Judgment Sheet

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

2nd Civil Appeal No.S-03 of 2016

2nd Civil Appeal No.S-04 of 2016

Appellant No.1 through Legal Heirs in both Appeals	***:***	***Mian Hassanullah (deceased) through Mr. Tariq G. Hanif Mangi, Advocate***
Respondents in 2nd Civil Appeal No.03 & 04 of 2016	***:***	***Muhammad Sadiq & others and Abdul Razzak and others through Mr. Sarfraz A Akhund, Advocate***
Date of hearing	***:***	***18.8.2023 & 21.8.2023***
Date of Decision	***:***	***08.09.2023***

J U D G M E N T

ARBAB ALI HAKRO, J: This judgment shall dispose of instant 2nd Civil Appeal No. S-03 of 2016 as well as connected 2nd Civil Appeal No. S-04 of 2016, as both captioned Appeals have been filed by the same parties in respect of the same property.

2. Before proceeding with the facts of the case, it is pertinent to mention here that initially, two revision applications were filed against the impugned common judgment dated 30.04.2011 decree dated 05.05.2011, passed by the learned Additional District Judge Naushahro Feroze, in Civil Appeal Nos. 142 &143 of 2004, whereby the learned trial Court allowed the appeals filed by the Respondents and dismissed F.C. Suit No.38/1992, filed by the Plaintiffs (Appellants herein). After that, applications under Section 151

CPC in both revisionswere filed whereby permission was sought from the Court to convert the civil revision into 2nd Appeal and allowed the applicants to file memo of 2nd Appeal under Section 100 CPC on the ground that at the time of filing of suit before the trial Court, the value of suit property was not more than Rs.250,000/-; however when applicants realised that the value of the suit property is more than Rs.250,000/-, aforesaid applications under Section 151 CPC were filed, which were allowed vide order dated 17.10.2016 and the Applicants were directed to file amended title of regular second appeals.

3. Concise facts leading to captioned 2nd Civil Appeals are that on 16.03.1992, deceased Mian Hassanullah (Appellant No.1) and Muhammad Idris (Appellant No.2) filed F.C. Suit No.38/1992 (Mian Hassanullah and another vs. Muhammad Sadiq & others) for Specific Performance of Contract and Injunction. It is also asserted that Respondents Muhammad Sadiq died on 16.09.1993, and Mian Hassanullah (Appellant No.1) also died during the pendency of the suit; therefore, legal heirs of both the deceased were impleaded as parties. That the applicants' (Appellants herein) suit was based on a sale agreement dated 13.04.1989 and *Iqrarnama* dated 27.04.1997 duly executed by Respondents (Muhammad Sadiq) for self and on behalf of the Respondents No.2, 3, 4 & 5 in favour of the Appellants Mian Hassanullah (since deceased) and Muhammad Idris for sale in respect of agricultural land bearing Survey Nos. 70/1,2, 76/1, 210/2, 211/2, 224/1&2, 849, 841, 795, 937, 205/3, 96, 967, 839, 862/2, 166/2, 166/A&B, 189, 90/2, 238, 207/1, 207/2 of Deh Abji measuring 56-8½ acres. The total sale consideration settled between the parties according to Agreement was Rs.3,37,275/- and the area under sale was 56-8½ acres,

situated at Deh Abji, Taluka Naushahro Feroze, and at the first instance, the applicants (appellants) paid Rs.2,50,000/- and after that Rs.50,000/- were paid to the Respondents on 27.04.1991, such acknowledgement was executed by the Respondent No.1 on 27.04.1991. The applicants were also put in possession of the land. The balance amount of Rs.37,275/- was to be paid by the applicants to the Respondents at the time of execution of the Registered Sale Deed before the Sub-Registrar for which the date was fixed on 01.02.1992. It is further asserted that there was one of the terms and conditions of the Agreement to sell that Fard-e-Intikhab would be obtained by Respondents. It is narrated that in February 1992, the applicants (appellants) approached Respondents for the execution of registered sale deed, but he kept the applicants on false hopes and prior to three days of filing of the suit, the Respondents refused point blank; therefore, the applicants filed suit against the Respondents. As a counterblast to the suit of the applicants (appellants), the Respondents filed F.C. Suit No.71/1992 (re-Abdul Razzak & others vs Mian Hassanullah and others) before learned Senior Civil Judge Naushahro Feroze for Cancellation, Possession, Mesne Profits and Permanent Injunction on 26.04.1992. That on 17.07.1993, the learned trial Court framed consolidated issues and, in the first instance, dismissed the applicants' (appellants') suit against which the applicant (appellants) preferred an appeal, which was allowed and the matter was remanded back to the trial Court for decision afresh. After remanding the case, learned Senior Civil Judge Naushahro Feroze, vide judgment dated 13.11.2004, decreed the applicants' suit and dismissed F.C. Suit No.71/1992 filed by the Respondents. The Respondents had preferred Civil Appeals No.142 & 143 of 2004 before

