

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

**Civil Revision No.763 of 2014**

**Mohammad Rafique etc. VS Mohammad Mansha etc.**

**JUDGMENT.**

Date of Hearing	09.05.2017.
Petitioners by	Mr. Asad Jamal Akbar, Advocate
Respondents No.1 & 2 by	Mr. Mushtaq Ahmad, Advocate
Respondents No.3 to 5 are ex-parte.	

**HABIB ULLAH AMIR, J:-** Through this civil revision petitioners have challenged vires of judgment and decree dated 28.01.2010 passed by the learned Civil Judge, Chunian, District Kasur, whereby suit for specific performance of agreement to sell was decreed in favour of respondents No.1 & 2 and against respondent No.3 Mohammad Ahmad to the extent of his share in disputed land, subject to payment of balance amount of Rs:60,000/- and mutation No.12693 was cancelled and judgment dated 09.01.2014 of learned Additional District Judge, Chunian District Kasur who dismissed appeal of petitioners.

2. Concisely, facts giving rise to instant civil revision are that respondents No.1 & 2 Mohammad Mansha and Mohammad Sarwar instituted suit for specific performance of agreement to sell in respect to land measuring 38-kanal, 12-marla situated at Chah Manianwala, Chunian within revenue estate of Tehsil Chunian against respondents No.3 to 5 and during pendency of suit respondents No.3 to 5 sold out land in dispute to petitioners and without information about pendency of suit and in the trial they made application under Order I Rule 10 CPC to the learned Civil Judge and application of petitioners was accepted and they were impleaded as defendants. Suit was controverted by defendants and the learned Civil Judge, Chunian vide judgment and decree dated 28.01.2010 decreed suit of respondents No.1 & 2 against only defendant No.1 Mohammad Ahmad to the extent

of his share in disputed land, subject to payment of balance amount of Rs:60,000/- and mutation No.12693 was also cancelled, however, suit was dismissed to the extent of 2/3 share of disputed land owned by defendants No.2 & 3 and feeling aggrieved, petitioners preferred appeal which remained pending in the Court of learned Additional District Judge, Chunian but appeal of petitioners met with the fate of dismissal. Hence, this civil revision.

3. Arguments heard. Record perused.

4. The plaintiffs Mohammad Mansha etc averred in suit that defendants Mohammad Ahmad, Mohammad Azam and Mohammad Zulfiqar entered into an agreement to sell in respect to property in dispute on 02.08.1993 for consideration of Rs:75,000/- per acre and they received earnest money of Rs:40,000/- and it was agreed that remaining consideration price shall be paid before Sub-registrar, Chunian on 30.01.1994 but they did not appear before Sub-registrar, Chunian on 30.01.1994 and the plaintiffs waited for whole day, whereafter they made application before Sub-registrar and got marked their presence and it was further agreed that in case property was not transferred, the plaintiffs shall be entitled to receive double amount of consideration price and on the request of plaintiffs to transfer property in their favour the defendants promised that in case property was not transferred in favour of plaintiffs, they shall compensate plaintiffs and due to this reason plaintiffs remained silent for six months and thus sustained loss of Rs:3,000/- and after six months request was again made for transfer of property which was refused and this constrained plaintiffs to institute suit. Suit was controverted by defendants and through written statement Mohammad Ahmad etc. averred that the agreement to sell dated 02.08.1993 was the result of forgery and fraud, ineffective qua the rights of defendants over the suit property and also averred in written statement that defendant No.1 who owned 1/3 share in property in dispute

agreed to sell his land to plaintiff No.1 for consideration of Rs:1,00,000/- per acre and the plaintiff No.1 paid him Rs:20,000/- and promised that after two months consideration price shall be paid to defendant No.1 and that the defendant No.1 shall transfer his share of property to him. Defendant No.1 and plaintiff No.1 had good relations, therefore, defendant No.1 by trusting plaintiff No.1 put his signatures on a blank stamp paper but the plaintiff No.1 got prepared agreement to sell not only on behalf of defendant No.1, but on behalf of defendants No.2 and 3 despite that the defendants No.2 & 3 had not sold their property to plaintiff No.1 nor they received consideration price, moreover, defendants No.2 & 3 made no signatures or thumb impressions on agreement to sell and the agreement to sell was the result of fraud and forgery. The petitioners/defendants No.4 to 7 through their written statement claimed that they were the bonafide purchasers of land in dispute. On the divergent pleadings of parties, learned Civil Judge, Chunian framed following issues:-

