

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision Application No. S-159 of 2022

Abdul Qadir Vs Athar Hussain & Others

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
-----------------	-------------------------------

1. For orders on CMA No. 1211/2022 (Ex.A)

2. For hearing of main case.

Mr. Prem Kumar @ Parmanand, Advocate for applicant.

Mr. Inayatullah G.Morio, Advocate for respondents.

Mr. Agha Athar Hussain Pathan, Assistant Advocate General, Sindh.

Date of Hearing: 19-05-2025.

Date of Decision: 19-05-2025.

Date of Reason: 16-06-2025.

JUDGMENT

Ali Haider 'Ada', J:- Through this Civil Revision Application, the applicant Abdul Qadir Jatoi assailed the Decree and Judgment dated 13.09.2022 passed by the learned Additional District Judge-IV (Hudood), Sukkur (the Appellate Court), in Civil Appeal No. 94 of 2020 titled Abdul Qadir vs. Athar Hussain & others, as well as the order dated 18.08.2020 passed by the learned Senior Civil Judge-I, Pano Aqil (the Trial Court), in F.C. Suit No. 37 of 2019 titled Abdul Qadir Jatoi vs. Athar Hussain & others.

2. Briefly stated, the facts of the case are that the applicant, as plaintiff, instituted Civil Suit No. 37 of 2019 for Specific Performance of Contract and Permanent Injunction before the learned Senior Civil Judge-I, Pano Aqil. It was pleaded therein that in the year 1973, the father of defendant No.1, namely Molvi Nazeer Hussain, in the presence of witnesses Abdul Rasheed Jatoi and Abdul Khaliq, entered into a verbal / oral agreement to sell agricultural land bearing Survey Nos. 61 and 62, ad-measuring 10-03 acres, situated in Deh Meeranpur Saidki, Tapo Hingoro, Taluka Pano Aqil, District Sukkur, for a total consideration of Rs. 1,48,000/-. The said amount was paid and physical possession of the suit property was handed over to the applicant/plaintiff in the presence of the said witnesses. Upon the death of Molvi Nazeer Hussain, the applicant, along with the aforementioned witnesses, repeatedly approached his legal heir, namely Athar Hussain (defendant No.1/respondent No.1), who was confined in Central Prison, Sukkur, in connection with a criminal case. During one such meeting, defendant No.1 executed an Iqarnama dated 11.02.2016 in the presence of witnesses Tariq Mehmood and Per Bux, affirming

the oral agreement in favour of the applicant/plaintiff. Subsequently, as a portion of the suit land fell under the route of the newly constructed Motorway (CPEC Project), the private defendants allegedly became dishonest and refused to honour their commitment regarding mutation of the Khata, despite repeated demands. Hence, the applicant was compelled to file the suit, inter alia, seeking a decree directing the private defendants and the legal heirs of the deceased Molvi Nazeer Hussain to execute a registered sale deed in favour of the applicant/plaintiff in terms of the verbal agreement of sale. In the event of their failure to do so, the applicant prayed that the sale deed be executed through the Nazir of the Court. The applicant further sought a decree for permanent injunction restraining the defendants from alienating, transferring, or creating third-party interest in the suit property.

3. Upon admission of the aforementioned suit, notices were issued to the respondents, who, after due service, filed an application under Order VII Rule 11 C.P.C, seeking rejection of the plaint. The applicant/plaintiff submitted objections thereto. After hearing both sides, the learned Trial Court rejected the plaint vide order and decree dated 18.08.2020. The said order and decree were assailed by the applicant before the learned District Judge, Sukkur, whereupon the appeal was transferred to the learned Additional District Judge-IV (Hudood), Sukkur, who dismissed the appeal through judgment and decree dated 13.09.2022.

