Form No: HCJD/C

JUDGMENT SHEET.
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD.

R.F.A No. 314 of 2022

Wajid Mehmood.

Versus

Muhammad Hanif and another.

APPELLANTS BY:	Syed Ishtiaq Haider, Advocate along with appellant.
RESPONDENTS BY:	Mr. Arif Khan, Advocate for respondent No.1.
DATE OF HEARING:	21.05.2024

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BABAR SATTAR, J. - The appellant has impugned a judgment and decree dated 23.04.2022, pursuant to which the suit for specific performance of agreement to sell between the appellant and respondent No.1 dated 24.07.2004, was dismissed.

2. The appellant as plaintiff filed a suit for specific performance of an agreement to sell dated 24.07.2004 **("Sale Agreement")** in relation to a commercial plot measuring 10 Marlas to be allotted to respondent No.1 by the Intelligence Bureau Employees Cooperative Housing Society **("IB Society")** under Membership No.1886. Respondent No.1 was never allotted a commercial plot and was instead allotted three residential plots. The appellant filed an application under Order VI Rule 17 of the Code of Civil Procedure, 1908 **("CPC")** seeking amendment of the pleadings on the basis that the description of the property was inadvertently left out at the

time of filing of the suit and the property was mistakenly identified as commercial instead of residential at the time of execution of the Sale Agreement. (This application was subsequently allowed by the Civil Court by order dated 05.03.2018 on the basis that under the Sale Agreement, respondent No.1 had divested his rights in relation to Membership No.1886 in the IB Society and the residential plots were allotted to respondent No.1 under Membership No.1886). The appellant claimed that sale consideration in the amount of Rs.135,000/- was paid at the time of execution of the Sale Agreement out of a total sale consideration of Rs.240,000/-. The appellant further claimed that respondent No.1 refused to accept the balance consideration and transfer the property that formed the subject-matter of the Sale Agreement **("Property")** forcing the appellant to file a suit for specific performance on 07.03.2015.

3. Respondent No.1 disputed the appellant's claim in the written statement. He took the position that the Sale Agreement related to a commercial plot, if at all allotted to respondent No.1, and did not specify any sale consideration. That no commercial plot was ever allotted to respondent No.1 and no sale consideration was either agreed between him and the appellant nor was received by him. Respondent No.1 also filed an application under Order VII Rule 11 of CPC contending, *inter alia*, that the suit was barred by limitation (This application was dismissed by the Civil Court by order dated 20.11.2015 on the basis that no time for performance of the Sale Agreement was stated and consequently the question of limitation could not be decided without recording of evidence).

4. The Civil Court framed the following issues on 07.09.2019:

i. Whether the plaintiff is entitled to get a decree for specific performance of the sale agreement dated 24.07.2014, permanent and mandatory injunction as prayed for? OPP
ii. Whether suit of the plaintiff is not maintainable and liable to be dismissed, in view of factual and legal objections raised in written statements? OPD
iii. Relief?

5. In relation to issue No.1, the Civil Court came to the conclusion that the property did not exist at the time of execution of the Sale Agreement as had been acknowledged by the appellant (PW-1) as well as by Mr. Abdul Shakoor (DW-2), who appeared as a representative of the IB Society. The Civil Court concluded on the basis of law laid down by the Supreme Court in ***Muhammed Miskeen Vs. District Judge Attock (2020 SCMR 406)*** and a judgment of this Court in ***Bashir Ahmed Vs. Muhammad Isa (2021 MLD 698)*** that where the property that formed the subject-matter of a Sale Agreement was not clearly identified, the specific performance of the agreement in relation to such property could not be ordered. The Civil Court further took into account the fact that the Sale Agreement exhibited as Ex-P/2 reflected sale consideration as Rs.135,000/- while the plaint stated that the sale consideration was in the amount of Rs.240,000/-. In view of the evidence including, *inter alia*, the testimony of Mr. Muhammad Iqbal Zahid, who appeared as PW-3 and stated that no consideration was paid by the appellant to respondent No.1 in his presence, and in the absence of any other evidence led by the appellant

