JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

R.F.A.No.190 of 2021
Muhammad Waqar Azeem and another
Versus
Dr. Kartar Lal Pirwani and others

Dates of Hearing:	15.03.2023, 03.04.2023 and 04.05.2023.
Appellants by:	M/s Sajjad Haider Malik, Naheed Iqbal Awan and Ambreen Anwer, Advocates
Respondents by:	Rana Shahid Hussain Khan, Advocate for respondent No.1. Mr. Muhammad Amin, Advocate for respondent No.2. Mr. Saqib Ali Mumtaz, Advocate for respondent No.3 / CDA.

MIANGUL HASSAN AURANGZEB, J:- Through the instant regular first appeal the appellants, Muhammad Waqar Azeem (**"Waqar"**) and Sultan Safdar (**"Sultan"**), impugn the judgment dated 30.01.2021 and decree dated 23.02.2021 passed by the Court of the learned Civil Judge, Islamabad, whereby the suit for specific performance of agreements to sell dated 04.06.2015 and 17.06.2015, permanent injunction and compensation / damages for breach of the said agreements, instituted by respondent No.1, Dr. Kartar Lal Pirwani (**"Dr. Pirwani"**), was allowed to the extent of prayer (iii) in the said suit. The said prayer is reproduced herein below:-

> *"Decree for recovery of Rs.70,00,000/- as compensation alongwith mesne profit @ 15% per annum w.e.f 05-07-2015 till final realization of the amount."*

2. The facts essential for the disposal of the instant appeal are that vide agreement to sell dated 04.06.2015 (**Exh.PW1/3**), respondent No.2, Raja Muhammad Khalil (**"Raja Khalil"**) agreed to sell Plot No.104, measuring 272 square yards situated in Sector D-12/4, Islamabad (**"the suit plot"**) to Waqar and Sultan for a total sale consideration of Rs.1,40,00,000/- out of which Rs.20,00,000/- was paid as earnest money, whereas the remaining amount of Rs.1,20,00,000/- was to be paid within four

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weeks with a grace period of one week of the date of the execution of the said agreement.

3. The terms of the said agreement authorized Waqar and Sultan to resell the suit plot at any price and to any person. It was also agreed that in the event Waqar and Sultan resell the suit plot before its transfer in their name, Raja Khalil will have no objection and will execute such documents as Waqar and Sultan may require.

4. Vide agreement to sell dated 17.06.2015 (**Exh.PW1/2**), Waqar and Sultan agreed to sell the suit plot to Dr. Pirwani for a total sale consideration of Rs.1,55,00,000/- out of which Rs.35,00,000/- was paid as earnest money, whereas the remaining amount of Rs.1,20,00,000/- was to be paid on or before 05.07.2015.

5. Neither did Waqar and Sultan pay the entire sale consideration under the agreement to sell dated 04.06.2015 (**"the First Agreement"**), nor were the terms of the agreement dated 17.06.2015 (**"the Second Agreement"**) fulfilled. Consequently, at all material times, Raja Khalil had remained the owner of the suit plot.

6. On 01.09.2015, Waqar filed a suit (**Exh.D5**) against Raja Khalil for the specific performance of the First Agreement. Waqar and Sultan had executed a special power of attorney dated 11.09.2015 in favour of Dr. Pirwani to engage counsel and pursue the suit. This suit was dismissed as withdrawn on 02.12.2015. Thereafter, on 29.12.2015, Waqar filed another suit (**Exh.D7**) for specific performance of the First Agreement against Raja Khalil. Vide order and decree dated 05.01.2017, the learned Civil Court rejected the plaint in the said suit on the ground that since Waqar had withdrawn the earlier suit, the second suit on the same cause of action was not competent in terms of Order XXIII, Rule 1 of the Code of Civil Procedure, 1908 (**"CPC"**). The said order and decree was not challenged any further.

7. On 13.02.2016, Waqar and Sultan filed a suit for declaration, cancellation of agreement and permanent injunction

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(**Exh.D6**) against Dr. Pirwani before the Court of the learned Civil Judge, Islamabad. In the said suit, it was pleaded that since Dr. Pirwani had failed to fulfill his obligation of paying the remaining sale consideration of Rs.1,20,00,000/- under the Second Agreement, Waqar and Sultan were entitled to forfeit Rs.35,00,000/- which had been paid as earnest money by Dr. Pirwani. Furthermore, Waqar and Sultan had sought the cancellation of the Second Agreement. They had also sought an injunction to restrain Dr. Pirwani from using the Second Agreement to their disadvantage.