4. Learned counsel for the applicant contended that the impugned order, judgment, and decree passed by both the learned Trial Court and the Appellate Court are against law, justice, and equity. As, the findings are based on surmises and conjectures, and reflect non-application of judicial mind. It is argued that the applicant has been in peaceful possession of the suit land since its purchase in 1973 and has continuously enjoyed the same after spending a substantial amount on its development. It is further contended that the oral agreement of sale was lawfully executed in the presence of witnesses and subsequently affirmed by respondent No.1 through an Iqarnama dated 11.02.2016. In view thereof, the respondents are legally bound to perform the remaining part of the contract by executing the sale deed. The learned counsel emphasized that the application under Order VII Rule 11 CPC was required to be adjudicated strictly on the basis of averment made in the plaint, which, for

that purpose, must be presumed to be true. Rejection of plaint under Order VII Rule 11 CPC is permissible only when, on a plain reading, it is apparent that the entire claim is barred by law. It is submitted that the Courts below failed to determine. Hence, the impugned orders are liable to be set aside.

5. Conversely, learned counsel for the respondents vehemently opposed the Revision and argued that the entire case is false, fabricated, and mala fide. He pointed out that the applicant had previously filed a suit for the same relief, which was withdrawn on the pretext of a technical error, whereas no such legal defect existed. In the earlier suit, the sale consideration was shown as Rs. 48,000, while in the present suit, the amount was changed to Rs. 148,000 without justification. It was further argued that the applicant is relying upon a oral agreement which he never asserted during the lifetime of Molvi Nazeer Hussain. It was emphasized that respondent No.1 is not the sole legal heir of the deceased and the remaining heirs have not been impleaded, rendering the suit defective for non-joinder of necessary parties. As to the Iqarnama, it was contended that the same is a void document. The Iqarnama states that respondent No.1 was in Central Prison Karachi at the time of its execution; however, prison records establish that he was actually confined in Central Prison Sukkur on that date. There is no attestation or certification of the document by the jail authorities. Therefore, the document lacks evidentiary value. The learned counsel prayed for dismissal of the instant civil revision and for upholding the concurrent findings of the courts below.

6. Learned AAG also supported the impugned orders, judgment and decree, submitting that a bare reading of the plaint reveals that the claim is barred under the provisions of the Contract Act, the Specific Relief Act and the law of limitation. The purported oral agreement was said to have been executed in 1973, while the suit was instituted in 2019, after an unexplained delay of over 45 years. No sufficient explanation has been offered for this inordinate lapse of time. He submitted that the burden lies squarely upon the applicant to prove the existence and enforceability of the oral agreement, which he has failed to do. He further argued that the concurrent findings of fact by both the Trial and Appellate Courts do not warrant interference by this Hon'ble Court in Revisional jurisdiction.

7. Heard the arguments advanced by the learned counsel for the respective parties and perused the material available on record with due care and caution, examining each aspect of the case meticulously.

8. First of all, the case of the applicant/ Plaintiff is that the father of respondent No.1 entered into an oral agreement for sale of the suit property for a total consideration of Rs. 148,000/-. It is the applicant's stance that after the death of respondent's father, the respondent No.1, on 11.02.2016, executed an Iqrarnama wherein he admitted that his father had entered into the said oral agreement and had sold the suit property to the applicant. The said admission was reduced into writing in favour of the applicant. In this regard, the record has been examined with specific reference to the definition of agreement under Section 2(e) of the Contract Act, 1872, which reads as under:

Section 2. Interpretation clause-

(e) Every promise and every set of promises, forming the consideration for each other, is an agreement:

9. As a result, in order to ascertain the facts as presented by the applicant, that respondent No.1 executed an Iqrarnama in favour of the applicant. However, on the face of the record, the said Iqrarnama cannot be regarded as an enforceable document. The document bears the date of execution as 11.02.2016, whereas the signature of respondent No.1 thereon is dated 30.03.2016. Furthermore, the Iqrarnama mentioned that respondent No.1 was confined in Central Prison Karachi at the time of its execution. However, documentary evidence in the form of a certificate issued by the Jail authorities clearly established that respondent No.1 was transferred from Central Prison Karachi to Central Prison Sukkur on 20.02.2016. This raises a significant discrepancy, if, the Iqrarnama was purportedly executed on 11.02.2016 at Karachi Central Jail, how could respondent No.1 have signed the same on 30.03.2016 while being confined at Sukkur Central Jail. Moreover, the plaint itself averred that the Iqrarnama was executed by respondent No.1 at Central Prison Sukkur on 11.02.2016, which contradicted the official record of his transfer from Karachi to Sukkur occurring on 20.02.2016. These facts negate the establishment of a prima facie case and cast serious uncertainty on the authenticity and reliability of the Iqrarnama. Therefore, it cannot be said that this document aids the applicant in asserting his claim. In case of *Ch. Ghulam*

