HCJD/C-121

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

Civil Revision No.96 of 2015

Mohammad Saeed Mughal
Vs.
Mian Mohammad Latif and others

Petitioner by	**:**	Mr. Sarfraz Ali Khan, Adv.
Respondents by	**:**	Sardar M. Hafeez Khan for Respondents No. 1, 3 and 4. M/s Syed Masood Hussain, Sobea Akhtar and Tabinda Zahra Kalwar, Advocates for CDA.
Date of Hearing	**:**	**31.10.2024.**

Babar Sattar, J: - The petitioner has impugned judgment and decree passed by Additional District Judge, Islamabad, dated 02.02.2015 pursuant to which judgment and decree passed by Civil Judge 1st Class, Islamabad, dated 13.04.2013 in favour of the petitioner were set aside.

2. In terms of background, the petitioner filed Civil Suit No.570/1997 on 16.12.1997. The petitioner claimed that he entered into agreement to sell **("Agreement")** dated 22.07.1996 for purchase of Shop No.35, Talal Plaza, Sector I-9, Islamabad **("Property")** with Mohammad Latif (respondent No.1), which Agreement was registered before the Sub-Registrar, Islamabad on 24.07.1996. Respondent No.1 entered into the Agreement on behalf of respondent No.3, who was the wife of respondent No.1, and respondent No.4, who was the sister of respondent No.1, pursuant to a special power of attorney granted by respondents No.3 and 4 in favour of

respondent No.1, which was also registered with the Sub-Registrar, Islamabad, on 07.06.1996. Respondents No.1, 3 and 4 denied the sale agreement by filing a written statement in March of 2013, through an attorney Mr. Iftikhar Hussain asserting that the Agreement was a forged document and it had not been executed by respondent No.1. The Civil Court after affording the parties an opportunity to adduce evidence framed the following issues on 09.03.2013:

ISSUES:

i. Whether the plaintiff is entitled to the specific performance of sale agreement dated 01.10.1995 and agreement dated 24.07.1996 against the defendants? OPP

ii. Whether in alternative to the performance, the plaintiff is entitled to the damages amounting to Rs.18,50,000/-? OPP

iii. Whether the alleged agreements are fake and fabricated and created no right in favor of plaintiff? OPD

iv. Whether the suit is barred by law? OPD

v. Whether the plaintiff has not come to the court with clean hands, hence, not entitled for the relief as prayed? OPD

vi. Relief

3. The petitioner appeared as PW-1 and reiterated his claim while relying on the Agreement (Exh.P3) and two receipts in the amount of Rs.850,000/- as sale consideration (Exh.P1 and Exh.P2). He also produced Moharrar from the office of the Sub-Registrar, Islamabad as PW-2, who confirmed that the Agreement (Exh.P2) was the true copy of the registered document. Respondents No.1, 3 and 4 were represented by Mr.

Iftikhar Hussain, special attorney, who appeared as DW-1 and denied the execution of the Agreement and asserted that respondent No.1 had entered into no transaction with the petitioner. The Civil Court in view of the evidence disregarded the testimony of DW-1 being special attorney and not personally privy to the facts of the matter in view of the Article 71 of the Qanun-e-Shahadat Order, 1984 **("QSO")**, such evidence being inadmissible. The Civil Court found that sanctity and presumption of truth was attached to the Agreement, which was a registered document. The petitioner had also adduced, as evidence, receipts for payment of consideration and testified to having paid such amount to respondent No.1, which evidence had not been rebutted by respondents No.3 and 4. The Civil Court found that the petitioner had made out the case and consequently issued a judgment and decree in favour of the petitioner. The respondents No.1, 3 and 4 filed a Civil Appeal No.17 of 2014, which was instituted on 13.05.2013 and was decided through the impugned judgment dated 02.02.2015. The Additional District Judge held that respondents No.1, 3 and 4 had denied the Agreement and consequently the onus shifted back to the petitioner to prove the execution and content of the document, which he did not do by producing any marginal witnesses. He further found that while Exh.P1 and Exh.P2 were produced as the receipts for payment of consideration, no marginal witnesses were produced to establish that he had paid consideration in the amount of Rs.850,000/- to respondent No.1 on 01.10.1995 and 06.12.1995, respectively. He submitted that as the Agreement had been denied, Article 79 of the QSO

became applicable and it was essential for the petitioner to prove the sale transaction that formed the subject matter of the Agreement. As the transaction had not been proved, specific performance of the Agreement could not be ordered.

