JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

R.F.A. NO. 114 OF 2015

Syed Asad Ali

Versus

Sheikh Amin Jan and 3 others

Appellant by : Mr. Mr. Akhtar Aziz Khan, Advocate.

Respondents by : Ex-parte.

Date of hearing : 07.05.2025

MUHAMMAD AZAM KHAN, J.

1. Through the instant Appeal, the Appellant/Plaintiff has assailed the Judgment and Decree dated 27.04.2025 **("Impugned Judgment and Decree")** passed by the learned Civil Judge 1st Class, Islamabad-West **("Trial Court")**, whereby the suit filed by the Appellant/Plaintiff for Declaration, Permanent and Mandatory Injunction, Cancellation of Documents, Specific Performance, and Recovery of Rs. 2,362,000/- **("Suit")** was dismissed.

2. Succinctly, the facts leading to the filing of the instant Appeal are that the Appellant/Plaintiff filed the Suit against the Defendants, with the averments that Defendant No.1 entered into a Sale Agreement on 24.05.1997 with the Appellant/Plaintiff in respect of Apartments No. 7 & 2, Building No. 3-A, known as Sana Apartments, situated in the Diplomatic Enclave, for a sale consideration of Rs. 2,500,000/- each. The Appellant/Plaintiff paid Rs. 4,000,000/- at the time of the deal to Defendant No.1, which is acknowledged through a receipt dated 24.05.1997. As per the agreement, it was agreed that the remaining sale consideration of Rs. 1,000,000/- would be paid before 30th May 1997 at the time of transfer of the said apartments. It is averred in the plaint that the Appellant/Plaintiff, before the stipulated period, i.e., 30th May 1997, asked Defendant No.1 to receive the balance sale consideration of Rs. 1,000,000/- and get the said apartments transferred in favour of the Appellant/Plaintiff. Defendant No.1 requested for some time to get and prepare the required documents, therefore,

the agreement was extended. Defendant No.1 later, in the month of August 1997, demanded the outstanding amount of Rs. 1,000,000/-, but the Appellant/Plaintiff put the condition that the amount would be paid at the time of transfer of the above said apartments in the name of the Appellant/Plaintiff. However, it was mutually agreed that Rs. 862,000/- shall be paid as partial amount. Thus, a receipt on the letterhead of Defendant No.1 was executed on 11.08.1997. At the same time, it was also mutually agreed that whenever legal requirements were completed regarding the said apartments by Defendant No.1, the remaining amount of Rs. 138,000/- shall be paid by the Appellant/Plaintiff, and the suit premises would be transferred accordingly. Later, in the month of October 1997, Defendant No.1 approached the Appellant/Plaintiff, stating that one of the flats, i.e., Apartment No. 2, had some legal lacuna and defects therein, and hence, could not be transferred easily. If the Appellant/Plaintiff agreed, the Agreement to the extent of Apartment No. 7 would continue, while to the extent of Apartment No. 2, it shall be deemed to be cancelled. Accordingly, the parties mutually agreed to terminate the Agreement insofar as it pertained to Apartment No. 2. It was also agreed that since the Appellant/Plaintiff had paid Rs. 4,862,000/- to Defendant No.1 before termination of the Agreement to the extent of Apartment No. 2, therefore, the extra paid amount of Rs. 2,362,000/- would be returned to the Appellant/Plaintiff. Defendant No.1 promised to do so but could not arrange the amount. Defendant No.1, who at the time was a senior officer of the Pakistan Telecommunication Corporation, told the Appellant/Plaintiff that an inquiry had been initiated by some authorities against him and, till completion thereof, the process of transfer of the suit apartment would be withheld and when the inquiry is concluded positively, the transaction would be materialized. The Appellant/Plaintiff demanded immediate delivery of physical possession of the suit apartment, asserting that the entire consideration of Rs. 2,500,000/- had been paid, and nothing was outstanding. Defendant No.1 assured the Appellant/Plaintiff that he had become the absolute and exclusive owner of the suit apartment after full payment. However, as someone was living in the suit apartment as a tenant and could not be immediately evicted, possession could not be delivered. He promised instead that monthly rent at the rate of 1,200 US Dollars would be paid to the Appellant/Plaintiff from the date of the Agreement till the sale. Defendant No.1 also executed a general power of attorney in favour of the Appellant/Plaintiff's wife. It is averred that since the

