JUDGMENT SHEET

LAHORE HIGH COURT, LAHORE

(JUDICIAL DEPARTMENT)

Civil Revision No.3204 of 2015
(Mst. Waris Jan ***vs.*** *Liaqat Ali, etc)*

&

Civil Revision No.2946 of 2015
(Muhammad Jahangir & others ***vs.*** *Liaqat Ali, etc)*

JUDGMENT

Date of hearing: -	14.01.2019
Petitioner in C.R.No.3204/2015 by:-	Mr. Muhammad Anwar Butt, Advocate
Petitioners in C.R. No.2946/2015 by: -	Mr. Javed Iqbal Saif, Advocate
Respondent No.1 Liaqat Ali by: -	Qari Nadeem Ahmad Awaisi Advocate

SHAHID WAHEED, J:- This judgment shall govern C.R.No.3204 of 2015 alongwith its complementary revision bearing No.2946 of 2015 as both of them are of the defendants and arise out of a suit for specific performance of an agreement to sell a piece of land measuring 15 *Kanals* in *Chak* No.62-D, Pakpattan, belonging to the applicant of C.R.No.3204 of 2015, Mst. Waris Jan, first defendant who, it is alleged, agreed to sell the same to the plaintiff, Liaqat Ali (respondent No.1) but subsequently resiled from the agreement and sold the same to Muhammad Jahangir, Muhammad Ameer, Nazeer Ahmad, Muhammad Abbas and Muhammad Ashiq (respondents No.2 to 6 herein and applicants of C.R.No.2946 of 2015), second defendant, who purchased it without notice of the agreement.

2. The plaintiff's case, in substance, is that Mst. Waris Jan, first defendant, who was owner of land measuring 30 *Kanals* situated at *Chak* No.62-D, Pakpattan, the details whereof have been given in

paragraph No.1 of the plaint, entered into negotiations for sale of the same with him. As a result of negotiations, on 30th May, 2007 Mst. Waris Jan through a written agreement agreed to sell her land to the plaintiff for a consideration of Rs.487,500/-. Out of this consideration, a sum of Rs.20,000/- was paid by the plaintiff to the first defendant in presence of the witnesses and it was agreed that balance amount of Rs.467,500/- would be payable on 5th July, 2007 and thereafter, the land would be transferred in favour of the plaintiff through oral sale mutation. This agreement stood unperformed till 5th July, 2007. The plaintiff and the first defendant, however, mutually decided to cancel the first agreement and through a fresh written agreement dated 19th July, 2007 the first defendant agreed to sell her land measuring 15 *Kanals* of *Chak* No.62-D, Pakpattan to the plaintiff for a consideration of Rs.243,750/-. The amount paid by the plaintiff under the first agreement was treated as earnest money in the second agreement and it was agreed that the first defendant upon receiving of balance sale amount of Rs.223,750/- till 20th October, 2007 would transfer land in favour of the plaintiff. The first defendant, Mst. Waris Jan, partially performing the agreement put the plaintiff, Liaqat Ali in possession of the suit land. The plaintiff had been ready and willing to perform his part of the agreement. On 14th October, 2007 the first defendant, to meet the needs of her husband, demanded Rs.130,000/- from the plaintiff, which was paid at *Chak* No.62/D, Pakpattan in presence of the witnesses but receipt thereof was not obtained as the parties had cordial relations and mutual confidence inter se. The first defendant, however, went back on her promise and did not execute the conveyance in favour of the plaintiff and on the other hand she sold the suit land to the second defendant who knowing the agreement got the suit land transferred in their name vide oral sale mutation No.1221 dated 16th November, 2007 for a consideration of Rs.750,000/-. The plaintiff was thus, obliged to

bring the suit claiming specific performance of the agreement dated 19th July, 2007 with the declaration that mutation No.1221 was void.