4. Learned counsel for the appellant submitted that the Agreement was a registered document and presumption of truth attached to such document. Respondents No.1, 3 and 4 through their special attorney had contested the execution of the Agreement and the sale transaction that formed its subject matter, but had adduced no evidence to prove the factum of fraud or forgery. He submitted that the Civil Court had correctly held that the testimony of DW-1 was not admissible in evidence in terms of Article 71 of QSO, as he was appointed as attorney for purposes of filing the appeal and was not a witness to any facts in relation to which he had testified. He submitted that respondents No.1, 3 and 4 never entered the witness box and respondent No.1 did not present himself to testify and subject himself to cross-examination. The said respondents also did not file any application seeking a comparison of the signatures of respondent No.1 on the Agreement as well as the payment receipts. Consequently, a bald denial by the attorney of respondents No.3 and 4 could not be considered as denial for purposes of Article 79 of QSO transferring the onus of proof to the petitioner. He submitted that the manner in which the Civil Court had accepted the written statement was also mysterious. While respondents No.1, 3 and 4 had entered appearance before the Civil Court on 08.03.2000 by filing a memo of appearance,

their right to defend was struck-off by the Civil Court on 06.06.2006 and finally on 26.02.2013 they filed an application for recalling of such order along with an application for condonation of delay, after rendering appearance by filing vakalatnama on 22.02.2013 accompanied by a copy of the special power of attorney of Mr. Iftikhar Hussain (dated 20.06.2012, recognizing him as attorney of respondent No.1, 3, & 4).

5. A perusal of the order sheet reflects that no order was passed accepting such application and permitting respondents No.1, 3 and 4 to file a written statement. A written statement is available on the record. Thus, without accepting the application seeking the setting aside of the right of respondents No.1, 3 and 4 to defend themselves, the written statement dated 05.03.2013 somehow crept into the record and issues were framed on 09.03.2013. He submitted that the petitioner has been in possession of the Property since 1996 and the same has been acknowledged in the registered sale agreement by mentioning the Property as the address of the petitioner therein. He submitted that given that there was no evidence adduced by respondents No.1, 3 and 4 against the petitioner, and the petitioner's claim and the evidence adduced by the petitioner was not rebutted, the Civil Court had correctly appreciated the law and decreed the suit.

6. Learned counsel for the respondents defended the judgment of the Additional District Court. He submitted that a story of the petitioner did not add up. While the petitioner had

claimed that he had paid consideration in the amount of Rs.850,000/-, the Agreement stated that a consideration of Rs.550,000/- had been agreed upon. He submitted that respondents No.1,3 and 4 had previously authorized Mr. Abdul Shakoor Tariq as their attorney who had filed a written statement on 27.04.2000 and the assertion that no written statement had been filed by respondents No.1, 3 and 4 was therefore incorrect. He further submitted that once the transaction had been denied by respondents No.1, 3 and 4 by filing a written statement, the onus to prove the transaction shifted back to the petitioner, which he had failed to discharge. The Additional District Court had correctly observed that one of the attesting witnesses was the brother-in-law of the petitioner but had not been produced before the Court to prove the transaction. He also submitted that consideration had not been proved as there were no attesting witnesses to the purported receipts issued and no testimony had been produced on behalf of any witness to such payment. As the execution of the Agreement had not been proved after such execution having been denied by respondent No.1 and payment of consideration had also not been proved, the specific performance of the Agreement could not have been ordered.

