Form No: HCJD/C-121

# JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

**Regular First Appeal No.315 of 2024**

Naheed Shoukat Malik (late) through her legal heirs.

***Versus***

Malik Mohsin Raza and 02 others.

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| | |
|---|---|
| Appellants by: | Mr. Naseer Anjum Awan, Advocate. |
| Respondent No.1 by: | Ch. Kamil Hayat and Mr. Mehmood Sadiq Khokhar, Advocates. |
| Respondents No.2&3/DHA by: | Raja Muhammad Masood, Advocate. |
| Date of hearing: | 28.04.2025. |

**TARIQ MEHMOOD JAHANGIRI, J:** Through this Regular First Appeal filed through Special Attorney Muhammad Jamil Rizvi son of Haji Khan, the appellants have assailed judgment and decree dated 01.06.2024, passed by learned Additional District Judge-III, East-Islamabad, whereby suit for specific performance, possession and permanent injunction, filed by respondent No.1/Malik Mohsin Raza, was decreed and the suit for declaration, cancellation of agreement to sell dated 26.03.2022, mandatory and permanent injunction, filed by the appellants was dismissed.

02. Brief facts of the case are that respondent No.1 / Malik Mohsin Raza filed a civil suit No.0183/2022, for specific

performance of agreement to sell dated 26.03.2022, alongwith possession and permanent injunction, against the appellants contending therein that the predecessor-in-interest of appellants No.1-A to 1-D, Mst. Naheed Shoukat Malik (deceased), was the owner in possession of a house having total covered area 5899.37 Sq. ft. (Plot area 500.00 Sq. yards) bearing House No.7, Street No.12, Sector D, Phase-II, situated in Defense Housing Authority "DHA" Phase-II, Islamabad-Rawalpindi, through an allotment letter dated 20.02.2020, having membership No.HP-105721; a completion certificate in respect of the said house was also issued in her favour by DHA on 10.05.2022; in the month of March, 2022, the predecessor-in-interest of the appellants No.1-A to 1-D, Mst. Naheed Shaukat Malik, agreed to sell the house in dispute to respondent No.1 for a total sale consideration of Rs.5,80,00,000/-, in this regard, an agreement to sell was executed between the parties on 26.03.2022; at the time of execution of the agreement, an amount of Rs.5,00,000/- was paid in cash to Mst. Naheed Shoukat, while the remaining amount of Rs.5,75,00,000/- was agreed to be paid at the time of transfer; after execution of the agreement dated 26.03.2022, both the parties obtained statements of dues from DHA on 19.05.2022, which were deposited on 22.07.2022. Subsequently, a No Demand Certificate (NDC) was issued by DHA on the same date after clearance of all dues, including

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government taxes; respondent No.1 despite repeated demands, both personally and through intermediaries, Mst. Naheed Shoukat failed to perform her part of the contract, including transfer of the property and delivery of vacant possession, in violation of the terms of the agreement.

03. The predecessor-in-interest of the appellants instituted a suit for declaration, cancellation of agreement to sell dated 26.03.2022, permanent and mandatory injunction before the Court of Senior Civil Judge, Islamabad, where due to the pecuniary jurisdiction suit was withdrawn and thereafter instituted before the District Judge-East, Islamabad on 10.03.2023; both the suits were consolidated, where predecessor-in-interest of appellants No.1-A to 1-D sought the remedy with prayer that a decree for declaration to the effect that alleged agreement to sell was a forged and manipulated document; further declaration to the effect that respondent No.1 had no right to claim on the basis of alleged agreement to sell.

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04. The suits were contested between the parties, written statements were filed. Out of divergent pleadings, following consolidated issues were framed on 17.05.2023:

*i. Whether the plaintiff executed an agreement to sell dated 26.03.2022 with the predecessor in interest of defendants and was ready to perform his part within stipulated period? OPP*

*ii. Whether time was of the essence of the contract and the defendants failed to pay the balance sale consideration within stipulated time? OPD*

*iii. Whether the agreement to sell dated 26.03.2022 is forged and manipulated documents? OPD*

*iv. Whether the plaintiff is entitled to the decree of specific performance, possession and permanent injunction alongwith consequential relief on the ground stated in the plaint? OPP*

