joiya Advocates for respondent No.5

SHAHID BILAL HASSAN-J: Succinctly, the respondents No.1 to 4 instituted a suit under sections 39 & 42 of the Specific Relief Act, 1877 alongwith consequential relief, contending therein that they purchased land measuring 117-Kanals 17-Marlas from one Mehboob Elahi son of Mian Muhammad Akram vide sale deed No.449 registered on 19.10.1988 for a consideration of Rs.2,400,000/-; that after purchase, the possession of the land was delivered to them at the site; that a mutation for sale on the strength of the said sale deed at Sr.No.1057 of the register of mutations pertaining to village Ghazipur, Tehsil Ferozwala District Sheikhpura and the same was sanctioned in favour of the respondents on 27.12.1988. However, the said sale was pre-empted by Iftikhar Ahmad, respondent No.5. Simultaneously, Sheikh Faqir Ullah son of Mian Muhammad Aslam of Sharaqpur Sharif also

instituted a suit for possession through pre-emption against the respondents No.1 to 4. During pendency of both the suits, both the pre-emptors opted for the suit land against the payment of Rs.2,400,000/- and persuaded the respondents No.1 to 4 that the suit for pre-emption be decreed for a consideration of Rs.2,400,000/-. Later on, due to the change of law of pre-emption, both the pre-emption suits were likely to fail. Iftikhar Ahmad, respondent No.5 alongwith other, therefore, approached the respondents No.1 to 4 and offered to purchase the disputed land for a consideration of Rs.2,400,000/- outside the Court and the bargain was struck, a token money of Rs.160,000/- was received by the respondents No.1 to 4 and respondent No.5 persuaded the respondents No.1 to 4 to put their respective signatures on blank papers as well as certain other papers with the assurance that the sale shall be reduced into an agreement. Allegedly, Iftikhar Ahmad, respondent No.5, being sitting Member of Punjab Assembly, belonging to ruling party was a resourceful and influential person at that time. He after procuring the signatures of respondent No.1 to 4 over number of blank papers and certain printed proformas and stamp papers withdrew his suit for possession through pre-emption regarding the disputed land. Respondents No.1 to 4 requested him repeatedly to pay the remaining sale amount and get the sale deed executed and registered in his favour but the respondent No.5 postponed the matter. Meanwhile, respondent No.5 and his accomplice Muhammad Anwar son of Fazal Din

and Khairat son of Abdullah took forcible, illegal an unauthorized possession of the disputed property with ulterior motive and nefarious designs during month of November 1989. Respondents No.1 to 4 called upon Iftikhar Ahmad to restrain alongwith his accomplice from the above act but they were made to wait. Respondents No.1 to 4 instituted suit for redressal of their grievance and restoration of possession of the suit land which was decreed in their favour and against respondent No.5 etc. on 13.03.1991 by the learned trial Court. Respondents No.1 to 4 filed execution petition on 27.07.1991 and the learned executing Court called upon respondent No.5 and others to submit their reply. At that stage, Iftikhar Ahmad respondent No.5 broke the news that he suit land had been transferred to his brother Roshan Iqbal, the present petitioner but did not disclose the nature of transaction. Iftikhar Ahmad, respondent No.5, later on filed application under Order IX, Rule 13, Code of Civil Procedure, 1908 on behalf of Khairat son of Abdullah and also got filed application under section 47, Code of Civil Procedure, 1908 on behalf of the present petitioner, challenging the jurisdiction and authority of the executing Court. Application under section 12(2), Code of Civil Procedure, 1908 was also got filed by respondent No.5 against the respondents No.1 to 4 wherein it was disclosed for the first time that the suit land had been transferred in favour of Roshan Iqbal, the present petitioner, vide mutation No.1173 dated 11.07.1990 in exchange of land measuring 147-Kanals 12-Marlas owned by

the present petitioner, situated at Khewat No.63 of village Rorha, Tehsil Ferozewala and mutation No.168 dated 17.07.1990 was attested in this regard. Entry of this mutation of land of village Rorha in favour of respondents No.1 to 4 and of course entry of mutation No.1173 dated 11.07.1990 of the disputed land had been result of fraud, forgery, misrepresentation, undue influence, without appearance of the respondents No.1 to 4 and without any consideration. These mutations of exchange had been attested without any authority and the same were result of misrepresentation, undue influence, want of consideration and were illegal, unlawful and void ab initio. Respondents No.1 to 4 asked the present petitioner and respondent No.5 not to claim anything in respect of land of respondents No.1 to 4 and not to pose themselves to be owners of the land in disputed but they did not submit to their rights. Possession of the suit land was not transferred under mutation of exchange No.1173 dated 11.07.1990. Respondents No.1 to 4 did not take possession of the alleged exchanged land as the same was lying with the present petitioner. Respondents No.1 to 4 came to know after inquiry that respondent No.5 as MPA of ruling party prevailed upon the revenue field staff as well as the office of ADBP Sharaqpur Branch to enter mutation No.1172 dated 11.07.1990 about redemption of suit land which had been mortgaged with the ADBP and the consequent mutation of exchange. The respondents No.1 to 4 contended that they were being harassed and threatened and the present

petitioner and respondent No.5 refused to admit their rights; hence, the suit.

2. The present petitioner and respondent No.5 contested the suit by submitting separate written statements and while controverting the averments of the plaint prayed for dismissal of the suit. The divergence in pleadings of the parties was summed up into issues and evidence of the parties in pro and contra was recorded.

3. On conclusion of trial, the learned trial Court vide impugned judgment and decree dated 08.12.2006 decreed the suit in favour of the respondents No.1 to 4 and against the present petitioner and respondent No.5. Appeal was preferred by the petitioner which was accepted on 22.12.2010 and suit of respondents No.1 to 4 was dismissed. The respondents No.1 to 4 preferred R.S.A. No.46 of 2011, which was accepted with the consent of the learned counsel for the parties on 20.05.2014 and while setting aside the judgment and decree dated 22.10.2010 passed by the learned appellate Court, remanded the case to the learned appellate Court for decision of appeal afresh. After remand, the learned appellate Court heard the parties' counsel and vide impugned judgment and decree dated 02.07.2014 dismissed the appeal preferred by the present petitioner; hence, the instant revision petition.

4. Learned counsel for the petitioner has argued that the impugned judgments and decrees are against law and facts

of the case; that the learned courts below have failed to discuss evidence on record especially when the respondents No.1 to 4 have failed to discharge the onus placed on their shoulders; that the learned Courts below have appreciated evidence in a slipshod manner and overlooked the admissions made by the respondents No.1 to 4 in the course of evidence regarding the exchange deed; that the impugned judgments and decrees suffer from misreading and non-reading of evidence; that it is a settled law that evidence beyond pleadings cannot be considered being inadmissible and when allegation of undue influence, fraud and forgery was not attributed to the present petitioner in pleadings rather to the brother of the petitioner i.e. respondent No.5, who has nothing to do with the matter in hand, the evidence in respect of fraud and undue influence against the present petitioner cannot be considered; that the evidence of D.W.6 has been misread by the learned appellate Court; that there are material contradictions in evidence of the respondents No.1 to 4 but the same have been overlooked; that the suit was also bad because no possession was sought for because the possession of

the suit land was with the petitioner and not with the respondent No.5 from the date of attestation of the exchange mutation as is evident from Khasra Girdawri Ex.D/34 and the respondents No.1 to 4 are in possession of the exchanged property, photocopy of Khasra Girdawri was produced on record in this regard but the same was overlooked; that revenue officer and officials appearing as D.Ws. have supported the stance of the petitioner and no ill-will or enmity was attributed to them therefore, there evidence was an independent piece of evidence but the same was discarded for no reason by the learned Courts below while passing the impugned judgments and decrees; that material illegalities and irregularities have been committed by the learned Courts below while have resulted in miscarriage of justice; therefore, the impugned judgments and decrees are not sustainable in the eye of law. The same may be set aside by allowing the revision petition in hand and suit of the respondents No.1 to 4 may be dismissed with costs throughout.

5. Naysaying the above said submissions, the learned counsel, representing the respondents No.1 to 4, has, by supporting the impugned judgments and decrees, concurrent in nature, prayed for dismissal of the revision petition in hand.

