

ORDER SHEET

**LAHORE HIGH COURT, LAHORE**

JUDICIAL DEPARTMENT

**RSA No.225/2014**

Mehmood Anwar

Vs

Abdul Hanan etc.

S.No. of Order/ Proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary
----------------------------	---------------------------	--

03.5.2017 Ch. Ijaz Akbar, Advocate on behalf of the appellant.  
Ch. Shoukat Hayat Gondal, Advocate on behalf of respondent No.1.

This regular second appeal has been filed against the concurrent findings of learned trial and first appellate courts as a civil suit for specific performance of contract and permanent injunction filed by the appellant against the respondents has been dismissed by the learned Civil Judge, Gujranwala vide judgment and decree dated 28.7.2012 and first appeal has also met the same fate vide judgment and decree dated 2.10.2014 passed by the learned Additional District Judge, Gujranwala.

2. Relevant facts emerging from the record are that appellant/plaintiff Mehmood Anwar through his special attorney filed the above civil suit against the respondents before the Civil Court Gujranwala and it was averred in the plaint that the respondents owned 226-Kanals 10-Marlas land situate in Tung Kala Tehsil Nowshera Virkan, District Gujranwala and they agreed to sell the said land to the appellant for consideration of Rs.65,11,875/- through a written agreement to sell dated

4.10.2000. Under the said agreement, the respondents received earnest amount of Rs.20,00,000/- from the appellant in the presence of witnesses and it was settled that after payment of remaining amount of Rs.45,11,875/- till 15.6.2011, the suit land would be transferred through registered sale deed. It was further averred in the plaint that under the above agreement, the respondent No.1 partially transferred 170-Kanals 7-Marlas land to the appellant through registered sale deed No.326 dated 11.6.2011 after receiving an amount of Rs.24,73,500/- Regarding the transfer of remaining 56-Kanals 3-Marlas land, the respondents sought extension of time, which was granted verbally. Later on, the respondents further received an amount of Rs.5,00,000/- from the appellant and renewed promise to transfer the remaining land very soon. Since the respondents failed to fulfill their promise inspite of repeated reminders, therefore, the appellant was constrained to file a suit for specific performance of contract in respect of remaining 56-Kanals 3-Marlas land after payment of outstanding amount of Rs.15,38,375/- The respondent No.1 only contested the suit as the remaining respondents did not appear inspite of service of summons. The respondent No.1 in his written statement denied about the execution of agreement to sell dated 4.10.2000 between the parties and termed the said document as forged and fictitious. The respondent No.1, however, conceded in his written

statement about the transfer of 170-Kanals 7-Marlas land to the appellant and his wife Mst. Rehana Parveen after receiving the amount of Rs.42,00,000/- through registered sale deed No.326 dated 11.6.2001. The contesting respondent also took a stance that earlier to it he had also transferred 8-Kanals land to the appellant and his wife through sale mutation No.539 dated 29.3.2011. The contesting respondent alleged that the respondents No.2 to 4 were collusive with the appellant as the said respondents had already exchanged their owned property situate in District Sahiwal with him. Out of the divergent pleadings of the parties, the following issues were framed by the learned trial court: -

- 1) *Whether the defendants entered an agreement to sell dated 4.10.2000 in respect of the land measuring 226-Kanals 10-Marlas against the consideration of Rs.65,11,875/- and received Rs.20,00,000/- as earnest money and on 11.6.2001 land measuring 170-Kanals 7-Marlas was transferred in favour of plaintiff as a part performance of agreement? OPP*
- 2) *Whether the plaintiff paid Rs.5,00,000/- more to the defendants in pursuance of agreement dated 4.10.2000? OPP*
- 3) *Whether the plaintiff is entitled to the decree for specific performance of agreement alongwith permanent injunction as prayed for? OPP*
- 4) *Whether the suit has been filed with the collusiveness of defendants No.2 to 4? OPD-1*
- 5) *Whether the suit is time barred? OPD-1*

- 6) *Whether plaintiff is estopped by his words and conduct to file the suit? OPD-1*
- 7) *Whether the suit is false, frivolous, baseless and has been filed just to harass and blackmail the defendant as such defendant is entitled to special costs? OPD-1*
- 8) *Relief.*

The parties led their respective oral and documentary evidence on the above issues and after finalization of trial, as noted above, the learned trial Judge dismissed the suit and first appeal also met the same fate vide impugned judgments and decrees challenged through this regular second appeal.