*v. Whether the defendants are entitled to the decree of declaration, cancellation of agreement to sell dated 26.03.2022, mandatory and permanent injunction on the grounds stated in the plaint? OPD*

*vi. Relief.*

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05. During evidence of respondent No.1, Mohsin Raza appeared in witness box as **PW-1**, got his statement recorded and during his statement, he produced original agreement dated 26.03.2022 as **Ex.PA/1-2**, statement of dues (original) as **Ex.PB**, demand certificate dated 22.07.2022 (original) as **Ex.PC**, copies of plaint of suit filed by Naheed Shaukat Malik alongwith order sheets **Ex.PD/1-13**; he also produced Malik Khayyam Nadeem as **PW-02**, who submitted authority letter as **Ex.PE**, allotment letter in the name of Mrs. Naheed Shaukat Malik as **Ex.PF**, copy of possession letter originally issued to owner as **Ex.PG**, completion certificate dated 10.05.2023 as **Ex.PH**, statement of dues of seller and purchaser dated 19.05.2022 as **Ex.PJ**, tax challan amounting to Rs.4,30,000/- deposited on 22.07.2022 by Mst. Naheed Shaukat as **Ex.PK**

and challan amounting to Rs.4,30,000/- deposited on 22.07.2022 by Mst. Maryam Malik as **Ex.PL**; on 19.03.2024, learned counsel for respondent No.1 closed the oral as well as documentary evidence of respondent No.1.

06. On the other hand, learned counsel representing the appellants made statement that as respondent No.1 had failed to prove his case as per law, therefore, he did not want to produce any evidence on behalf of the appellants.

07. After concluding the trial, learned Additional District Judge-III, East-Islamabad decreed the suit filed by respondent No.1 and dismissed the consolidated suit No.0317/2023, filed by the appellants vide impugned judgment and decree dated 01.06.2024, hence the instant R.F.A.

08. Learned counsel for the appellants, *inter alia,* contends that the findings of the learned trial Court are contrary to law and facts on record; that the agreement to sell dated 26.03.2022 was not proved in accordance with Article 79 of the Qanun-e-Shahadat Order, 1984, as the marginal witnesses to the said agreement did not appear before the Court; that the burden to prove the execution and validity of the agreement squarely lay upon respondent No.1/plaintiff, and in the absence of production of the attesting witnesses as mandated by Article 79, respondent No.1 had failed to discharge this burden. It is further submitted that the deceased

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admitted the execution of the agreement in the previous suit and not in the present proceedings. Learned counsel further contends that such an admission could not be treated as an admission for the purpose of the present suit, and relied on the judgment reported as **"2001 YLR 1103"**; that the document attached with the plaint is forged, fabricated, and manipulated; the learned trial Court failed to consider the contentions of the appellants in their true perspective, and the impugned judgment is based on misreading and non-reading of the material available on record; impugned judgment and decree is erroneous and is not tenable under the law, hence the same is liable to be set-aside.

09. Conversely, learned counsel for respondent No.1 has opposed the contentions raised by the learned counsel for the appellants and submits that execution of the agreement to sell dated 26.03.2022, was admitted by the predecessor-in-interest of appellants No.1-A to 1-D, Mst. Naheed Shoukat Malik (deceased) and an admitted fact need not be formally proved. Learned counsel has placed reliance on a case reported as **"2020 SCMR 496"**; no evidence was brought on record by the appellants to substantiate their allegation of forgery and mere denial in the written statement cannot be treated as evidence. Reliance has also been placed on the judgments reported as **"2007 SCMR 569"**, **"2018 CLC 1524"**, and **"2009 CLC 966"**; that respondent No.1 in order to prove his

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case has produced cogent and convincing evidence; that he has produced oral as well as documentary evidence, which sufficiently proves his case; the impugned judgment and decree has rightly been passed, hence the instant appeal is liable to be dismissed.

10. Arguments advanced by learned counsel for the appellants and learned counsel for the respondents have been heard and record has been perused with their able assistance.

11. Civil Suit No.0183 for specific performance of sale agreement dated 26.03.2022, possession and permanent injunction was filed by respondent No.1 / Malik Mohsin Raza against the appellants on 02.09.2022, which has been decreed on 01.06.2024, against which instant R.F.A. has been filed.