to establish payment of consideration, it was found that no consideration was paid by the appellant to respondent No.1. The Civil Court noted that the appellant made no effort to deposit any sale consideration with the Court while seeking the enforcement of the sale agreement. The Civil Court further observed that the appellant had relied on an irrevocable General Power of Attorney purportedly issued in his favour by respondent No.1, which was exhibited as Ex-P/3 and the date of execution was reflected as 24.07.2015, which was a date ten years subsequent to the execution of the Sale Agreement on 24.07.2004, and also subsequent to the date of institution of the suit i.e. 07.03.2015. After appreciating the evidence as discussed above, the Civil Court concluded that the appellant was not entitled to the discretionary relief of specific performance of the Sale Agreement in terms of Section 22 of the Specific Relief Act, 1877 **("Specific Relief Act")**. Issue No.1 was accordingly decided against the appellant. After deciding issue No.1 as such, the Civil Court did not rule on the maintainability of the suit and denied the relief sought by the appellant while dismissing the suit.

6. The learned counsel for the appellant submitted that while accepting the appellant's application under Order VI Rule 17 of CPC for amendment of pleadings, the Civil Court did not frame an issue in relation to the rectification of the Sale Agreement. He submitted that the Sale Agreement mistakenly referred to a commercial plot as opposed to a residential plot, and the parties had not been invited by the Civil Court to lead evidence by framing an issue in this regard. He submitted that the execution of the Sale Agreement was not denied by

respondent No.1. Respondent No.1 had also issued a General Power of Attorney to the appellant. Respondent No.1 was allotted three residential plots under Membership No.1886, which number was mentioned in the Sale Agreement. Consequently, the appellant was entitled to seek the enforcement of the Sale Agreement in relation to one residential plot of 10 Marlas. He submitted that the appellant appearing as PW-1 had testified that he had paid a consideration of Rs.135,000/- to respondent No.1. This testimony was corroborated by Mr. Pervez Akhtar, who appeared as PW-2 and confirmed that payment of Rs.135,000/- was made by the appellant to respondent No.1. Such evidence was not properly appreciated by the Civil Court while finding that sale consideration had not been proved by the appellant. He contended that the suit was liable to be decreed by setting aside the impugned judgment and decree.

7. The learned counsel for respondent No.1 submitted that the appellant had neither led any evidence nor had instituted a separate suit to have the Sale Agreement rectified within the meaning of Section 31 of the Specific Relief Act. The Sale Agreement clearly defined the subject-matter of the content as a commercial plot to be allotted to respondent No.1 under his Membership No.1886, which plot was never allotted to him. And consequently, the Sale Agreement in relation to a property that never came into existence was void and unenforceable. He submitted that the Civil Court had correctly concluded that the Property had not been described in the Sale Agreement with certainty and such Sale Agreement could not be specifically enforced. The Civil Court also correctly appreciated that the

appellant had failed to prove payment of consideration. While the appellant had asserted in the plaint that a receipt in the amount of Rs.135,000/- had been issued reflecting payment of consideration to such extent by the appellant to respondent No.1, no evidence whatsoever was led to prove payment of consideration. This aspect of the controversy fully came out in the cross-examination of the appellant as PW-1, who denied producing any bank statement or other proof of payment of sale consideration to the extent of Rs.135,000/-. He further submitted that Mr. Iqbal Zahid, who appeared as PW-3 also acknowledged that the Sale Agreement as executed by respondent No.1 had left out the sale consideration as blank. This was filled out by the appellant subsequently. He further submitted that the suit was also time barred as the Sale Agreement was admittedly executed on 24.07.2004 and the suit was not filed up until 07.03.2015, even though the period of limitation prescribed under Article 113 of the Limitation Act, 1908 **("Limitation Act")** for purposes of seeking the specific performance of an agreement under the Limitation Act was a period of three years. Even if it were the appellant's contention that the suit had been filed within three years of respondent No.1 refusing to perform the agreement, it was for the appellant to adduce evidence for such purpose to establish that the suit was maintainable and had been filed within the period of limitation. This was not done. The learned counsel for the respondents supported the judgment for rightly dismissing the appellant's suit.