learned District Judge Naushahro Feroze, which were allowed vide impugned judgment dated 30.04.2011 by setting aside the judgment and decree passed by the trial Court, hence instant 2nd Civil Appeals.

4. At the outset, learned Counsel for the Appellants submits that the impugned common judgment passed by the trial Court is not sustainable under the law; besides, the plaintiff/appellant and his witnesses supported the case, but the learned Appellate Court without discussing and appreciating the evidence, so also without advancing any reason for differing with the findings and conclusion given by the trial Court. It is argued that the observation made by the learned Appellate Court about the non-examination of Muhammad Sadiq Khan, vendor, and Mian Hassanullah is, on the face of it, appears to be redundant as both the appellant No.1 and Respondent No.1 were passed away, which fact was also on the record of Appellate Court, therefore, their non-examination will not cause dent in the case as amended title was filed by one Zahoor Ahmed being attorney of Respondent. It is next argued that the observation of the learned Appellate Court regarding examination of scriber and Notary Public is concerned, it is submitted that applicants had made such a request before the trial Court, but the application was not pressed; however, the Court itself is competent to call any person as a witness, but that powers were not exercised by the learned Appellate Court. Besides, the learned Appellate Court did not consider the scriber's signatures. It is further argued that so far, the signature of Applicant No.1 is concerned, that there are already two witnesses examined who witnessed the document; therefore, there is no need for third person to confirm the Agreement besides evidence of scriber is not the requirement of Qanoon-

e-Shahadat Order, 1984. It is emphasized that so far, the observation of the learned Appellate Court regarding possession, it is contended that the land was on lease with some other person, namely Goraho. However, such evidence was also not considered by the Appellate Court. It is argued that the learned Appellate Court concluded that there is a contract of sale of the suit land between parties, but the learned Appellate Court has knocked out the appellants for the reasons that they have failed to prove the authenticity and genuineness of the agreement to sell and *Iqrarnama*, hence these appeals.

5. Conversely, the learned Counsel representing the Respondents in both 2nd Civil Appeals contended that the Appellate Court decided factual as well as legal points in its judgment; the appellant filed suit for specific performance of contract and admitted the ownership of Respondents; therefore, there is no need to seek declaratory relief in consonance of the suit for possession under Section 8 of the Specific Relief Act 1877. He contended that the Appellants were lessee and such admission is in their suit and written statement; thus, there is no need to prove the lease in terms of Article 113 of Qanoon-e-Shahadat Order, 1984. He next contends that Dhalreceipts produced by the appellant also negate *Iqrarnama* dated 27.04.1991. There is no attestation of the alleged marginal witness, Abdul Aziz, on the sale agreement, even though they failed to bring convincing and reliable evidence to prove the execution of the sale Agreement and the alleged statements of marginal witnesses are contradictory, and F.C. Suit No.71 of 1992 was filed through an attorney who has not been examined; thus, the suit was filed by an unauthorised person. He finally submits that Survey No.96 has already been sold out to one Aftab

Mashoori, and such pleadings are incorporated in the plaint and written statement of the Respondents in both the suits, respectively, despite the appellants' have not joined said Aftab Mashoori as a defendant in the suit.