**ISSUES.**

1. *Whether the defendants through an agreement dated 02.08.1993 agreed to sell the suit land to the plaintiffs for Rs:3,00,000/- and received Rs:40,000/- as earnest money? OPP*
2. *Whether the plaintiffs are entitled to a decree for specific performance of contract? OPP*
3. *Whether the plaintiffs have no cause of action? OPD*
4. *Whether the plaintiffs are estopped by their won words and conduct to bring the suit? OPD*
5. *Whether the suit is frivolous and vexatious; hence the defendants are entitled to compensatory costs? OPD*
6. *Relief.*

5. Thereafter, the learned Civil Judge, Chunian framed one additional issue which is as under:-

**ADDITIONAL ISSUE.**

1. *Whether the defendants No.4 to 7 are bonafide purchasers of the disputed property for payment of consideration and they were not informed by defendants No.1 to 3 about the pendency of this case and they were also not informed about it by other source, so their rights are protected under the law? OPD 4 to 7*

6. The defendants No.2 & 3 categorically denied execution of agreement to sell and also denied that they had entered into an agreement to sell with plaintiffs or that they had received consideration price or that they had put their thumb impressions or signatures on agreement to sell and in circumstances when in paragraph No.5 of written statement the defendants denied the execution of agreement to sell dated 02.08.1993 on ground that it was the result of fraud and forgery, the plaintiffs were burdened to prove the execution of agreement to sell by producing legal evidence. Moreover, the defendant No.1 had taken plea that he was made to put signatures on a blank stamp paper as he had entered into agreement to sell but consideration price was fixed to the tune of Rs:1,00,000/- per acre to the extent of his share in property and it was agreed that after two months consideration price shall be paid and that he shall transfer property in dispute in favour of plaintiffs but the plaintiffs by committing fraud and forgery got prepared agreement by putting forged attestation of defendants, so the plaintiffs were also burdened to establish that they had made effort to pay remaining sale price to the vendor, within stipulated period by producing evidence, however, by appreciating evidence available on record the learned civil judge decided issues No.1 & 2 in the following manners:-

*“Perusal of Ex-P1 clearly shows that the thumb impression of the defendant No.1 as affixed by blue colour pad ink while the thumb impressions of defendants No.2 & 3 were affixed with light blue pen ink, which clearly shows that they were not affixed at the same time. Furthermore, thumb impression attributed to the defendants No.2 & 3 are not clearly identical and are also not comparable with their original thumb impressions. Moreover, according to statement of PWs-2 & 3, they are close relatives of plaintiff No.1 so, they are interested witnesses. No independent witness has been produced regarding the conclusion of agreement to sell even the stamp vendor and scribe of Ex-P1 were not produced. All the PWs stated that they did not know the name of its scribe which is highly unbelievable that the name of scribe should not be known by the plaintiff in whose favour the agreement was concluded. Moreover, it was alleged that the agreement to sell was written at Lahore, while the disputed land is situated in Tehsil Chunian. Both the parties are also residing there. It is also notable that plaintiffs produced two witnesses of the*

*agreement to sell but their oral statement is not considerable at par with the proof of documentary evidence. The plaintiff had to prove the execution of Ex-P1, affixing of thumb impression of defendants No.2 & 3 correctly at the time of its execution. So due to their failure to prove Ex-P1, the statement of PWs cannot be considered as proof of the alleged agreement.*

*10. In view of above discussion, both these issues are decided against the plaintiffs to the extent of their claim against defendants No.2 & 3 but the same are decided in their favour to the extent the defendant No.1.”*