8. Let us first consider the content of the Sale Agreement. After identifying the parties, the Sale Agreement states that,

"the first party is member of Intelligence Bureau Employees Cooperative Housing Society (Pakistan Town Phase-III, Zone-V), Islamabad under Membership No.1886, and a commercial plot of land measuring 10 Marlas to be allotted by the said Society, to the first party". The Sale Agreement then follows to state that, *"the first party hereby sells, transfers, conveys and alienates his above membership with all right of allotment of the said plot with its all rights, interests, deposits, profits and liabilities in consideration of Rs.135,000/- in favour of the second party…"*. It is unambiguous, in view of the description of the Property in the Sale Agreement, that it relates to a commercial plot and not to a residential plot. It is also evident from the language used in the Sale Agreement that the parties were aware that the property was yet to be allotted by the IB Society to respondent No.1. The plaint as filed at the time of institution of the suit sought specific performance of the Sale Agreement in relation to a commercial plot, as mentioned in the Sale Agreement. While in Para-3 of the plaint, asserted that respondent No.1 had refused to accept balance sale consideration, it provided no further details in such regard. The prayer also sought enforcement of the Sale Agreement in relation to the commercial plot that was mentioned therein. The appellant filed an application under Order VI Rule 17 of CPC for amendment in the plaint, which was allowed by the Civil Court by order dated 05.03.2018 and the revision against such order was dismissed by the Additional District Court by order dated 20.11.2018. Both the aforementioned orders, suffered from legal infirmity as there was no evidence adduced before the Civil Court, establishing for purposes of Section 31

of the Specific Relief Act, that the Sale Agreement was a product of fraud or a mutual mistake by the parties. To the extent that it referred to a commercial plot as opposed to a residential plot, the Civil Court acted under the misapprehension that the subject-matter of the Sale Agreement was the respondent's Membership No.1886 in the IB Society and not a plot to be allotted to respondent No.1 under his entitlement pursuant to such Membership of the IB Society. Neither the Civil Court nor Additional District Court took into account the fact that while a party could be allowed to amend its pleadings under Order VI Rule 17 of CPC, such application could not be allowed for purposes of rewriting a contract between the parties. Unless of course the party seeking rectification of the legal instrument proved on a balance of probabilities that the rectification was warranted in view of any fraud or by virtue of a mutual mistake of the parties, due to which the Sale Agreement did not reflect the true intention of the parties. The application filed by the appellant under Order VI Rule 17 CPC was therefore not seeking an amendment of pleadings, but was seeking rectification of the Sale Agreement, which could not have been allowed without the Civil Court coming to a conclusion on the basis of evidence adduced that the intent of the parties while executing the Sale Agreement was not correctly reflected by the language used in the Sale Agreement due to a mutual mistake of the parties. There is absolutely nothing in the application filed by respondent No.1, reflecting what mutual mistake was committed by the parties that led to the use of the word commercial in both the Sale Agreement as well as the

General Power Attorney exhibited as Ex-P/3 relied on by the appellant.

9. Section 18 of the Specific Relief Act vests in a purchaser the right to compel a vendor to make a good contract in relation to any property in which the vendor has imperfect title, if subsequent to the execution of the contract the vendor acquires interest in the property that forms the subject-matter of the agreement to be enforced. In the instant case, the appellant filed an affidavit-in-evidence dated 19.01.2022, exhibited as Ex-P/1, which does not utter a word about any mistake in relation to the property being characterized as a commercial plot as opposed to a residential plot. At the stage of producing evidence, the Civil Court had already allowed the appellant's application under Order VI Rule 17 of CPC and the appellant, therefore, had ample opportunity to adduce evidence, for purposes of Section 31 of the Specific Relief Act, to establish that the characterization of the property as a commercial plot was a product of a mutual mistake committed by the parties. Similarly, Mr. Pervez Akhtar (PW-2) also filed an affidavit-in-evidence and made no testimony in relation to any mistake for purposes of Section 31 of the Specific Relief Act. After the filing of the suit, respondent No.1 filed a written statement and contended that the Sale Agreement was in relation to a commercial plot if at all allotted to respondent No.1 and as no commercial plot had ever been allotted to respondent No.1, the Sale Agreement being a conditional one had become void. Likewise, respondent No.2 (IB Society) also filed a written statement providing details of the three residential plots allotted to respondent No.1, which established