date of the Agreement, the Appellant/Plaintiff has been demanding possession, but Defendant No.1 delayed it on various pretexts. Later, Defendant No.1 was arrested by NAB and all his assets were attached. The Appellant/Plaintiff contacted him through his wife, who stated that the suit apartment had been purchased through legal means, therefore, no question of its forfeiture could arise. However, Defendant No.1 was sentenced to 5 years' imprisonment by the Accountability Court. After serving his sentence, Defendant No.1 did not honour his commitments. He also cancelled the power of attorney given to the Appellant/Plaintiff's wife. The matter was then referred to a Jirga, which also asked Defendant No.1 to transfer the suit apartment in favour of the plaintiff and also pay the rent at the rate of 1200 U.S Dollars per month but to no avail. On 16.09.2005, it came to the knowledge of the Appellant/Plaintiff that Defendant No.1 had illegally sold the suit apartment to Defendant No.3, who further sold it to Defendant No.4, which necessitated the Appellant/Plaintiff to file the Suit.

3. Defendant No.1 contested the suit by filing a written statement wherein the execution of the Sale Agreement was vehemently denied. Similarly, receipt of any sale consideration was also denied. However, he admitted the execution of power of attorney in favour of the Appellant/Plaintiff's wife but claimed it was cancelled as the Appellant/Plaintiff attempted to cheat him. All averments in the plaint were denied and dismissal of the suit was prayed for.

4. In view of the divergent pleadings of the parties, the learned Trial Court framed the following issues:

1. Whether the Plaintiff is entitled to a decree for declaration and cancellation of documents? OPP
2. Whether the Plaintiff is entitled to decree for specific performance? OPP
3. Whether the Plaintiff is entitled to a decree for permanent injunction? OPP
4. Whether the Plaintiff is entitled to a decree for mandatory injunction? OPP
5. Whether the Plaintiff has no locus standi and cause of action? OPD
6. Whether the suit is not maintainable and plaint is liable to be rejected under Order VII Rule 11 CPC? OPD-1
7. Whether the Plaintiff is estopped by his words and conduct to file suit? OPD-1

8. Whether the suit is false, frivolous and vexatious, hence Defendant No.1 is entitled to get special costs? OPD-1

9. Relief.

5. The record reveals that the Appellant/Plaintiff, in order to prove his case, appeared as PW-1, produced Syed Hameed Akhtar as PW-2, Khalid Mehmood (Registry Moharrar) as PW-3 regarding the general power of attorney, and Mst. Noor Jahan as PW-4. The Appellant/Plaintiff produced receipts dated 24.05.1997 as Ex.PW-1/1 and Ex.PW-1/2, sale deed executed by the previous owner of Defendant No.1 as Ex.PW-1/3, general power of attorney executed by Defendant No.1 in favour of Mst. Noor Jahan as Ex.PW-1/4, the judgment of Accountability Court as Ex.PW-1/5, newspaper cutting as Ex.PW-1/6, cancellation of general power of attorney as Ex.PW-3/2, and sale deed as Ex.PW-3/3.

6. The learned Trial Court, after going through the evidence and hearing arguments, dismissed the Suit on the following findings:

- No cogent or admissible evidence was produced to cancel registered Sale Deeds No.1836 dated 11.07.1998 and 506 dated 31.01.2004. These documents enjoy statutory presumption of truth under the law and cannot be set aside based on unsubstantiated oral assertions.
- Cancellation of General Power of Attorney (Deed No.480 dated 25.02.1998) was not challenged by the attorney holder Mst. Noor Jahan, who was not impleaded as a party, thereby making the claim legally unsustainable.
- The alleged Agreement to Sell dated 24.05.1997 was not produced in its complete form, and the receipts (Ex.PW-1/1 and Ex.PW-1/2) lacked signatures of either party and were unsupported by any attesting witnesses, thus failing to meet the evidentiary requirements of Article 79 of the Qanun-e-Shahadat Order, 1984.
- The claims of specific performance, permanent injunction, and mandatory injunction were held to be redundant in light of the above findings.