3. The suit was contested by both sets of defendants. The first defendant in her written statement contended, inter alia, that she had never agreed to sell her land to the plaintiff and the story of agreement of sale as set up by the plaintiff was entirely false. She stated that the suit land was given to the plaintiff on lease with the understanding that he would himself get possession by evicting one Muhammad Yasin therefrom but he in connivance with the stamp vendor/deed writer fraudulently got written agreement to sell on the stamp paper. She also denied receiving of earnest money or any other amount under the agreement. She, however, admitted the sale of suit land to the second defendant.

4. The second defendant in their written statement reiterated the defence of the first defendant with a further plea that they were *bona fide* purchasers for value having no notice of any agreement to sell of the suit land with the plaintiff.

5. On pleadings, the Trial Court framed following issues, which are not happily worded and composed:

1) Whether the defendant entered into an agreement to sell with the plaintiff on 03.5.07 for 30-K landed property for Rs.4,87,500/- and received Rs.20,000/- as earnest money. Later on entered into an other agreement to sell while concealing this agreement, on 19.7.2007 he agreed to sell 15-K of property for Rs.243750/- and Rs.20,000/- previously received by the defendant deemed to be earnest money and later on, on 14.7.07 defendant No.1 through her husband received an other installment of Rs.130,000/- and after receiving remaining amount defendant is under obligation to transfer the suit property in his name? OPP

2) Whether the plaintiff was lessee of the defendant and plaintiff in connivance with the scribe and stamp vendor obtained thumb impression of the defendant on disputed deed? OPD.

3) Whether the plaintiff has no cause of action to file the suit? OPD.

4) Whether the plaintiff has filed the suit only to harass the defendant and in case of dismissal of the suit defendant is entitled to recover special cost u/s 35-A CPC? OPD.

4-A) Whether the defendants No.2 to 6 are bonafide purchasers of suit property, without notice and with consideration, if so, its affects? OPD 2 to 6.

5) Relief.

6. The Trial Court came to the conclusion, on the evidence adduced by the parties, that the story of agreement to sell (Ex.P-1), as alleged by the plaintiff, was established and it was in pursuance of said agreement that the plaintiff was put in possession of the suit land. It was held that the defendants' story was not correct and that the plaintiff did advance a sum of Rs.20,000/- as earnest money and subsequently Rs.130,000/- to the first defendant. So far as the second defendants were concerned it was held that they were not *bona fide* purchasers for value without notice. In view of these findings the Trial Court through judgment dated 14th November, 2012 accepted the claim for specific performance and accordingly issued a decree in favour of the plaintiff. Through the said decree the plaintiff was directed to pay the remaining consideration amount of Rs.93,750/- within fifteen days from the decree.

7. Against this decision, the defendants jointly took an appeal to the District Court. The appeal was heard by the Additional District Judge, Pakpattan. The first Appellate Court held, concurring with the Trial Court, that case of concluded agreement between the parties was established by the evidence adduced in the case and the fact of the plaintiff being put in possession of the suit land could be regarded as an act of part performance of the agreement. The result was that the appeal was dismissed vide judgment and decree dated 11th September, 2015.

8. The first defendant has brought application in revision i.e. C.R.No.3204 of 2015 whereas the second defendant through their

revisional application i.e. C.R.No.2946 of 2015 have sought revision of the decrees of the Courts below.

9. The learned counsel for the applicants contend before me that the findings upon which the Courts below disbelieved the story of the defendants and decreed the claim for specific performance are not proper findings of facts which may be legitimately inferred from the evidence adduced in this case.

10. In the case on hands, issue No.1, though is composed in an unusual manner, was material and, it may be conveniently said, consisted of four parts, to wit, firstly, whether the first defendant on 30th May, 2007 had executed written agreement to sell her 30 *Kanals* land to the plaintiff for a consideration of Rs.487,500/- and received Rs.20,000/- as earnest money; secondly, whether the first defendant entered into another agreement dated 19th July, 2007 (Ex.P-1) while cancelling the earlier agreement dated 30th May, 2007, agreeing to sell her 15 *Kanals* of land for Rs.243,750/- and deeming Rs.20,000/- previously received by her to be earnest money; thirdly, whether on 14th July, 2007 the first defendant had received another installment of Rs.130,000/-; and, fourthly, whether the first defendant was under obligation to transfer the suit land in the name of the plaintiff. Burden to prove the said four components of issue No.1 was upon the plaintiff. Similarly, the Courts below were also required to return their findings on each component of issue No.1. Before proceeding further, let me observe here that since the subordinate Courts have not recorded finding qua each of the components, I am obliged to examine the same on the basis of evidence available on record.