7. Perusal of the record reflects that the Civil Court could have been more diligent in the manner in which the trial was conducted and orders recorded. The record reflects that written statement was filed on behalf of respondents No.1, 3 and 4 through a special attorney named Abdul Shakoor Tariq on

27.04.2000, However, issues were not framed in view of such written statement. The order sheet does not reflect that this written statement was disregarded by the Civil Court or that the permission was granted to file a better statement which was subsequently filed by Mr. Iftikhar Hussain as the last attorney holder on behalf of respondents No.1, 3 and 4 on 05.03.2013. The order sheet also doesn't reflect whether any order was passed in relation to the application filed by Mr. Iftikhar Hussain in the year 2012, on behalf of respondents No.1, 3 and 4, to recall the order striking out their right to defend themselves in the year 2006.

8. Be that as it may, the petitioner appears not to have contested the legality of the written statement as considered by the Civil Court before the Appellate Court and evidence was produced by both parties on the basis of issues framed by the Civil Court by order dated 28.01.2013. Consequently, as a revisional court, this Court will take into account the evidence as adduced before the Civil Court, and the admissibility as well as reliability of such evidence, as it was on such basis that the Additional District Court set aside the judgment and decree passed by the Civil Court dated 13.04.2013.

9. This Court has also taken note of the fact that the Property as claimed by respondents No.1, 3 and 4 was in the name of Mst. Naheed Akhtar (respondent No.3), who is purportedly the wife of respondent No.1, and Mst. Sadaf Naseem (respondent No.4), who is purportedly the sister of respondent No.1. Respondents No.3 and 4 granted the petitioner special power of

attorney to administer and sell the Property by special power of attorney dated 07.06.1996, which was registered with the Sub-Registrar, Islamabad. It was pursuant to this power of attorney that respondent No.1 purportedly entered into the Agreement with the petitioner. Respondents No.3 and 4 then had the power of attorney issued to respondent No.1 cancelled on 09.10.1997 through another document also registered with Joint Sub-Registrar, Islamabad on 09.10.1997. In view of the cancellation of the special power of attorney (Exh.P5) it is unclear as to the interest of respondent No.1 in the Property, other than as a witness who can testify to the facts in relation to the Agreement. This Court has also noted that in the first written statement filed by respondents No.1, 3 and 4 they had asserted that respondent No.1 had sold the Property to one Mr. Abdul Shakoor Tariq and executed a power of attorney in his favour on 09.10.1997. The statement in this regard in para 01 of the written statement dated 27.04.2000, however, does not feature in the written statement filed on behalf of respondents No.1, 3 and 4 by Mr. Iftikhar Hussain in March of 2013, whereby it has been asserted that respondents No.1, 3 and 4 are owners of the commercial building construction on Plot No.17, I-9 Markaz known as Talal Plaza, Islamabad.

10. Both written statements were filed by special attorneys who were authorized by respondents No.1 and 3, who at the time of appointment of such special attorneys were in Canada, where they still remain. In other words, written statements were filed by the special attorneys appointed by respondents No.1, 3

and 4. And respondents No.1, 3 and 4 chose not to appear before the Civil Court to represent themselves or adduce evidence in relation to the petitioner's claim. Respondents No.1, 3 and 4 also chose not to testify before the Civil Court and it was only their special attorney Mr. Iftikhar Hussain who testified as DW-1.

11. The legal questions that arise in view of the above include, *inter-alia,* as to what constitutes denial of a registered agreement for purposes of Article 79 of the QSO and at what point does the onus shift back to a claimant who relies on a registered document that has been denied by the counterparty, and in terms of Article 71 of the QSO what can a person authorized as special attorney testify regarding while appearing on behalf of a principal.

12. It was held by the Supreme Court in ***Abdul Majeed and others Vs. Mohammad Subhan and others*** ***(1999 SCMR 1245)*** that, *"it is axiomatic principle of law that a registered deed by itself, without proof of the execution and genuineness of the transaction covered by it, would not confer any right. There is no cavil with the proposition that these documents being part of public record are admissible in evidence but they by their own force would not prove the genuineness and execution of that to which they relate unless the transaction covered by them is substantiated from independent and reliable source. Admissibility is to be distinguished from proof required by law for determining the execution and genuineness of a document."* In ***Abdul Ghafoor and others Vs. Mukhtar Ahmed Khan*** ***(2006***