12. The execution of the agreement has been admitted by the appellants at different stages, in written statement filed by the appellants before the trial Court, it is mentioned in para No.03 of the preliminary objections that:

> ***"The plaintiff entered into an agreement to sell with regard to suit house with the predecessor in interest of the Ans. Defendants for total sale consideration of Rs.58,000,000/- (Fifty Eight Million only)."***

13. The reason for non-compliance of the agreement was mentioned that the time limit for finalization of the deal was

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fixed for two weeks, as predecessor-in-interest of the appellants No.1-A to 1-D, Mst. Naheed Shaukat Malik, who actually executed the agreement, was a cancer patient and was in need of money for her treatment in USA, but respondent No.1 did not pay the amount within stipulated period.

14. On 23.08.2022, the predecessor-in-interest of the appellants No.1-A to 1-D / real mother, Mst. Naheed Shaukat Malik, filed a suit against respondent No.1 / Malik Mohsin Raza for declaration, cancellation of agreement to sell dated 26.03.2022, mandatory and permanent injunction; para No.01 of the plaint is reproduced as under:

> ***"1. That brief facts giving rise to the instant suit are that plaintiff and defendant No.1 entered into an agreement to sell dated 26.03.2022 regarding the House No.7, Street No.12, Sector D, Phase II measuring 500 Sq Yds situated in DHA-2, Islamabad for the total consideration amount of Rs.5,80,00,000/- (Rupees Five Crore Eighty Lacs) and out of which defendant No.1 has paid Rs.5 lacs as earnest money and he was bound to transfer the said house in his name within a period of two weeks after paying remaining amount. (Copy of agreement is annexed for the kind perusal of this honorable Court)."***

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15. The said suit was dismissed as withdrawn on 25.02.2023 by the Court of Civil Judge 1st Class, East-Islamabad, for want of pecuniary jurisdiction with the permission to file a fresh suit.

16. The second suit bearing No.0317/2023, for declaration, cancellation of agreement to sell dated 26.03.2022, mandatory and permanent injunction was filed by the appellants on 10.03.2023. Para No.03 of the plaint is reproduced for ready reference:

> ***"3. That the predecessor in interest of the plaintiffs Naheed Shaukat Malik was a cancer patient. The Defendant No.01 entered into an agreement to sell with regard to suit house with the predecessor in interest of the plaintiffs for total sale consideration of Rs.58,000,000/- (Fifty Eight Million only). The said Naheed Shaukat Malik also received Rs.5,00,000/- (Rupees Five Hundred Thousands) as earnest money."***

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Which was consolidated with the suit for specific performance filed by respondent No.1 and vide impugned judgment and decree dated 01.06.2024, suit for specific performance, possession and permanent injunction, filed by respondent No.1 was decreed and suit for cancellation of agreement to sell dated 26.03.2022, filed by the appellants was dismissed. The

appellants have not filed any appeal against the dismissal of the suit for cancellation of agreement to sell dated 26.03.2022 and the same has attained finality.

17. The legal notices, **Ex-PD/1-13**, were also served by the predecessor in interest of the appellants No.1-A to 1-D, Mst. Naheed Shaukat Malik, to respondent No.1 as well as to the Director Transfer and Record, DHA-2, Islamabad, wherein it is admitted that Mst. Naheed Shaukat Malik entered into an agreement to sell dated 26.03.2022 and the seller received a sum of Rs.5,00,000/- and the agreement was cancelled due to non-compliance of the terms of agreement by respondent No.1/ purchaser.

18. The agreement to sell dated 26.03.2022 has been exhibited as Ex.PA/1-2 in the learned trial Court, wherein the total sale price of the property was fixed at the rate of Rs.58,000,000/- (Rupees Five Crore Eighty Lacs) and the seller acknowledged the receipt of Rs.5,00,000/- and the remaining amount was liable to be paid by purchaser to the seller at the time of transfer of the plot. The seller/ owner of the plot/ predecessor in interest of the appellants No.1-A to 1-D, Mst. Naheed Shaukat Malik, submitted a form for issuance of No Demand Certificate (NDC), which was issued on 22.07.2022, but refused to transfer the house on the name of respondent

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No.1/ purchaser, so the suit for specific performance was filed on 02.09.2022.