11. A careful reading of the averments made in the plaint suggests that claim of the plaintiff for specific performance was based on two agreements. The first agreement was dated 30th May, 2007 whereas the second was allegedly executed on 19th July, 2007. It was maintained in the plaint that the first defendant through the first

agreement dated 30th May, 2007 had agreed to sell her land measuring 30 *Kanals* in *Chak* No.62-D, Pakpattan to the plaintiff for a consideration of Rs.487,500/-; out of which Rs.20,000/- were paid as earnest money and balance amount was agreed to be payable on 5th July, 2007; that this agreement stood unperformed and resultantly parties to the agreement through a fresh written agreement dated 19th July, 2007 (Ex.P-1) decided to cancel the first agreement and it was agreed that first defendant would sell her only 15 *Kanals* land of *Chak* No.62-D, Pakpattan and the plaintiff would purchase the same at the rate of Rs.243,750/-. It was further agreed that amount of Rs.20,000/- paid under the first agreement would be treated as earnest money of the second agreement (Ex.P-1) and upon payment of balance amount on 20th October, 2007 the first defendant would transfer the suit land in favour of the plaintiff either through sale mutation or registered sale deed. In fact the plaintiff through these assertions wanted to present that initial agreement dated 30th May, 2007 was subsequently substituted by another agreement dated 19th July, 2007 (Ex.P-1). This was a plea of "novation of contract" as contemplated in Section 62 of the Contract Act, 1872 and explained by the House of Lords[1]. The "novation of contract", according to House of Lords, is that where there being a contract in existence, some new contract is substituted for it either between the same parties or between different parties, the consideration mutually being the discharge of the old contract. It is now well settled that when an agreement is substituted, both the agreements are supposed to be read together to form a complete subsisting agreement. Thus, to prove a novation, four elements must be shown, that is, (a) the existence of a previous valid agreement; (b), the agreement of the parties to cancel the first agreement; (c) the agreement of the parties that the second agreement replaces the first one; and, (d) the validity of the second

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[1] **Benjamin** v. **Alfred George Jordine (1982) 7 A.C.345**

agreement. From a legal standpoint a novation is a form of affirmative plea and the party who canvasses a novation has the burden of proving it by clear satisfactory evidence. The plaintiff was, therefore, required to prove the terms and conditions of sale, which as per para 2 of the plaint, were reduced to the form of agreement dated 30th May, 2007. Article 102 of the Qanun-e-Shahadat, 1984 forbids proving the contents of writing otherwise than by writing itself. The best evidence about the contents of a document is, therefore, the document itself and it is the production of the document that is required by law in proof of its contents. The basic requirement of law is to see the terms incorporated in the document[1]. Rao Ali Bahadar (PW-5) during the course of cross-examination stated that agreement dated 30th May, 2007 was handed over to Liaqat Ali, the plaintiff. The plaintiff though produced oral evidence to prove the agreement dated 30th May, 2007 but the same was not admissible as the original agreement was not produced before the Court. This omission leads to the conclusion that the existence of the first agreement dated 30th May, 2007 and payment thereunder was not proved and resultantly the plaintiff also failed to prove the agreement of the parties to cancel the first agreement and that the second agreement (Ex.P-1) replaced the first.