7. Arguments heard. Record perused.

8. After reviewing the record, hearing learned counsel for the parties, and carefully reviewing the reasoning of the Trial Court, this Court is of the considered view that the Impugned Judgment suffers from no legal infirmity or perversity. It is settled law that a party seeking specific performance must prove a valid and

enforceable agreement. The Appellant/Plaintiff failed to produce a formally executed agreement to sell bearing the signature of both parties and the attestation of marginal witnesses, which are indispensable for admissibility under Article 79 of the Qanun-e-Shahadat Order, 1984. The receipts relied upon (Ex.PW-1/1 and Ex.PW-1/2) do not contain the signatures of the Appellant/Plaintiff, nor do they bear any independent attestation, thus making them insufficient to constitute or prove a binding agreement. It is further noted that these documents were not proved in accordance with law. Therefore, the rejection of specific performance was justified. The sale deeds in question (No.1836 and No.506) are registered documents and carry a presumption of correctness under the Registration Act, 1908 and the Qanun-e-Shahadat Order, 1984. The law prescribes that such documents cannot be cancelled merely on the basis of oral evidence unless there is cogent documentary proof of fraud, forgery or misrepresentation. The remaining defendants are lawful purchaser of the suit apartment for consideration without any notice. Unless any mala-fide is established on their part through any admissible, cogent and tangible evidence, they shall be deemed to be *bona fide* purchaser for consideration and their rights are well protected under the law. A careful perusal of record revealed that the Appellant/Plaintiff has not placed on record any admissible evidence to rebut this presumption or to show that these transactions were illegal or fraudulent. The mere assertion of prior payment or alleged understanding is not enough to defeat registered title, especially in absence of any *lis* pending at the relevant time or injunction restraining such transfer.

9. As far as the general power of attorney allegedly executed by Defendant No.1 in favour of Mst. Noor Jahan which was later cancelled through registered Deed No.480. Mst. Noor Jahan, being the attorney and a key stakeholder, was not impleaded as a party, nor did she challenge the cancellation deed herself. It is evident that she is not a party in the instant suit. She has not filed any suit either herself or through her husband. Hence, no claim/relief could have been granted in her favour in her absence and the absence of a legal challenge to the revocation of the instrument. It is a settled principle of law that no relief through proxy can be granted. Moreover, as there was no duly executed Sale Agreement in her favour by Defendant No.1 regarding the suit apartment, the general power of attorney was not one coupled with interest within the meaning of Section 202 of the Contract Act. Therefore, in the absence of any sale agreement or restraining order from a

court of competent jurisdiction, there was no legal bar to the cancellation of the same.

10. Since the primary relief of specific performance and cancellation of documents has been declined on sound legal grounds, the consequential reliefs of permanent and mandatory injunctions, as well as the recovery of Rs.23,62,000/-, do not survive independently and must fall with the main relief.

11. It is a cardinal principle of civil jurisprudence that he who seeks equity must come with clean hands and must discharge the burden of proof as per the law. In the instant case, the Appellant/Plaintiff has failed to establish the core of his case through legally admissible and credible evidence. The learned Trial Court has rightly evaluated the evidence, applied correct legal principles, and dismissed the suit by a well-reasoned Judgment.

12. For the above reasons, the titled Appeal, being devoid of merit, is **dismissed** and the Impugned Judgment and Decree passed by the learned Trial Court is upheld. No order as to the costs.

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the open Court on this _____ day of May 2025.

JUDGE

SAJID/--