Rasool vs. Mrs. Nusrat Rasool and others (PLD 2008 SC 146)., it has been observed that: A promise ripens into an agreement only after an offer is accepted but every promise is not necessarily an agreement, as there is difference between a contract and promise as valid contract creates obligation and is capable for enforceable in law. Where as a mere promise to render service or to handover certain property to as person without any consideration may not create a contractual obligation to be enforced in law.

10. Further, Section 2(g) of the Contract Act, 1872 defines a void agreement as one that is not enforceable by law. For ready reference, the provision reads as follows:

An agreement not enforceable by law is said to be void.

11. Accordingly, even if the Iqarnama is presumed to be an agreement enforceable for specific performance, it is, in fact, not enforceable under law and is thus void. This position finds support in the judgment of *Major Pervaiz Iqbal vs. Barrister Muhammad Amin Bagri through Legal Heirs* (2005 YLR 2224, Lahore Division Bench). In that case, the Trial Court's order rejecting the plaint under Order VII Rule 11 CPC was upheld, affirming that such documents reflecting mere intention or willingness without contractual certainty cannot be enforced. Similarly, in the present case, the Iqarnama merely demonstrates respondent No.1's desire or intention to benefit the applicant, which does not amount to a binding agreement under law. Therefore, such Iqarnama cannot be treated as a valid contract, nor can it provide a basis for specific performance.

12. Furthermore, Section 10 of the Contract Act, 1872 clearly stipulates that a person competent to contract is essential for the validity of an agreement. In the present case, learned counsel for the respondent has contended that there exist other legal heirs of the deceased Molvi Nazeer Hussain. The documentary evidence relied upon by the applicant is entirely silent on whether respondent No.1 holds any power of attorney or other authority to act on behalf of these other legal heirs or is otherwise competent to enter into the contract. It is a settled legal principle that a person who is not competent to contract cannot give free consent to form a valid contract. Thus, in the absence of competence on the part of respondent No.1 to contract on behalf of all legal heirs, the essential element of lawful object and free consent is absent, rendering the

purported agreement void. For ready reference, Section 10 of the Contract Act, 1872 is reproduced hereunder:

10. What agreements are contracts.- All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void. Nothing herein contained shall affect any law in force in 5 [Pakistan], and not hereby expressly repealed, by which any contract is required to be made in writing⁶ or in the presence of witnesses, or any law relating to the registration of documents.

13. It is essential conditions to constitute a valid contract between parties is the existence of consensus ad idem, that is, a meeting of minds with regard to all the terms of the contract and in case of any ambiguity, the same can adversely reflect about existence of the contract. Reliance is placed upon the case of *Muhammad Matloob and 10 others vs. Jamshed K. Marker and 2 others* (PLD 2006 Karachi 523),

14. In the present case, the applicant's claim is based on an oral agreement and an Iqarnama executed by respondent No.1. However, there exist several material contradictions and ambiguities that negate the possibility of any true *aggregatio mentium* between the parties. The Iqarnama bears conflicting dates and details about its execution, with the respondent purportedly signing it on a date inconsistent with his incarceration record. The applicant has failed to establish that respondent No.1 possessed the authority or power of attorney to bind other legal heirs, which casts doubt on the capacity of respondent No.1 to enter into a binding agreement on their behalf. These lack of clarity demonstrate a failure of the parties to reach a genuine, mutual understanding regarding the essential terms of the agreement. The maxim *aggregatio mentium*, meaning the union or coming together of minds, is a basic principle in contract law. It requires that all parties involved must share a genuine meeting of minds and mutual understanding on the terms and conditions of the contract for it to be valid and enforceable. This alone justifies the rejection of the plaint under Order VII Rule 11 CPC and dismissal of the suit for specific performance.

