JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

C.R.No.237 of 2016
I.B. Employees Cooperative Housing Scheme
Versus
Qamar Abbas and others

Date of Hearing:	26.04.2017
Petitioner by:	Mr. Muhammad Shahid Kamal Khan, Advocate,
Respondent by:	Ch. Zaheer Ahmad and Azra Parveen, Advocates for respondents No.1 to 9.

MIANGUL HASSAN AURANGZEB, J:- Through the instant civil revision petition, the petitioner, I.B. Employees Cooperative Housing Scheme, impugns the order dated 10.05.2016, passed by the Court of the learned Additional District Judge, Islamabad, whereby the petitioner's appeal against the order dated 18.04.2016, passed by the Court of the learned Civil Judge, Islamabad, was dismissed. Vide the said order dated 18.04.2016, the learned Civil Court dismissed the petitioner's application for interim injunction under Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure, 1908 ("C.P.C."). The petitioner had filed the said application for interim injunction along with its suit for specific performance of the agreement to sell dated 05.09.2012, whereby the respondents' agreed to sell land measuring 20 Kanals and 02 Marlas situated in Revenue Estate Khatrial, District Islamabad.

2. Learned counsel for the petitioner submitted that the learned Courts below concurrently erred by dismissing the petitioner's application for interim injunction; that the learned Courts below did not appreciate that another agreement to sell dated 12.11.2013 was executed between the petitioner and the respondents through which the respondents agreed to sell land measuring 12 Kanals and 18 Marlas in Revenue Estate Dhalyala, District Islamabad; that in pursuance of the said agreement to sell, an amount of Rs.5,500,000/- was paid by the petitioner

through cross cheques; and that if the respondents sell the suit land to third parties, the petitioner shall suffer irreparable loss.

3. The petitioner's case is that in the year 2012, Muhammad Munir alias Goshi (respondent No.10), who is a property dealer offered to arrange land for the petitioner's housing project; that with respondent No.10's efforts, respondents No.1 to 9 entered into an agreement to sell dated 05.09.2012 with the petitioner, whereby respondents No.1 to 9 agreed to sell 20 Kanals and 2 Marlas of land situated in Khasra Nos.715, 717, 719, 517/1, 518, 694, 702 and 489 in Revenue Estate Khatrail, District Islamabad; that out of the said land of 20 Kanals 2 Marlas, the said respondents agreed to sell land 8 Kanals 2 Marlas at the rate of Rs.4,75,000/- per kanal, and for the remaining 12 Kanals, 12 Marlas, the petitioner was to allot eight developed plots measuring 30x60 feet each in Block-T of the Housing Project; that provisional allotment letters dated 01.10.2012 were issued to respondents No.1 to 6 for eight plots; that respondent No.9 received Rs.5,47,000/- through cheque dated 18.09.2012, Rs. 18,00,000/- through cheque dated 03.10.2012 and Rs. 15,00,000/- though cheque dated 05.11.2012; that in this way a total amount of Rs. 38,47,500/- in addition to the said eight developed plots has been paid as total sale consideration for the land measuring 20 Kanals 2 Marlas; that only 12 Kanals 12 Marlas were transferred through Mutation No. 996, dated 26.11.2012 to the petitioner, whereas the remaining 7 Kanals 10 Marlas was not transferred by the respondents.

4. On 10.04.2017, Ms. Azra Parveen, Advocate, tendered appearance on behalf of respondents No.1 to 9 and submitted that land measuring 12 Kanals 12 Marals was transferred in favour of the petitioner earlier, whereas land measuring 7 Kanals 10 Marlas has also been transferred in favour of the petitioner. Learned counsel for the petitioner sought some time to consult with his client and verify as to whether the remaining 7 Kanals 10 Marlas of land had indeed been transferred in the petitioner's favour. For this purpose, the matter was adjourned for a period of ten days. On 26.04.2017, the learned counsel for respondents

No. 1 to 9 produced Mutation No.967, which shows that the remaining 7 Kanals 10 Marlas of land had indeed been transferred in favour of the petitioner. It is not disputed that the petitioner is in possession of the entire 20 Kanals 2 Marlas of land which was transferred by respondents No.1 to 9 in pursuance of the agreement to sell dated 05.09.2012.

5. Now, the petitioner's suit for specific performance, mandatory and permanent injunction is not just with respect to the specific performance of the agreement to sell dated 05.09.2012 regarding 20 Kanals 2 Marlas in Revenue Estate of Khatrail, District Islamabad, but also with respect to the alleged addendum dated 12.11.2013. This addendum is at pages 54 to 56 of this petition. None of respondents No.1 to 9 are parties to this addendum. These documents show that three cheques dated 14.11.2013 for Rs. 15,00,000/-, 15.11.2013 for Rs.25,00,000/- and 21.11.2013 for Rs.15,00,000/- were paid by the petitioner to respondent No.10. Respondents No.1 to 9 denied having received any amount from respondent No.10. They also denied the execution of an agreement to sell for the sale of their land in Revenue Estate Dhalyala. At no material stage was any power of attorney executed by respondents No.1 to 9 in favour of respondent No.10 for the sale of their land in Revenue Estate Dhalyala. Apparently on 18.04.2016, respondent No.10's statement was recorded to the effect that a deal was struck between respondents No.1 to 9 and the petitioner in respect of a land situated in Revenue Estate Khatrail, whereas no agreement was executed between the said parties with respect to a land situated in Dhalyala. The documents at page-54 to 56 of this petition can hardly be termed as qualifying as an agreement to sell between the petitioner and respondents No.1 to 9. Anyhow, since the petitioner is yet to prove the execution of the agreement to sell dated 12.11.2013 by producing evidence, it is my view that the learned Courts below did not commit any jurisdictional irregularity by dismissing the petitioner's application for interim injunction.

6. In view of the above, the instant civil revision petition is dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2017

Sultan **(JUDGE)**

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