
2026 C L C 520

[Lahore]

Before Ahmad Nadeem Arshad, J

MUNIR AHMAD ---Petitioner

versus

MUHAMMAD RAFIQUE ---Respondent

Civil Revision No. 32155 of 2017, decided on 20th January, 2025.

(a) Specific Relief Act (I of 1877)-

----Ss.12 & 22---Qanun-e-Shahadat (10 of 1984), Arts. 17 & 79---Civil Procedure Code (V of 1908), S.115---Suit for specific performance of an agreement to sell---Vendor denying execution of agreement---Proof---Production of two attesting witnesses---Mandatory requirement---Vendee producing only one attesting witness---Effect---Agreement to sell cannot be proved in circumstances and discretionary relief cannot be granted---Briefly, the respondent/plaintiff instituted a suit for possession through specific performance of an alleged agreement to sell viz. the suit property; the petitioner/defendant denied executing any such

agreement and contested the claim; the suit and connected proceedings travelled through trial and appeal, including remand directions to re-record certain witnesses, culminating in the trial court judgment and decree and then the appellate judgment and decree which set aside the Trial Court's decision and decreed the respondent's suit, leading the petitioner to file the present civil revision under S.115, C.P.C. challenging the legality of the appellate decree---Pivotal question requiring determination before the High Court was as to "whether the agreement to sell in question, being disputed, was proved in accordance with Arts. 17 & 79 of the Qanun-e-Shahadat, 1984 so as to lawfully sustain a decree for specific performance/possession, and if not, whether the appellate judgment and decree called for interference in revisional jurisdiction of the High Court under S.115, C.P.C.?"---Held: The petitioner unambiguously denied the execution of any such agreement---Under Art.17 read with Art.79 of the Qanun-e-Shahadat, 1984, plaintiff/respondent was duty bound to prove the genuineness of the said document through cogent, confidence inspiring and independent evidence---Out of two witnesses, only one witness was examined and the petitioner failed to produce the other marginal witness of agreement---No sufficient reason for his non-production was brought on record---Even the respondent/plaintiff did not make any efforts to summon him through Court---The provisions of Art.79 were mandatory and non-compliance thereof rendered agreement as inadmissible in evidence---The evidence produced by the respondent/plaintiff was full of contradictions and on the basis of such type of evidence no decree for specific performance could be passed especially when the respondent/plaintiff had badly failed to prove genuineness of a valid agreement to sell in his favour, therefore, the Appellant Court erred in law while allowing the appeal of respondent/plaintiff and decreeing the suit---Judgment and decree of the Appellate Court was a result of non-reading and misreading of evidence and same was set aside---Present civil revision was allowed, in circumstances. [pp. 525, 526, 527] B, G & I

Hafiz Tassaduq Hussain v. Muhamamd Din through Legal Heirs and others PLD 2011 SC 241 and Khudadad v. Syed Ghuzanfar Ali Shah alias S.Inam Hussain and others 2022 SCMR 933 rel.

(b) Qanun-e-Shahadat (10 of 1984)---

----Arts.17 & 79---Agreement to sell, execution of---Proof---Onus---In order to prove a valid agreement to sell, it is the duty of the beneficiary to prove its genuineness by producing its marginal witnesses. [p. 525] A

(c) Qanun-e-Shahadat (10 of 1984)---

----Arts.17, 79 & 129(g)---Specific Relief Act (I of 1877), S.11---Suit for specific performance of agreement to sell---Vendor denying execution of the agreement---Proof---Onus on beneficiary---Procedure---Production of two attesting witnesses, failure of---Vendee producing only one attesting witness---Effect---Adverse presumption---Scope---When vendee fails to produce one of the two attesting witnesses and no sufficient reason for his non-production is brought on record and also no effort was made to have him summoned through the Court, in this way the vendee/beneficiary of the agreement withholds best piece of evidence---Hence, presumption would be drawn that if he had produced that witness in evidence, he might have deposed against him. [p. 525] D

Hafiz Tassaduq Hussain v. Muhamamd Din through Legal Heirs and others PLD 2011 SC 241 **rel.**