3. The learned counsel for the appellant has argued that the impugned judgments of the learned lower courts are against law and facts as outcome of misreading and non-reading of evidence; that no separate and legal findings were recorded on each issue; that the appellant had discharged responsibility to prove agreement to sell by examining a scribe and a marginal witness in a natural background as the other marginal witness was partially examined but he could not be cross examined at relevant time due to default of the contesting respondent and unfortunately the said marginal witness later on died; that the learned lower courts ignored a material fact that evidence adduced by the appellant was not rebutted from respondents No.2 to 4 and that the conclusions drawn by

the learned lower courts are contrary to law and unwarranted, hence, the appeal be allowed.

4. The learned counsel for the respondent No.1 has vehemently opposed the appeal by supporting the concurrent findings of the learned lower courts.

5. Arguments heard. Record perused.

6. On careful scrutiny of record and evidence of this case, it is found that at the stage of recording evidence of the appellant, the respondent No.1 absented from the proceedings, on account of which, he was proceeded against ex-parte and ex-parte evidence of the appellant comprising of four witnesses was recorded and when the suit was at the stage of ex-parte final arguments, the respondent No.1 joined the proceedings and applied for setting aside ex-parte proceedings order and his application was accepted and thereafter the witnesses examined by the appellant were resummoned for facing cross examination. In his ex-parte evidence, the appellant had examined one marginal witness cited on the agreement to sell Exh.P-1 namely Allah Ditta as PW-1, a Stamp Vendor Ali-ul-Hassan as PW-2, special attorney of the appellant Muhammad Latif appeared as PW-3 and a Hand Writing Expert Arif Saleem was examined as PW-4. When the said witnesses were summoned for cross examination, it was reported that marginal witness Allah Ditta has passed away and in this way, under the law testimony of PW-1 carried no weight.

PW-2 a Stamp Vendor through his examination in chief tried to assume the role of marginal witness but when he was cross examined from the opposite side he was found to be unaware of material events which led to the execution of the agreement to sell Exh.P-1 as he frankly conceded that he was not knowing the parties to the agreement and that money exchange was not done in his view. A Hand Writing Expert PW-4 was examined to establish that agreement to sell Exh.P-1 was bearing the genuine thumb impression of respondent No.1 but the said witness when checked in cross examination disclosed that he was not even Hand Writing Expert and the formalities of enlargement of thumb impression were observed by another photographer. Other left out worth considering evidence of the appellant is the statement of PW-3 his special attorney, whose statement is not much helpful to establish claim of the appellant as he disclosed in cross examination that he was not knowing as to who was in possession of the disputed 56-Kanals 3-Marlas of land and that payment of consideration amount was not made in his presence and that he was also not witness of main document Exh.P-1.

7. During the course of arguments, the learned counsel for the appellant reading out from the statements of respondent No.1 and his son examined as DW-1 and DW-2 attempted to make out the case of his client by referring some of the replies given in cross examination

and particularly referred some portions of statement of son of respondent No.1, wherein he had conceded about the presence of his signature on Exh.P-1. In this regard, the learned opposite counsel aptly responded by arguing that it was primary responsibility of the appellant to build up his case on his own legs and not rely or bent upon the weaknesses of his adversary. Further argued that under Article 17 of the Qanoon-e-Shahadat Order, 1984, the appellant was essentially required to examine at least two attesting marginal witnesses of agreement to sell Exh.P-1, who have not been examined. Although the said deficiency was tried to be made up by examining a Stamp Vendor, whose testimony is otherwise not found to be worth reliance. In this view of the background how the appellant can ask for decreeing his claim without complying with the essentials of Articles 17 and 79 of the Qanoon-e-Shahadat Order, 1984.

8. As argued above from the appellant side that evidence of the appellant against respondents No.2 to 4 was un rebutted, therefore, the claim of his client could have been granted against them, the said assertion of the learned counsel for the appellant cannot be given any legal weight for the reasons that in order to prove a financial transaction, the appellant was under legal obligation to observe the legal formalities provided in the Qanoon-e-Shahadat Order, 1984 but he failed. In this regard, guidance is solicited from Mst. Maryam Bibi and

others Vs Muhammad Rafique Anwar and others (2012 SCMR 1384) and Salman Ali VS Maqbool Hussain (deceased) through his legal representatives and others [PLJ 2000 Lahore 1723 (DB)].

9. In view of the above discussed background, the learned counsel for the appellant has been unable to point out that the concurrent findings of the learned courts below suffer from any legal or factual infirmity or the same is result of some misreading or non-reading of evidence or the conclusions drawn therefrom are contrary to law or the said courts had failed to determine some material issue of law or usage having the force of law. As a result thereof, this regular second appeal found to be devoid of any merit is dismissed with costs.

**(Abdul Sattar)**  
Judge

*Naeem*

Approved for reporting.

Judge