JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

R.F.A No. 273 of 2025

Mudassar Ali and another.

Versus

Nazir Ahmed Khan and others

Appellant By	:	Mr. Muhammad Waqas Malik and Dr. Palwasha Ayaz Khan, Advocate
Respondents By	:	Mr. Moeen Iqbal , Advocate for Respondent No. 1.
State By	:	Ms. Sumera Khursheed, learned State Counsel. Mr. Saghir Ahmed, S.I.
Date of Hearing	:	27.05.2025

MUHAMMAD ASIF, J. Through the instant appeal, the appellants impugn the Ex-parte Judgment & Decree dated 08.04.2025, passed by learned Civil Judge, 1st Class, West-Islamabad, whereby suit of the appellants/plaintiffs was dismissed.

2. Learned counsel for the appellants/plaintiffs contended that the Impugned Ex-parte Judgment and Decree dated 08.04.2025, is against the law and facts of the case; that the learned trial Court has failed to properly appreciate the evidence and material placed on record by the Appellants/Plaintiffs, particularly with respect to the agreement dated 12.11.2004; that the learned trial court erred in holding that the Appellants/Plaintiffs failed to prove the execution of the Agreement; that the learned trial Court has failed to consider the purpose and context of the suit; that the findings recorded by the learned trial Court are based on a misinterpretation and non-application of relevant legal principles; that the impugned Ex-parte Judgment & Decree dated

08.04.2025, has caused grave injustice to the Appellants/Plaintiffs, hence, instant appeal.

3. Conversely, learned counsel for the Respondent No.1, repelled the contentions raised by the learned counsel for the Appellants/plaintiffs by stating that there is no illegality or irregularity in the impugned Ex-parte Judgment & Decree dated 0804.2025, and same was passed in accordance with law and prayed for dismissal of instant appeal.

4. Arguments heard, record perused.

5. As per available record, appellant/plaintiff No.1, entered into an agreement dated 12-11-2004/Ex-P2 with Respondents No.01 & 02 for purchase of land measuring 1200 Kanal, situated at Mouza Hattar & Qutbal, Tehsil Fateh Jhang, District Attock, falling in Kasra No. 2035 at the agreed rate of Rs. 70,000/- per kanal. As per the terms of the agreement/Ex-P2, Respondent No. 01 & 02 were bound to transfer the land measuring 500 at first stage. In this regard, appellant/plaintiff paid Rs. 4.5 million to the respondent/defendant as part payment along with post dated cheque.

6. Record further depicts that the agreement dated 12.11.2004/Ex-P2, is a primary document and foundation of the suit of the appellants/plaintiffs, which is to be proved by producing the marginal/attesting witnesses in support of his or her claim, but in the case in hand, the marginal/attesting witnesses have not been produced by the appellants/plaintiffs before the learned trial Court in support of their agreement/Ex-P2.

7. The object and purpose of attestation of a document by a required number of witnesses and its proof through them is meant to

eliminate the possibility of fraud and purported attempt to create and fabricate false evidence for the proof thereof. As the subject matter is related to the financial obligation and in case of presence of written agreement/Ex-P2, it is the mandatory requirement of Article 17 of the Qanoon-e-Shahadat Order, 1984 **("QSO"**) that such document shall be attested by two witnesses. Relevant portion of Atricle 17(2)(a) of QSO is reproduced here-in-below:

> ***"(a) in matters pertaining to financial or future obligations, if reduced to writing, the instrument shall be attested by two men, or one man and two women, so that one may remind the other, if necessary, and evidence shall be led accordingly; and"***

8. When Article 17 of QSO, 1984 is read with Article 79 of QSO, 1984, it is prescribed that appellants/plaintiffs failed to prove genuineness of agreement/Ex-P2 by not producing, cogent, confidence inspiring and independent attesting witnesses. The provisions of Article 79 QSO, 1984, are mandatory and non-compliance of thereof rendered agreement as inadmissible in evidence. In this regard reliance is also placed upon the case of *"Khudadad v. Syed Ghuzanfar Ali Shah alias S.Inam Hussain and Others*" **(2022 SCMR 933).**

9. Similarly, appellants/plaintiffs also failed to brought on record any plausible reason as to non-availability of the said witnesses. In case, where the witnesses cannot be traced or even died, then it is the duty of the person to prove such fact, who purports so, in light of Article 80 of QSO, 1984, same is re-produced as follows:

> ***"80. Proof where no attesting witness found.– If no such attesting witness can be found, it must be proved that the witnesses have either died, or cannot be found***

and that the document was executed by the person who purports to have done so."

10. In view of the foregoing, no illegality, or irregularity, mis-reading or non-reading of evidence has been found in Impugned Judgment. Hence, the instant Regular First Appeal is **dismissed.**

(MUHAMMAD ASIF)
JUDGE

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