19. As far as the argument of learned counsel for the appellants that in para No.3 of written statement, it is mentioned that alleged agreement to sell attached with the plaint was a manipulated and forged document, the said stance is self-contradictory, as in the same para, the contentions put forward in para No.03 of the preliminary objections were reiterated and time limit for the finalization of deal was fixed by the parties for two weeks, so there was only one agreement dated 26.03.2022, executed between the parties attached with the plaint and exhibited as "**Ex-PA/1-2**" in the evidence of respondent No.1 / plaintiff.

20. Issue No.III was also framed, which is reproduced as under:

> "***Whether the agreement to sell dated 26.03.2022 is forged and manipulated documents? OPD"***

The onus to prove this issue was on the appellants / defendants but they did not produce any evidence to prove said issue, which has clearly established that respondent No.1 / plaintiff has successfully proved the agreement dated 26.03.2022, executed between the parties.

21. As it has been established that execution of agreement was admitted by the appellants at different stages,

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so there was no need to produce the two witnesses under Article 79 of the Qanun-e-Shahadat Order, 1984. Article 81 of the Qanun-e-Shahadat Order, 1984, is relevant in this regard, which is reproduced herein under:

> ***"81. Admission of execution by party to attested document.—The admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested."***

22. Reliance, in this regard, is placed on *"Muhammad Afzal (Decd.) through L.Rs. and others Versus Muhammad Bashir and another."* **(2020 S C M R 197)**, wherein it was held by the Honourable Supreme Court of Pakistan that:

> ***"Article 81 is an exception to the general rule that where a document is required by law to be attested the same cannot be used in evidence unless two attesting witnesses are called for the purposes of proving its execution. The simple reading of Article 81 shows that where the execution of a document is admitted by the executant himself, the examination of attesting witnesses is not necessary."***

Reliance is also on *"Nazir Ahmed v Muzaffar Hussain."* **(2008 SCMR 1639)**, wherein it was held that:

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> ***"… in case of denial of execution of document, the party relying on such document must prove its execution in accordance with the modes of proof as laid down in Qanun-e-Shahadat Order, 1984 and the party is required to observe rule of production of best evidence."***

Reliance in this regard could also be placed on *"Manzoor Hussain Khan v. Mst. Asia Begum and 21 others."* **(1990 CLC 1014)**.

23. On 30.04.2024, learned counsel for the appellants/ defendants made a statement that as respondent No.1/ plaintiff failed to prove his case as per law, therefore, the appellants/ defendants opted not to produce any evidence.

24. As it is well established law that without producing the evidence, no relief can be granted merely on the basis of the contents of written statement. In this regard, the Hon'ble Supreme Court in a case reported as *"Abdul Majid v. Syed Muhammad Ali Shamim and 10 others."* **(2000 SCMR 1391)** observed as under:

> ***"It is trite law that pleadings are not evidence by themselves and that statements of a defendant in written statement could not be used as evidence when amounting to admission of plaintiff's plea, without the examination of the concerned party in its***

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> ***support. See. Khairul Nisa v. Muhammad Ishaque and 2 others (PLD 1972 SC 25) and Muhammad Ishaq v. Erose Theatre and others (PLD 1997 SC 109)"***

Similarly, in a case titled "Muhammad Akram and another v. Mst. Farida Bibi and others." **(2007 SCMR 1719)**, it was held that:

> ***"It is a settled law that pleadings of the parties are not substantive piece of evidence unless and until the averments made in the pleadings proved from the evidence in Court or admitted by the other party. See Faqir Muhammad's case PLD 2003 SC 594".***

The Honourable Supreme Court of Pakistan in another case reported as *"Mrs. Anis Haider and others vs. S.Amir Haider and others*" **(2008 SCMR 236)** held that:

> ***"The pleadings of parties could never be taken as an evidence particularly when the arbitrator was not even examined in Court in support of his written statement much less his cross examination by the party desiring so to do."***

25. For what has been discussed above, suit filed by respondent No. 1 was rightly decreed by the Court of learned Additional District Judge-III, East-Islamabad vide impugned

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judgment and decree dated 01.06.2024, which needs no interference by this Court, hence the instant Regular First Appeal is without merits and is accordingly **dismissed.**

**(TARIQ MEHMOOD JAHANGIRI)**
**JUDGE**

Announced in Open Court on this 08th day of May, 2025.

**JUDGE**

*M. Zaheer Janjua /-*

***APPROVED FOR REPORTING.***

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