(d) Qanun-e-Shahadat (10 of 1984)---

----Arts.17 & 79---Disputed document/instrument---Proof---Production of two attesting witnesses---Mandatory compliance---Significance highlighted---The command of the Art.79 is vividly discernible which elucidates that in order to prove an instrument which by law is required to be attested, it has to be proved by two attesting witnesses, if they are alive and otherwise are not incapacitated and are subject to the process of the Court and capable of giving evidence---The powerful expression "shall not be used as evidence" until the requisite number of attesting witnesses have been examined to prove its execution is couched in the negative, which depicts the clear and unquestionable intention of the legislature, barring and placing a complete prohibition for using in evidence any such document, which is either not the eventuality those were conceived by Art.79 of the Qanun-e-Shahadat, 1984, itself not as a substitute. [p. 525] E

Hafiz Tassaduq Hussain v. Muhamamd Din through Legal Heirs and others PLD 2011 SC 241 **rel.**

(e) Qanun-e-Shahadat (10 of 1984)---

----Arts.17 & 79---Disputed document/instrument, execution of---Validity, proof and admissibility of a disputed document---Two attesting witnesses, production of---Mandatory requirement---Essence and significance stated---Consequence of non-production of two attesting witnessed highlighted---The attestation and execution both have distinct characteristics---The execution of document

attributes signing in presence of attesting witnesses including all requisite formalities which may be necessary to render the document valid---While the fundamental and elemental condition of valid attestation is that two or more witnesses signed the instruments in presence of the executants---This stringent condition mentioned in Art.79 of the Qanun-e-Shahadat, 1984 is uncompromising---So long as the attesting witnesses are alive, capable of giving evidence and subject to the process of Court, no document can be used in evidence without the evidence of such attesting witnesses---The provision of this Article is mandatory and noncompliance will render the document inadmissible in evidence---If the execution of a document is specifically denied, the best course is to call the attesting witnesses to prove the execution---When the evidence brought forward by a party to prove the execution of a document is contradictory or paradoxical to the claim lodged in the suit, or is inadmissible, such evidence would have no legal sanctity or weightage. [p. 526] F

Khudadad v. Syed Ghuzanfar Ali Shah alias S.Inam Hussain and others 2022 SCMR 933 **rel.**

(f) Qanun-e-Shahadat (10 of 1984)---

----Arts.17 & 79---Scribe of a document as marginal witness, consideration of---Legality---Whether scribe of a document can substitute a marginal witness?---Vendee producing scribe of a document in evidence would only be considered as a scribe of a document and not a marginal witness. [p. 527] H

Hafiz Tassaduq Hussain v. Muhamamd Din through Legal Heirs and others PLD 2011 SC 241 **rel.**

(g) Administration of justice---

----Where the law requires an act to be done in a particular manner, it has to be done in that way and not otherwise. [p. 525] C

Usman Nasir Awan for Petitioner.

Naseer Ahad Jora for Respondent.

Date of hearing: 20th January, 2025.

JUDGMENT

AHMAD NADEEM ARSHAD, J.---Through this Civil Revision filed under section 115 of *Code of Civil Procedure, 1908*, the petitioner has called in question the validity and legality of impugned judgment and

decree dated 28.02.2017, passed by learned appellate Court, whereby, while setting-aside the judgment and decree dated 07.03.2015 passed by learned trial Court, decreed the respondent's suit.