SCMR 1144) it was held that, *"there is no cavil to the proposition that a presumption of truth is attached to registration of a document but if its contents are challenged then the onus shifts on the beneficiary to prove its contents."* In ***Karim Nawaz and another Vs. Habib Ullah Khan*** ***(2013 SCMR 1408)*** a dispute with regard to an agreement to sell came before the Supreme Court. It was held that, *"these three documents are registered documents and presumption of truth is attached to these documents … Admittedly, Amir Abdullah who had executed the said documents was alive but he was not produced in the Court to nullify the execution of documents in question. Even no application was ever moved for the comparison of his signatures on the said documents, as such, the High Court has correctly relied upon the said documents for restoration of this judgment of the Civil Court whereby the suit filed by the respondent stood decreed."* In ***Mst. Akhtar Sultana Vs. Major Retd. Muzaffar Khan Malik*** ***(PLD 2021 Supreme Court 715)*** a claimant sought to produce a certified copy of the registered document as secondary evidence under Article 88 of the QSO. The Supreme Court held that, *"the petitioner was first to produce evidence to account for non-production of the original and establish that the original had infect been lost, as required under Article 6 (c) of the QSO. Once the execution of a registered document is disputed, it does not remain a "Public Document" and becomes a "Private Document"; therefore, any form of its secondary evidence, including its certified copy, cannot be produced in evidence to prove its existence, condition*

or contents without complying with the requirements of Article 76 of QSO."

13. The High Courts have drawn different conclusions about the admissibility of a registered document the execution of which has been denied, and the manner in which the onus to prove such document is to be discharged. The issue was comprehensively addressed by the Supreme Court most recently in ***Mst. Nazeeran and others Vs. Ali Bux and others* (2024 *SCMR 1271)*** in which the following was held:

> *"the phrase 'burden of proof' has two meanings – one the burden of proof as a matter of law and pleading, that is 'legal burden' and the other, the burden of establishing a case, that is 'evidential burden', the former is fixed as a question of law on the basis of the pleadings and is unchanged during the entire trial, whereas the latter is not constant but shifts as soon as a party adduces sufficient evidence to raise a presumption in his favour.*
>
> *Thus, the legal burden would always remain on the plaintiffs and the evidential burden would shift to the defendants if they (plaintiffs) discharged their initial burden. The evidence required to shift the evidential burden need not necessarily be direct evidence i.e. oral or documentary evidence or admissions made by the opposite party, it may comprise of circumstantial evidence or presumptions of law or fact. The question as to whether the burden of proof has been discharged by a party to the lis or not, would depend upon the facts and circumstances of the case ….*
>
> *The standard of evidence is not uniform when challenging a registered document as compared to challenging an unregistered document. It has been observed that in disputes relating to registered documents, a common misconception may arise when an executant attempts to*

dispute the validity of the document through mere denial. It is essential to emphasize that the act of registration is not a perfunctory formality but rather a deliberate and legally binding process. When a document is registered, it becomes an official record available to the public. This adds credibility to the authenticity and legal purpose of the transaction.

… a document duly registered by the Registration Authority in accordance with the law becomes a legal document that carries a presumption as to the genuineness and correctness under Articles 85(5) and 129(e) of the Q.S.O. and which cannot be dispelled by an oral assertion that is insufficient to rebut the said presumption. The High Court overlooked the above position of law and erroneously held in the impugned judgment that "the moment the document [suit registered documents] is challenged by the alleged executant or his successor-in-interest, that presumption stands rebutted, and the beneficiary thereof has to prove not only the execution thereof, but also the original transaction embodied therein."

The case of the respondents rested on the ground of fraud and forgery allegedly committed by the appellants. Fraud vitiates all actions and no Court can uphold a right on fraud. It is very easy to assert fraud but it is difficult to prove the same … when a party alleges fraud it becomes its duty to prove the same and generalized allegations or for that matter, mere bald assertions without evidence cannot shift the initial burden.

That being so, we have no hesitation in our mind to hold that a mere denial by the executant of a registered sale deed is insufficient to shift the burden onto the beneficiary of the registered document. He (executant) must establish his assertion of fraud or forgery, etc. by producing some evidence other than his denial to shift the burden onto the beneficiary to prove the valid execution of the registered document. This legal principle reflects

the recognition of the high evidentiary value attached to registered documents as compared to unregistered documents."