6. Heard.

7. Article 117 of Qanun-e-Shahadat Order, 1984 provides that whoever desires any Court to give judgment as to any legal right or liability dependent on existence of facts which

he asserts, must prove that those facts exist. Moreover, Order VI, Rule 4 of the Code of Civil Procedure, 1908 enunciates that, *'in all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items necessary) shall be stated in the pleadings.'* However, in the case in hand, the respondents No.1 to 4 could not substantiate the stance taken up in the plaint and could not chain the links of alleged fraud and misrepresentation because the same was pleaded against the respondent No.5 and not against the present petitioner, who is beneficiary of the exchange mutation; therefore, any evidence led by the respondents No.1 to 4 pertaining to fraud, purportedly committed by the present petitioner, cannot be considered being inadmissible as the same was not pleaded in their plaint because a party cannot go beyond its pleadings as has been held in judgments reported as *Sh. Fateh Muhammad v. Muhammad Adil and others* **(PLD 2008 SC 82)**, *Hyder Ali Bhimji v. Additional District Judge Karachi South and another* **(PLD 2012 SC 279)** and *Muhammad Aslam and others v. Muhammad Anwar* **(2023 SCMR 1371)**. Furthermore, the respondents namely Nazar Muhammad and Muhammad Ahmad, while appearing in the witness box as P.W.3 and P.W.4 have categorically admitted, during cross examination, that the

disputed exchange mutation No.1173 bear their signatures and thumb impressions of their brothers and they did not agitate or protest at the time of attestation of the disputed mutation and even they did not move any application before the competent authority for initiation of proceedings against the present petitioner and respondent No.5 for purported fraud, forgery and misrepresentation, which shows that they were satisfied with the transaction at the relevant time. P.W.3, during cross examination, deposed that after taking of possession by the petitioner and respondent No.5, the respondents No.1 to 4 did not pay *Abiyana*. This witness further deposed that they did not institute suit for recovery of mesne profit and share of produce and also did not interfere in possession of the petitioner. Had the possession over the disputed property been made by the petitioner otherwise that in pursuance of exchange mutation, the respondents No.1 to 4 would have agitated the matter before any forum but no such exertion was ever made by them and even at the time of attestation of exchange mutation they did not protest. Even P.W.4 during cross examination admitted that they (three brothers) and 3/4 other persons went for the purpose of mutation No.1173, which speaks volume and proves the stance of the petitioner that the exchange mutation No.1173 was validly entered and executed and the respondents No.1 to 4 voluntarily exchanged their land with the land of petitioner. In

judgment reported as *Abdul Ghafoor and others v. Muhammad Murad and others* **(2022 CLC 1713)**, it has been held that:-

> *'8. Admittedly the suit land was mutated in the record of rights in the names of respondents/ defendants at the time of final attestation. The petitioners/plaintiffs had raised no objection. There is no evidence on record that the petitioners/ plaintiffs were not present at the time of final attestation. Under section 52 of the West Pakistan Land Revenue Act, 1967 (Act 1967) the mutation carries presumption of truth.'*

In addition to the above, it is not the case of the respondents No.1 to 4 that they are illiterate persons and do not know the pros and cons of the transaction rather it is admitted on record that P.W.4 was serving as Hawaldar at that time and his brother namely Ishaque, who executed general power of attorney in favour of P.W.4, was serving in rangers. When the position is as such that the respondents No.1 to 4 have failed to discharge the initial burden of proving alleged fraud, forgery and misrepresentation, the burden of proving the valid execution of exchange mutation was not shifted upon the petitioner.

8. However, the petitioner produced D.W.1-Abdul Ghaffar, Bill Clerk, D.W.2 Naseer Ahmad Malik, Manager ADBP, D.W.3 Shakil Tariq, Registry Moharrir, D.W.4 Mubarak office Qanoongo, Tehsil Ferozwala, who produced *Part Sarkar* of mutation No.1173, D.W.5 Safdar Ali Patwari, who produced Part Patwar of mutation No.1173, D.W.6 Nazeer

Ahmad, who is Pattidar in Ghazipur who supported the stance of the petitioner that the respondents namely Nazar Muhammad, Muhammad Ahmad and Liaqat Ali came for exchange mutation [(No. 1173 (Ex.D1)] in the office of Patwari in his presence and he also deposed that on 11.07.1990 Naib Tehsildar Bashir Ahmad Bhatti came in the village in his presence, where 40/50 other persons were also present and Nazar Muhammad, Muhammad Ahmad, etc. on query made by Naib Tehsildar admitted the exchange mutation and change of possession of the exchanged land. This witness negated the suggestions that Nazar, Liaqat and Muhammad Ahmad, did not appear either before Bashir Bhatti or any other revenue officer and also negated the suggestion that the said person did not appear before Ishaque Patwari for incorporating the mutation rather under influence of Iftikhar Bhango affixed their thumb impressions. D.W.7 Muhammad Nawaz also supported the stance of the petitioner as well as deposition of D.W.6. Ishfaq Ahmad, son of Muhammad Ishaque (Patwari) appeared as D.W.8, who deposed that Muhammad Ishaque Patwari was his father, who died on 1st July, 1997 and he was posted as Patwari in the year 1990 at Ghazi Pur. D.W.9 Jamal Din, Naib Tehsildar produced original *Part Sarkar* of mutation No.168, which was incorporated in the Register Haqdaran Zameen for the year 1990-91. D.W.10-Muhammad Aslam Patwari, who was posted as Patwari Halqa Rohra in July 1990 and this witness deposed

that mutation No.168 was entered by him, which was got entered by Roshan Iqbal, Nazar Muhammad, Muhammad Ahmad and Liaqat Ali. Naib Tehsildar called him with record and he produced the same at Ghazi Pur where Muhammad Ishaque Patwari, Naib Tehsildar Bashir Ahmad Bhatti and Muhammad Idrees Qanoongo were present. The contents of mutations were read over to Roshan Iqbal, Nazar Muhammad, Liaqat Ali and Muhammad Ahmad and after inquiry the revenue officer sanctioned the mutations. D.W.11-Iftikhar Ahmad is landlord of the area, who deposed that Roshan Iqbal purchased plants of guava for plantation on his land measuring 13-Killas. D.W.12 Bashir Ahmad Bhatti, who was Naib Tehsildar at the relevant time of Sharaq Pur Sharif and he deposed that he validly sanctioned Ex.D1 and Ex.D2 after thorough inquiry from the parties and during cross examination he remained unscathed and affirmed his deposition on oath. D.W.13-Noor Ahmad is contractor, who constructed Dairy Farm on the exchanged property on the asking of Roshan Iqbal, the present petitioner. D.W.14-Muhammad Zubair deposed about visit of Naib Tehsildar on 11th July, 1990. This witness is son of Ch. Karamat and grandson of Jalal Din. His father has died, who was attesting witness of the disputed mutation and on the asking of this P.W. his father told him about the exchange transaction. D.W.15-Mansha son of Muhammad alias Malla, who deposed that he is cultivating 2 ½ acre land at Mauza

Rohra, which has been received by him from Nazar and Ahmad on the share of produce basis. He deposed that Nazar, etc. have 18 ½ acres of land and remaining half land is being cultivated by Nazar, etc. Through this witness, it has been established by the petitioner that respondents No.1 to 4 are in cultivating possession of the exchanged land. D.W.16-Faqir Muhammad deposed that he has land in Ghazi Pur and his father was ancestral owner in the area. His father died in the year 1988 and he became owner in 1989. This witness deposed that he has seen the disputed property which is in possession of Roshan Iqbal since 1990, which was exchanged by him with Nazar, Ahmad, Liaqat and Ishaque. D.W.17-Sakhawat Ali, who is witness of visit of Naib Tehsildar and he deposed that he was present there when exchange mutations were sanctioned. Muhammad Afzal Manager NBP has been produced as D.W.18 who deposed about the statement of accounts of Liaqat Ali son of Haji Barkat Ali by producing the same as Ex.DW18/2. He deposed that on 23.06.1990 Rs.550,000/- were deposited in PLS Acctt.N.1425-8. D.W.19-Haji Iftikhar Ahmad (respondent No.5) who deposed that he has nothing to do with the disputed land and also negated the allegations of undue influence and pressure upon the respondents No.1 to 4/plaintiffs for obtaining their signatures on blank papers. Roshan Iqbal, the present petitioner appeared as D.W.20 and deposed in line with his written statement and during cross examination upon D.W.19

and D.W.20, the learned counsel for the respondents No.1 to 4 could not shatter their standing rather they both affirmed their depositions and remained unscathed despite cringe-making questions put to them during cross examination. Even if it is admitted that certain shortcomings and contradictions took place in the depositions of the D.Ws. the same are natural and are not too fatal to disbelieve the same. Even otherwise, the party (in the present case, the respondents No.1 to 4) has to stand on its own legs and any shortcoming or discrepancy in the evidence of the rival party cannot extend benefit to the other party. In the present case, as discussed above, the respondents No.1 to 4 have failed to discharge the initial burden and they have also failed to show any ill-will and mala fide on the part of the revenue officer and officials, who are independent witnesses and have supported the stance of the petitioner, which prompted them to depose against the respondents No.1 to 4/plaintiffs.

9. Pursuant to the above, it is observed that the learned Courts below have failed to adjudicate upon the matter in hand by appreciating law on the subject; therefore, the Courts below have misread evidence of the parties and when the position is as such, this Court is vested with authority and ample power to undo the concurrent findings while exercising revisional jurisdiction under section 115, Code of Civil Procedure, 1908, as has been held in *Nazim-Ud-Din and others v. Sheikh Zia-Ul-Qamar and others* **(2016 SCMR 24)**, *Sultan*

Muhammad and another v. Muhammad Qasim and others **(2010 SCMR 1630)**, *Ghulam Muhammad and 3 others v. Ghulam Ali* **(2004 SCMR 1001)** and *Habib Khan and others v. Mst. Bakhtmina and others* **(2004 SCMR 1668)**.

10. The crux of the discussion above is that the revision petition in hand succeeds and the same is allowed, impugned judgments and decrees are set aside, consequent whereof the suit instituted by the respondents No.1 to 4 stands dismissed. No order as to the costs.

(Shahid Bilal Hassan)
Judge

Approved for Reporting.

.A.Hassan

Stereo. HCJDA 38

Lahore High Court
Muhammad Safdar v. Jameel Ahmed and another
R.S.A.No.195522 of 2018
Mr. Justice Shahid Bilal Hassan

Crux of Judgement:

i) The relief of specific enforcement of an agreement to sell pertaining to an immovable property is a discretionary relief as enunciated in section 22 of the Specific Relief Act, 1877.

ii) If the appellant did not send any written notice to the respondent showing his readiness to pay the remaining amount and asking him to perform his part of agreement even after cut-off date, the agreement to sell will stand cancelled.

iii) See above in analysis clause.

