JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Civil Revision No.69 of 2025

Muhammad Sharif

Versus

Muhammad Ejaz Rana and another

Petitioner by:	Hafiz Ghulam Afzaal Raja and Mr. Zubair Asla Ghuman, Advocates.
Respondent No.1 by:	Mr. Moazzam Ali Sheikh, Advocate.
Date of Hearing:	**08.05.2025.**

INAAM AMEEN MINHAS, J.- Through the instant civil revision, the petitioner has impugned the consolidated judgment and decree dated 22.07.2024 **("Impugned Judgment and Decree")**, passed by the learned Additional District Judge-III, Islamabad (East) **("Appellate Court")**, whereby the appeal filed by the petitioner was dismissed, whereas appeal filed by respondent No1 was allowed.

2. Brief facts as per the memo of the petition are that on 20.07.2004, the petitioner entered into a sale agreement with respondent No.1 for Plot No.45, Block B, Street MB, Membership No.355-A, 406, NHF Housing Scheme Kahuta, Zone-V, Islamabad **("Suit Plot")**, for a total consideration of Rs.6,13,000/-, out of which Rs.1,13,000/- was paid at the time of agreement. Respondent No.1 failed to fulfil the remaining obligations despite repeated efforts by the petitioner and eventually disappeared. After a long lapse, on 26.11.2015, the petitioner lawfully sold the same plot to Khurram Masood Niazi for Rs. 6,13,190/- and after completing all formalities transferred the property. However, when the transfer proceedings were near to completion, respondent No. 1 filed a suit for specific performance of contract dated

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20.07.2004, permanent and mandatory injunction on 10.07.2019, halting the transfer process. The petitioner contested the suit, the learned Trial Court after recording of evidence and hearing the arguments dismissed the suit vide judgment and decree dated 21.03.2024, however, the petitioner was directed to refund double the amount received (Rs.1,13,000/-) to respondent No.1. Against the said judgment and decree of the learned Trial Court, both the petitioner and respondent No.1 filed their appeals. The learned Appellate Court vide the Impugned Judgment and Decree allowed the appeal filed by respondent No.1 and decreed his suit, whereas the appeal filed by the petitioner was dismissed, hence, this petition.

3. The learned counsel for the petitioner contended that the Impugned Judgment and Decree are contrary to the law and facts of the case and therefore are not sustainable; that Impugned Judgment and Decree are based on misreading and non-reading of evidence; that the learned Trial Court had rightly dismissed respondent No.1's suit on the ground of limitation, as it was time-barred and neither any valid reason for the delay was provided nor any evidence of the last refusal by the petitioner was produced; that the learned Appellate Court overlooked these critical legal aspects, ignored the petitioner's documentary evidence and failed to appreciate that the petitioner lawfully sold the plot after respondent No.1 abandoned the agreement; that the Impugned Judgment and Decree are based on presumptions rather than legal merit and were passed hastily and carelessly, causing a grave miscarriage of justice, therefore, the same are liable to be set aside.

4. Conversely, the learned counsel for respondent No.1 opposed the instant revision and contended that the learned Appellate Court has rightly appreciated the evidence and passed the Impugned Judgment and Decree in accordance with law.

5. I have heard the arguments and perused the record.

6. Perusal of the record reveals that an agreement to sell dated 20.07.2004 (Exh.PW/1-1) was executed between the petitioner and

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respondent No.1 in respect of the Suit Plot, which respondent No.1 intended to acquire under the membership of respondent No.2's Housing Scheme. The total consideration was fixed at Rs.613,000/-, out of which Rs.113,000/- was paid as a down payment, whereas Rs.500,000/- were to be paid at the time of transfer. However, it is an admitted position that as of the date of the agreement, the plot had not been allotted to the petitioner. The plot was merely part of a list handed over by the petitioner, associated with Membership No. 355-A-II of respondent No.2's scheme, and not an actual allotment. This is further supported by respondent No.1's admission in paragraph 4 of the plaint and the attached reference letter dated 23.04.2004 (Ex.PW/1/3). It is a settled principle of law that for an agreement to be specifically enforceable, the subject matter must be certain and identifiable. In the present case, the agreement to sell is predicated on a prospective allotment and not on any existing title or transferable right in favour of respondent No.1. The agreement does not pertain to a plot that had been formally allotted at the time of execution. Thus, the agreement is speculative and lacks certainty required under contract law. This uncertainty renders the agreement void for the purpose of enforcement, as no legally enforceable title had accrued in favour of respondent No.1. Under the law, an agreement based on an unallotted or non-existent property is vague and legally unenforceable and the subject suit was not maintainable based on agreement dated 20.07.2004 as Exh.PW/1-1 and both the Courts below did not exercise their jurisdiction in accordance with the law regarding maintainability of the suit.