7. The learned Civil Judge, Chunian vide judgment and decree dated 28.01.2010 observed that the plaintiffs failed to prove execution of agreement to sell Exh.P-1, however suit of plaintiffs was decreed only to the extent of share of defendant No.1 in property in dispute and at the same time also declared that the defendants No.4 to 7 petitioners were bonafide purchasers of disputed property as they were not informed by defendants No.1 to 3 about pendency of case. It is astonishing to note that the suit was decreed in favour of plaintiffs and against defendant No.1 Mohammad Ahmad to the extent of his share in property, however, it was not discussed in finding of learned Civil Judge in judgment dated 28.01.2010 that how the plaintiffs proved that they had paid consideration price to the defendant Mohammad Ahmed or that actually plaintiffs had performed the part performance of agreement on target date i.e. 30.01.1994.

8. The plaintiffs did not prefer appeal against the dismissal of suit to the extent of defendants Mohammad Azam and Zulfiqar and similarly, Mohammed Ahmed had not preferred appeal against the judgment and decree dated 28.01.2010 of learned Civil Judge, Chunian while appeal was preferred only by Rafique etc, the subsequent purchasers of suit property and it has not been appreciated by learned Additional District Judge that the petitioners had preferred appeal feeling aggrieved with judgment and decree dated 28.01.2010 of the learned Civil Judge Chunian and wrongly observed that as Mohammad Ahmed had not filed independent appeal against decree of learned Civil Judge, therefore, same had attained

finality and it has also been ignored that the petitioners were declared as bonafide purchaser of suit property by the learned Civil Judge and also that they were aggrieved of the judgment and decree of the learned Civil Judge, whereby suit was decreed against defendant Mohammad Ahmed to the extent of his share in property in dispute purchased by Mohammad Rafique etc.

9. It was the stance of defendant No.1 Mohammad Ahmed that plaintiff No.1 Mohammad Mansha had good relations and defendant Mohammad Ahmed put his signatures on blank stamp paper but the plaintiffs fabricated stamp paper and by committing fraud got written agreement to sell on behalf of defendants No.2 & 3 also. While as DW-3 he deposed that he owned 13-kanal piece of land and he entered into an agreement to sell with plaintiffs for consideration of Rs:1,00,000/- per acre and he received Rs:20,000/- as earnest money and it was agreed that after two months remaining consideration price shall be paid and he also deposed that due to his relationship with plaintiffs he put his signatures on blank stamp paper while there were forged signatures of his brothers on stamp paper and he also deposed that as the plaintiffs did not perform the part performance, therefore, the agreement was rescinded and cancelled.

10. Under the law, specific performance of agreement to sell always is discretionary in nature but to be exercised judiciously, equitable and on well-recognized judicial considerations as required by provisions of the Specific Relief Act. To grant specific performance of the contract is absolutely within the discretion of the Court and no hard and fast rigid rule can be laid down when and where this discretion is to be exercised by the Court. The discretion that has to be exercised by the Court shall depend upon the circumstances of the case and in case the plaintiff fails to show that he had performed his part of contract and it was proved that he did not pay the sale consideration to the defendant on or by the fixed date without any plausible reason, he could not claim the specific

performance of contract and Court cannot use its discretion. I am fortified by the case law reported as **“Mohammad Yousaf Rangoonwala Vs. Mst. Razia Fatima A. Karim through her attorney” (2007 M L D 1949)**. It has also been laid down in judgment reported as **“Bank Al-Falah Ltd. Vs. Mrs. Shahzadi Zarfashan Sohail” (2016 YLR 2528)** which is as under:-

*“---S. 12---Suit for specific performance of contract--- Discretionary relief---Scope---Neither plaintiff made any effort to pay the remaining sale price to the vendor nor sent any notice to perform her part of agreement before expiry of target date---Nothing was on record to suggest that agreement and defendant avoided the same---Plaintiff having failed to make payment of balance sale price within the stipulated time, was not entitled to the decree of specific performance which was discretionary relief--- Court even if case was proved could refuse to exercise its discretion---No illegality had been pointed out in the impugned judgment and decree passed by the Trial Court---Appeal was dismissed in circumstances”*

11. It has also been observed in judgment reported as **“Zahid Rahman Vs. Mohammad Ali Asghar Rana” (2007 CLC 1814)** that in case plaintiff (vendee) fails to prove that he is ready and willing to perform his contractual obligation as vendee, at the time of performance of the agreement. Such fact alone disentitles the plaintiff to claim specific performance of agreement.