Facts Of Case:

Appellant/ plaintiff instituted a suit for possession through specific performance of agreement to sell along with permanent injunction. The trial Court decreed the suit in favour of the appellant. The respondent No.2 being aggrieved preferred an R.F.A. before High Court, however, due to enhancement of pecuniary jurisdiction of the District Judge, the said R.F.A. was transmitted to the District Judge for decision. The appellate Court accepted the appeal, set aside the judgment and decree passed by the learned trial Court and dismissed suit of the appellant for specific performance, however, held the appellant entitled to receive back earnest money Rs.1,500,000/- from the respondent No.1 in addition to withdrawal of any other amount deposited by him in compliance of judgment and decree hence, the instant regular second appeal.

Issues In Case:

i) Whether the relief of specific enforcement of an agreement to sell pertaining to an immovable property is a discretionary relief?

ii) What is the effect if the appellant did not send any written notice to the respondent showing his readiness to pay the remaining amount and asking him to perform his part of agreement after cut-off date?

iii) Whether the judgment of the appellate Court can be

interfered?

Analysis Of Issues of Case:

i) It is a settled proposition of law that to bestow the relief of specific enforcement of an agreement to sell pertaining to an immovable property is a discretionary relief as enunciated in section 22 of the Specific Relief Act, 1877; even in cases where the agreement to sell is validly proved by the plaintiff, the Courts may refuse to allow the relief of specific performance. Court is neither obliged to grant the relief of specific enforcement nor can the plaintiff claim it as a matter of right.

ii) The time is essence of the agreement as the cut-off date was fixed as 29.09.2009, however, the present appellant for the first time demanded execution of registered sale deed by approaching the respondent No.1 on 25.10.2009, meaning thereby he was not ready to perform his part of purported agreement to sell till the cut-off date. Moreover, after cut-off date, the appellant did not send any written notice to the respondent No.1 showing his readiness to pay the remaining amount and asking him to perform his part of agreement, despite the fact that as per terms and conditions of agreement, if vendee fails to pay balance consideration amount till target date the agreement to sell will stand cancelled.

iii) This a regular second appeal which has a very limited scope as provided under section 100, Code of Civil Procedure, 1908. The judgment of the appellate Court cannot be interfered with unless some procedural defects materially effecting such findings is pointed out by the appellant. Reliance is placed on Bashir Ahmed v. Mst. Taja Begum and others (PLD 2010 Supreme Court 906) and Muhammad Feroze and others v. Muhammad Jamaat Ali (2006 SCMR 1304).

Stereo. HCJDA 38

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

R.S.A.No.195522 of 2018

Muhammad Safdar
Versus
Jameel Ahmed and another

J U D G M E N T

Date of hearing: ***27.10.2023***

Appellant(s): M/s Mian Muhammad Athar and Shafqat Mehmood Chohan, Advocates

Respondent(s): Mr. Shahid Mehmood, Advocate for respondent No.1

Respondent No.2 ex parte on 03.07.2018

SHAHID BILAL HASSAN-J: Succinctly, appellant/ plaintiff instituted a suit for possession through specific performance of agreement to sell dated 09.03.2009 alongwith permanent injunction, against the respondent No.1/defendant by stating therein that respondent No.1 entered into agreement to sell with the appellant with regards to the land measuring 24-Kanals for a consideration of Rs.3,600,000/- and received Rs.1,500,000/- as earnest money in presence of witnesses whereas the remaining amount was settled to be paid till 29.09.2009 at the time of registration of sale deed. It was further maintained that the appellant was always ready forperformance of his part of agreement but the respondent

No.1 avoided on one reason or the other and finally refused to execute the registered sale deed and during the pendency of the suit, respondent No.1 transferred the suit land to the respondent No.2 through registered sale deed dated 28.10.2010 who later on was impleaded as defendant No.2 in the suit.

The suit was contested by the respondents/defendants by filing separate written statements. The respondent No.1 admitted the execution of agreement to sell and receipt of earnest money; however, took the stance that the earnest money was returned in October, 2009. The respondent No.2 controverted averments of the plaint and prayed for dismissal of the suit.

The divergence in pleadings of the parties was summed up into as many as nine issues including "Relief" and evidence of the parties in pro and contra was recorded. After hearing arguments, on conclusion of trial, the learned trial Court decreed the suit vide judgment and decree dated 31.01.2015 in favour of the appellant. The respondent No.2 being aggrieved preferred an R.F.A.No.292 of 2015 before this Court, however, due to enhancement of pecuniary jurisdiction of the District Judge, the said R.F.A. was transmitted to the District Judge for decision. The learned appellate Court vide impugned judgment and decree dated 18.01.2018 accepted the appeal, set aside the judgment and decree passed by the learned trial Court and dismissed suit of the appellant for specific performance, however, held the appellant entitled to receive back earnest

money Rs.1,500,000/- from the respondent No.1 in addition to withdrawal of any other amount deposited by him in compliance of judgment and decree dated 31.01.2015; hence, the instant regular second appeal.

2. Heard.

3. It is a settled proposition of law that to bestow the relief of specific enforcement of an agreement to sell pertaining to an immovable property is a discretionary relief as enunciated in section 22 of the Specific Relief Act, 1877; even in cases where the agreement to sell is validly proved by the plaintiff, the Courts may refuse to allow the relief of specific performance. Court is neither obliged to grant the relief of specific enforcement nor can the plaintiff claim it as a matter of right. Reliance is placed on *Sheikh Akhtar Aziz v. Mst. Shabnam Begum and others* **(2019 SCMR 524)**, wherein it was held:-

> *'16. Finally, there is no cavil with the proposition that relief of specific performance is discretionary in nature and despite proof of an agreement to sell, exercise of discretion can be withheld if the Court considers that grant of such relief would be unfair or inequitable.'*

Further reliance can safely be placed on judgment reported as *Muhammad Abdur Rehman Qureshi v. Sagheer Ahmad* **(2017 SCMR 1696)**, wherein it has been held that:-

> *'16. Perusal of section 22 of the Specific Relief Act, 1877 as interpreted by this Court makes it*

abundantly clear that the Court has discretion to decline specific performance of an agreement even in the absence of an obvious impediment in this behalf and despite the fact that such agreement may possess all necessary particulars entitling the specific performance of the contract. It declares that specific performance is essentially an equitable relief which can lawfully be declined if the Court comes to the conclusion that it is unjust and inequitable to do so.'

4. In this case, a minute perusal of the alleged agreement to sell Ex.P1 goes to divulge that the time was essence of the agreement as the cut-off date was fixed as 29.09.2009, however, the present appellant for the first time demanded execution of registered sale deed by approaching the respondent No.1 on 25.10.2009, meaning thereby he was not ready to perform his part of purported agreement to sell till the cut-off date. Moreover, after cut-off date, the appellant did not send any written notice to the respondent No.1 showing his readiness to pay the remaining amount and asking him to perform his part of agreement, despite the fact that as per terms and conditions of Ex.P1, if vendee (appellant in this case) fails to pay balance consideration amount till target date i.e. 29.09.2009, the agreement to sell will stand cancelled. Furthermore, the suit was filed by him on 05.11.2009 after the cut-off date but the appellant did not deposit the remaining sale consideration with the Court by moving an application in this regard, which was necessary to show his bona fide and readiness to perform his

part of agreement. In a judgment passed in Civil Appeal No.1121 of 2018 titled "***Ijaz Ul Haq v. Mrs. Maroof Begum Ahmed and others***" decided on 16.08.2023, the Apex Court of the country has invariably held that:

> *'7. It would be appropriate first to examine how the plaintiff discharged his pleading burden. The law governing this aspect of the matter is provided in Form No.47 and 48 of Appendix-A of the First Schedule to the Code of Civil Procedure, 1908. According to para-2 of Form 47, the plaintiff was to state in the plaint that he had applied to the defendants specifically to perform the contract on their part, but the defendants had not done so. Similarly, per para-2 of Form 48, the plaintiff was required to state in his plaint that on such and such date, he tendered an amount to the defendants and demanded a transfer of the property. Thus, in his suit for specific performance, the plaintiff ought to have pleaded and proved his readiness and willingness to perform his obligations under the contract (Ex.P.3). There is no denying that according to contract condition, the plaintiff was to pay the balance of Rs.6,850,000/- to the defendants on or before 18th March, 2023, subject to the registration/completion of property transfer documents by the defendants in his favour. The plaintiff did not pay this amount. The plaintiff's stance was that he had been ready to pay the balance, but, defendant No.1 procrastinated the matter and delayed the completion of the transfer documents, which led him to institute the suit. A perusal of the evidence suggests that the plaintiff could not prove his narrative.'*

In the present case, the facts of the case are identical to the above referred judgment of the Apex Court, because in the present case, the appellant failed to prove his case as well as stance.