15. Further, in this regard, Sections 21(c) and 21(g) of the Specific Relief Act, 1877, explicitly provide that certain contracts are not specifically enforceable. These provisions clarify that contracts lacking enforceability under law cannot be compelled by the Courts to be performed specifically. For ready reference and assistance, the relevant portions of Sections 21(c) and 21(g) are reproduced as follows:

21. Contracts not specifically enforceable.— The following contracts cannot be specifically enforced:—

- (a)---
- (b)---
- (c) a contract the terms of which the Court cannot find with reasonable certainty;
- (d)---
- (e)---
- (f)---
- (g) a contract the performance of which involves the performance of a continuous duty extending over a longer period than three years from its date;
- (h)---

And, save as provided by the ⁽¹⁹⁾[Arbitration Act, 1940⁽¹⁹⁾], no contract to refer ⁽²⁰⁾[present or future differences] to arbitration shall be specifically enforced; ⁽²¹⁾but if any person who has made such a contract ⁽²²⁾[other than an arbitration agreement to which the provisions of the said Act apply] and has refused to perform it sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit.

16. The introduction of these provisions is clear, where a contract is either void or otherwise not enforceable by law, such as contracts based solely on oral agreements without requisite formalities, or agreements missing lawful authority or competence, the remedy of specific performance is barred. In the instant case, the applicant has failed to establish an enforceable contract as discussed supra; and therefore the suit for specific performance cannot be maintained in view of these statutory prohibitions.

17. In the instant matter, the plaint fails to disclose the sale consideration in precise and specific terms. Merely mentioning an estimated amount without setting out the exact terms of payment or conditions is insufficient to establish a claim for specific performance. It is a basic requirement in suits for specific performance that the contract must contain clear and definite terms, including the sale consideration, time for completion, mode of payment and delivery of possession. The absence of such specific terms renders the agreement incapable of enforcement under the Specific Relief Act.

18. Moreover, the applicant's case rests on an oral agreement averred executed in 1973, the limitation period for filing suits for specific performance under Article 113 of the Limitation Act is three years from the date fixed for performance of the contract. Any delay beyond this period must be satisfactorily explained by the plaintiff; failure to do so results in the suit being barred by limitation. In the present case, the suit was filed after an inordinate

delay of several decades, without any plausible justification for such delay, relying solely on an Iqrarnama purportedly executed in 2016 and a verbal agreement of 1973, which raises serious uncertainty about the validity of the contract.

19. Furthermore, unsure and vague terms in the agreement, especially the absence of any evidence such as receipts or documents corroborating the oral agreement, further weaken the applicant's case. Essential elements such as the exact sale consideration, terms of payment, time for completion of the sale, are missing. Without these, the agreement lost the necessary clarity and certainty required for specific performance. This position finds support in the judgments of *Anwar Hussain Surya v. Sumair Builders through Partners* (2008 CLC 418) and *Shajar Ali Hoti v. Esmail Sobani* (1987 CLC 2307).

20. Additionally, where a contract imposes continuous obligations extending beyond three years from its date, the Courts generally refrain from granting specific performance as it amounts to supervision of an ongoing duty, which is beyond judicial competence. Now come on the point that where under a contract the obligation is cast upon a person to perform continuously a particular duty for a period longer than three years from the date of agreement, the same cannot be specifically enforced. This principle was elucidated in *Hameedullah and 9 others v. Head Mistress Government Girls School Chokra District Karak and 5 others* (1997 SCMR 855). In light of the above, the plaint in this case is incomplete, barred by limitation and devoid of essential contractual elements necessary for specific performance. Consequently, the suit suffers maintainability.