12. Similarly, it has also been laid down in case law reported as **“Mohammad Sharif and others Vs. Nabi Bakhsh and others” (2012 SCMR 900)** which is as under:-

*“---Ss. 12 & 27---Suit for specific performance of sale agreement---Powers of Court---Scope---Remedy by way of specific performance for being an equitable relief and discretionary could not be claimed as of right---Court would not be bound to grant such relief merely because doing so would be lawful.”*

13. The agreement Exh.P-1 has been produced by plaintiff No.1 Mohammad Mansha and as per terms and conditions of agreement to sell, it was agreed that on 30.01.1994 remaining consideration price shall be received by defendants and thus the plaintiffs were bound to prove part performance on their side and PW-1 has deposed that it was agreed that remaining

consideration price shall be paid on 30.01.1994 and that he appeared before Sub-registrar Chunian but Mohammad Ahmed etc. did not reach there, however, he has not deposed that he had made application to the Sub-registrar to mark his presence, rather he has deposed that thereafter he approached the defendants for registration of sale deed through family which was refused, whereafter they instituted suit and none of the witness of plaintiff supported averments in suit that plaintiffs attended office of Sub-registrar Chunian on 30.01.1994 and that the plaintiffs made application to Sub-registrar to mark their presence, moreover, no effort was made by plaintiffs to produce Sub-registrar who marked their presence when as per terms and conditions of agreement to sell plaintiffs went to office of Sub-registrar where the defendants were supposed to receive remaining consideration price. The plaintiffs in such like cases are burdened to establish that they made efforts to pay remaining consideration price to the vendor and that they were willing to perform their part of agreement, however, it has been noticed that the judgment and decree was passed by the learned Civil Judge, Chunian on 28.01.2010, subject to payment of R:60,000/- and the learned Additional District Judge, Chunian vide judgment dated 09.01.2014 directed for the deposit of balance sale price of Rs:60,000/- with Nazir of Tehsil Court, Chunian within one month from 09.01.2014 by observing that previously plaintiffs did not pay or even deposit the remaining consideration price in Court and prior to that no effort was made by petitioner to pay the remaining consideration price to the vendor and similarly, the petitioner did not send notice to perform their part of agreement till stipulated period. Moreover, nothing has been brought on record to suggest that plaintiffs were ready to perform their part of agreement and that defendant Mohammad Ahmed avoided to receive the same. Similarly, it has also been found that plaintiffs failed to make payment of balance sale price within the stipulated period and in the

circumstances the plaintiffs were not entitled to the decree for specific performance which is discretionary relief of the Court even if case is proved, the Court can refuse to exercise its discretion.

14. The plaintiff failed to prove that they had performed their part of agreement before stipulated date i.e. 30.01.1994 and that defendant avoided the same and in view of above, especially when execution of agreement to sell had not been proved, the findings of the Courts below impugned in this revision petition are not sustainable in the eye of law as the learned Courts below have committed error of law which has caused grave injustice resulting into miscarriage of justice and consequently this revision petition merits acceptance.

15. In view of discussion made above, revision petition in hand is accepted and impugned judgments & decrees dated 28.01.2010 passed by learned Civil Judge, Chunian and dated 09.01.2014 passed by learned Additional District Judge, Chunian are set aside and in result whereof suit of respondents No.1 & 2 for possession through specific performance of agreement is dismissed.

**(Habib Ullah Amir)**  
**Judge**

Approved for reporting.

**Judge**