

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**  
[Appellate Jurisdiction]

**PRESENT:**

Ch. Muhammad Ibrahim Zia, C.J.  
Ghulam Mustafa Mughal, J.

Civil Appeal No. 239 of 2017  
(Filed on 21.11.2017)

1. Atif Jamshed,
2. Kashir Jamshed, sons,
3. Mst. Asifa Jamshed, daughter of Jahshed Alam r/o House No. 9, Street No. 40, Block-Y, People's Colony Gujranwala, Pakistan,
4. Muhammad Shabbir s/o Muhammad Zaman r/o House No. 187, Sector F/3, Mirpur,
5. Aftab Ahmed s/o Mohammad Bostan r/o Sector F-3, Mirpur.

.... APPELLANTS

**VERSUS**

1. Fazal Hussain JarraI s/o Feroz JarraI r/o House No. C/5, WAPDA Colony, Mirpur, Tehsil & District Mirpur,
2. Javed Akhtar JarraI s/o Hakim Ali JarraI r/o Sector C/3, Mirpur,

..... RESPONDENTS

3. Mst. Noreen Jamshed d/o Jamshed Alam r/o House No.9, Street No. 40, Block-Y, People's Colony Gujranawala, Pakistan,
4. MDA, Mirpur through Chairman MDA, Mirpur,
5. Estate Officer, MDA, Mirpur.

.....PROFORMA-RESPONDENTS

(On appeal from the judgment and decree of the  
High Court dated 28.10.2017 in Civil Appeal No.  
126 of 2008)

-----

FOR THE APPELLANTS: Ch. Muhammad Anwar,  
Advocate.

FOR RESPONDENTS NO.1 & 2: Muhammad Riaz Inqlabi,  
Advocate.

FOR PROFORMA-RESPONDENT NO.3: Mr. Riaz Naeed Butt,  
Advocate.

*Date of hearing:* 23.04.2019.

**JUDGMENT:**

***Ghulam Mustafa Mughal, J—*** The captioned appeal is directed against the judgment and decree dated 28.10.2017 passed by the Azad Jammu and Kashmir High Court in civil appeal 126 of 2008.

2. The facts necessary for disposal of the captioned appeal are that plaintiff-respondent No.1, herein, filed a suit for specific performance of contract against the defendant-appellants, herein, before the Additional District Judge, Dudyal, Camp, Mirpur on 01.02.2001, regarding plot No. 51 measuring (50x90) situated in Sector F/3, Part-II, Mirpur. The suit was later on amended on 05.06.2004. It was claimed that the

plaintiff- respondent, herein, has purchased the disputed plot from Robina Jamshed, widow of Jamshed Alam through respondent No.2, herein, (attorney) in lieu of Rs. 4,00,000/- vide agreement-to-sell dated 02.08.1989. It was further claimed that Robina Jamshed, allottee, has died in the year 1997 and the disputed plot was transferred in the names of her sons and daughter, namely, Atif Jamshed, Kashif Jamshed and Asifa Jamshed vide transfer letter dated 29.09.2000. It was claimed that the plaintiff-respondent, herein, asked several times to Mst. Robina Jamshed in her lifetime to honour her commitment by executing the sale-deed and after her death to her legal heirs but they have not executed the same. It was further stated that recently the defendants have refused the specific performance of the agreement. It transpired that defendant No. 1 has got the said plot transferred in his own name with the connivance of defendants No.5 & 6, herein. It was claimed that defendant No. 1 has full

knowledge of the agreement-to-sell executed in favour of the plaintiff. After the agreement-to-sell, an agreement about the payment of some outstanding money was executed on 11.06.2000 in presence of the respectable witnesses between him and proforma-respondent No. 7, herein, who was attorney of her mother. All this has been done by defendant No.1. After obtaining the guardian certificate from Senior Civil Judge, Gujranwala and by using the same illegally, defendant No.1, herein, got the plot transferred in his name from 10.10.2000. The said certificate was fraudulent because the sister of defendant No. 1 Mst. Noreen Jamshed was not impleaded as party. It was claimed that the transfer of plot in dispute in the name of defendants No.1 and 8, the execution of power of attorney in the name of defendant No. 9 and agreement-to-sell in the name of defendant No.8, is against the interest of the plaintiff, illegal and ineffective against his rights. It was further

stated that the defendants were bound to execute the sale-deed.