14. In view of the law laid down by the Supreme Court in ***Mst. Nazeeran***, by denying the execution of an agreement that constitutes a registered document in pleading the legal burden of such denial might stand discharged but the evidential burden doesn't. For the evidentiary burden to shift from the party denying the execution of a registered document to the claimant relying on such document a perfunctory denial in the written statement is insufficient. Where it is argued by the counter party that a registered document is the product of fraud and forgery, it is for such party to first establish through evidence that fraud or forgery were affected by the claimant by producing evidence before the Court after which the burden would shift back on the claimant to prove the execution of such registered document.

15. The denial of a claim on grounds of fraud also came before this Court in ***Mohammad Zafar Iqbal Vs. Malik Aurangzeb and another (2018 MLD 1689 Islamabad)*** in which it was held that details of fraud and forgery must be established and proved by the party making such claim in the following terms:

"It is well settled that fraud and forgery must be proved by producing unimpeachable, impartial and confidence inspiring evidence. Mere allegations of fraud and forgery cannot partake proof required under the law … If, in the plaint, a document is alleged to be fake or fraudulent or obtained through fraud, the plaintiff duty was to state clearly the material facts showing how the alleged fraud was committed."

16. The second question that arises is the manner in which a special attorney can produce evidence on behalf of a party to the dispute. In the context of preemption, the question came before the Supreme Court in ***Abdul Qayyum Vs. Mohammad Sadiq (2007 SCMR 957)*** in which the following was held:

> *"This is an admitted fact that attorney of the pre-emptor was not present in the meeting in which he claimed to have performed Talb-i-Muwathibat and had no personal knowledge about the date of sale and making of performance of Talbs by the pre-emptor rather his statement was based on the knowledge of the pre-emptor who despite being available, did not appear in the witness box. The pre-emptor, no doubt could appoint an attorney to pursue the suit but Talb-i-Muwathibat being a personal act of the pre-emptor, is required to be proved by him through his own statement and an attorney may not be a substitute of the pre-emptor under the law."*

17. The same question was comprehensively dealt with by the Lahore High Court in ***Muhammad Siddique through Legal Representatives Versus Mst. Noor Bibi through Legal Heirs (PLD 2016 Lahore 140)*** in which the plaintiff who was the beneficiary of mutations did not appear in the witness box and instead had his attorney appeared for him. The Lahore High Court held that, *"a party to a suit must show some plausible reason for not appearing in the witness box to give evidence more so when the facts required to be deposed are exclusively in the personal knowledge of the party. Where a party to the suit does not appear in the witness box and state his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by*

him is not correct. In other words, if a party abstains from entering the witness box, it would give rise to an adverse inference against him." The Lahore High Court relied on judgment of the Indian Supreme Court ***Janki Vashdeo Bhojwani v. Indusind Bank Limited*** ***(2005 (2) SCC 217)*** in which Indian Supreme Court held the following:

> *"Order III, Rules 1 and 2. C.P.C., empower the holder of power of attorney to "act" on behalf of the principal. In our view the word "acts" employed in Order III, Rules 1 and 2, C.P.C., confines only in respect of "acts" done by the power of attorney holder in exercise of power granted by the instrument. The term "acts" would not include deposing in place and instead of the principal. In other words, if the power of attorney holder has rendered some "acts" in pursuance of power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter which only the principal can have a personal knowledge and in respect of which the principal is entitled to be cross-examined…*
>
> *If the facts required to be proved are exclusively in the personal knowledge of the principal, the evidence of the attorney holder on those facts would be in the nature of hearsay evidence carrying no weight."*