12. Now, the validity of the second agreement to sell dated 19th July, 2007 (Ex.P-1) is examined. It is an admitted fact that the first defendant (Mst. Waris Jan) and her husband (Muhammad Amin) were illiterate persons. Their thumb impressions on the agreement (Ex.P-1) are eloquent testimony in support. The defence set up by the first defendant was that she had merely intended to give the land on lease to the plaintiff for a period of one year and had thumb-marked an agreement believing the same to be a lease-deed (*Patta nama*); that the plaintiff in connivance with the stamp vendor/deed

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[1] ***Hazratullah*** *v.* ***District Council, Haripur*** **(1997 SCMR 1570)**

writer fraudulently got written agreement to sell instead of lease-deed; that plaintiff was not in possession of the suit land; that one Yasin son of Ghulam Farid being lessee was in possession of suit land; and, that the alleged agreement to sell was void being based on fraud and without consideration. The maxim *"non est factum"* (Latin for "it is not my deed", which is a defence in contract law that allows signing party to escape performance of an agreement which is fundamentally different from what he or she intended to execute or sign) was thus found imbedded in the defence of the first defendant. It is contended on behalf of the plaintiff that it is settled principle of law that in a suit for specific performance where the defendant admits his/her thumb impression on the sale agreement but alleges that his/her thumb impression was obtained through fraud or misrepresentation on blank papers which have been converted into sale agreement subsequently, the burden to prove the same lies on the defendant; and, that since in the instant case the first defendant did not appear in the witness box to state her own case on oath and did not offer herself to be cross-examined by the plaintiff, a presumption would arise that the case set up by her was not correct. The said argument is neither well founded nor sufficient to prove the validity of the agreement to sell dated 19th July, 2007 (Ex.P-1). Ordinarily, the person who challenges the validity of a transaction on the ground of fraud, undue influence, etc. and charges his opponent with bad faith has to discharge the burden of proof which rests on him. But the major exception to this rule is that the initial burden would not shift to the party who challenges the transaction and will instead be cast on the person who relies on such deed or document if it is brought to the notice of the Courts that grantor is illiterate. Even otherwise in the case on hands the suit was for specific performance, and, therefore, it was for the plaintiff to prove his case, and agreement for sale (Ex.P-1) and non-examination of the first

defendant in the Court was of no consequence, especially when she was not called upon to prove any other aspect but her defence only by cross-examining the plaintiff's witnesses and, therefore, no adverse inference could be drawn against the first defendant because she did not enter the witness-box[1].

13. Here the document in question was executed by Mst. Waris Jan, the first defendant, who was under disability requiring reliance on others for advice as to contractual transaction. And that was her illiteracy. Her husband, Muhammad Amin, was also illiterate. Since illiteracy is sympathetically regarded as a misfortune and not a privilege, some measure of protection is accorded to illiterate, whether be a woman or man, in their contractual transactions. The case law[2] on the subject, under consideration, suggests that the burden of proof in respect of genuineness of a transaction with an illiterate person and a document allegedly executed by such a person lies on the beneficiary of the document, who is legally obliged to prove and satisfy the Court: firstly, that the document was executed by an illiterate person; secondly, that illiterate person had complete knowledge and full understanding about the contents of the document; thirdly, the document was read over to him/her and terms of the same were adequately explained to him/her; and, fourthly, that he/she had independent and disinterested advice in the matter before coming into the transaction and executing the document. The essence of the above stated principle is to prevent any overreaching out or fraud being perpetrated on illiterates by reason of their

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[1] ***Mitti Bewa*** *v.* ***Daitari Nayak and others*** (**AIR 1982 Orissa 174**) &
Umesh Bondre *v.* ***Wilfred Fernandes*** (**AIR 2007 Bombay 29**)

