

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.
IInd Appeal No.34 of 2023

Appellant: Aijaz Ali son of Ali Bux through Mr. Muhammad Hassan Chang, Advocate.

Private Respondent: [nemo].

The State: Mr. Muhammad Yousif Rahputo, Assistant A.G Sindh

Date of Hearing: 06.04.2026.

Date of Order 06.04.2026

J U D G M E N T

Syed Fiaz ul Hassan Shah, J:- The appellant has challenged the Judgment dated 18.04.2023 and Decree dated 19.04.2023 (impugned Judgment), passed in Civil Appeal No. 262 of 2022 by the learned 7th Additional District Judge, Hyderabad ("the lower appellate Court"), affirming the Judgment and decree dated 01.10.2022, passed by the learned 5th Senior Civil Judge, Hyderabad in F.C. Suit No.607 of 2020 whereby the learned trial Court dismissed the suit of the appellant/plaintiff. Hence, this appeal.

2. Succinctly facts leading to the present appeal are that the appellant/plaintiff filed suit for declaration, specific performance of contract, damages & permanent injunction, wherein he alleged that the father of the defendants No.1 to 5 namely Hussain Bux was the owner of property i.e. House No.237 (double storied-2 rooms on GF & 2 rooms on first floor) admeasuring 20x25, situated in block "A" Unit No. 11, Latifabad Hyderabad vide allotment order dated 05.03.1964 (suit property). Due to his terminal illness, he was confined to bed and he through his son Shakeel Ahmed (defendant No.1) entered into a Sale Agreement dated 07.07.2017 with plaintiff in respect of suit property against total sale consideration of Rs.3000,000/- in presence of the defendant No.1 to 4 and in the said sale agreement said Hussain Bux was also shown as one of

the witnesses and his LTI and signature are also therein. It was further claim that at the time of said Sale Agreement, the appellant/plaintiff paid Rs.1000,000/- as earnest money while balance of Rs.2000,000/- was to be paid within two years i.e. upto 05.07.2019 but after about two or three months of the execution of the Sale agreement, said Hussain Bux expired and property devolved upon defendant No.1 to 5 being his legal heirs. Subsequently, defendants demanded 6-Lac which was paid by the appellant and an Iqarnama was also executed while for remaining amount of Rs.1400,000/- the defendant No.1 to 5 agreed to extend the period upto 07.07.2020 but when appellant approached the respondents/defendants on 01.07.2020 for transfer of suit property willingness to pay of remaining sale consideration before Sub-Registrar, they refused and became greedy. Thereafter, appellant/plaintiff served legal notice on respondents/defendants but in reply of such legal notice, they took strange false plea that appellant/plaintiff is tenant as he was in possession of ground floor in pursuant to the Iqarnama. Thus, suit was filed with prayer that he may be declared as an owner and that registered sale deed may be executed in favour of Appellant.

3. It is contended by the learned counsel for the appellant that the appellant and the private respondents are sibling brothers and sisters and the appellant on 07.07.2017 had executed sale agreement and purchased House No.237 admeasuring 20x25, situated in block "A" Unit No. 11 Latifabad Hyderabad, subsequently after the death of their father deceased Hussain Bux, the modification agreement which was executed on 14.12.2018 but the respondents failed to perform the same. He further urged that consequently the appellant instituted suit for Specific Performance of Contract i.e. F.C. Suit No.607 of 2020, was dismissed; hence, the appellant preferred Civil Appeal No.262 of 2022, which was also dismissed. Learned counsel further contended that the appellant had purchased property in question against sale consideration of

Rs.3000,000/- and paid Rs.1000,000/- in cash against which possession of ground floor was handed over after further payment Rs.600,000/- on 14.12.2018. While for remaining amount of Rs.1400,000/- the appellant was ready to pay however both the Courts below did not consider such facts and dismissed the suit of the appellant. He next argued that the parties were also involved in rent litigation and in rent application the learned 3rd Additional District Judge Hyderabad also directed for analysis the disputed signatures of the respondents and such report received from the office of Forensic Division dated 03.06.2024 revealed that the signature of Aijaz Ali and Marginal witness Shahab as available on rent agreement compared with their known exemplars "**observed in drawing as imitation in copied process and Unnatural.**". He lastly prayed that the impugned judgments and decrees are in utter disregard and violation of the various verdicts of law hence liable to be set aside.

4. Heard learned counsel for the appellant as well as learned A.A.G for the State and perused the material available on record.

5. I have carefully examined the available record. The entire claim of the appellant hinges upon the Sale Agreement dated 07.07.2017, the execution of which was denied by the respondents. Since the document's authenticity was in dispute, the legal burden lay squarely on the appellant to prove it in accordance with the strict mandate of Article 79 of the Qanun-e-Shahadat Order, 1984. The evidence led by the appellant, however, fails to meet the threshold of legal certainty. Out of the 04 marginal witnesses, the appellant produced only one i.e. PW-2 (Muhammad Imran). Although the original agreement (Ex.19/A) lacks his parentage and CNIC details, nevertheless, his alone evidence is not sufficient to prove the sale agreement. Furthermore, the appellant's failure to produce voluntarily or to "call" at least one more marginal witnesses is a fatal blow to his case. Following the principles laid down by the Hon'ble Supreme Court in PLD 2021 SC 538 and PLD 2011 SC 241, the

mandatory requirement of examining at least two attesting witnesses cannot be dispensed with on the mere apprehension that they might testify against the interest of purchaser even though in such situation law provides alternate mechanism to prove through other modes.

6. Substantively, the agreement does not prove. If a person is legally competent to attest a document as a witness, there is no rational, legal, or logical reason as to why he could not be examined or if the appellant apprehend that he would give false evidence adverse to his interest, he could prove otherwise by proving signature of witnesses. This discrepancy points toward the fact that the document was a result of fabrication rather than a *bona fide* transaction. Consequently, the agreement remains legally unproven, therefore, no performance of unimproved contract can be issued.

7. The appellant's reliance on a forensic report from the rent proceedings is equally misplaced. Firstly, a document or report not produced during the trial cannot be scrutinized at the stage of a second appeal. Secondly, even if the report is considered, it serves as a "double-edged sword" against the appellant, as the expert opined that the signatures on the sale agreement do not match the specimen signatures of the respondent. Furthermore, the appellant's reliance on the Rent Controller's findings has no legs to stand on, as that order was subsequently set aside in First Rent Appeal No. 128 of 2022. The specific performance is a discretionary relief and where a contract is not proved, such discretion cannot be exercised despite the fact that part performance was made and possession was handed over to the applicant. Such plea can only led basis to make defence under section 53-A Transfer of Property Act, 1881 for keeping possession only.

8. This Court while exercising jurisdiction under Section 100 CPC, finds no reason to interfere with the concurrent findings of the courts

below. There is neither any misreading of evidence nor any jurisdictional error in the impugned judgments. The two courts below have correctly appreciated the facts and the law.

9. In light of the above facts and circumstances, the Appeal is **dismissed** with no order as to costs.

Judge

Ahmed/Pa,