The Lahore High Court further relied on ***Man Kaur v. Hartar Singh Sangha*** ***((2010) 10 SCC 512)*** where the Indian Supreme Court held similarly that, *"an attorney-holder who has signed the plaint and instituted the suit, but has no personal knowledge of the transaction can only give formal evidence about the validity of the power of attorney and the filing of the*

suit … The attorney-holder cannot depose or give evidence in place of his principal for the acts done by the principal or transactions or dealings of the principal, of which principal alone has personal knowledge." The Lahore High Court affirmed the aforementioned principles expounded by the Indian Supreme Court and held that, *"for proving the facts leading up to the conclusion of sale transaction (oral sale) between the parties and the payment of the sale consideration, therefore, the petitioner-plaintiff ought to have examined himself as a witness and to state all these facts that were in his personal knowledge, and in holding so observed that the testimony of the attorney of the plaintiff had to be ignored for being hearsay evidence where the evidence produced is found to be relevant and admissible the evidentiary value of such evidence is to be determined by the trial Court."* It was held by the Supreme Court in ***Mst. Akhtar Sultana*** that, *"the evidentiary value or in other words, weight of evidence, is actually a qualitative assessment made by the trial judge of the probative value of the proved fact. Unlike "admissibility", the evidentiary value of a piece of evidence cannot be determined by fixed rules, since it depends mainly on common sense, logic and experience and is determined by the trial judge, keeping in view the peculiarities of each case."*

18. Article 79 of the QSO states the following:

> *"**Proof of execution of document required by law to be attested**: If a document is required by law to be attested, it shall not be used as evidence until two attesting witnesses to least have been called for the purpose of proving its execution, if there be two attesting witnesses alive, and subject to the process of the Court*

and capable of given Evidence. Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Registration Act, 1908 (XVI of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied."

Article 79 of the QSO provides that in case of a registered document such document need not be proved by production of two attesting witnesses, "*unless its execution by the person by whom it purports who has been executed is specifically denied."*

19. In the facts of the case before the Court, respondent No.1 had two written statements filed through two different attorneys and denied the execution of the Agreement through both statements. In the first written statement respondent No.1 asserted to have sold the Property to a third party. Whereas in the second written statement, there was no mention of any third party, and it was claimed that the ownership remained with respondents No.1, 3 and 4. The assertion in the written statement can at best be treated as respondent No.1 discharging the legal burden of denying the execution of the document in terms of the law laid down by the Supreme Court in ***Mst. Nazeeran***. The only evidence adduced by respondents No.1, 3 and 4 in support of their assertion that the Agreement is a product of fraud and forgery is a statement by Mr. Iftikhar Hussain, a special attorney, as DW-1. In his testimony DW-1 acknowledged that the petitioner has remained in possession of the Property since 1997 and that respondents No.1, 3 and 4 filed

a suit for forgery and fraud. However, no evidence with regard to the status of such suit was ever placed on record, nor was any reference to the outcome of such case made during the arguments either. DW-1 further acknowledged that he has testified in his capacity as special attorney and did not claim to either be a witness to the transactions-in-question or have any personal knowledge of the same.

20. Article 71 of QSO, that the Civil Court relied on while disregarding the testimony of DW-1, provides the relevant part that, *"oral evidence must, in all cases whatever be direct, that is to say-if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it."* The transaction-in-question relates to execution of the Agreement and receipt of sale consideration. It is the petitioner's claim based on the Agreement, which is a registered document, that the Agreement was executed by respondent No.1 who received sale consideration and issued receipts Exh.P1 and Exh.P2. Respondent No.1 purportedly entered into such transaction as special attorney of respondents No.3 and 4 in the year 1996. Subsequently, in 1997 the special power of attorney of respondent No.1 was cancelled and consequently the status of respondent No.1 was reduced to that of being a witness to the transaction purportedly entered into by him on behalf of respondents No.3 and 4. It was only respondent No.1 who could personally testify by entering the witness box and disputing the fact that he had executed the Agreement, which was registered with the Sub-Registrar, Islamabad, as was testified by PW-1,

and confirmed by PW-2, an official in the office of Sub-Registrar, Islamabad. Respondent No.1 neither entered into the witness box as aforementioned nor presented himself to be cross-examined by the petitioner. Further respondents No.1, 3 and 4 filed no application to have the signatures of respondent No.1 on the Agreement and/or the payment receipts (Exh.P1 and Exh.P2) to determine whether they were indeed the signatures of respondent No.1 or not. The only evidence denying the execution and content of the Agreement was the testimony of DW-1, special attorney for respondents No.1, 3 and 4, who was not privy to the facts and presented hearsay evidence which was not admissible in terms of Article 71 of QSO, as correctly held by the Civil Court. Respondents No.1, 3 and 4 had thus failed to discharge the evidential burden of proving that the Agreement was never executed and the Agreement and its registration was a product of fraud and forgery in terms of the law laid down by the Supreme Court in ***Mst. Nazeeran***. The onus of proving the Agreement therefore never shifted back to the petitioner.