[2] ***Mt. Farid-ud-Nisa*** *v.* ***Munshi Mukhtar Ahmad and another*** (**AIR 1925 PC 204**),
Chainta Dasya *v.* ***Bhalkur Das*** (**AIR 1930 Calcutta 591**),
Parasnath *v.* ***Tileshra Kuav*** (**1965**) **All LJ 1080**),
Daya Shankar *v.* ***Smt. Bachi and others*** (**AIR 1982 All 376**),
Janat Bibi *v.* ***Sikandar Ali and others*** (**PLD 1990 SC 642**),
Amirzada Khan and another *v.* ***Itbar Khan and others*** (**2001 SCMR 609**),
Khawas Khan through legal heirs *v.* ***Sabir Hussain Shah and others*** (**2004 SCMR 1259**),
Muhammad Ashraf Khan *v.* ***Khan Siddique and others*** (**2010 SCMR 1116**),
Mian Allah Ditta through L.Rs. *v.* ***Mst. Sakina Bibi and others*** (**2013 SCMR 868**) &
Phul Peer Shah *v.* ***Hafeez Fatima*** (**2016 SCMR 1225**)

inability to read and write. In furtherance of this object it is, therefore, incumbent upon a person who writes any document at the request, or on behalf, or in the name of any illiterate person also to write on such document, his own name as the writer thereof and his address as well as the endorsement to the effect that document was written in presence of the seller's consultant (that is, who (i) can read and write the language of the document; (ii) understands the contractual transaction; and (iii) having no conflict of interest has advised the illiterate person about the contractual transaction). Such Verification Note/Statement shall be equivalent to a statement: (a) that he was instructed to write such document by the person it purports to have been written and the document fully and correctly represents his/her instructions; and (b) if the document purports to be signed with the signature or mark of the illiterate person, that prior to being so signed or marked, it was read over and explained to the illiterate person, and that the signature or mark was made by such person.

14. In order to prove the validity of second agreement to sell dated 19th July, 2007 (Ex.P-1), the plaintiff firstly produced deed writer/stamp vendor namely Kamal Khan before the Trial Court as PW-1. The statement of this witness was important as he was the independent person who could depose as to whether while executing agreement (Ex.P-1) the requirements, stated in the preceding paragraph, were complied with. This witness deposed that the agreement was written by him; that at the time of writing of the agreement husband of the first defendant, namely Muhammad Amin was present; that terms and conditions of the agreement were written upon instructions of Mst. Waris Jan; and, that upon completion of writing, thumb impression of Mst. Waris Jan, Liaqat Ali, and signatures of the marginal witnesses were obtained on the agreement (Ex.P-1). He did not state that at the time of execution of the

agreement to sell the transaction was explained to Mst. Waris Jan. It means that the agreement (Ex.P-1) was neither read over to Mst. Waris Jan nor terms of the same were adequately explained to her. This was a material omission. The second witness who appeared on behalf of the plaintiff was Muhammad Shah Bodla, Advocate (PW-2). He was Notary Public. He deposed before the Trial Court that on 19th July, 2007 Mst. Waris Jan and Liaqat Ali presented agreement (Ex.P-1) before him for verification; that at the time of verification Mst. Waris Jan affixed her thumb impression (Ex.P-1/5) in his presence; that Liaqat Ali also affixed his thumb impression; that document was entered in his register vide serial No.270; that at the time of verification the document was explained and read over to Mst. Waris Jan and she admitted the contents thereof; and, that he had not made any endorsement on Ex.P-1 to the effect that document was read over and explained to Mst. Waris Jan. The statement of PW-2 was inconsequential as the document (Ex.P-1) stood complete before PW-1. Since PW-1 had not explained and read over the terms of agreement (Ex.P-1) to Mst. Waris Jan, the subsequent attempt by PW-2 was just an exercise to overcome the omission, which was a sham exercise. Although the marginal witnesses of the agreement (Ex.P-1) i.e. PW-4 and PW-5 deposed before the Trial Court that the terms of the agreement were explained to the first defendant and her husband Muhammad Amin yet the same could not be taken into consideration for the reasons: firstly, that they were closely related to the plaintiff; and, secondly, that the same being contradictory to the statement of independent witness (PW-1) appeared to be an afterthought so as to cover the illegality which was committed by the deed writer (PW-1) while getting the agreement (Ex.P-1) executed. Notwithstanding the above, there is another flaw in the plaintiff's case. The plaintiff was under burden to prove and satisfy the Court that Mst. Waris Jan had independent and disinterested advice in the