21. Moreover, the suit for specific performance is a discretionary remedy and not a matter of right. The Courts exercise this discretion with utmost care and caution, ensuring that the grant of such relief does not result in unfair advantage or injustice to either party. Specifically, where there is any element of fraud, misrepresentation, or concealment, the Court may refuse to enforce the contract, as equity does not allow a party to benefit from their own wrongful conduct. In this regard, **Section 22(I) of the Specific Relief Act, 1877**, provides clear content. The provision bars the specific performance of contracts where the contract itself is obtained by fraud or where there is any fraudulent misrepresentation affecting the parties' consent. For ready reference, Section 22(1) is reproduced as follows:

22. Discretion as to decreeing specific performance.— The jurisdiction to decree specific performance is discretionary, and the Court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the Court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a Court of appeal.

The following are cases in which the Court may properly exercise a discretion not to decree specific performance:-

1. Where the circumstances under which the contract is made are such as to give the plaintiff an unfair advantage over the defendant, though there may be no fraud or misrepresentation on the plaintiff's part.

22. As, in the instant case, where the applicant has failed to demonstrate a clear, fair and enforceable agreement; and there exist material contradictions and questions of credibility, the discretionary relief of specific performance is not warranted. Granting such relief under these circumstances would be inequitable and contrary to the principles of justice and good conscience. So, on such discourse, it is settled law that the grant of specific performance is a discretionary relief; and the plaintiff must establish a clear and unequivocal case for such remedy. Even where the plaintiff proves the case on merits, the Court exercises its discretion judiciously, considering all relevant facts and circumstances to ensure that equity and justice prevail. This principle has been consistently reiterated by the Superior Courts. In this regard reliance is placed upon in cases of *Ufaid Gul vs. Mst. Farkhanda Ayub Khan and others* (2025 SCMR 64), Similarly, in *Khan Maalik vs. Khalid Bashir and 4 others* (PLD 2010 Karachi 162).

23. Now, turning to the point regarding the necessity of attestation in contracts and agreements, it is imperative to consider the relevant statutory provisions governing such formalities. The **Notaries Ordinance 1961** provides the legal framework regarding the role and functions of notaries in the attestation and authentication of instruments. For clarity, **Section 2(a)** of the Ordinance defines the term instrument includes every document by which any right or liability is, or purports to be, created, transferred, modified, limited, extended, suspended, extinguished or recorded; Meanwhile, **Section 2(c)** defines a notary means a person appointed as such under this Ordinance. Crucially, **Section 8 of the Notaries Ordinance 1961** describes the functions of notaries, which primarily include the authentication and attestation of instruments, thereby ensuring their genuineness and legal validity. The notary

acts as an impartial witness to the execution of the document, certifying the identity of the parties and the voluntary nature of the act. For ready reference, the relevant provisions are reproduced below:

Section 8. Functions of notaries.- (1) *A notary may do all or any of the following acts by virtue of his office, namely:-*

- (a) verify, authenticate, certify or attest the execution of any instrument;*
- (b) present any promissory note, hundi or bill of exchange for acceptance or payment or demand better security;*
- (c) note or protest the dishonour by non-acceptance or non-payment of any promissory note, hundi or bill of exchange or protest for better security or prepare acts of honour under the Negotiable Instruments Act, 1881 (XXVI of 1881), or serve notice of such note or protest;*
- (d) note and draw up ship's protest, boat's protest or protest relating to demurrage and other commercial matters;*
- (e) administer oath to, or take affidavit from, any person;*
- (f) prepare bottomry and respondentia bonds, charter parties and other mercantile documents;*
- (g) prepare, attest or authenticate any instrument intended to take effect in any country or place outside Pakistan in such form and language as may conform to the law of the place where such deed is intended to operate;*
- (h) translate, and verify the translation of, any document from one language into another;*
- (i) any other act which may be prescribed.*

(2) *No act specified in sub-section (1) shall be deemed to be a notarial act except when it is done by a notary under his signature and Official seal.*