8. Waqar had filed an application for the withdrawal of the said suit. On 09.06.2016, the learned Civil Court recorded Waqar's statement to the effect that he did not want to pursue the said suit due to a compromise effected between the contesting parties. Vide order dated 09.06.2016, the said suit was dismissed as withdrawn.

9. On 31.01.2017, Dr. Pirwani filed a suit for specific performance of the First and Second Agreements against Raja Khalil as well as Waqar and Sultan. On 20.03.2017, the learned Civil Court recorded Waqar and Sultan's statement to the effect that they would have no objection if the said suit was decreed. Vide order and decree dated 13.09.2017, the plaint in the said suit was rejected on the ground that since the earlier suit instituted by Waqar had been withdrawn, a second suit on the same subject matter by a third party purchaser could not be filed. In other words, the learned Civil Court had invoked the provisions of Order VII, Rule 11 CPC for rejecting the plaint in the said suit under the principle of *res judicata*.

10. The said order and decree were assailed by Dr. Pirwani in regular first appeal No.155/2017 before this Court. Vide judgment dated 04.06.2018, reported as Kartar Lal Pirwani Vs. Muhammad Waqar Azeem and others (2018 YLR 2219), the said appeal was allowed, the said order and decree dated 13.09.2017 were set-aside and the matter was remanded to the learned Civil Court with the direction to give an opportunity to Raja Khalil,

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Waqar and Sultan to file their written statements and thereafter frame issues and proceed with the trial.

11. At this stage, it may be mentioned that on 04.06.2018 (i.e., the same day on which this Court announced the judgment in R.F.A.No.155/2017), Dr. Pirwani filed a suit against Waqar and Sultan for recovery of Rs.70,00,000/- as compensation along with *mesne* profit for failing to fulfill their obligations under the Second Agreement. On 14.02.2019, the learned Civil Court recorded the statement of Dr. Pirwani's counsel to the effect that since this Court had remanded a case to the learned Civil Court, it was not necessary to proceed with this case. Vide order dated 14.02.2019, the said suit was dismissed as withdrawn.

12. After the remand of the case, Dr. Pirwani filed an application under Order VI, Rule 17 CPC seeking an amendment in the plaint in order to claim compensation against Waqar and Sultan. Vide order dated 09.04.2019, the said application was allowed. Thereafter, Dr. Pirwani filed an amended plaint in which he sought recovery of Rs.70,00,000/- as compensation along with *mesne* profit at the rate of 15% per annum with effect from 05.07.2015. On 16.07.2019, Raja Khalil filed an amended written statement contesting Dr. Pirwani's suit. On 28.09.2019, Waqar and Sultan's counsel recorded his statement to the effect that the said parties rely on their earlier written statement filed prior to the filing of the amended plaint. Vide order dated 06.10.2020, the learned Civil Court framed an issue on whether Dr. Pirwani was entitled to the recovery of Rs.70,00,000/- as compensation along with *mesne* profit. The said order dated 06.10.2020 shows that the issues re-framed with the consent of the parties were as follows:-

> ***"1. Whether the plaintiff is entitled to get a decree for specific performance of agreements dated 04.06.2015 and 17.06.2015 and permanent injunction, as prayed for? OPP***
>
> ***2. Whether plaintiff is entitled to get a decree for recovery of Rs. 70,00,000/- as compensation / damages alongwith mesne profit @ 15% per annum w.e.f. 05.07.2015 till final realization of the amount? OPP***

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3. Whether the plaintiff has no cause of action or locus standi against the defendants, hence, suit of plaintiff is liable to be dismissed? OPD
4. Whether the suit of the plaintiff is false & frivolous, hence, same is liable to be dismissed? OPD
5. Whether the plaintiff has come to the court with unclean hands and has concealed material facts from the court, hence, suit of the plaintiff is liable to be dismissed? OPD
6. Whether the defendant No. 3 is not proper and necessary party of the suit? OP D-3
7. Relief"

(Emphasis added)

13. Dr. Pirwani gave evidence as PW-1; Abdul Qadir as PW-2; Raja Ehtisham ul Hassan as PW-3; and Muhammad Naeem Khan as PW-4. Waqar and Sultan did not cross-examine Dr. Pirwani or any of the other witnesses produced by him in support of his case. The only contesting defendant was Raja Khalil who appeared as DW-1 and gave testimony consistent with his written statement. The trial culminated in the judgment dated 30.01.2021 and decree dated 23.02.2021 whereby Dr. Pirwani's suit was decreed only to the extent of his prayer for the recovery of Rs.70,00,000/- as compensation along with *mesne* profit at the rate of 15% per annum with effect from 05.07.2015 against Waqar and Sultan. The said judgment and decree has been assailed by Waqar and Sultan in the instant appeal. Vide order dated 18.01.2023, this Court stayed the proceedings before the learned Executing Court.