6. I have heard Counsel for the parties and have minutely perused the record with their assistance.

7. Although it is well settled that findings of fact cannot be interfered with by the High Court in a second appeal, in view of dictum in the case of **Karim Bakhsh through L.R.s and others v. Jindwadda Shah and others (2005 SCMR 1518)**, wherein it has been held inter-alia that when the findings of the two Courts below were at variance, the High Court could appreciate the evidence in order to determine which of the two decisions were in accordance with the evidence on the record. In cases where the findings of an Appellate Court are not supported by evidence on the record and the same are found to be without logical reasoning or arbitrary or capricious, the same could be interfered with in a second appeal. Reference in this context may be made to the law in the case of **Abbas Ali Shah and others v. Ghulam Ali and another (2004 SCMR 1342)**. Within the confines of these guiding principles, I analysed the available evidence to ascertain whether the viability of either of the divergent judgments and decrees passed by the Courts below was sustainable.

8. It is also well-established law that the specific performance is a discretionary relief and the Courts are not bound to grant such relief mechanically merely it is lawful to do so. The discretion to grant relief of specific performance or otherwise by the Court is not something mechanical or arbitrary exercise of jurisdiction but is structured on sound and reasonable judicial principles, amenable to judicial review

and correction by the Court of Appeal. Reliance is placed upon the case of **MUHAMMAD RIAZ HUSSAIN vs. ZAHOOR HASSAN (2021 SCMR 431).**

9. The appellant No.1, in his suit for specific performance, distinctly alleged the factum as to the execution of the Agreement to sell dated 13.4.1989, as well as the *Iqrarnama* dated 27.4.1991. However, Respondents, in his written statement, denied the execution of the said Agreement and *Iqrarnama*. Furthermore, it has pleaded that the said Agreement and *Iqrarnama* were managed and prepared with malafide intentions to usurp the suit land, and possession of appellant No.1 over the suit land is as lessee. Such denial by Respondents made it obligatory upon the appellants to prove the execution of the said Agreement and *Iqrarnama* under Article 17, read with Article 79 of the QSO, 1984.

10. In the present case, a perusal of the record shows that it is the case of the appellants that appellant No.1 Mian Hassanullah had purchased the suit land from respondent No.1 Muhammad Sadiq for a total consideration of Rs.337,275/-, out of which said Mian Hassanullah had paid Rs.250,000/- as part payment to the Muhammad Sadiq at the time of execution of Agreement to Sell dated 13.4.1989 and Rs.50,000/- were paid to said Muhammad Sadiq on 27.4.1991 and on receipt of such payment said Muhammad Sadiq handed over possession to Mian Hassanullah and executed such *Iqrarnama* dated 27.4.1991 while remaining consideration was to be paid at the time of execution of Sale Deed before Sub-Registrar till 01.02.1992. In support of that claim, the appellants examined two marginal witnesses, namely Gul Bahar, son of Gul Muhammad and Abdul Aziz, son of Shafi Muhammad, of Agreement to sell dated 13.4.1989, as PW-2 and 3 respectively.

However, they neither stated the mode of payment nor described the suit property as mentioned in the Agreement to sell. They did not say a single word in their evidence that the Signatures/thumb impression over the Agreement to sell is/are the same and belongs to the vendor and vendee, namely Sadiq and Mian Hassanullah, Muhammad Idrees. PW-3 Abdul Aziz, in his evidence, has stated that the second document (*Iqrarnama*) was executed on the date and time of the first Agreement (Agreement to sell). However, the Agreement to Sell was executed on 13.4.1989, while *Iqrarnama* was executed on 24.4.1991. The above contradictory and inconsistent evidence of the two important witnesses does not inspire confidence to accept them as witnesses of the truth. Their evidence in no manner warrants the conclusion that the above Agreement and *Iqrarnama* were executed between appellant No.1 and respondent No.1 as alleged by them. PW-2 Gul Bahar, in his evidence, stated that Muhammad Uris Solangi scribed the Agreement, and perusal of said Agreement reveals that Muhammad Uris Solangi also attested to same, but the appellants did not examine him.