24. Accordingly, in contracts or agreements which require attestation under law, the absence of notarization or proper attestation may render the document vulnerable to challenge in terms of genuineness and enforceability. This is particularly pertinent in cases involving Iqarnama, unregistered documents, where statutory formalities play a significant role in establishing evidentiary value. Accordant to this legal framework, the primary function of a notary is to verify, authenticate, certify and attest any document presented before them. The notary acts as an impartial and legally empowered witness to the execution of contracts and agreements, thereby ensuring the genuineness of the document and safeguarding the interests of all parties involved. In general societal context, the presence of a notary helps to prevent fraud, misrepresentation, and disputes by duly witnessing the execution and consideration of contracts.

25. Now, coming to another crucial legal aspect, the Civil Procedure Code provides specific guidance regarding the particulars to be furnished in pleadings through Forms 47 and 48 of Appendix A. These forms lay down the essential ingredients and formal requirements for the statements and pleadings filed before the Court. For ready reference and perusal, the relevant provisions contained in Forms 47 and 48 are reproduced below:

No. 47. SPECIFIC PERFORMANCE (No. 1).

(Title.)

A. B., the above-named plaintiff, states as follows:-

- 1. By an agreement dated the day of and signed by the defendant, he contracted to buy of [or sell to] the plaintiff certain immovable property therein described and referred to, for the sum of rupees.*
- 2. The plaintiff has applied to the defendant specifically to perform the agreement on his part, but the defendant has not done so.*
- 3. The plaintiff has been and still is ready and willing specifically to perform the agreement on his part of which the defendant has had notice.*
[As in paras. 4 and 5 of Form No. 1.]
- 6. The plaintiff claims that the Court will order the defendant specifically to perform the agreement and to do all acts necessary to put the plaintiff in full possession of the said property [or to accept a transfer and possession of the said property] and to pay the costs of the suit.*

No. 48. SPECIFIC PERFORMANCE (No. 2).

(Title.)

A. B., the above-named plaintiff, states as follows:-

- 1. On the day of 19, the plaintiff and defendant entered into an agreement in writing, and the original document is hereto annexed.*
The defendant was absolutely entitled to the immovable property described in the agreement.
- 2. On the day of 19, the plaintiff tendered rupees to the defendant, and demanded a transfer of the said property by a sufficient instrument.*
- 3. On the day of 19, the plaintiff again demanded such transfer [or the defendant refused to transfer the same to the plaintiff].*
- 4. The defendant has not executed any instrument of transfer.*
- 5. The plaintiff is still ready and willing to pay the purchase-money of the said property to the defendant.*
[As in paras. 4 and 5 of Form No. 1.]
- 8. The plaintiff claims –*
 - (1) that the defendant transfers the said property to the plaintiff by a sufficient instrument [following the terms of the agreement];*
 - (2) rupees compensation for withholding the same.*

26. In view of the above, in the case under scrutiny, even the plaint, on its own, is completely silent on the essential particulars required to support the claim. In this regard, reliance is placed on the judgment of the Honourable Supreme Court in *Muhammad Riaz and others vs. Mst. Badshah Begum and*

others (2021 SCMR 605), wherein it was categorically held that:

5. Order VI of the Code of Civil Procedure, 1908 ('the Code') is titled 'Pleadings Generally' and its Rule 2 states that, 'every pleading shall contain ... a statement in concise form of the material facts on which the party pleading relies for his claim or defence...' and its Rule 3 that, 'The forms in Appendix A when applicable, and where they are not applicable forms of the like character, as nearly as may be, shall be used for all pleadings'. With regard to a plaint which seeks specific performance two forms are prescribed, that is, 'No. 47. Specific Performance (No. 1)' and 'No. 48. Specific Performance (No. 2)' which respectively require that the following particulars should be mentioned in the plaint:

No. 47. Specific Performance (No. 1):

(i) 'agreement', (ii) 'immovable property therein described', (iii) 'for the sum of _____ rupees', (iv) the plaintiff has called upon 'the defendant specifically to perform the agreement on his part', (v) 'the plaintiff has been and still is ready and willing specifically to perform the agreement on his part of which the defendant has had notice', (vi) Facts showing when the cause of action arose and that the Court has jurisdiction, (vii) 'the value of the subject-matter of the suit for the purpose of jurisdiction is _____ rupees and for the purpose of court fees is _____ rupees.'