5. Additionally, perusal of Ex.D1 shows that on the back page No.2 of the registered sale deed copy of register Haqdaran Zameen has been shown and in last column, a note has been given, according to which, no injunctive order by any competent Court pertaining to suit property is on record; meaning thereby the respondent No.2 made an inquiry as to any encumbrance upon the suit property but when he found no entry of any restriction or injunction in the revenue record, he opted to purchase the suit property vide sale deed Ex.D1. In a judgment reported as *Mst. Samina Riffat and others v. Rohail Asghar and others* **(2021 SCMR 7)**, it has been held that:-

> *'Since there is nothing on record to show, that the Appellants/defendants 2 and 3 committed any breach, mere observation of the appellate court that since the Defendants 2 and 3 did not issue any notice making time essence of the contract is not justified under facts and circumstances of the case, even if it is presumed no notice to such an effect was issued, very fact specific plea was raised in the written statement that for failure to make the payment of the balance sale consideration within stipulated period rendered the agreement rescinded and earnest amount forfeited is sufficient notice, such fact coupled with fact that the Plaintiff on one hand failed to offer sale consideration within agreed*

period, secondly, did not tendered the amount despite order of the learned trial Court dated 19.7.2005 and even after the suit was dismissed.'

In judgment reported as *Rao Abdul Rehman (deceased) through legal heirs v. Muhammad Afzal (deceased) through legal heirs and others* **(2023 SCMR 815)**, the August Supreme Court invariably held that:-

'In the case of Bahar Shah and others v. Manzoor Ahmad (2022 SCMR 284), this Court held that an honest buyer should at least make some inquiries with the persons having knowledge of the property and also with the neighbors. Whether in a particular case a person acted with honesty or not will obviously depend on the facts of each case. The good faith entailed righteous and rational approach with good sense of right and wrong which excludes the element of deceitfulness, lack of fair-mindedness and uprightness and or willful negligence. The purchaser is required to make inquiry as to the nature of possession or title or further interest if any of original purchaser over the property in question at time of entering into sale transaction.'

As to point of "time essence" of agreement in this case, further reliance can be placed on case of *Muhammad Aslam and others v. Muhammad Anwar* **(2023 SCMR 1371)**, wherein it has been held that:-

'…… In these circumstances, the judgments and decrees passed by all the courts below ignoring the fact that the terms of the agreement show that time

was essence of the contract when it was specifically mentioned the date for performance and its consequences for non-performance by the plaintiff-vendee and it will be cancelled and earnest money will be confiscated. Plaintiff admitted that he could not arrange the remaining consideration amount even on the date of performance and even three months thereafter and further dishonestly it is pleaded that plaintiff approached the legal heirs of vendor as he passed away before the date of performance which is factually incorrect whereas his own evidence as well as evidence of his witnesses contradict his pleadings.'

6. This a regular second appeal which has a very limited scope as provided under section 100, Code of Civil Procedure, 1908. The judgment of the learned appellate Court cannot be interfered with unless some procedural defects materially effecting such findings is pointed out by the appellant. Reliance is placed on *Bashir Ahmed v. Mst. Taja Begum and others* **(PLD 2010 Supreme Court 906)** and *Muhammad Feroze and others v. Muhammad Jamaat Ali* **(2006 SCMR 1304)**.

7. For the foregoing reasons and while placing reliance on the judgments *supra*, it is observed that the learned trial Court has misread evidence on record, whereas the learned appellate Court has judiciously appreciated evidence of the parties and has reached to a just conclusion while passing the impugned judgment and decree; therefore, the appeal in hand comes to naught and the same is hereby dismissed. No order as

to the costs.

(Shahid Bilal Hassan)

Lahore High Court
Ahmad (deceased) through L.Rs v. Haji Saeed Ahmad (deceased) through L.Rs.
Civil Revision No.247 of 2015
Mr. Justice Shahid Bilal Hassan

Crux of Judgement:

i) Yes, date, time, place along with names of witnesses in whose presence the agreement to sell reached upon, are sine qua non to be pleaded and proved.

ii) See analysis portion.

iii) When the very basis of the purported agreement to sell did not remain in field, then in such situation contingent agreement cannot be enforced.

iv) Mere exhibition of the document is not sufficient rather the contents of the same are to be proved.

v) The depositions of witnesses based upon hearsay cannot be relied upon.

vi) Yes, High Court is vested with ample power to undo the concurrent findings while exercising revisional jurisdiction.

Facts:

Through this civil revision the petitioner(s) being aggrieved by the judgments and decrees of trial court and appellate court in consequence of the suit for specific performance of agreement to sell filed by the respondents, have challenged the same.

Issues:

i) Whether date, time, place along with names of witnesses in whose presence the agreement to sell reached upon, are

sine qua non to be pleaded and proved?

ii) What is the definition of “Contingent Contract”?

iii) When contingent agreement cannot be enforced?

iv) Whether mere exhibition of the document is sufficient?

v) Whether depositions of witnesses based upon hearsay can be relied?

vi) Whether High Court is vested with ample power to undo the concurrent findings while exercising revisional jurisdiction?

Analysis:
i) Once vendee could not plead as to when, where and at what place the alleged agreement to sell was reached at and only pleaded that the vendor entered into agreement to sell with him, without mentioning the names of the witnesses, in whose presence the parties bargained and agreed to enter into the transaction in dispute, which otherwise was necessary and sine qua non to be pleaded and proved, in such circumstances the suit for specific performance cannot be succeeded...

ii) Under section 31 of the Contract Act, 1872, A “Contingent contract“ is a contract to do or no to do something, of some event, collateral to such contract, does or does not happen...

iii) When the very basis of the purported agreement to sell did not remain in field, the contingent agreement loses its value and cannot be enforced...

iv) Mere exhibition of the document is not sufficient rather the contents of the same are to be proved…

v) The depositions of P.W.7, P.W.8 and P.W.9 are based on hearsay, so the same have no value in the eye of law and

cannot be relied upon…

vi) High Court is vested with authority and ample power to undo the concurrent findings while exercising revisional jurisdiction under section 115, Code of Civil Procedure, 1908…

Stereo. HCJDA 38

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Civil Revision No.247 of 2015

Ahmad (deceased) through L.Rs.
Versus
Haji Saeed Ahmad (deceased) through L.Rs.

J U D G M E N T

Date of hearing: ***23.10.2023***
Petitioner(s): Malik Muhammad Imtiaz Mahal, Advocate

Respondent(s): Mr. Javid Ur Rehman Rana, Advocate

SHAHID BILAL HASSAN-J: Succinctly, the respondents instituted a suit for specific performance of agreement to sell with the assertion that a patch of land measuring 17-Kanlas 16-Marlas was owned by Ahmad son of Mehr Chawa. The said Ahmad agreed to sell the said land to Haji Saeed Ahmad for a consideration of Rs.50,000/- vide disputed agreement to sell dated 14.12.1987, the reason behind this sale was alleged that Ahmad son of Chawa deceased instituted a suit for possession through

pre-emption against Sarang son of Hamayon and Mst. Ghulam Fatima daughter of Ghulam Muhammad, which suit was decreed in his favour vide judgment and decree dated 12.11.1987 and he (Ahmad) had to deposit the sale price of the pre-empted land in the Court. He was in need of Rs.50,000/- so as to deposit in Court, therefore, he agreed to sell the suit land

to Haji Saeed, deceased respondent No.1/plaintiff vide disputed agreement to sell and received the entire sale consideration. As per averments of the plaint, there were stipulations mentioned in the disputed agreement to sell that after final decision of the said pre-emption suit, the predecessor of present petitioners had to transfer the suit land in favour of predecessor in interest of the respondents and in case of filing of appeal, he was bound to transfer the said land within one year after decision of final appeal. It was further averred that initially the judgment debtor of the said decree filed an application for setting aside the said ex parte decree but the same was dismissed vide order dated 26.02.1989. The petitioner(s) entered appearance and contested the suit by filing written statement. The divergence in pleadings of the parties was summed up into following issues: -

1. *Whether Iqrarnama dated 14.12.1987 was genuinely executed and if the same was enforceable at law against the defendant: OPP*
2. *Whether the plaintiff has no cause of action and locus standi? OPD*
3. *Whether the suit is false and vexatious? OPD*
4. *Whether the suit has been undervalued for the purposes*

of court fee and jurisdiction, if so what would be the correct valuation? OPD

5. *Whether the suit is within time? OPP*
6. *Relief.*

Both the parties adduced their oral as well as documentary evidence in support of their respective contentions. At the end of trial, the learned trial Court decreed the suit in favour of the respondent(s) on 14.02.1994 and appeal preferred by the deceased petitioner Ahmad was dismissed on 30.11.996, who filed revision petition bearing No.652 of 1997 before this Court which was accepted on 06.03.2007 and while setting aside the judgments and decrees, the case was remitted to the learned trial Court with direction to grant permission to both the parties to produce further evidence in support of their pleadings and decide the case afresh on the basis of evidence already available on record and further to be produced by the parties. After remand, further evidence of the parties was recorded and on conclusion of trial, the learned trial Court decreed the suit of the respondent(s) vide impugned judgment and decree dated 30.11.2010. The petitioner(s) being aggrieved preferred an appeal against the same but it was dismissed vide impugned judgment and decree dated 16.09.2014 by the learned appellate Court; hence, the instant revision petition.

2. Learned counsel for the petitioners has argued that the impugned judgments and decrees are against law and facts of the case; that there are many discrepancies and contradictions

in the depositions of the witnesses examined by the respondents, who have miserably failed to prove the genuineness of the disputed agreement to sell but the learned Courts below have ignored the same, thus, have committed misreading and non-reading of evidence while passing the impugned judgments and decrees; that the petitioners have successfully proved that the predecessor in interest of the respondents in fact paid a loan amount to the predecessor in interest of the petitioners after receiving gold ornaments from him as security but the learned Courts below have failed to appreciate the same and illegally passed the impugned judgments and decrees; that material illegalities and irregularities have been committed by the learned Courts below while has resulted in miscarriage of justice; therefore, by allowing the revision petition in hand, the impugned judgments and decrees may be set aside, consequent whereof the suit of the respondents may be dismissed throughout with costs.