matter before coming into the transaction and executing the agreement (Ex.P-1). The evidence available on record suggests that at the time of execution of agreement (Ex.P-1) Mst. Waris Jan was only accompanied by her husband, Muhammad Amin. Here question arises as to whether presence of Muhammad Amin, in the given facts and circumstances of the case, would mean that at the time of execution of agreement Mst. Waris Jan had an independent advice qua the contractual transaction. In my view, answer to this question is in the negative. The factor of advice cannot be treated lightly as a mere formality. To protect illiterate persons from the overpowering influence of another person to enter into conveyance and transactions relating to their property, the law contemplates effective, meaningful and purposeful consultation of the illiterates with a person who can read and write the language of the document, comprehend the implication of contractual transaction, and, has no conflict of interest with him/her so as to eliminate any room for complaint and to establish *"consensus ad idem"*, that is, intention of the parties forming the contract. It is an admitted fact that Muhammad Amin was also illiterate. He was under disability to understand the contractual transaction and in turn to render any advice to his wife Mst. Waris Jan qua the effect and implication of the agreement (Ex.P-1). His presence at the time of execution of agreement (Ex.P-1) and advice, if any, to his wife was thus of no avail. Thus, it could not be held that the first defendant had entered into the transaction of sale after getting independent and disinterested advice and resultantly the agreement (Ex.P-1) was valid.

15. The third component of the issue No.1 is whether on 14th October, 2007 the first defendant had received a further amount of Rs.130,000/- from the plaintiff. It was maintained in paragraph No.3 of the plaint that a sum of Rs.130,000/- under the agreement was paid to the first defendant on 14th October, 2007 in presence of the

witnesses but receipt thereof was not obtained as the plaintiff had been maintaining cordial relations with the first defendant. The above stated assertion of the plaintiff makes the matter pellucid that the transaction of payment of Rs.130,000/- was oral. The plaintiff was, therefore, required to state in the plaint the date, time, place and names of the witnesses before whom the transaction of payment of amount had taken place. Such requirement was sine qua non for proving the oral financial transaction. Though the plaintiff had stated the date and place of making payment of Rs.130,000/- in the plaint yet omitted to mention the names of the witnesses before whom the said amount was paid to the first defendant, and thus the statement of the witnesses could not be considered as per principle settled in the case of *Moiz Abbas*[1] and the conclusion would be that the plaintiff had failed to prove the making of payment of Rs.130,000/- to the first defendant.

16. The last component of issue No.1 is whether the first defendant was under obligation to transfer the suit land in the name of the plaintiff. In other words whether the plaintiff was entitled to apply for specific performance of the agreement dated 19th July, 2007 (Ex.P-1). It is now well settled law that remedy for a specific performance is an equitable remedy and is in the discretion of the Court, which discretion requires to be exercised according to the settled principles of law and not arbitrarily. The Court, however, is not bound to grant the relief just because there was a valid agreement to sell. The plaint of a suit for specific performance, therefore, must be in conformity with the requirements prescribed in Form Nos.47 & 48 given in Appendix-A of the First Schedule to the Code of Civil Procedure, 1908. Para No.2 of Form No.47 requires the plaintiff to state in the plaint that he has applied to the defendant specifically to perform the agreement on his part but defendant has not done so.

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[1] ***Moiz Abbas*** *v.* ***Mrs. Latifa and others*** **(2019 SCMR 74)**

Para No.2 of Form No.48 requires the plaintiff to state in the plaint that on such and such date the plaintiff tendered ---------- Rupees to the defendant and demanded a transfer of the suit property by a sufficient instrument. Para No.3 of Form No.48 requires the plaintiff to state that on the ---------- day of ----------, the plaintiff again demanded such transfer (or defendant refused to transfer the same to the plaintiff). It means that in a suit for specific performance it is incumbent upon the plaintiff not only to set out agreement on the basis of which he sues in all details but also to plead that he had applied to the defendant specifically to perform the agreement pleaded by him but the defendant had not done so. The plaintiff should also plead that he had been and is still ready and willing to specifically perform his part of the agreement.[1]