14. Learned counsel for Waqar and Sultan, after narrating the facts leading to the filing of the instant appeal, submitted that Dr. Pirwani, in his suit, had not disclosed that in an earlier suit instituted by Waqar for the specific performance of the First Agreement, a special power of attorney had been executed by Waqar and Sultan in Dr. Pirwani's favour to pursue the suit; that Dr. Pirwani had complete knowledge of the earlier suit instituted by Waqar for the specific performance of the First Agreement against Raja Khalil; that the order dated 05.01.2017, whereby the plaint in the said suit was rejected, was not challenged by Dr. Pirwani any further; that in his application for the amendment of the plaint, Dr. Pirwani did not disclose that he had earlier

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withdrawn a suit in which he had sought compensation against Waqar and Sultan; that a decree for compensation could not have been granted in Dr. Pirwani's favour as he had earlier withdrawn his suit for compensation; that after this Court remanded the matter to the learned Civil Court vide judgment dated 04.06.2018, there were two suits pending in which Dr. Pirwani had sought the same relief of compensation against Waqar and Sultan; that Waqar and Sultan have been exposed to double jeopardy as they have lost Rs.20,00,000/- that they paid to Raja Khalil as earnest money under the terms of the First Agreement and now under the impugned judgment and decree they will have to pay more than Rs.70,00,000/- to Dr. Pirwani; that since Dr. Pirwani was well aware that the suit plot had not been transferred to Waqar or Sultan, and that they only had an agreement to sell in their favour, a decree for recovery of money against Waqar and Sultan should not have been passed by the learned Civil Court; that in clause 8 of the Second Agreement, it is mentioned that if Waqar and Sultan withdraw from the deal or fail to get the suit plot transferred to Dr. Pirwani by 05.07.2015, they would return the amount received from Dr. Pirwani along with an equal amount as penalty, or alternatively Dr. Pirwani could file a suit for specific performance; that since Dr. Pirwani filed a suit for specific performance of the Second Agreement, he had no right to claim compensation from Waqar and Sultan; and that Waqar and Sultan could not be burdened with damages as the terms of the First Agreement had empowered them to sell the suit plot to a third party. Learned counsel for the appellants prayed for the appeal to be allowed and for the impugned judgment dated 30.01.2021 and decree dated 23.02.2021 to be set-aside.

15. During the course of the arguments, learned counsel for Waqar and Sultan made an offer that if Raja Khalil returns Rs.20,00,000/- that he had received as earnest money under the terms of the First Agreement, Waqar and Sultan would pay Dr. Pirwani Rs.35,00,000/- that was received from him as earnest

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money under the terms of the Second Agreement. This offer was turned down by Dr. Pirwani.

16. On the other hand, learned counsel for respondent No.1 / Dr. Pirwani submitted that it was not disputed that Waqar and Sultan had received Rs.35,00,000/- from Dr. Pirwani as earnest money under the terms of the Second Agreement; that at no material stage was the suit plot transferred to Waqar and Sultan so that it could be further transferred to Dr. Pirwani; that the impugned judgment and decree is consistent with clause 8 of the Second Agreement which clearly provides that if Waqar and Sultan fail to transfer the suit plot to Dr. Pirwani by 05.07.2015, they would return the amount received from Dr. Pirwani along with an equal amount as penalty; that since Dr. Pirwani was not certain as to whether R.F.A.No.155/2017 would be allowed by this Court, he filed a suit for recovery of compensation against Waqar and Sultan; that this suit was withdrawn after this Court allowed the said appeal and Dr. Pirwani filed an amended plaint claiming compensation against Waqar and Sultan; that the application for the amendment in the plaint was allowed by the learned Civil Court with Waqar and Sultan's consent; that there has been no privity of contract between Dr. Pirwani and Raja Khalil; that since Waqar and Sultan did not pursue their suit for specific performance of the First Agreement against Raja Khalil, they have no right to complain against the decree for the award of compensation in Dr. Pirwani's favour; that it is an admitted position that on 02.12.2015, Waqar had withdrawn the first suit for specific performance filed against Raja Khalil; that the plaint in the second suit for specific performance filed by Waqar against Raja Khalil was rejected vide order dated 05.01.2017 and the said order was not assailed by Waqar any further; that Dr. Pirwani was not a party in either of the suits for specific performance filed by Waqar against Raja Khalil; and that the mere fact that Dr. Pirwani had obtained a special power of attorney from Waqar and Sultan did not pose as a legal obstacle in him filing a suit for recovery of compensation against Waqar

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and Sultan. Learned counsel for Dr. Pirwani prayed for the appeal to be dismissed.