3. Naysaying the above submissions, the learned counsel appearing on behalf of the respondents while supporting the impugned judgments and decrees has prayed for dismissal of the revision petition in hand.

4. Heard.

5. It is notable fact that the deceased respondent Haji Saeed Ahmad could not plead as to when, where and at what place the alleged agreement to sell was reached at and

only pleaded that the deceased petitioner Ahmad entered into agreement to sell Ex.P1 with him on 14.12.1987, without mentioning the names of the witnesses, in whose presence the parties bargained and agreed to enter into the transaction in dispute, which otherwise was necessary and sine qua non to be pleaded and proved; however, in the instant case, as observed above, neither the said factum has been pleaded nor the same has been deposed or proved by the deceased respondent Haji Saeed Ahmad while appearing in the witness box rather he as P.W.6 deposed that he bargained about the disputed property with the defendant (deceased petitioner) against consideration of Rs.50,000/- (without disclosing the detail and measurement of the property in question). Moreover, the agreement to sell in question is a contingent agreement, which has been defined under section 31 of the Contract Act, 1872, as under:-

> *„A „contingent contract" is a contract to do or no to do something, of some event, collateral to such contract, does or does not happen."*

It was purportedly agreed between the deceased petitioner Ahmad and deceased respondent Haji Saeed Ahmad that on passing of decree in suit for possession through pre-emption the disputed land measuring 17-Kanals 16-Marlas out of the total land would be transferred in favour of Haji Saeed Ahmad, meaning thereby if the decree was passed the agreement to sell would be executed further otherwise not. In the present case, document Ex.P5 (judgment dated 23.10.1989 passed by the

learned appellate Court), which has obviously been brought on record by exhibiting the same on behalf of the respondent(s), divulges that the learned appellate Court while hearing appeal against order dated 26.02.1989 whereby the learned trial Court dismissed the application of Sarang, etc. for setting aside ex parte decree dated 12.11.1987, decided the appeal as such that:-

> *„…… Without adverting to the merits of the application, I have noticed that the ex parte decree was passed in favour of the pre-emptor on the basis of collateral-ship only and after the crucial date i.e. 31.07.1986, the respondent/pre-emptor does not possess any other superior pre-emptive right. I must say that collateral-ship was not a superior pre-emptive right on 12-11-1987, when the respondent succeeded to obtain the decree. I feel no hesitation in concluding that the said decree is nullity in the eye of law and it should have been ignored by the learned Trial Court while dealing with the application of the appellants/defendants. Learned counsel for the respondent has argued that merits of the case cannot be looked into while deciding an application under Order 9 Rule 13 CPC. I am not in agreement with the learned counsel for the respondent because merits of the case are always very which material while deciding such application. I am supported in my view by the case law laid down in Assistant Controller and two others v. Muhammad Iqbal (1989 CLC 398) where dealing with the similar situation, the Honourable Sindh High Court observed as under:*

> *"On my observation that even an ex parte suit, it is the duty of the Court to examine the question, where the relief prayed for, can be granted on the basis of the material available on record."*
>
> *3. Seeking guidance from case law referred to above, I accept this appeal, set aside the impugned order and dismiss the pre-emption suit of the respondent, with no order as to costs."*

Meaning thereby the said ex parte decree dated 12.11.1987 did not remain in field any more, as the said judgment and decree dated 23.10.1989 was not further challenged and if the same would have been assailed further the respondents should have brought on record the subsequent proceedings and orders but nothing as such has been brought on record; therefore, when the very basis of the purported agreement to sell did not remain in field, the contingent agreement Ex.P1 loses its value and cannot be enforced. Even otherwise, there are material contradictions in depositions of the deceased respondent Haji Saeed Ahmad (P.W.6) and alleged marginal witnesses (P.W.4) and (P.W.5) regarding their presence at the time of execution of purported agreement to sell (Ex.P1) because P.W.5 deposed that he did not accompany at the time when the stamp paper was reduced into writing and this witness at the end of cross examination stated that he pasted his thumb mark while visiting deed writer at Tehsil. Therefore, such a self-contradictory statement cannot be believed because on the one hand this witness deposed that

he did not accompany when the stamp paper was reduced into writing and on the other hand states that he thumb marked while visiting deed writer at Tehsil, which shows that he did not know the contents of the document which was allegedly thumb marked by him. Mere exhibition of the document is not sufficient rather the contents of the same are to be proved, however, in the instant case, none of the P.W. deposed about the contents of the document i.e. purported agreement to sell Ex.P1.

6. In addition to the above, the pivotal document Ex.P1 shows that the same has been written twice with different inks as in opening part, the writing is with 'light ink' while after fourth line the writing has been made with 'strong ink' and date of writing of the said document after word '*Al-marqoom Morkha*' is left blank. Moreover, at the back of the said stamp paper, there has been found no signature or thumb mark of its purchaser i.e. Mehar Ahmad and P.W.2, the stamp vendor, during cross examination deposed that he did not know Ahmad personally and issued the stamp paper after seeing the identity card. Depositions of P.W.7, P.W.8 and P.W.9 are based on hearsay, so the same have no value in the eye of law and cannot be relied upon.

7. All these facts and aspects have not been considered and pondered upon by the learned Courts below while passing the impugned judgments and decrees, which otherwise ought to have been dilated upon and responded to by the learned Courts

below. Had the learned Courts below considered each and every aspect of the case as well as examined the documents especially the document Ex.P5, the result would have been different.3

8 Pursuant to the above, it is observed that the learned Courts below have failed to adjudicate upon the matter in hand by appreciating evidence of the parties and law on the subject; therefore, the Courts below have misread evidence of the parties and when the position is as such, this Court is vested with authority and ample power to undo the concurrent findings while exercising revisional jurisdiction under section 115, Code of Civil Procedure, 1908, as has been held in *Nazim-Ud-Din and others v. Sheikh Zia-Ul-Qamar and others* **(2016 SCMR 24)**, *Sultan Muhammad and another v. Muhammad Qasim and others* **(2010 SCMR 1630)**, *Ghulam Muhammad and 3 others v. Ghulam Ali* **(2004 SCMR 1001)** and *Habib Khan and others v. Mst. Bakhtmina and others* **(2004 SCMR 1668)**.

9. The crux of the discussion above is that the revision petition in hand succeeds and the same is allowed, impugned judgments and decrees are set aside, consequent whereof the suit instituted by the respondent(s) stands dismissed. No order as to the costs.

(Shahid Bilal Hassan)
Judge

Approved for reporting.

Judge

M.A.Hassan

Lahore High Court
Mst. Sughran Bibi v. Abdul Sattar, etc.
Civil Revision No. 2194/2011
Mr. Justice Asim Hafeez

Crux of Judgement:
In view of sections 214 and 215 of the Contract Act, 1872, where agent purchases the property, subject of agency, for himself or his own benefit, same is obligated to seek principal's consent, after acquainting the principal with all material circumstances.

Facts Of Case:
Instant and connected Civil Revision are directed against consolidated judgment and decree of first appellate court, whereby appeals preferred by petitioner was dismissed, and consolidated decision of court of first instance, was affirmed, in terms whereof trial court had dismissed suit for declaration instituted by the petitioner, and decreed suit for specific performance brought by respondent No.1, seeking enforcement of alleged agreement to sell.

Issues In Case:
Whether in view of sections 214 and 215 of the Contract Act, 1872, where agent purchases the property, subject of agency, for himself or his own benefit, same is obligated to seek principal's consent, after acquainting the principal with all material circumstances?

Analysis of Issues of Case:
It is established that no special permission was asked – though attorney admitted that respondent No.1 was his nephew [no explanation was provided to show that respondent No.1 was not the descendant from same ancestor, and respondent No.1 was not related by blood. Notwithstanding this inadequacy, there is another fundamental lapse in the performance of obligations by the Attorney. Attorney has to prove that transaction was not for his benefit, which material issue was not proved and instead it is established that suit property was sold in return of the services rendered by the respondent No.1 – which convincingly proved that attorney sold suit property for his own benefit. Evidently the transaction carried out secured him his comfort, residence, food and care extended by the respondent No.1, which influenced the attorney and led to compromising his duties, responsibilities and obligations towards the principal. The advantages / benefits drawn by the attorney, at the expense of the principal, are established. These admitted facts constitute provisioning of tangible benefits and calls for the necessity of prior permission from the

principal. No evidence was led to prove that money allegedly received were paid to the principal. Attorney not even alleged this fact. Hence, requirements of sections 214 and 215 of the Contract Act, 1872 were not met.

Form No: HCJD/C-121

ORDER SHEET

IN THE LAHORE HIGH COURT, LAHORE.
JUDICIAL DEPARTMENT

Case No: C.R. No.2401 of 2014.

Sughran Bibi, etc. vs. Muhammad Nawaz, etc.

S.No. of order/ proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of parties or counsel, where necessary
	30.10.2023.	M/s Saqib Haroon Chishti and Mahad Abdul Ghafoor, Advocate for the applicants-petitioners. Mr. Jahanzaib Khan, Advocate for the respondents.

C.M. No.1-C of 2023.

This is an application for restoration of the titled civil revision, which was dismissed on account of non-prosecution by this Court vide order dated 05.04.2023.