No. 48. Specific Performance (No. 2):

(i) 'agreement' which 'is hereto annexed', (ii) 'the immovable property described' in the agreement, (iii) the 'tendered' payment, (iv) the 'demanded' transfer of the said property, (v) that the plaintiff 'is still ready and willing to pay the purchase-money of the said property to the defendant' and (vi) 'that the defendant transfers the said property to the plaintiff by a sufficient instrument [following the terms of the agreement]'.

6. The plaintiffs in the instant case relied upon an oral agreement. However, the plaintiffs did not set out the particulars of such oral agreement as per either of the prescribed forms (above) or as nearly as may be thereto and also did not describe the land which was the subject matter of the agreement. Therefore, the agreement would be void for uncertainty in terms of section 29 of the Contract Act, and consequently, it could not be specifically enforced as stipulated by section 21(c) of the Specific Relief Act. Exhibit P1, which was the mainstay of the plaintiffs' suit also did not describe the land. The plaintiff's testimony with regard to exhibit P1 was by way of tardeedi shahadat (evidence in rebuttal) and we are informed that this was done in terms of Order XVIII, Rule 3 of the Code, however, primary evidence in support of a claim cannot be categorized as evidence in rebuttal.

27. These forms ensure that the pleadings are comprehensive, clear, and precise by requiring parties to set forth the material facts, grounds of claim or defense, description of the property (if any), consideration paid, and other relevant details. This is essential to enable the Court to clearly understand the nature of the dispute and the relief sought.

28. A party claiming the existence of an oral agreement must clearly specify its particulars, including the exact date, time, place, and the names of witnesses, as well as establish the presence of a mutual consensus or agreement between

the parties. From the face of the present case, the applicant has failed to satisfy these essential criteria. Reliance is placed upon the case of *Hafiz Abdul Qari Fateh vs. Ms. Urooj Fatima and others* (2024 SCMR 1709), *Saddaruddin (since deceased) through LRs vs. Sultan Khan (since deceased) through LRs and others* (2021 SCMR 642), and *Moiz Abbas vs. Mrs. Latifa and others* (2019 SCMR 74), *Sultan Khan vs. Saddar-ud-din* (2018 CLC Note 37).

29. The entire case of the plaintiff/applicant suffers from the failure to distinctly signify the terms and conditions of the oral agreement. The law is clear that an oral agreement lacking specific terms and conditions is not valid or enforceable. This principle was upheld in *Qazi Muhammad Saqib Khan vs. Ghulam Abbas and 2 others* (2023 MLD 131).

30. Regarding the aspect of the Iqarnama, it is pertinent to note that the document does not contain any specific reference to the exact consideration for the alleged agreement. The Iqarnama, by its very nature, cannot be treated as a proposal or a binding contract unless it reflects the clear acceptance and willingness of the parties involved. In the present case, such willingness or acceptance on the part of the applicant is notably absent. The Iqarnama may only qualify as an agreement if it establishes a legal relationship between the parties, which is a fundamental prerequisite in a suit for specific performance. A document which does not meet the legal criteria of an agreement cannot be considered competent evidence for enforcement of specific performance. This principle was firmly established in the case of *Mst. Barkat Bibi and others vs. Muhammad Rafique and others* (1990 SCMR 28). Moreover, the Iqarnama in the instant case is an unregistered document upon which the applicant relies to establish title or interest over the suit property. It is settled law that an unregistered document cannot confer any title or interest in immovable property unless duly registered as required by law. Consequently, no title or interest over the suit property can be developed on the basis of such a document. Reliance is placed upon the case of *Gohar Rehman vs. Riaz Muhammad* (2011 YLR 888). In light of these established principles and precedents, the Iqarnama relied upon by the applicant is legally insufficient and unenforceable. Hence, no decree based solely on such a document can be sustained.