17. Learned counsel for respondent No.2 / Raja Khalil submitted that the First Agreement could not be performed because Waqar and Sultan did not pay the remaining sale consideration within the stipulated period; and that Dr. Pirwani has not challenged the learned Civil Court's judgment dated 30.01.2021 and decree dated 23.02.2021 to the extent whereby his claim for specific performance of the First and Second Agreement was turned down. Learned counsel for Raja Khalil also prayed for the appeal to be dismissed.

18. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the instant appeal have been set out in sufficient detail in paragraphs 2 to 13 above and need not be recapitulated.

19. In furtherance of the terms of the First Agreement, Waqar and Sultan had paid Rs.20,00,000/- to Raja Khalil and the remaining amount of Rs.1,20,00,000/- was to be paid within one month of 04.06.2015 with a grace period of one week. There is nothing on the record to show that Waqar and Sultan had paid the remaining sale consideration to Raja Khalil or were in a position to make such a payment. Raja Khalil forfeited Rs.20,00,000/- which had been paid as earnest money by Waqar and Sultan. The suit for specific performance of the First Agreement instituted by Waqar on 01.09.2015 was withdrawn on 02.12.2015. The learned Civil Court's order whereby the said suit was withdrawn shows that Waqar's counsel had recorded a statement to the effect that the suit was being withdrawn due to a compromise arrived at between Waqar and Raja Khalil. Neither were the terms of the compromise brought on record nor was the suit decided in terms of any compromise. Be that as it may, on 29.12.2015, Waqar instituted a second suit for specific performance of the First Agreement against Raja Khalil. The second suit was tendered in evidence as Exh.D7. In paragraph 6

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of the said suit, there is reference to a compromise on the basis of which the earlier suit was withdrawn but again there is no mention as to the terms of the compromise. In paragraph 7 of the said suit, there is a bald assertion that Raja Khalil had violated the terms of the compromise. The evidence on the record is also silent about the terms of the compromise. Therefore, the withdrawal of the first suit instituted by Waqar would be treated as a withdrawal simpliciter having the consequences envisaged by Order XXIII, Rule 1(3) CPC. The said provision mandates *inter alia* that where a plaintiff withdraws from a suit without the permission of the Court to file a fresh suit on the same subject matter, he shall be precluded from instituting any fresh suit in respect of such subject matter. The plaint in the second suit for the specific performance of the First Agreement instituted by Waqar on 29.12.2015 was rejected by the learned Civil Court vide order dated 05.01.2017 only because Order XXIII, Rule 1(3) CPC precluded Waqar from instituting the suit on the same subject matter as the earlier suit instituted by him on 01.09.2015. The said order dated 05.01.2017 was accepted by Waqar as neither he nor Sultan challenged the same before a higher forum.

20. Regardless of the fact that Waqar had filed two suits for specific performance of the First Agreement, the fact remains that the ownership in the suit plot at all relevant times remained with Raja Khalil. Due to this, Waqar and Sultan were in no position to transfer title in the suit plot in favour of Dr. Pirwani under the terms of the Second Agreement.

21. It has become commonplace in these days when the value of real estate increases by the day that people execute agreements to purchase immovable property having no resources to pay the sale consideration but soon after executing such agreements they start searching for third party purchasers so as to generate funds to pay the sale consideration to the original owners. In this process, they aim to make a quick profit by selling the immovable property to third-party purchasers at a rate higher than the sale consideration agreed with the original

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owner and that too within the period stipulated for the performance of the agreement with the original owner. It is also not unusual that such people are not able to generate funds within the period stipulated in the agreement to sell executed with the original owner for the payment of the sale consideration. This scenario leads to multiplicity of litigation not just between the original owner and the person who claims a right in the immovable property on the basis of an agreement to sell but also between such person and the third party purchaser.