3. The suit was contested by the defendant-appellants, herein, by filing separate written statements. It was stated that the plaintiff-respondent, herein, has no cause of action and the suit was also time-barred. It was further stated that the suit was not maintainable in its present form, therefore, the same was liable to be dismissed with costs. It was pleaded that the agreement-to-sell on the basis of the suit has been filed, is concocted and bogus. No such agreement-to-sell is executed by the mother of defendant No. 8. The learned trial Court framed issues and directed the parties to lead evidence in support of their respective claim. At the conclusion of the proceedings, the learned trial Court vide judgment and decree dated 15.03.2008 dismissed the suit for want of cause of action and on the ground of limitation. An appeal was filed by the plaintiff-respondent, herein, before the Azad Jammu and Kashmir

High Court on 14.06.2008. After hearing the parties, the learned High Court vide judgment dated 18.02.2015 has accepted the appeal in the following terms:—

“15. The pith of the above detailed discussion is that the instant appeal is accepted with costs. The impugned judgment and decree dated 15.03.2008 is hereby sent to grave and the case is remanded back to the trial Court for decision, afresh, after framing fresh issues, in light of the pleadings of the parties as well as the points enumerated in above paras of the judgment and decide the controversy, in accordance with law, within a period not exceeding 4 months from today.”

Feeling dissatisfied, the defendant-appellants, herein, filed an appeal before this Court on 10.04.2015. This Court vide judgment dated 17.10.2017, has accepted the appeal in the following manner:—

“8. In view of the above stated reasons, we are constrained to accept this appeal, set aside the impugned

judgment and decree of the appellate Court and remand the appeal back to the High Court for decision afresh on merit. As the parties have faced the litigation since more than a decade period, therefore, it is felt advised that the High Court shall decide the appeal within two month's time from the communication this judgment."

After remand of the case, the learned High Court vide impugned judgment and decree dated 28.10.2017 has accepted the appeal in the following terms:—

"16. The crux of above discussion is that the instant appeal is accepted and judgment & decree passed by the Court below dated 15.03.2008, are hereby set aside. The transfer of plot by Mirpur Development Authority, in favour of defendants Nos. 1 to 4 and 8, dated 10.10.2000, is hereby quashed. The MDA-respondent No.5, is directed to transfer plot No. 51, measuring (50x90), situated in Sector F/3, Part-II, Mirpur, to appellant-plaintiff within a period of one month...."

4. Ch. Muhammad Anwar, the learned Advocate appearing for the defendant-appellants, herein, argued with vehemence that the agreement-to-sell executed on 02.08.1989 in favour of Fazal Hussain, plaintiff-respondent, herein, was concocted and fraudulent which has not been executed by Mst. Robina Jamshed through any attorney. The learned Advocate argued that the agreement-to-sell has not been proved by summoning two marginal witnesses, which was the requirement of law, hence, the learned High Court has illegally decreed the suit and granted the decree of specific performance of contract in favour of plaintiff-respondent No.1. The learned Advocate argued that the transfer of plot dated 10.10.2000 in the name of defendant No.1 by MDA was lawful. Similarly, the transfer of plot in dispute in the names of defendants No. 1 and 8 and execution of power of attorney in the name of defendant No. 9 and deed of agreement-to-sell in the name of defendant No. 8 was lawful. He argued that in



presence of this transfer, no decree for specific performance of contract could have been granted in favour of the plaintiff-respondent, herein. The learned Advocate argued that the dispute between Atif Jamshed and Fazal Hussain was with regard to some payment of money and they have no right to claim any interest on the basis of so-called agreement-to-sell dated 02.07.1989.

5. Conversely, Muhammad Riaz Inqlabi, the learned Advocate appearing for plaintiff-respondents No. 1 & 2, herein, argued that the appeal is not maintainable because the same has been filed on the basis of power of attorney which does not bestow any authority on the defendant-appellants, herein, to file the appeal before this Court. The learned Advocate on merits argued that the agreement-to-sell dated 02.08.1989 made in favour of the plaintiff-respondent, herein was an admitted document, hence, the summoning of the marginal witnesses to prove the said document was not necessary at all. The learned Advocate further argued that

even then the plaintiff has produced Muhammad Ayub Sabir, Notary Public, who has attested the agreement-to-sell, Muhammad Yousaf, Stamp Vendor and one Akhtar Hussain son of Ghulam Hussain, petition writer. He argued that nothing was further required to prove the document. The learned Advocate further argued that the law is settled that the admitted facts need not to be proved.