2. With concurrence of learned counsel for the parties, the instant application is allowed and the order dated 05.04.2023 passed by this Court is recalled and civil revision is restored to its original number. Office is directed to fix the main civil revision today.

Main Case.

Respondents No.1 & 2/plaintiffs namely Muhammad Nawaz and Tahir Mehmood filed a

suit for specific performance of agreement to sell, declaration and permanent injunction as a consequential relief against Fateh Din, Sughran Bibi, Karam Bibi and Nazar Bibi before the learned Senior Civil Judge, Gujranwala on 14.06.2000. The case of Muhammad Nawaz, etc. was to the effect that the defendant

No.2 to 4 in the suit entered into an agreement to sell with them on 27.10.1999 through Fateh Din, the defendant No.1 as their general attorney dated 13.10.1992 with regards to the land measuring 38 kanal 17 marlas situated in Khewat No.12, according to register Haq Daran-e-Zamin for the year 1987-88 out of their total entitlement of 52 Kanal 15 Marlas for a total consideration at Rs.12,14,062/- and received an amount of Rs.11,00,000/- as earnest money. The remaining consideration of Rs.1,14,062/- was to be paid on 13.06.2000. On the stated failure of the defendants in the suit, the plaintiffs were left with no other option but to knock the door of the Court through the said suit.

2. The defendant No.1 i.e. Fateh Din filed a consenting written statement, whereas defendants No.2 to 4/plaintiffs through their written statement denied the stance of the plaintiffs on legal as well as factual grounds. The stance put forward by the defendants No.2 to 4 was that they at the relevant time trusted defendant No.1 i.e. their real brother but on attaining knowledge of malafide of their brother who was statedly collusive with the plaintiffs, they got the general

power of attorney dated 13.10.1992 cancelled on 19.04.2000. In addition to this, they denied the agreement to sell dated 27.10.1999 while submitting that it was prepared after cancellation of the general power of attorney.

3. Out of the divergent pleadings of the parties, learned trial court framed following necessary issues:-

ISSUES

1. Whether the defendants No.2 to 4 through their duly and validly constituted general attorney i.e. defendant No.1, entered into an agreement to sell of the suit property, received part of the consideration, delivered possession of suit land and accordingly executed an agreement to sell dated 13-06-2000? OPP.

2. Whether the suit is collusive between the plaintiffs and defendant No.1? OPD 2 to 4.

3. Whether the defendant No.1 had no lawful authority to execute any agreement on behalf of defendants No.2 to 4? OPD 2 to 4? OPD.

4. Whether the plaintiffs have no cause of actions? OPD 2 to 4.

5. Whether the plaintiffs are entitled to decree for specific performance of this agreement, if so at what terms and conditions? OPP.

6. Relief.

After framing of issues, both the parties produced their respective evidence and on completion of the same, suit was decreed by way of impugned judgment dated 09.06.2011 passed by the learned Trial Court. Being aggrieved, the defendants/petitioners preferred an appeal but remained unsuccessful vide impugned judgment and decree dated 13.06.2014 passed by the learned Additional District Judge, Gujranwala, hence this civil revision.

4. Heard.

5. The most pivotal document in this case is purported general power of attorney, which has been brought on record as Ex.P-2. In order to better explain the position, the recital of the same, bestowing the powers upon General Attorney namely Fateh Din (defendant No.1), is reproduced infra:-

مایانکہ صغراں بی بی دختر نوراں زوجہ مقبول احمد ذات جٹ ساکن چک نمبر 38 جنوبی خاص تحصیل و ضلع سرگودھا حال موضع نوشہرہ سانسی تحصیل و ضلع گوجرانوالہ و کرم بی بی دختر نور ازوجہ قطب دین ذات جٹ ساکن نوشہرہ سانسی تحصیل و ضلع گوجرانوالہ و نذر بی بی دختر نور ازوجہ عبدالغفور ساکن نوشہرہ سانسی تحصیل و ضلع گوجرانوالہ کہ ہیں۔ جو کہ مامظہران اراضی تعدادی 15 مرلہ 52 کنال مندرجہ کھیوٹ نمبر 12 اراضی تعدادی 17 مرلہ 42 کنال و کھیوٹ نمبر 631 اراضی تعدادی 18 مرلہ 9 کنال جملہ تعدادی 15 مرلہ 52 کنال بروئے رجسٹر حقداران سال 1988-1987 و بروئے انتقال نمبر 2604 واقع موضع نوشہرہ سانسی تحصیل و ضلع گوجرانوالہ معہ جملہ اش حقوق ٹیوب ویل چاہ احاطہ درختاں وغیرہ کی مالکان ہیں۔ مامظہران عدیم الفرصتی کی بنا پر اراضی مذکورہ کی دیکھ بھال و انتظام و انصرام و کاشت وغیرہ کرنے سے قاصر ہیں۔ چنانچہ مامظہران نے بلا جبر و اکراہ بلا ترغیب غیرے اپنی ازاد مرضی سے مسمی فتح دین ولد نور محمد قوم جٹ ساکن موضع نوشہرہ سانسی تحصیل و ضلع گوجرانوالہ کو مختار عام مقرر کر کے اختیار دیتی ہیں کہ مختار عام مذکور اراضی مذکورہ بالا کو کاشت کرے۔ دیکھ بھال کرے۔ انتظام و انصرام کرے۔ مزارعت پر دیوے۔ مالیہ ادا کرے۔ ٹھیکہ وصول کرے۔ رسید وصولی ٹھیکہ دیوے۔ اراضی مذکورہ کو بیچ کرے۔ ہبہ کرے۔ رہن کرے یا کسی دیگر طریقہ سے منتقل کرے۔ بصورت مقدمہ بازی وکیل از عدالت ہائے دیوانی تا سپریم کورٹ مقرر کرے۔ دعوے دائر کرے۔ جواب دعوے دیوے۔ اپیل کرے۔ پیروی مقدمہ کرے۔ مختار خاص مقرر کرے۔ اگر جملہ اراضی گورنمنٹ Acquire کرے تو اراضی مذکور کا معاوضہ وصول کرے۔ قبضہ اراضی دیوے یا درخواست دیوے۔ یعنی جملہ کاروائی مکمل کرے غرضیکہ ہر وہ کام کرے جو کہ مامظہران نے کرنا ہے۔ مختار عام کا کردہ و پرداختہ مثل مامظہران ہوگا۔ مامظہران نے قبل ازیں اراضی مذکورہ بالا کا مختار نامہ عام کسی کو نہ دیا ہے۔ مختار نامہ عام ناقابل تنسیخ ہے۔ مندرجات مختار نامہ عام سن لیے ہیں درست ہیں۔ سن کر سمجھ کر اپنے انگوٹھا جات ثبت کر دیئے ہیں۔ لہذا یہ چند حروف بطور مختار نامہ عام تحریر کر دیئے ہیں تاکہ سند رہے۔

After referring the conferring portion of the purported general power of attorney, it seems necessary and appropriate to consider legal insinuations of sale and agreement to sell, which have been defined in section 54 of the Transfer of Property Act, 1882 and section 2(h) of the Contract Act, 1872, respectively, which are reproduced as under:-

'54. "Sale Defined". "Sale" is a transfer of ownership in exchange for a price paid or promised or part paid and part promised.

Sale how made. Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other, intangible thing, can be made only by a registered instrument.

In case of tangible immovable property, of a value of less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs in possession of the property.

Contract for sale. A contract for the sale of immovable property is a contract that a sale of such property shall take place on such terms settled between the parties.'

The definition of "Contract" under the Contract Act, 1872 as provided under section 2(h) is that an agreement enforceable by law is a contract.

When the recitals of the alleged general power of attorney is gone through only powers of sale have been conferred upon the general attorney namely Fateh Din and the same does not give any power to enter into an agreement to sell. As per my understanding, the powers to sell the property does not include the power to enter into an agreement to sell as in the powers of the sale the consideration amount is received and property is sold out; however, the agreement to sell binds both the parties in accordance with the terms of agreement to

perform their part in future. Therefore, when a specific power of entering into an agreement to sell of the suit property was not given to Fateh Din, attorney, he was not competent to enter into any kind of agreement to sell on the behalf of the petitioners/ principals/ owners of the disputed property, because in case of 'sale' a transaction is completed, rights and liabilities of the parties are determined through an instrument of sale and with the registration and completion of the same, no further liability of parties remains against each other; as against this, in case of agreement to sell both the parties are bound to perform the terms and conditions of agreement to sell in future, thus, until and unless an attorney is given and bestowed with specific powers to bind the principal for performance of terms of the agreement in future, the attorney cannot bind the principal and enter into agreement to sell of property owned by the principal(s). In such scenario, the alleged agreement to sell, sought to be enforced through suit for specific performance in the instant case, is bad on the basis of having no powers with the attorney to enter into agreement to sell of the suit property, owned by the present petitioners. In this regard, reliance is placed on judgments, pen down, by the Supreme Court of Pakistan, reported as *Fida Muhammad v. Pir Muhammad Khan (Deceased) through Legal Heirs and others* **(PLD 1985 Supreme Court 341)** and *Malik Riaz Ahmed and others v. Mian Inayat Ullah and others* **(1992 SCMR 1488)**

wherein it has been held that:-

> *'It is wrong to assume that every 'general' power of attorney on account of the said description means and includes the power to alienate/dispose of property of the principal. In order to achieve that object it must contain a clear separate clause devoted to the said object. The draftsman must pay attention to such a clause if intended to be included in the power of attorney with a view to avoid any uncertainty or vagueness. Implied authority to alienate property, would not be readily deducible from words spoken or written which do not clearly convey the principal's knowledge, intention and consent about the same. The Courts have to be vigilant particularly when the allegation by the principal is of fraud and or misrepresentation.'*