22. A third party purchaser has no right under the law to seek the specific performance of the agreement to sell between the original owner and the first purchaser. This is because he is not privy to the agreement to sell between the original owner and the first purchaser. A third party purchaser can also not enforce an agreement to sell against a party who does not have title in the immovable property with respect to which such an agreement is executed, but such a third party purchaser cannot be denied the right to be refunded the amount paid as earnest money where the seller is unable to transfer title in the property to him. It is only when the original owner transfers title in the immovable property to the first purchaser that the latter will be in a position to transfer title in the property to the third party purchaser. In the case of Abdul Hameed Vs. Shamasuddin (PLD 2008 SC 140), the Hon'ble Supreme Court enunciated the principle that a transferee stepping in the shoes of a transferor who was not a lawful owner of the property would not get a better title. In the case of Nadeem Sadiq Vs. Dewan Masih Gulraiz (2022 YLR 2151), the Hon'ble Lahore High Court held that when a person has no title in an immovable property, he could not enter into an agreement for the transfer of such property.

23. A mere agreement to sell does not invest a purchaser with title in the property so as to enable him to sell it further. It is only when a document of title / sale deed / allotment letter is executed in a purchaser's favour that he is empowered to convey title. It is well settled that an agreement to sell is not a document which, by

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itself, creates a title in the immovable property. It only creates a right to obtain another document i.e., a sale deed in favour of the person in whose favour the agreement to sell is executed. Reference in this regard may be made to the law laid down in the cases of Rasheeda Begum Vs. Muhammad Yousuf (2002 SCMR 1089), Shah Muhammad Vs. Atta Muhammad (2005 SCMR 969) and Muhammad Ibrahim Vs. Fateh Ali (2005 SCMR 1061). The practice of selling immovable property by persons who neither have title in such property nor are in a legal position to have title in such property transferred in their favour, needs to be deprecated in the strongest terms. Such transactions lead to wasteful litigation and consume the Courts' public time.

24. As mentioned above, a person who has not acquired title in the immovable property cannot transfer the same to a third party purchaser by executing an agreement to sell with him. But the law does not prohibit a person who has entered into an agreement to purchase immovable property to enter into another agreement for the sale of such property to a third party purchaser. Where such a person does enter into an agreement to sell with a third party purchaser, the latter's right to seek the specific performance of the agreement to sell in his favour is postponed until proprietary rights in the immovable property are acquired by the person who executes the agreement to sell. I say so because Section 43 of the Transfer of Property Act, 1882 provides that where a person fraudulently or erroneously represents that he is authorized to transfer certain immovable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists.

25. The question of enforceability of an agreement to transfer land before proprietary rights had been conferred on the vendor came to be considered by the Hon'ble Supreme Court in the case of Muhammad Iqbal Vs. Muhammad Hussain (PLD 1986 SC 70).

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In the said case, government land was allotted to Ghulam Rasool as *Dakhilkar* (tenant with occupancy rights). Subsequently, he made an application to the Collector, Sheikhupura, for being given proprietary rights over the said land. The application was still pending when Ghulam Rasool entered into an agreement with Muhammad Hussain to the effect that he would transfer the said land in his favour for a sum of Rs.5,000/- after the proprietary rights had been conferred upon him. He, however, received the price of the land in advance. Before the conferment of the proprietary rights on his application, Ghulam Rasool died. After his death, his legal heirs made another agreement with Muhammad Hussain admitting the earlier sale and agreed to fulfill the same by transferring the land to him as and when the proprietary rights were given to them by the Government. After some time, proprietary rights with respect to the land were conferred on Ghulam Rasool's legal heirs. Despite repeated requests by Muhammad Hussain, the land was not transferred to him. He, therefore, filed a suit for specific performance. Ghulam Rasool's legal heirs had also sold the said land to other purchasers who were also impleaded as respondents in the suit. The Hon'ble Supreme Court held that the agreement to sell executed between Ghulam Rasool and Muhammad Hussain was not hit by the provisions of Section 19 of the Colonization of Government Lands (Punjab) Act, 1912, which bars a tenant by or under the Government Tenants (Punjab) Act, 1893 or the Colonization of Government Lands (Punjab) Act, 1912 to transfer land allotted to him. The Hon'ble Supreme Court referred to and followed an earlier judgment dated 16.06.1981 passed in civil appeal No.216/1978, wherein it was held as follows:-