that no commercial plot had been allotted to him. It was after this that the appellant filed an application under Order VI Rule 17 of CPC seeking to amend the pleadings and asserted that the reference to the commercial plot as the subject-matter of the Sale Agreement was an inadvertent mistake.

10. What emerges from the above discussion is that the property as described in the Sale Agreement as forming its subject-matter was a commercial plot and not a residential plot. The appellant as claimant led no evidence to establish that the description of the subject-matter as that being a commercial plot was an inadvertent mistake and that the Court ought to treat one of the three residential plots allotted to respondent No.1 by the IB Society as the actual subject-matter of the Sale Agreement. The other complication with such reading of the Sale Agreement is that respondent No.1 was allotted three residential plots by the IB Society. It is not the appellant's claim that the appellant entered into a transaction with respondent No.1 to purchase all three residential plots allotted to him by respondent No.2 (IB Society) under the appellant's Membership No. 1886. From this aspect too it is evident that the Sale Agreement does not define the property that forms the subject-matter of the sale agreement with clarity and certainty. It is settled law that a contract that does not clearly specify the property that forms its subject-matter cannot be specifically enforced. The rationale of this principle is self-evident: in order to determine the intent of the parties to a contract, the object of the contract is to be deciphered, without which it cannot be determined as to what the contracting parties consented to. Order VII Rule 3 of CPC requires that where the subject-matter

of a suit is immovable property, the plaint must contain a description of the property sufficient to identify it. The failure to sufficiently identify a property as required under order VII Rule 3 is not fatal as the plaint can always be amended with the permission of the Court as provided under Order VI Rule 17 of CPC. However, where the contract itself is vague in relation to its subject-matter or does not sufficiently identify the property in relation to which it has been executed, such vagueness is not curable.

11. Section 29 of the Contract Act, 1872, provides that, "*agreements, the meaning of which is not certain, or capable of being made certain, are void.*" Further, Section 21(c) of the Specific Relief Act provides that, "*a contract the terms of which the Court cannot find with reasonable certainty,*" cannot be specifically enforced. The law interpreting the aforementioned sections is well settled. In ***Mian Mohammad Saleem and others Vs. Mst. Hameeda Begum and others (1987 SCMR 624)*** where the identity of the land agreed to be sold could not be ascertained with reasonable certainty, it was held by the Supreme Court that specific performance could not be granted. In ***Haji Saindino Khan and another Vs. Mst. Zaibunnissathrough Legal Heirs and another(1991 SCMR 972)*** the Court found that lawful consideration, which was an essential term of the contract, was not found within the relevant provision of the contract. It was consequently held that the, "*offer was vague for uncertainty and indefiniteness on the acceptance of which no contract is ever born or comes into being.*" In ***Mohammad Riaz and others Vs. Mst. Badshah Begum and others (2021 SCMR 605)*** the Supreme Court