31. Regarding the basic requirements of a valid and enforceable contract, it is well established that a contract must embody the following essential elements:

offer, acceptance, exchange of consideration, and mutuality of obligation between the parties. In the instant case, these crucial elements are conspicuously absent. The alleged oral agreement and the Iqrarnama fail to demonstrate clear offer and acceptance, and there is no evidence of mutual obligations or valid consideration being exchanged. Hence, the foundational requisites for a legally enforceable contract are not met. Further, it is a well-recognized legal requirement that all pages of a contract or agreement must bear the signatures or thumb impressions of the parties and witnesses to validate the document as a whole. The Iqrarnama in the present matter is deficient in this respect, as it lacks signatures or thumb impressions on all pages, including the first page, which remains unsigned and without any thumb impression by any of the parties or witnesses. Reliance is placed upon the case of *Akhtar Waheed vs. Muhammad Hussain and others* (2025 SCMR 551). Thus, in the present matter, the absence of essential contractual elements coupled with the procedural infirmity of the Iqrarnama not being duly signed or thumb-impressed on front page precludes any enforceability or grant of specific performance.

32. On the subject of the oral agreement, it is imperative that there exists cogent and credible evidence of payment made pursuant to the contract. Such evidence must be supported by strong documentary proof to substantiate the claim of specific performance. In the present case, the only documentary evidence relied upon by the applicant is the Iqrarnama, which itself does not constitute an enforceable contract, as previously discussed. For the grant of a decree for specific performance, it is essential to prove that payment has been made either through direct evidence or, if oral, by consistent and strong documentary corroboration. The mere assertion of payment without such evidence cannot sustain the suit. Reference may be made to the case of *Muhammad Ghaffar (Deceased) through LRs and others vs. Arif Muhammad* (2023 SCMR 344).

33. In the context, such a suit, which relies on documents that are not legally enforceable and is thus incompetent, ought to be dismissed at the earliest stage to prevent unnecessary waste of judicial time and resources. Reliance in this regard is placed upon the case of *Ishrat Swaleh vs Mst. Farzana Shaikh and 2 others* (PLD 2024 Sindh 28).

34. In the present case, it is significant to note that not all legal heirs of the deceased Molvi Nazeer Hussain have been impleaded as parties in the suit. Since 1973, the applicant has remained silent and failed to assert any rights over the disputed property. It is a fundamental principle of pleading that the Court must examine the plaint and material on record not merely from a formalistic perspective but in a practical, meaningful, realistic, and rational manner, so as to arrive at a just and correct conclusion. Courts are duty-bound to avoid attributing artificial or fanciful meanings to pleadings that would otherwise mislead or distort the true nature of the case. This principle was underscored in several precedents emphasizing that the substance and reality of facts should prevail over mere technicalities in pleadings.

35. According to the prayer clause, the applicant's entire case hinges upon the oral agreement allegedly made in 1973. It is therefore incumbent upon the plaintiff/applicant to prove the existence and validity of such an agreement with full particulars. Moreover, given that the suit has been instituted after a delay of approximately 45 years, the applicant must offer a satisfactory explanation for such an inordinate delay. The law of limitation applies squarely to the present case, and the suit is liable to be dismissed on the ground of limitation alone if no adequate justification for the delay is furnished. Reliance in this regard is placed upon the cases of *Dost Muhammad Khan vs. Fareed Muhammad Khan and others* (2024 SCMR 793), *Bashir Ahmed and 21 others vs. Shah Muhammad and another* (2010 CLC 734).

36. For the reasons discussed above, the plaintiff/applicant has failed to establish a prima facie case for the grant of specific performance of the contract. Consequently, the impugned decree, judgment and order passed by the learned trial Court and upheld by the appellate Court require no interference. Accordingly, the instant Civil Revision Application stands dismissed as per the short order dated 19-05-2025. These are the reasons for that short order.