> ***"It was held by this Court in paragraph 12 of its judgment in that case that a contract of this kind was not violative of the provisions of section 19 of the Colonization of Government Lands Act, 1912. Paragraph No.12 may be reproduced here for facility of reference:--***
>
> > ***On the facts of the case, we are clear that the document was merely an agreement to sell the specific performance of which was postponed to a date when the grantees had acquired the proprietary rights. Such a reservation in the deed itself showed***

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> ***the awareness of the prohibition, the recognition of its legal effect and an effort on the part of the contracting parties to keep themselves well; within the confines of the law and to act in accordance with the requirements of the law. Such an agreement to sell cannot be said to be violative of either the express provisions of section 19 of the Act or of the public policy behind such a statutory provisions."***

Law to the said effect has also been laid down in the cases of Muhammad Sadiq Vs. Muhammad Ramzan (2002 SCMR 1821) and Arbab Ali Vs. Noor Bakhsh (2003 CLC 1670). Although all these cases pertain to the execution of agreements to transfer land by a person in whose favour allotment of such land had not been made under the provisions of Colonization of Government Lands (Punjab) Act, 1912, it is my view that this principle would also apply where a person executes an agreement to sell immovable property to a third party purchaser at a stage when the seller in such an agreement had not acquired title in the immovable property from the original owner.

26. In the case at hand, Waqar and Sultan represented, by executing the Second Agreement with Dr. Pirwani, that they were authorized to transfer the suit plot and professed to transfer the same for consideration mentioned in the said agreement. Since the Second Agreement has no reference to the First Agreement, I am of the view that Waqar and Sultan fraudulently (not erroneously) represented to Dr. Priwani that they were authorized to sell the suit plot. Even if it is assumed that they did so erroneously, the fact remains that Waqar and Sultan did not acquire ownership in the suit plot by 05.07.2015, i.e. the date stipulated in the Second Agreement for the transfer of the suit plot. With the first suit for specific performance instituted by Waqar having been withdrawn and the plaint in the second suit instituted by him having been rejected, all hopes of Waqar and Sultan acquiring title in the suit plot were lost. This being so, Dr. Pirwani could not expect the Court to pass a decree for the specific performance of the Second Agreement in his favour. The learned Civil Court was wise in turning down Dr.

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Pirwani's prayer for a decree for specific performance of the Second Agreement and allowing his prayer for compensation.

27. The withdrawal of the suit filed on 04.06.2018 by Dr. Pirwani for seeking compensation from Waqar and Sultan is of no consequence given the fact that Waqar and Sultan did not object to Dr. Pirwani's application for amendment in the suit filed on 31.01.2017 by Dr. Pirwani so as to enable him to seek compensation from them. Indeed, the award of compensation for Rs.70,00,000/- is in consonance with clause 8 of the Second Agreement which obligates Waqar and Sultan to pay the said amount to Dr. Pirwani in the event they fail to transfer the suit plot to him by 05.07.2015. It is not disputed that the suit plot was not transferred but rather could not have been transferred by Waqar and Sultan to Dr. Pirwani by the said date. Had Waqar and Sultan paid the said amount to Dr. Pirwani by 05.07.2015, they would have saved themselves from being burdened with the payment of *mesne* profit. Having not done so, now, after a lapse of eight years, they will have to pay more than double of Rs.70,00,000/- in terms of the impugned judgment and decree – that is if they pay the decretal amount this month.

28. Much emphasis was laid by the learned counsel for the appellants on the special power of attorney dated 11.09.2015 executed by Waqar and Sultan empowering Dr. Pirwani to engage counsel and pursue the suit titled "Waqar Azeem Vs. Raja Muhammad Khalil, etc." pending before the Court of the learned Civil Judge, Islamabad. At the time when the said power of attorney was executed, the first suit for specific performance of the First Agreement instituted by Waqar on 01.09.2015 against Raja Khalil was pending. This suit was dismissed as withdrawn on 02.12.2015. Waqar and Sultan do not even allege that Dr. Pirwani had any hand in the withdrawal of the said suit. They do not even allege that the second suit for specific performance of the First Agreement filed on 29.12.2015 against Raja Khalil was instituted by Dr. Pirwani. Therefore, the execution of the said

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power of attorney cannot operate to defeat Dr. Pirwani's claim for compensation against Waqar and Sultan.

29. In view of the above, I do not find any merit in the instant appeal, which is dismissed with costs throughout.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 12/07/2023

(JUDGE)

APPROVED FOR REPORTING

*Qamar Khan**

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