17. In the present case the essential term of the agreement (Ex.P-1) was that the plaintiff would make the balance payment on 20th October, 2007; and, that upon payment the first defendant would appear on the same date before the concerned officer for transfer of suit property in favour of the plaintiff. The plaintiff neither in the plaint nor during the course of evidence while appearing before Trial Court as PW-3 stated that he adhering to the terms and conditions of the agreement (Ex.P-1) tendered balance amount to the first defendant and went to the office of the concerned officer for transfer of suit land. Same is the status of the statement of other witnesses who appeared on behalf of the plaintiff. In other words the plaintiff had violated the essential term of the agreement (Ex.P-1) and, therefore, per Section 24(b) of the Specific Relief Act, 1877, he was not entitled to specific performance.[2]

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[1] ***Muhammad Yaqub*** *v.* ***Muhammad Nasrullah Khan and others*** **(PLD 1986 Supreme Court 497)** & ***Mst. Amina Bibi*** *v.* ***Mudassar Aziz*** **(PLD 2003 SC 430)**

[2] ***Mubarak Ali*** *v.* ***Tula Khan alias Sadullah Khan*** **(1985 SCMR 236)** & ***Muhammad Yaqub*** *v.* ***Muhammad Nasrullah Khan and others*** **(PLD 1986 SC 497)**

18. There is yet another good ground for which the suit must fail. The plaintiff, as stated above, in his suit ought to have pleaded and proved not only his willingness, which was mental process, but also his readiness, which was something to do with translating that will into action and was preceded by necessary preparation for being in a position to be ready, that is, to be financially able to pay the purchase price.[1] To adjudge whether the plaintiff was ready and willing to perform his part of the agreement (Ex.P-1), the conduct of the plaintiff prior and subsequent to the filing of the suit was relevant. It was for this reason it was mandatory for the plaintiff to prove that at the relevant time he had sufficient money to pay the remaining sale price[2]; and, to apply to the Court, on his first appearance, for getting permission to deposit the balance amount[3]. On the contrary, the plaintiff had neither stated in the plaint nor deposed in his evidence that on or before 20th October, 2007 he was in possession of the balance amount and tendered the same to the first defendant for performing his part of the agreement. Even the plaintiff on his first appearance before the Trial Court had not tendered the balance amount and thus, according to the principle settled in the case of *Hamood Mehmood*[3] he was not entitled to the decree as prayed for in the plaint. This aspect of the matter was not considered by the Courts below and therefore, their findings in respect of issue No.1 are not sustainable in the eye of law and the same are accordingly reversed.

19. As regards issue No.4-A it is suffice to say that since the plaintiff had failed to prove issue No.1, the sale of suit land through mutation No.1221 dated 16th November, 2007 in favour of second defendant could not be held invalid and without consideration, particularly when the first defendant had admitted the same. This issue is, therefore, decided in favour of the second defendant.

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[1] ***Bishambhar Nath Agrawal*** *v.* ***Kishan Chand and others*** (**AIR 1998 Allahabad 195**)

[2] ***Bootay Khan through legal heirs*** *v.* ***Muhammad Rafiq and others*** (**PLD 2003 SC 518**)

[3] ***Hamood Mehmood*** *v.* ***Mst. Shabana Ishaque and others*** (**2017 SCMR 2022**)

20. On the basis of my findings on issues No.1 and 4-A, the findings qua other issues of the Courts below are hereby reversed. However, in the given facts and circumstances of the case, the defendants are not held entitled for special costs.

21. Upshot of the above discussion is that the plaintiff had failed to prove not only the agreement (Ex.P-1) but also his readiness and willingness to perform the terms and conditions stated therein and thus, the decree could not be issued in his favour. This application in revision is, therefore, accepted and while setting aside the decrees of the Courts below the suit of the plaintiff is dismissed with no order as to costs.

(**SHAHID WAHEED**)
JUDGE

APPROVED FOR REPORTING

JUDGE

Saeed Akhtar