6. Mr. Riaz Naveed Butt, the learned Advocate appearing for proforma-respondent No.3, has adopted the argument of the learned Advocate for the defendant-appellants, herein.

7. We have heard the learned Advocates representing the parties and gone through the record of the case. A perusal of the record reveals that plot No. 51 measuring (50x90) situated in sub-sector, F-3, Part-II, Mirpur was transferred by the said allottee through Mr. Javed Akhtar, attorney, in lieu of Rs. 4,00,000/- on 02.08.1989. The case of the plaintiff-respondent, herein, was that he has asked Mst.

Robeena Jamshed in her lifetime to honour her commitment by executing the sale-deed and after her death to her legal heirs but they have not performed their part of the agreement-to-sell.

8. In order to prove the agreement-to-sell dated 02.08.1989 exhibit 'PA/1', the plaintiff-respondent, herein, has produced exhibit 'PA', the original general power of attorney, executed in favour of Javed Akhtar Jarral on 02.07.1989 and the agreement-to-sell exhibit 'PA/1' dated 02.08.1989. It may be stated that Javed Akhtar Jarral, who was appointed as attorney and in possession of the general power of attorney, executed by Mst. Robeena Jamshed, has appeared in the Court and owned the power of attorney as well as the agreement-to-sell exhibit 'PA/1'. It is not denied or challenged through any suit that Javed Akhtar Jarral was not appointed as attorney, hence, he has no lawful authority to transfer the land through agreement-to-sell in question. In this way, the

execution of the document is admitted one and the learned High Court has rightly concluded that admitted facts need not to be proved. Article 113 of the Qanoon-e-Shahadat Order, 1984 is to the same effect. For proper appreciation of the matter, the same is reproduced as under:—

“113. *Facts admitted need not to be proved.* 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 pleadings 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 than by such admissions.”

In view of the above reproduced provision of Qanoon-e-Shahadat Order, 1984, the producing of marginal witnesses was not required at all but even then as stated above, the plaintiff-

respondent, herein, has produced Muhammad Ayub Sabir, Notary Public, Muhammad Yousaf, Stamp Vendor, Akhtar Hussain son of Ghulam Hussain, petition writer, Ch. Muhammad Ishaq, Sub-Registrar, who has registered the power attorney. Hence, the agreement-to-sell has sufficiently been proved to have been executed in favour of the plaintiff-respondent, herein.

9. The contention of Ch. Muhammad Anwar, the learned Advocate appearing for the defendant-appellants, herein, that agreement-to-sell is not in existence in view of the other agreement-to-sell exhibit 'PA/2', is devoid of any force. This document further strengthens the case of the plaintiff-respondent, herein, because in this agreement, the execution of the agreement-to-sell is admitted. The question of dispute of payment of the amount is between the legal heirs and Javed Akhtar Jarraal. In this situation, we can easily conclude that the learned High Court has rightly granted the decree of specific performance of contract in

favour of the plaintiff-respondent, herein. Therefore, the agreement-to-sell executed in favour of the defendant on 02.01.2001 was a subsequent document and that has not been proved through an iota of evidence that the previous agreement was not in the knowledge of Atif Jamshed. No evidence has been led that Muhammad Bashir son of Muhammad Zaman, the subsequent transferee, has purchased the plot vide agreement dated 02.01.2001 in good faith and was a *bonafide* purchaser. He has not challenged the agreement-to-sell executed in favour of the plaintiff-respondent, herein, at any stage.

10. The contention of Mr. Riaz Inqlabi, the learned Advocate appearing for the defendant-appellants, herein, that the appeal is not competent because no specific authority has been granted for attorney holder for execution of appeal, is correct, but the appeal is even otherwise maintainable because one Muhammad Shabbir, appellant No. 4, herein, has filed his

power of attorney independently for institution of the appeal, therefore, this argument has no substance. A perusal of the impugned judgment of the High Court reveals that no any legal infirmity has been committed by the learned High Court.

The upshot of the above discussion is that finding no force in this appeal, it is hereby dismissed. No order as to costs.

Mirpur

.04.2019. JUDGE

CHIEF JUSTICE