11. The other important factor is that the alleged Sale Agreement comprises upon 05(five) pages and only on its' last page signatures/thumb impressions of the parties are affixed. In such circumstances, when all the pages of said Agreement are not signed, it makes the Agreement doubtful, and that cannot be relied upon in any way, unless not proved that all the five pages were produced with the same aim/object and those were signed by the executor. In this regard, reliance is placed on the case of **Zafar Iqbal and others v. Mst. Nasim Akhtar and others (PLD 2012 Lahore 386)**, which says that;

> *"At the first page there are absolutely no signatures of any body neither of the alleged vendor or any witness or any identifier or any endorsement by the alleged Magistrate. First page of the alleged agreement being unsigned by anybody is worthless and further that the second page also does not contain the signatures of the alleged vendee. This is unilateral writing by a person allegedly the seller in favour of the alleged purchaser who is not a party to this alleged agreement and also has not signed this paper. In my view it does not constitute a contract because a contract binds both the parties to an agreement when the alleged vendee is not a signatory to this alleged contract then how he is bound by that contract."*

(Emphasis provided)

12. On each page, there is no signature of the vendee, and in that scenario, the execution of the Agreement cannot be said to be proved. So far as the other aspect of proving the same is concerned, the appellants did not file any application for comparison of the signature/thumb mark present on the same before the trial Court. And from the very beginning, from the respondents' side, it was denied that the respondents did not execute the sale agreement. Since the appellants were the document's beneficiaries, they were obligated to prove the same. The existence of the Agreement does not mean that it was validly executed and proved. When such a document creates a right or mentions some rights or obligations, and if it is denied by the other side affected by the said document, it is a rule that the person who is the beneficiary of the document must prove the same. Reliance in this respect can well be placed in the case titled **Amjad Ikram vs. Mst. Asia Kausar (2015 SCMR 1)** that: -

> *"It is an equally settled principle of law that it is the duty and obligation of the beneficiary of the transaction or a document to prove the same."*
>
> (*Emphasis provided*)

13. Nonetheless, the Agreement mentions that the advance/part amount was paid. But there is no receipt for when and where that amount was paid. Although oral assertion of the P.W.s is there, that is also inconsistent. In the case of **Muhammad Ghaffar (Deceased) through L.R.s and others vs Arif Muhammad (2023 SCMR 344)**, wherein Apex Court has held as under: -

> *"For the grant of a decree plaintiff has not only to prove the Agreement to sell by producing two marginal witnesses but also the* ***receipt****/proof of payment of the consideration amount (averred to be paid). When the evidence of payment of earnest money/partial consideration amount is in oral form which is in contradiction to the Agreement, it should have been pleaded so, it must be proved through strong and consistent with the other documentary evidence on record. In the instant case, where the execution of the document has categorically been denied by the vendors then it was obligatory upon the plaintiff party to seek the signatures/thumb impression comparison, which was never requested. This Court has already held in the case of "Khudadad v. Syed Ghazanfar Ali Shah" (2022 SCMR 933) that 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."*

14. As far as the question of possession being purchaser is claimed by the appellants, on the basis of the *Iqrarnama* dated 27.4.1991, perusal of the same reflects that after payment of Rs.50,000/ by the appellant No.1, the possession of the suit land was handed over to him by the respondent No.1. However, in terms of Article 117 of the QSO, 1984, the burden to prove the *Iqrarnama* is on the appellants. Since Respondents denies the *Iqrarnama*, Article 78 of the QSO,

1984 requires the appellants to prove that it was executed by respondent No.1, of the modes of such proof, Article 79 of the QSO, 1984 provides as follows: -

> ***"79. Proof of execution of document required by law to be attested****: If a document is required by law to be attested, it shall not be used as evidence until two attesting witnesses at least have been called for the purpose of proving its execution, if there be two attesting witnesses alive, and subject to the process of the Court and capable of giving evidence.*
>
> *Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Registration Act, 1908 (XVI of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied."*

15. Since the *Iqrarnama* was a document relating to a financial obligation coupled with possession, it was required by Article 17(2)(a) of the QSO, 1984, to be attested by witnesses. Therefore, Article 79 of the QSO, 1984 applies to the *Iqrarnama*, which provision mandates that "it shall not be used as evidence until two attesting witnesses at least have been called for the purpose of proving its execution. Undisputedly, a pictorial view of the *Iqrarnama* (Exhibit 172) reveals that two witnesses did not attest to the same. It has been held by the Apex Court in the case of **Mst. Rasheeda Begum and others v. Muhammad Yousaf and others (2002 SCMR 1089)** that: -

> "*where an agreement to sell has been reduced to writing but not attested by witnesses its execution and the contract embodied therein can be proved by other strong evidence and attending circumstances which may vary from case to case. Needless to mention that such evidence can also be produced in the first category of cases as supporting evidence."*
>
> [emphasis added].