21. It is evident from the law as discussed above, when applied to the facts of the instant case, that other than a bald statement in the two contradictory written statements filed on behalf of respondents No.1, 3 and 4 by two different special attorneys, there was no evidence whatsoever led to deny the execution of the Agreement by respondent No.1, 3 and 4 or to prove that the Agreement was a product of fraud and forgery. In these circumstances the Additional District Court misapplied its mind when it concluded that a bald denial in a written statement

filed by a special attorney of respondents No.1, 3 and 4 shifted the onus to prove the execution of the Agreement, being a registered document, on the petitioner, who then failed to discharge such onus. The Agreement is a registered document and as held by the Supreme Court in ***Mst. Nazeeran*** a presumption of credibility and authenticity attaches to such document. The onus could only be shifted back to the petitioner to prove such transaction if respondents No.1, 3 and 4 had first discharged their onus, as a *prima-facie* matter, by producing evidence before the Civil Court to establish that the Agreement was a product of fraud and forgery. This was not done.

22. In support of his claim the petitioner entered into the witness box and reasserted his claim with regard to the execution of the Agreement and its content. He produced Exh.P1 and Exh.P2 as proof of payment of consideration and rendered his own testimony in support of such facts. Once the Agreement and its contents were not effectively denied by respondents No.1, 3 and 4, as already held above, Exh.P1 and Exh.P2 would be treated as secondary evidence together with petitioner's own testimony that would be treated as primary evidence. There was no rebuttal of such evidence by respondents No.1, 3 and 4 as they presented no evidence to challenge the evidence produced by the plaintiff or in support of denial of petitioner's claim. The evidence produced by DW-1 as special attorney was hearsay evidence and could not be taken into account in terms of Article 71 of QSO. And there was no documentary or other secondary evidence whatsoever was adduced by respondents No.1, 3 and

4. The Additional District Court misapplied the law in terms of Article 79 of QSO and also did not take into account the finding of the Civil Court in terms of Article 71 of QSO where it had disregarded the testimony of DW-1 being hearsay evidence of a special attorney not privy to the facts in relation to which he sought to testify.

23. For the aforementioned reasons, this Court finds that the Civil Court had correctly ruled in favour of the petitioner by issuing a judgment and decree ordering the specific performance of the Agreement. The Additional District Court incorrectly concluded that the execution and content of the Agreement stood denied in terms of Article 79 of QSO and the onus had shifted back to the petitioner to prove the execution and content of the Agreement. The presumption of truth attaches to the Agreement, which is a registered document, and such presumption has not been rebutted by respondents No.1, 3 and 4. The petitioner has also produced evidence in terms of his own testimony and Exh.P1 and Exh.P2 to establish payment of consideration in support of the content of the Agreement, which acknowledges payment of consideration. Nothing turns on the exact amount of payment, which as explained by the petitioner was recorded as being a lesser amount than that actually paid for tax reasons on the insistence of respondent No.1. The Civil Court also correctly took into account the fact that the petitioner had been in possession of the Property since 1997 and as of 2013 the respondents had filed no suit to seek possession of the Property or assert their ownership rights against the petitioner.

It was in view of these facts that the Civil Court correctly came to the conclusion that on a balance of probabilities the petitioner had established his claim in view of the evidence adduced. And given that he had the possession of the Property, his claim was also supported on the ground of equity.

24. In view of the above, the impugned judgment and decree passed by the Additional District Court dated 02.02.2015 is ***set-aside*** and the judgment and decree dated 13.04.2013 passed by the Civil Court is ***reaffirmed*** and ***upheld.*** The revision petition is ***allowed*** in the above terms.

(BABAR SATTAR)
JUDGE

Announced in the open Court on **19.11.2024.**

JUDGE

Approved for reporting.

M.A. Raza