2. Facts in brevity are that plaintiff/respondent *(herein after referred to as the respondent)* instituted a suit on 12.10.2006 for possession through specific performance of agreement to sell dated 28.07.2006 against the petitioner/defendant *(herein after referred to as the petitioner)* with regard to property/house measuring 7½ malas situated at Mohallah Usmanabad, Chiniot *(hereinafter referred to as the suit property)*. The respondent maintained in his suit that on 28.07.2006 the petitioner agreed to sell the suit property for a consideration of Rs.7,65,000/-; that the petitioner received an amount of Rs,100,000/- and executed an agreement to sell (Exh.P-2); that it was agreed that the respondent will pay an amount of Rs.100,000/- on 15.08.2006 and executed receipt also endorsing the receipt of earlier amount of earnest money i.e. Rs.100,000/-; that the petitioner delivered the possession of the suit property; that with regard to remaining consideration amount of Rs.565,000/- the respondent agreed to pay the same by 05.10.2006 at the time of attestation of registered sale deed; that the respondent requested time and again to receive remaining consideration amount and to get registered the sale deed in his favour, but he refused; that he gave a legal notice to the petitioner and also attended the office of Sub-Registrar on 05.10.2006 along with remaining consideration amount but the petitioner failed to attend the said office, which constrained the respondent to institute the suit. The petitioner resisted the suit by filing contested written statement by denying the execution of any agreement to sell and prayed for dismissal of the suit with special costs. The learned trial Court framed necessary issues out of divergent pleadings of the parties and invited them to produce their respective evidence. After recording evidence of the parties, pro and contra, oral as well as documentary decreed the suit vide judgment and decree dated 30.06.2010; that the petitioner assailed the said judgment and decree through preferring an appeal; that the respondent also filed cross objections; that the learned appellate Court dismissed the cross objection whereas allowed the appeal preferred by the petitioner vide consolidated judgment and decree dated 01.06.2011 and by framing additional issues directed the learned trial Court to rerecord the statements of PW-1, DW-1 and DW-2 and thereafter decide the same afresh; that the respondent being aggrieved, challenged the said judgment and decree dated 01.06.2011 by preferring F.A.O. No.303 of 2011 before this Court; that this Court vide judgment dated 01.06.2011 modified the judgment dated 11.03.2014 by holding that the same is not sustainable to the extent of framing of fresh issues, however, to the extent of re-recording of the statements of PW-1, DW-1 and DW-2, the same was maintained and endorsed; that the learned trial,

in remand proceedings again dismissed the suit of the respondent vide judgment and decree dated 07.03.2015; that being dissatisfied the respondent preferred an appeal which was allowed vide judgment and decree dated 28.02.2017 and resultantly decreed the suit of the respondent. Being dissatisfied, the petitioner filed the instant Civil Revision.

3. I have heard learned counsel for the parties at full length and perused the record with their able assistance.

4. In order to prove a valid agreement to sell, it is the duty of the beneficiary to prove its genuineness by producing its marginal witnesses. The petitioner unambiguously denied the execution of any such agreement. Under Article 17 read with Article 79 of the *Qanun-e-Shahadat Order, 1984*, a plaintiff was duty bound to prove the genuineness of the said document through cogent, confidence inspiring and Independent evidence. It is in line with the principle that where the law requires an act to be done in a particular manner, it has to be done in that way and not otherwise. From perusal of agreement dated 28.07.2006 (Exh P-2) it reveals that the same was attested by two marginal witneses namely Malik Allah Ditta son of Allah Baksh and Muhammad Nawaz son of Bahawal Sher. Perusal of record further reveals that out of above mentioned two witnesses, only one witness namely Malik Allah Ditta was examined as PW-4 and the petitioner falled to produce the other marginal witness of agreement namely Muhammad Nawaz son of Bahawal Sher. No sufficient reason for his non-production was brought on record. Even the respondent did not make any efforts to summon him through Court. In this way the respondent withheld best piece of evidence, hence, presumption is drawn that if he had produced that witness in evidence, he might have deposed against him. Reliance, in this regard is placed upon case titled as *"Hafiz Tassaduq Hussain v. Muhamamd Din through Legal Heirs and others" (PLD 2011 Supreme Court 241)* wherein it was held as under: -

> *"The command of the Article 79 is vividly discernible which elucidates that in order to prove on instrument which by low is required to be attested, it has to be proved by two attesting witnesses, if they are alive and otherwise are not incapacitated and are subject to the process of the Court and capable of giving evidence. The powerful expression "shall not be used as evidence" until the requisite number of attesting witnesses have been examined to prove its execution in couched in the negative, which depicts the clear and unquestionable intention of the legislature, barring and placing a complete prohibition for using in evidence any such document, which is either not the eventuality those were conceived by Article 79 of Qanun-e-Shahadat, Order, 1984, Itself not as a substitute. Mandatory provision of law had to be complied with."*