7. The petitioner filed his written statement, wherein he admitted that the Suit Plot had already been transferred to a third party, namely Khurram Masood Niazi, in 2015, after completing all legal formalities. This transfer has neither been challenged by respondent No.1 at any stage nor he sought amendment in his pleading and prayer rather respondent No.1 continued to press for the specific performance of the original agreement dated 20.07.2004. This inaction on part of

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respondent No.1 negates the principle of equity and renders the relief of specific performance inappropriate, especially when the subject matter of the agreement has already been lawfully transferred to a third party without challenge.

8. Respondent No.1 filed the suit on 10.07.2019 after 15 years of the agreement dated 20.07.2004. Under Article 113 of the Limitation Act, 1908 a suit for specific performance must be filed within three years from the date fixed for performance of the agreement or from the date when the plaintiff has noticed that performance is refused. In this regard reliance is placed upon ***Muhammad Ramzan vs. Muhammad Qasim***, **(2011 SCMR 249)**. Respondent No.1 has neither pleaded nor established any date of refusal or denial by the petitioner and no explanation is provided for the delay of 15 years. The cause of action, if any, arose in 2004 itself. Thus, the suit is patently barred by time. Finding of the learned Appellate Court that the limitation did not apply merely because no specific date of refusal was mentioned is contrary to the settled law. Mere silence or delay cannot indefinitely extend the limitation period.

9. The down payment of Rs.113,000/- is admitted, whereas the remaining amount of Rs.500,000/- was specifically denied by the petitioner. The burden of proving the full consideration lay upon respondent No.1. Although respondent No.1 examined himself and two witnesses, no documentary proof of payment of the balance amount was furnished. Even otherwise it is mentioned in the agreement that the remaining amount shall be paid at the time of transfer, whereas, respondent No.1 along with PWs 2 & 3 took a plea that the whole consideration amount was paid to the petitioner, which is self-contradictory plea of respondent No.1. Both the Courts below have acknowledged the failure to prove payment of the remaining amount. Despite this, the Appellate Court granted decree for specific relief in favour of respondent No.1 by accepting the appeal against the judgment and decree of the learned Trial Court.

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10. The learned Trial Court while dismissing the suit for specific performance held liable the petitioner to return double amount of the down payment i.e Rs.113,000/-. This relief was neither sought by respondent No.1 nor any issue was framed. The learned Trial Court proceeded beyond the pleadings and granted relief that lacked any evidentiary or legal basis, thereby exceeding its jurisdiction and relief of return of double of amount to respondent No.1 is not supported by any evidence and beyond jurisdiction of the learned Trial Court. Such relief, without proper framing of issues or evidence, is legally untenable.

11. Under Section 115, CPC, this Court is empowered to correct jurisdictional errors and material irregularities which cause a miscarriage of justice. Both the Courts below have ignored the settled law on the enforceability of vague agreements, limitations and the evidentiary burden regarding consideration amount. Furthermore, by granting specific performance for a plot that was neither existing nor available at the time of execution of the agreement and which had since been transferred to a third party, the Appellate Court exercised jurisdiction improperly and passed the Impugned Judgment and Decree contrary to law.

12. In view of above discussion, the instant civil revision is **allowed**. The Impugned Judgment and Decree of learned Appellate Court is set aside. Suit of respondent No.1 against the petitioner for specific performance stands **dismissed**. The petitioner will return the down payment of Rs.113,000/-, which he admits, to respondent No.1.

(INAAM AMEEN MINHAS)
JUDGE

Announced in open Court on 27.05.2025

JUDGE

R.Anjam

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