found that the agreement, *"did not describe the land which was the subject matter of the agreement. Therefore, the agreement would be void for uncertainty in terms of section 29 of the Contract Act, 1872, and consequently it could not be specifically enforced as stipulated by section 21(c) of the Specific Relief Act, 1877."* In ***Inayatullah Khan and others Vs. Shabbir Ahmed Khan (2021 SCMR 686)*** where a document did not, *inter-alia*, describe the land and the total sale consideration and when the balance sale consideration was payable, it was held that, *"such a document does not constitute a contract to sell land. Therefore, it would be void for uncertainty in terms of section 29 of the Contract Act, 1872, which provides that agreements, the meaning of which is not certain or capable of being certain are void."* In ***Muhammad Ghaffar (deceased) through LRs and others Vs. Arif Muhammad (2023 SCMR 344)*** it was observed in the judgment of the Supreme Court that, *"there is nothing on record to suggest the exact measurement of the land transferable under the agreement-in-question. When property is not specific no decree can be passed in the light of section 21 of the Sp*ecific *Relief Act*, 1877." In ***Sheikh Akhtar Aziz Vs. Mst. Shabnam Begum (2019 SCMR 524),*** the Supreme Court reiterated that the identity and accurate description of the property agreed to be sold as well as the amount of sale consideration were essential ingredients of an agreement. In ***Mohammed Miskeen*** the Supreme Court while allowing an appeal in relation to a suit decreed under the Specific Relief Act held that, *"the courts below have totally ignored the law on the subject while decreeing the suit on the basis of an agreement which neither specified the property under sale by meets and*

bounds nor provided for the sale consideration." Most recently in ***Rao Abdur Rehman Vs. Mohammed Afzal*** ***(2023 SCMR 815)*** the Supreme Court emphasized that, "*where an effective and enforceable contract is not structured by the parties, it is not the domain or province of the court to make out a contract for them but the lis would be decided on the basis of terms and conditions agreed and settled down in the contract. The decree for specific performance may not be passed if the substratum of the contract suffers from shortcoming or legal infirmities which render the contract unacceptable and enforceable."*

12. The language of the Sale Agreement clearly contemplates that a commercial plot is to be allotted to respondent No.1 by virtue of his Membership with the IB Society. In other words, the suit property at the time of execution of the Sale Agreement was inexistent. In view of Section 18 of the Specific Relief Act, the appellant could have asserted a claim in relation to Property that formed the subject-matter of the Sale Agreement, if rights in relation to such Property were vested in respondent No.1 subsequent to the execution of the Sale Agreement. This, however, did not happen. Respondent No.1 was never allotted any commercial plot in the IB Society. It is in these circumstances, that the appellant has sought to assert a claim against one of the three residential plots allotted to respondent No.1 by the IB Society without making out a case that the original intention of the appellant and respondent No.1 as reflected in the Sale Agreement was that the sale transaction related to a residential plot. Therefore, the appellant could derive no benefit from Section 18 of the Specific Relief Act. And the appellant made out

no case in his pleadings either, or through adducing evidence, that the Sale Agreement ought to be rectified for purposes of Section 31 of the Specific Relief Act. In these circumstances, the Civil Court correctly concluded in the impugned judgment that the Sale Agreement did not identify the property that formed the subject-matter of the Sale Agreement in relation to which specific performance of the agreement could be ordered.

13. The second reason why the suit failed was that the appellant was unable to establish payment of consideration. In the context of sale consideration, the plaint itself is self-contradictory. Para-1 of the plaint asserts that the Sale Agreement was concluded for a consideration of Rs.135,000/-. Para-6 of the plaint states on the contrary that at the time of execution of the Sale Agreement, the appellant paid respondent No.1 Rs.135,000/- out of a total amount of Rs.240,000/-. The sale consideration of Rs.240,000/- finds no mention in the Sale Agreement. There is a similar contradiction between the affidavit-in-evidence sworn by the appellant as PW-1 where he testifies that the total sale consideration for the property was Rs.240,000/-, out of which Rs.135,000/- were paid by him to respondent No.1. As already mentioned, the Sale Agreement does not state that the sale consideration is Rs.240,000/-. The second and more disconcerting contradiction is between Ex-P/2 (i.e. the Sale Agreement exhibited by the appellant along with his affidavit-in-evidence) and a copy of the Sale Agreement that was appended to the plaint and was confronted to the appellant and then exhibited as Ex-X-PW1/1. While Ex-X-PW1/1 leaves out the sale consideration as blank, Ex-P/2 has the blanks filled out reflecting that the sale consideration was Rs.135,000/-.