Further reliance can safely be placed on judgments reported as *Dost Muhammad v. Member, Board of Revenue and others* **(2001 MLD 2019)** and *Yar Baz Khan v. Lal Nawaz* **(PLD 1996 Peshawar 86)**, wherein it has been held that:-

> *'Before parting with this case, I would like to emphasize that an attorney derives authority from the principal with regard to his property either for its management or alienation for a specific purpose. The agent has to act within the framework of the deed which is depository of the intention, rights, liability and authority of parties and cannot travel beyond its scope and purview of its recitals. By re-passing confidence in agent, he is expected in law to act for the benefit of his principal. His conduct and performance of duty enjoined upon him is subject to certain commotions and limitations.'*

In another judgment reported as *HAQ NAWAZ and others v.*

BANARAS and others **(2022 SCMR 1068)** on the similar preposition, the Hon'ble Supreme Court of Pakistan has invariably held**:-**

> *"5. Mst. Channan Jan's stance throughout has been that she appointed Ghulam Rasool, who was her tenant in occupation, as her attorney, merely to manage the affairs of her land and for nothing more, and therefore, given the status of the lady, it was imperative for the appellants Nos.1 and 2 to have demonstrated and proved that at the time of the execution of the power of attorney, she was fully conscious of the fact that the document also contained power to sell and that the entire document was read out and explained to her fully and truly, and further that she executed it under an independent advice. They had also to prove that the lady was fully aware and conscious of the consequences and implications of executing the said document. However neither did they prove, nor even pleaded any of it. It therefore cannot be held that Ghulam Rasool, was in fact authorized by Mst. Channan Jan to sell the suit land. The impugned sale/transfer was thus liable to be set-aside on this ground alone. In any view of the matter, since admittedly, the power of attorney did not do not specifically authorized Ghulam Rasool, to convey the property to his sons, or forthat matter to any of his near ones, nor has he been able to prove that, he was otherwise so authorized. The impugned sale mutation was liable to be cancelled as rightly done by the revenue hierarchy. Since long it is well established that an attorney cannot lawfully make transfer of a property under agency in his own name, or for his benefit, or in favour of his associates, without explicit consent of the principal, and in the event he does so, the principal, under the mandate of section 215 of the Contract Act, has a right to repudiate such transaction. Mst. Channan Jan having disowned the subject transaction,*

the same was rightly annulled as noted above."

In view of the above, when it is established on record from the recitals and contents of the purported general power of attorney Ex.P-2 that no power was given to Fateh Din by the petitioners to enter into agreement to sell germane to their property with any one, Fateh Din was not authorized to do such an act i.e. agreement to sell in question on behalf of the petitioners/principals, therefore, the purported agreement to sell is bad in the eyes of law and is not enforceable. Moreover, revocation of purported general power of attorney by the petitioners makes it vivid that they did not confer any power of disposing of the disputed property in the manner as has been done by defendant No.1 namely Fateh Din. When the very basis of the suit in hand is proved to be non- enforceable, the suit cannot succeed even if the evidence supports the stance of the respondents No.2 to 4. However, in the present case, no cogent and confidence inspiring evidence has been brought on record showing the receipt of sale consideration by the present petitioners. Moreover, the second marginal witness of the alleged agreement to sell namely Muhammad Nasir son of Muhammad Ali was not produced in the witness box, meaning thereby the said document has also not been proved as per requirement of Article 79 of the Qanun-e-Shahadat Order, 1984. Though an argument has been advanced that the scribe of the document is also

witness of receipt of the consideration amount but the same has no force because the scribe of the document cannot be equated with marginal witness. In this regard reliance is placed on *Hafiz Tassaduq Hussain Vs. Muhammad Din through Legal Heirs and others* (**PLD 2011 Supreme Court 241**). Non-production of the second marginal witness is also fatal to the respondents case because he was an independent witness, whereas the other marginal witness is father of the respondents, who has status of an interested witness; therefore, withholding of the best available evidence without any incapacity, attracts the adverse presumption as per Article 129(g) of Qanun-e-Shahadat Order, 1984 that had the said witness been produced, he would not have supported the stance of the respondents/plaintiffs.

5. It will not be out of place to mention here that the petitioners/ defendants No.2 to 4 are admittedly illiterate and Parda Nashin ladies and Courts of law in such cases ought to be very careful in deciding the controversy as special caution has been given in law. In respect of a transaction germane to property with a *pardanasheen*, village household and rustic ladies, the Apex Court of the country in a judgment reported as *Phul Peer Shah v. Hafeez Fatima* **(2016 SCMR 1225)** has given the parameters and conditions to be fulfilled in a transparent manner and held that:-

> *'In case of a (property) transaction with an old, illiterate/rustic village 'Pardanasheen' lady the following mandatory conditions should be*

complied with and fulfilled in a transparent manner and through evidence of a high degree so as to prove the transaction as legitimate and dispel all suspicions and doubts surrounding it:-

i. *That the lady was fully cognizant and was aware of the nature of the transaction and its probable consequences;*
ii. *That she had independent advice from a reliable source/person of trust to fully understand the nature of the transaction;*
iii. *That witnesses to the transaction were such, who were close relatives or fully acquainted with the lady and had no conflict of interest with her;*
iv. *That the sale consideration was duly paid and received by the lady in the same manner; and*
v. *That the very nature of transaction was explained to her in the language she understood fully and she was apprised of the contents of the deed/ receipt, as the case may be.'*

Moreover, this Court has held that old and illiterate ladies are entitled to the same protection which is available to the Parda observing lady under the law; reliance is placed on *Muhammad Afzal v. Muhammad Zaman* **(PLD 2012 Lahore 125)**. Furthermore, in *Ghulam Muhammad v. Zahoran Bibi and others* **(2021 SCMR 19)**, the Apex Court of country has held:-

'It is settled law that the beneficiary of any transaction involving parda nasheen and illiterate women has to prove that it was executed with free consent and will of the lady, she was aware of the meaning, scope and implications of the document that she was executing. She was made to understand the implications and consequences of the same and had independent and objective advice either of a lawyer or a male member of her immediate family available to her.'

In judgment reported as *Muhammad Naeem Khan and another v. Muqadas Khan (decd) through L.Rs. and another* **(PLD 2022 Supreme Court 99)**, the Apex Court of the country has invariably held:-

> *'If any such plea is taken then it is a time-honored parameter that in case of a document executed by a pardanashin lady, the burden of proof is on the party who depends on such a deed to persuade and convince that Court that it has been rad over and explicated to her and she had not only understood it but also received independent and disinterested advice in the matter. The aforesaid parameter and benchmark is equally applicable to an illiterate and ignorant woman who may not be a pardanashin lady. If authenticity or trueness of a transaction entered into by a pardanashin lady is disputed or claimed to have been secured on the basis of fraud or misrepresentation, then onus would lie on the beneficiary of the transaction to prove his good faith and the court has to consider whether it was done with freewill or under duress and has to assess further for an affirmative proof whether the said document was read over to the pardanashin or illiterate lady in her native language for her proper understanding.'*

Keeping in view the ratio of the above said judgments, when the facts of the case in hand are considered, it appears that none of the above said parameters have been met with.

4. In view of the above, it is concluded that the learned Courts below have failed to consider each and every aspect of the case and have failed to construe law on the subject in a judicious manner while passing the impugned

judgments and decrees, which cannot be allowed to hold field further. This Court is vested with ample power and jurisdiction to reverse and revise the concurrent judgments and decrees, when the same suffer material illegalities and irregularities as well as result of misreading and non-reading of evidence as has been held in judgments reported as *Nazim-ud-Din and others v. Sheikh Zia-ul-Qamar and others* **(2016 SCMR 24)**, *Mandi Hassan alias Mehdi Hussain and another v. Muhammad Arif* **(PLD 2015 Supreme Court 137)**, *Iqbal Ahmed v. Managing Director Provincial Urban Development Board, N.-W.F.P. Peshawar and others* **(2015 SCMR 799)**, *Sultan Muhammad and another v. Muhammad Qasim and others* **(2010 SCMR 1630)**, *Ghulam Muhammad and 3 others v. Ghulam Ali* **(2004 SCMR 1001)** and *Habib Khan and others v. Mst. Bakhtmina and others* **(2004 SCMR 1668)**.

5. For the foregoing reasons, the revision petition in hand is allowed, impugned judgments and decrees are set aside, consequent whereof, the suit instituted by the respondents No.1 & 2 stands dismissed. No order as to the costs.

(SHAHID BILAL HASSAN)
JUDGE

Approved for reporting.

JUDGE

M. Usman.*

Connoisseur's Introduction.

Sahibzada Mian Muhammad Ashraf Asmi, an advocate of the High Court, hails from the ancestral city of Lahore. His father, the esteemed Mian Omar Draz, was a teacher. Mian Muhammad Ashraf Asmi spent his childhood at Sargodha under the guidance of his maternal uncle, Hakeem Enayat Qadri Noshahi. He completed his matriculation from Government Comprehensive High School Sargodha and pursued his intermediate & Graduation at Government College of Commerce Sargodha. He was also student of Government College Sargodha.