In Case of **Sheikh Muhammad Muneer v. Mst. Feezan (PLD 2021 Supreme Court 538)**, it has been held by the Apex Court as under:-

> *"The petitioner presumably was not able to locate a witness (Allah Ditta). The burden to produce or summon him lay upon the petitioner, which is not alleviated merely by saying he could not be found. Article 80 of the Qanun-e-Shahadat provides, that:*
>
> > *80. Proof where no attesting witness found. If no such attesting witness can be found, it must be proved that the witnesses have either died or cannot be found and that the document was executed by the person who purports to have done so.*
>
> *The Article states that it must be proved that the witness had either died or could not be found. Simply alleging that a witness cannot be found did not assuage the burden to locate and produce him. The petitioner did not lead evidence either to establish his death or disappearance, let alone seek permission to lead secondary evidence".*

16. Moreover Section 53-A of the Transfer of Property Act 1882 defines the question of possession based on contract. For ready reference, said Section is reproduced as under: -

> *"**53A. Part performance**. Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract, and the transferee has performed or is willing to perform his part of the contract, then, notwithstanding that the contract, though required to be registered, has not been registered, or, where there is an instrument of transfer, that the transfer has not been completed in*

the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this Section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof." (Emphasis added)

17. Respondents claim that appellant No.1 was the leasee of suit land before the purported Agreement to Sell and such factum of the lease has also been admitted by Appellant No.1 but disputed the period of lease in his written statement. According to Article 113 of QSO, 1984, facts admitted need not to be proved. It shall be advantageous to reproduce Article 113 of QSO, 1984 as under:-

"*No fact need be proved in any proceedings which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule or pleading in force at the time they are deemed to have admitted by their pleadings;*

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise by such admissions".

In the case of **Muhammad Rafiq and others vs Muhammad Ali and others (2004 SCMR 704),** the Apex Court has held as under:

"It had been claimed through para. 3 of the plaint that Siraj Din son of Nabi Bukhsh had died in the year 1966 and that he had left behind his widow, namely, Mst. Barkat Bibi, two sons, namely, Muhammad Din and Muhammad Rafiq and a daughter, namely Mst. Zainab Bibi. The pedigree-table of said Siraj Din was also drawn in the said paragraph. The

petitioners-defendants replied the said averments through their written statement in the following terms:--

"3. Admitted. Correct. "

The concurrent finding of the learned Appellate and the Honourable revisional Court that in view of this judicial admission through the written statement no issue was required to be struck and no further proof of this question was warranted from the plaintiff was a perfectly valid finding."

18. The question regarding the maintainability of the suit for possession raised by the learned Counsel representing the appellants that suit for possession without seeking declaration is not maintainable. Admittedly, appellant No.1 seeks enforceability of the Agreement to Sell, and the respondents' title is not disputed. The issue of possession is to be adjudicated in Section 8 of the Specific Relief Act 1877; therefore, the decree of possession based on entitlement, being the owner, can be awarded. The suit for possession cannot be dismissed if respondents have failed to prove the lease/lease agreement and seek a declaration in this respect. In the case of **Hazratullah and others vs Rahim Gul and others (PLD 2014 Supreme Court 380)**, the Hon'ble Apex Court has observed as follows:-

"*It may be held that in a suit under Section 8 of the Specific Relief Act, 1877, the declaration of the entitlement in an inbuilt relief claimed by the plaintiff of such a case. Once the plaintiff is found to be entitled to the possession, it means that he/she has been declared to be entitled, which includes the declaration of title of the plaintiff qua the property, and this is integrated into the decree for possession.*"

In Case of **Taj Wali Shah v. Bakhti Zaman (2019 SCMR 84)**, it was held by the Apex Court that: -

> *"This being so, it reaffirms the ratio of Hazratullah's case supra, that in a suit under section 8 of the Act of 1877, there is ordinarily an inbuilt prayer for the declaration of entitlement to possession, which is sought by the plaintiff. In view of the express declaration of title in the decree passed by the trial Court, the preliminary objection of the respondent and direction of the High Court, for Taj Wali Shah to first seek a declaration of title under section 42 of the Act of 1877 before filing a suit for possession under section 8 supra was not justified, and in the circumstances of the present case it would in fact be an exercise in legal futility".*