There is a similar discrepancy in the General Power of Attorney produced by the appellant and tendered along with his affidavit-in-evidence as Ex-P/3, which reflects that the General Power of Attorney was executed by respondent No.1 on 24.07.2015 i.e. eleven years after the execution of the Sale Agreement and a few months after the filing of the suit. On the contrary Ex.X-PW-1/2, which was the General Power of Attorney, a copy of which was appended to the plaint, leaves the date of execution of such power of attorney blank. Ex-P/3 i.e. General Power of Attorney exhibited by the appellant along with his affidavit-in-evidence as PW-1 also contradicts the content of the affidavit in evidence, as it states that the General Power of Attorney was handed to him by respondent No.1 in his office at the time of execution of the Sale Agreement on 24-07-2004. If this was so, the General Power of Attorney could not have been dated 24.07.2015. The third major contradiction in the evidence is the testimony of Mr. Muhammad Iqbal Zahid (PW-3), who testified that he never met the appellant and that the appellant was not present at the time when he signed the Sale Agreement as a witness. In other words, PW-3 contradicted PW-1 and PW-2 and testified that he was not a witness to the execution of the Sale Agreement by the appellant. The second aspect of his testimony that is relevant is that no consideration was paid in his presence by the appellant to respondent No.1 (which is obvious in view of PW-3's testimony that he never met the appellant). PW-3 further asserted that the Pervez Akhtar through whom the transaction was coordinated was not the Pervez Akhtar who appeared as PW-2.

14. What emerges from the above is that the appellant has adduced no documentary evidence, including bank statements, to establish that he paid consideration to the extent of Rs.135,000/- to respondent No.1. The appellant has produced two versions of the Sale Agreement exhibited as Ex-P2 and Ex-X-PW-1/1, with the latter leaving the consideration within the Sale Agreement blank and the former having consideration filled out as Rs.135,000/-. And further that the appellant sought to produce PW-3 as his witness who was summoned through the Court process and he testified that the appellant was not present at the time of execution of the Sale Agreement by respondent No.1 and further no consideration was paid by the appellant to respondent No.1 in his presence. This testimony contradicts the testimony of the appellant as PW-1 as well as the testimony of PW-2 and corroborates the version of respondent No.1 whose position has been consistent that he received no consideration from the appellant and that he merely allowed the appellant, in a transaction coordinated by PW-3 and one Pervaiz Akhtar to use his membership number to apply for a commercial plot, which was never allotted as subsequently the IB Society changed its policy of permitting members to apply for an indefinite number of plots and limited the maximum number of plots to be allotted to a member to three. The testimony of PW-3 is also in consonance with the version of the Sale Agreement and General Power of Attorney appended by the appellant with the plaint and exhibited as Ex-X-PW1/1 and Ex-X-PW1/2, respectively.

15. It is in appreciation of this evidence that the Civil Court correctly came to the conclusion that the appellant had failed to

establish payment of consideration. And further that the evidence reflected that the appellant never sought to perform his end of the bargain by paying the sale consideration purportedly agreed between the parties as per the appellant's version and was therefore not entitled to the discretionary relief of specific performance of the Sale Agreement in view of Section 22 of the Specific Relief Act.

16. Sections 12 and 22 of the Specific Relief Act provide that specific performance of a contract constitutes discretionary relief, which discretion is to be exercised by the Court in pursuit of fairness and justice in a reasonable manner. Section 24(b) of the Specific Relief Act provides that the specific performance of a contract cannot be enforced in favor of a person who violates an essential term of the contract. Thus where it is established that a purchaser has failed to pay consideration that forms part of the sale agreement, he or she is found to be disentitled to seek the specific performance of the contract that he or she seeks to enforce.