In recent decision cited as *"Khudadad v. Syed Ghuzanfar Ali Shah alias S.Inam Hussain and others" (2022 SCMR 933)*, the apex Court once again reinforced its earlier verdicts by holding as under: -

> *"The attestation and execution both have distinct characteristics. The execution of document attributes signing In presence of attesting witnesses including all requisite formalities which may be necessary to render the document valid. While the fundamental and elemental condition of valid attestation is that two or more witnesses signed the instrument and each of them has signed the Instruments in presence of the executants. This stringent condition mentioned in Article 79 is uncompromising. So long as the attesting witnesses are alive, capable of giving evidence and subject to the process of Court, no document can be used in evidence without the evidence of such attesting witnesses. The provision of this Article is mandatory and non-compliance will render the document inadmissible in evidence. If execution of a document is specifically denied, the best course is to call the attesting witnesses to prove the execution. When the evidence brought forward by a party to prove the execution of a document is contradictory or paradoxical to the claim lodged in the suit, or is inadmissible, such evidence would have no legal sanctity or weightoge."*

6. The provisions of Article 79 are mandatory and non-compliance thereof rendered agreement as inadmissible in evidence. Moreover, Malik Allah Ditta, marginal witness of Exh.P-3 during cross-examination stated that at the spot Rs.1000/- was paid. He further stated that the earnest money was paid in presence of scribe Umer Hayat. He further deposed during cross-examination that the bargain was struck while standing under the tree of *"Peepal"*. The scribe Umer Hayat appeared as PW-2 and during cross-examination admitted that no payment/consideration amount was paid in his presence. PW-2 also admitted during cross-examination that he was having no register of *Waseqa navees* and orally written the stamps. He further admitted that he did not keep the record of any writing. The respondent while appearing as PW-8 admitted during cross-examination that the bargain was struck down behind the rock where Malik Allah Ditta was cutting the plots. He also deposed that he pald Rs.100,000/- to the petitioner in presence of scribe PW-2 Umer Hayat. The evidence produced by the respondent is full of contradictions and on the basis of such type of evidence no decree for specific performance can be passed especially when the respondent has badly failed to prove genuineness of a valid agreement to sell in his favour, therefore, the learned appellant Court has erred in law while allowing the appeal of respondent and decreeing the suit. Moreover, payment of earnest money is also doubtful. The only marginal witness

produced by the respondent namely Malik Allah Ditta PW-4 failed to tell the exact place where the alleged transaction was made. PW-2 Umer Hayat is only scribe of the document Exh.P-2 and he not the marginal witness of agreement to sell. He is also not the signatory of impugned agreement. Moreover, the petitioner has also failed to prove that in consequence to agreement to sell the possession of the suit property was handed over to him in the year 2006. H

7. I have minutely gone through the record available on the file as well as the impugned judgment and decree passed by learned appellant Court and came to the conclusion that the judgment and decree of learned appellate Court is the result of mis-reading and non-reading of evidence/record. At the cost of repetition, it is mandatory provision of law that the beneficiary is bound to prove the agreement by producing its two marginal witnesses. But admittedly the respondent has failed to produce the second marginal witness of agreement Exh.P-2. The statement of marginal witness, the scribe as well as the respondent is also full of contradiction and on the basis of such type of evidence, the suit for specific performance of an agreement to sell cannot be decreed. So for as the case laws relied upon by the learned counsel for the petitioner are concerned, with utmost respect, the same have no relevancy to the facts and circumstances of the present case; therefore, it does not render any help or assistance to the petitioner's case.

8. Epitome of above discussion is that the instant civil Revision is allowed, judgment and decree of learned appellate Court dated 28.02.2017 is set-aside and resultantly the suit of the respondent is dismissed with no order as to costs. I

UN/M-53/L Revision allowed.