19. Learned Counsel representing the appellants has also raised an objection that the respondents have filed a suit for possession through an attorney who was not examined by them before the trial Court. It is also settled law that presumption is attached to the Power of Attorney until and unless the principal disputed it. One of the principal/ respondent No.2 examined himself before the trial Court, and his statement under Oath is not contrary to the pleadings of suit for possession filed through attorney; hence, such act as of agent as claimed by the Counsel for the appellants having no force. Moreover, the non-appearance of a party/Plaintiff in person but through his attorney is not fatal. In Case of **Mir Ajam Khan vs. Mst. Quresha Sultana and others (2006 SCMR 1927)**, it has been held by the Honourable Supreme Court of Pakistan that

> *"Non-appearance of the Plaintiff in this case was also not fatal. Respondent No.2 was the general attorney of the vendor from whom respondent No.1 had purchased the land and*

> *therefore, he was fully in knowledge of the relevant facts. The judgment in the case of K.S. Agha Mir Ahmad Shah and others v. K.S. Agha Mir Yaqub Shah and others (supra) proceeds on its own facts. Non-appearance of the party as a witness came under consideration of the superior Courts at a number of occasions. The first important judgment to be found is Sardar Gurbakhsh Singh v. Gurddial Singh and another AIR 1927 PC 230"*. It has further been observed by the Honourable Supreme Court of Pakistan that *"The ratio of the aforesaid judgments is that if there are certain facts and circumstances specially in the knowledge of the party, an adverse inference could be drawn from its non-appearance. There cannot, however, be any cast iron mould for the aforesaid principle. It will depend on the facts of each case.* ***In case the circumstances on which a party relies are proved by evidence on record, then non-appearance of the party would not be fatal****. It may be observed that a presumption (drawn from the conduct of a party), could not nullify proof of a fact by the evidence produced in the case"*. Similarly, in Case of ***Messrs Muhammad Amin Muhammad Bashir Limited and another Pakistan through Secretary, Ministry of Communications, Rawalpindi and 5 others*** ***(2000 CLC 1559)***, it has been held by this Court that *"Plaintiff's failure to appear in witness box in support of his case is fatal when the burden to prove any particular issue lies upon him and where the facts are within his knowledge but in case where a witness other than Plaintiff is fully aware of the facts and has brought all relevant facts successfully before the Court, the Defendant cannot compel the Plaintiff to appear in the witness box and to depose"*.

20. Nevertheless, the trial Court failed to appreciate the legal and factual aspects of the case and dismissed the Suit of Respondents while decreeing the suit of appellants. In contrast, after discussing the facts and evidence of the parties through a well-reasoned judgment, the appellate Court has rightly decreed the Suit of Respondents and, dismissed the suit of appellants and has committed no illegality. The present legal doctrine firmly establishes that when conflicting verdicts arise, decisions made by the appellate Court should be accorded greater deference and esteem unless it can be demonstrated from the available documentation that such

determinations lack substantiation from evidentiary support. Now, I would like to direct my focus towards the finer details of the entitlement to submit a Second Appeal as outlined in Section 100 of the Code, which can be set into motion only when the decision is contrary to law; failure to determine some material issue of law, and substantial error or defect in the procedure provided by the Code or law. In the case of **Madan Gopal vs Maran Bepari(PLD 1969 SC 617)**, the Apex Court has held that if the finding of fact reached by the first Appellate Court is at variance with that of Trial Court, such a finding by the lower Appellate Court will be immuned from interference in second Appeal only if it is found to be substantiated by evidence on the record and is supported by logical reasoning, duly taking note of the reasons adduced by the first Appellate Court, in another case reported as **Amjad Ikram v. Mst. Asiya Kausar (2015 SCMR 1)**, the Apex Court held that in case of inconsistency between the trial Court and the Appellate Court, the findings of the latter must be given preference in the absence of any cogent reason to the contrary.

21. For the foregoing reasons, I am of the view that the Appellate Court was fully justified in setting aside the judgments of the trial Court by decreeing the Suit of Respondents and dismissing the suit of appellants as stated above, and there does not appear to be any justification to interfere with such findings of the appellate Court, nor a case of any exception is made out; hence, these Second Appeals do not merit any consideration and are accordingly **dismissed.** Parties are left to bear their own costs.

JUDGE