17. The most disconcerting aspect that emerges from appreciation of evidence in the instant matter is that it appears, *prima facie*, that the appellant sought to fabricate false evidence in his affidavit-in-evidence (Ex-P1). The appellant as PW-1 testified that a consideration of Rs.240,000/- was agreed between the parties, out of which Rs.135,000/- was paid by the appellant to respondent No.1 in the presence of Mr. Parvez Akhtar (PW-2) and Mr. Iqbal Zahid (PW-3). Respondent No.1 in the written statement filed by him asserted that he received no consideration from the appellant and the Sale Agreement and

the General Power of Attorney, as signed by him, had left as blank the part of the Sale Agreement that dealt with consideration. This version is borne out by the copy of the Sale Agreement adduced by the appellant along with the plaint and subsequently exhibited as Ex-X-PW1/1. This version of respondent No.1 is also corroborated by the testimony of Mr. Iqbal Zahid (PW-3) who contradicted the affidavit-in-evidence filed by the appellant by stating that he never met the appellant, never witnessed the execution of the Sale Agreement by the appellant, and executed a version of the Sale Agreement where the sale consideration was left out blank, and also never witnessed the payment of any sale consideration by the appellant to respondent No.1. The Sale Agreement (Ex-P2) and the General Power of Attorney (Ex-P3) as exhibited by the appellant along with his affidavit-in-evidence (Ex-P1) are documents where the blanks that appear in the Sale Agreement and General Power of Attorney, Exhibit-X-PW1-1 and Ex-X-PW1-2, respectively, also reflect that Ex-P2 and Ex-P3 are forgeries where blanks have been filled out by the appellant in an effort to falsely augment his claim.

18. The court system in order to dispense justice in accordance with law relies on honest averments and testimonies of claimants that come before the courts to seek the adjudication of their claims. Order VI of CPC that prescribes requirements in relation to pleadings requires that the pleadings in the plaint or the written statement are to be verified on oath by the relevant party. The purpose of such verification of the facts asserted on oath is to ensure that the party while

presenting its version of truth to the Court does so in a candid, solemn and diligent manner.

19. Section 191 of Pakistan Penal Code, 1860 **("PPC")** defines false evidence and Section 192 describes what amounts to fabricating false evidence in a judicial proceeding. Section 193 of PPC provides that giving false evidence in a judicial proceeding or fabricating false evidence is an offence that attracts a punishment of up to seven years in jail. No justice system can function and mete out justice in contested matters where the contesting parties concoct falsehoods and lies to buttress their claims, and go scot-free where found to be fabricating evidence. This was highlighted by the Supreme Court in ***Notice to Police Constable Khizar Hayat son of Hidayatullah (PLD 2019 SC 527)*** in the following terms:

> *"We may observe in the end that a judicial system which permits deliberate falsehood is doomed to fail and a society which tolerates it is destined to self-destruct. Truth is the foundation of justice and justice is the core and bedrock of a civilized society and, thus, any compromise on truth amounts to a compromise on a society's future as a just, fair and civilized society. Our judicial system has suffered a lot as a consequence of the above mentioned permissible deviation from the truth and it is about time that such a colossal wrong may be rectified in all earnestness. Therefore, in light of the discussion made above, we declare that the rule falsus in uno, falsus in omnibus shall henceforth be an integral part of our jurisprudence in criminal cases and the same shall be given effect to, followed and applied by all the courts in the country in its letter and spirit. It is also directed that a witness found by a court to have resorted to a deliberate falsehood on a material aspect shall, without any latitude, invariably be proceeded against for committing perjury."*

20. The obligation to speak the truth is not contingent on whether the witness is testifying in a criminal matter or in relation to a civil dispute. While enumerating the components of the offence of fabricating evidence, as defined in Section 191 of PPC, the Supreme Court noted in ***Muhammad Amin vs. The State*** **(2004 SCMR 1792)** that, " a closer look at the afore-referred provision would indicate that the primary elements of the offence are as follows: (a) that a person is legally bound by oath or by an express provision of law to state that truth; (b) that he knowingly makes a statement which is false or which he believes is not true." While relying on the law laid down by the Supreme Court in the case of ***Ghulam Ali Vs. Mst. Ghulam Sarwar Naqvi (PLD 1990 Supreme Court 1)*** and ***Irshad Hussain Vs. Ijaz Hussain*** **(*PLD 1994 Supreme Court 326)***, the Division Bench of the Lahore High Court in ***Babu Irshad Ahmed Vs. Muhammad Ramzan*** ***(2002 YLR 2466)*** held that, *"it is also a settled principle of law that the discretion of court neither in case of declaration nor in a suit of specific performance, could be exercised in favour of a party, which indulged in forging and fabrication of a document in order to deprive others of their valuable property and to try to cheat the court".*