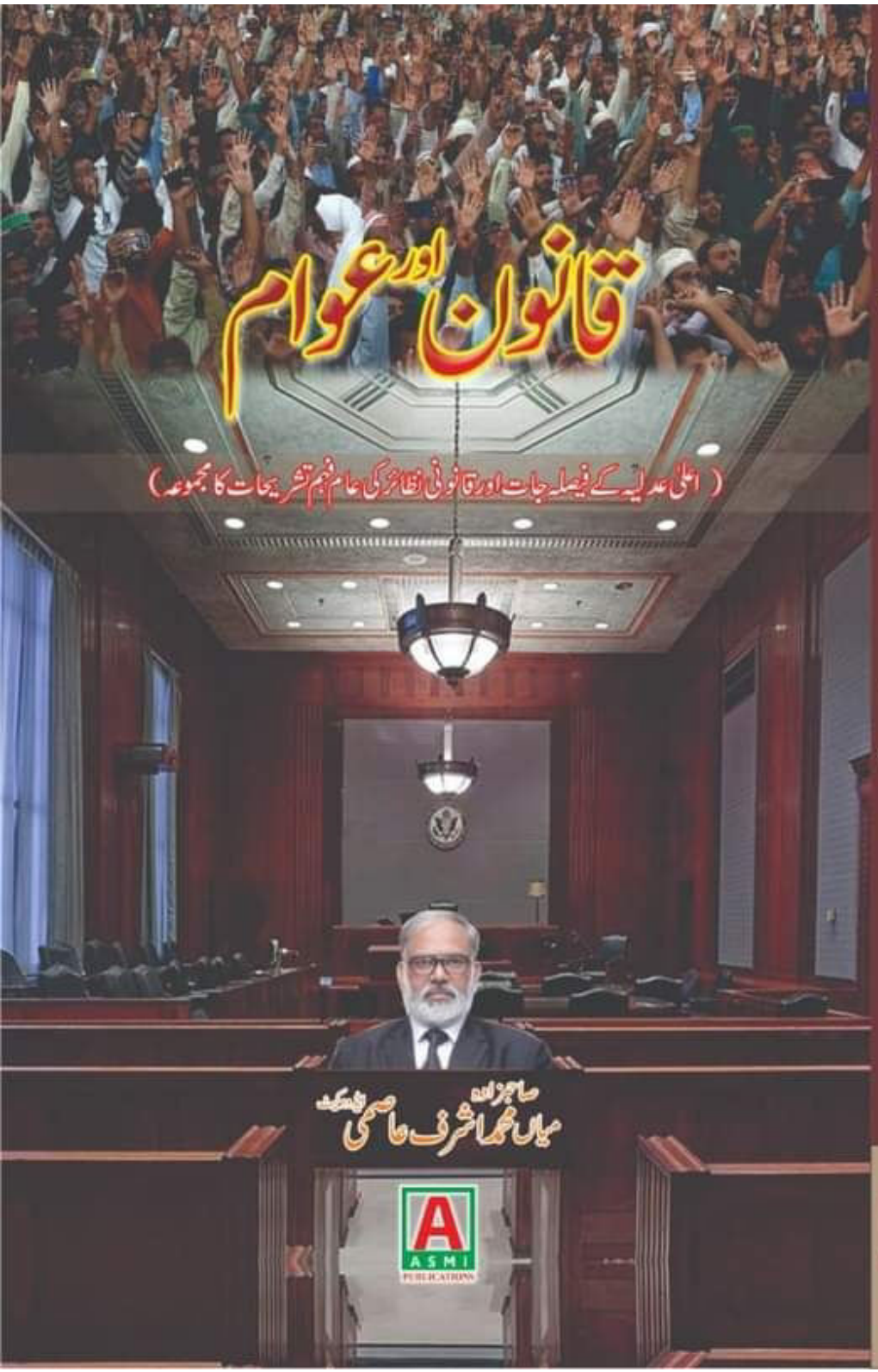
He holds master's degrees in Economics, Business Administration, and Education. He obtained his LLB and LLM degrees from Punjab University and also holds a postgraduate diploma in Islamic Law & Information Technology. For 35 years, he has been associated with the study and teaching of law. He is affiliated with the student organization Anjmin-e-Talaba Islam, known for its commitment to the love of Prophet Muhammad (PBUH).

Belonging to the illustrious Sufi family of Hafiz Mian Muhammad Isma'il, also known as Hafiz Mian Wada Sahib, from Burshehri Pak Wahan, he has roots in Lahore for centuries. His grandfather, Hafiz Mian Muhammad Isma'il, and great grandfather, Hafiz Mian Muhammad Ibrahim, served in the police department in British India. His family has resided in Lahore for generations, and the mosque on the left side of Bhatti Gate in Lahore is named after his great-grandfather, Hafiz Mian Ibrahim, who had it constructed.

Advocate Asmi contributes columns on social and legal issues to various national and international newspapers. He serves as the Senior Vice President of the World Columnist Club, a globally recognized organization of columnists. Actively engaged in human rights advocacy, he is the Chairman of the Human Rights Committee at Lahore High Court Bar and the founder Chairman of the Committee for the Protection of the Honor of Prophet Muhammad (PBUH) at Lahore Bar Association. He is also member of TXdLA of America since 1998.

He is also a representative of the Qadriyah Noshahiyya, being the authorized successor of Hakeem Mian Muhammad Enayat Khan Qadri Noshahi in the Silsila of Qadriyah Noshahiyya. Advocate Asmi has received literary awards from Lahore High Court Bar, Human Rights Award from Lahore Bar Association, and awards from the World Columnist Club. He has been honored with the Shahnaz Mazamil Award by Adab Sara International.

Apart from this book, he has authored numerous books on various subjects. Advocate Muhammad Ashraf Asmi, through his digital channels - Asmi Advocate, Qanoon Aur Awaam, and Cgent Legal Solutions, has recorded over seven thousand lectures. With systematic regularity, he records decisions of the higher judiciary in an easy-to-understand Urdu language, benefiting thousands of law-related individuals and the general public.



قانون اور عوام

صاحبزادہ میاں محمد اشرف عاصمی ایڈووکیٹ

صاحبزادہ میاں محمد اشرف عاصمی ایڈووکیٹ کا آبائی شہر لاہور ہے۔ان کے والد محترم صاحبزادہ میاں عمر دراز رحمۃ اللہ استاد تھے۔صاحبزادہ میاں محمد اشرف عاصمی ایڈووکیٹ نے اپنا بچپن ماموں جان حضرت حکیم میاں محمد عنایت خاں قادری نوشاہی کے زیر سایہ گزارہ۔گورنمنٹ کالج آف کامرس سرگودھا سے بی کام کیا۔معاشیات بزنس ایڈمنسٹریشن ،ایجوکیشن میں ماسٹرز کیے۔پنجاب یونیورسٹی سے ایل ایل بی کیا اور ایل ایل یم کریمنالوجی کی ڈگری کے حامل ہیں۔اسلامک لاء میں پوسٹ گریجویٹ ڈپلومہ بھی کیا ہے۔تین دہائیوں سے قانون کی درس وتدریس سے وابستہ ہیں۔عشق رسول ﷺ کی سرخیل تنظیم انجمن طلباء اسلام سے تعلق رہا ہے۔برصغیر پاک وہند کے عظیم صوفی بزرگ حضرت حافظ میاں محمد اسماعیل رحمۃ اللہ المعروف میاں وڈا صاحب رحمۃ اللہ لاہوری کے خانوادے سے تعلق ہے۔صاحبزادہ میاں محمد اشرف عاصمی ایڈووکیٹ کے دادا حافظ میاں محمد اسماعیل رحمۃ اللہ اور پردادا حافظ میاں محمد ابراہیم متحدہ ہندوستان میں محکمہ پولیس میں بطور افسر خدمات سرانجام دیتے رہے ہیں۔ان کا خاندان صدیوں سے لاہور میں رہائش پذیر ہے۔لاہور میں بھاٹی دروازے کے بائیں جانب مسجد ابراہیم ان کے پردادا کے نام سے منسوب ہے جو انھوں نے تعمیر کروائی تھی۔صاحبزادہ میاں محمد اشرف عاصمی ایڈووکیٹ مختلف قومی اور بین الاقوامی اخبارات میں سماجی اور قانونی موضوعات پر کالم لکھتے ہیں۔کالم نگاروں کی عالمگیر تنظیم ورلڈ کالمسٹ کلب کے سنیئر نائب صدر ہیں۔انسانی حقوق کے حوالے سے انتہائی فعال کردار ادا کر رہے ہیں۔ہیومن رائٹس کمیٹی لاہور ہائیکورٹ بار کے چیئرمین ہیں۔تاجدار ختم نبوت کمیٹی اور تحفظ ناموس رسالت ﷺ کمیٹی لاہور ہائی کورٹ بار ایسوسی ایشن کے بانی چیئرمین ہیں۔صاحبزادہ میاں محمد اشرف عاصمی ایڈووکیٹ سلسلہ قادریہ نوشاہیہ میں حکیم میاں محمد عنایت خاں قادری نوشاہی آف زاویہ نوشاہی سرگودھا کے خلیفہ مجاز ہیں۔اس کے علاوہ آپ کی متعدد تصانیف منظر عام پر آچکی ہیں۔

عاصمی پبلی کیشنز
ASMI
PUBLICATIONS

آفس نمبر 11 گراؤنڈ فلور فضل میراں بلڈنگ
4 مزنگ روڈ لاہور پاکستان۔0316-0047472
Email: asmipublications@gmail.com
https://youtube.com/c/mianashrafasmi
www.ashrafasmiadvocate .come