21. Where it appears to the Court conducting judicial proceedings that the parties and/or witnesses before it have been wanting in terms of their obligation to speak the truth and may have resorted to giving false evidence or fabricating evidence, the Court must not remain an indifferent bystander. It is for the Court to ensure that the process of the Court is not abused and judicial proceedings remain unsullied by falsehoods.

In view of the discussion above, this Court is of the, *prima facie,* the appellant may have given false testimony and may have fabricated evidence within the meaning of Sections 191 and 192 of PPC, the appellant may thus have rendered himself liable for the punishment prescribed under Section 193 of PPC.

22. This Court also finds that the Civil Court ought to have attended to the objection made by respondent No.1 with regard to maintainability of the suit on grounds of limitation. Section 26(2) of the CPC states that, *"on presentation of the complaint it shall be the duty of the court to prima facie satisfy itself of jurisdiction, cause of action and limitation".* The limitation for purposes of a suit for specific performance is prescribed in Article 113 of the Limitation Act, which provides a period of three years for bringing such claim. In a case where the date fixed for performance is not mentioned in the agreement, the limitation period begins to run when the plaintiff has notice that the performance has been refused. In such case, it is for the plaintiff to establish that it has asserted the claim within the period of limitation.

23. In the instant case, the Sale Agreement was executed on 24.07.2004, the residential plots were allotted to respondent No.1 by the IB Society on 07.07.2006, 09.07.2008 and 07.07.2010. The suit was instituted by the appellant almost five years after the allotment of the last residential plot to respondent No.1 on 07.03.2015. The appellant in the plaint did not mention a specific date on which the performance of the Sale Agreement was purportedly refused by respondent No.1. Even after respondent No.1 filed an application under Order VII

Rule 11 of CPC, claiming that the suit was barred by limitation, the Civil Court did not determine with any certainty as to when the period of limitation began to run. As the Civil Court has given no determination on the question of limitation, this Court need not make such determination at the appellate stage given that the suit has otherwise been dismissed on merits for reasons already discussed in detail. It is, however, essential to remember that in terms of Section 26 of CPC, the court is under an affirmative duty at the time of institution of the suit to determine, that the suit has been filed within the period of limitation and such exercise ought to be taken even without the contesting party raising an objection with regard to limitation.

24. For the reasons stated above, the Court finds that the suit filed by the appellant was liable to be dismissed and the appellant has failed to identify any infirmity in the impugned judgment and decree. The Court further finds that the conduct of the appellant as the claimant was such that it disentitled the claimant from grant of equitable relief for purposes of Section 22 of the Specific Relief Act. The appeal is therefore ***dismissed*** subject to a cost of Rs. 200,000/- payable by the appellant to respondent No.1 within a period of 30 days. The learned counsel for the appellant will file a compliance certificate with Deputy Registrar (Judicial) of this Court certifying that the order as to cost has been complied with.

25. By *prima facie* misrepresenting himself before this Court and before the Civil Court, the appellant is liable to be proceeded against for perjury and for giving and fabricating false evidence in terms of Sections 191 and 192 of PPC

punishable under Section 193 of PPC. Let a copy of this judgment be sent to the District and Sessions Judge Islamabad who will entrust the matter to a competent Court for proceeding in accordance with law against the appellant, Wajid Mehmood, to determine if he is liable for giving and fabricating false evidence.

(BABAR SATTAR)
JUDGE

Announced in open Court on 11.09.2024.

JUDGE

Shakeel Afzal/-

Approved for reporting.