IN THE SUPREME COURT OF AZAD JAMMU AND KASHMIR
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE KH. MUHAMMAD NASIM
MR. JUSTICE RAZA ALI KHAN

CIVIL APPEAL No. 318 OF 2024
(On appeal from the judgment of the High Court dated August 13, 2024, passed in Civil Appeal No. 271 of 2019)

Mirza Asif & 04 others.

…Appellant(s)

VERSUS

Zahir Hussain Shah & others.

…Respondent(s)

Appearances:

For the Appellant(s):	Raja Sajjad Ahmed Khan, Advocate.
For the Respondent(s):	Barrister Humayun Nawaz Khan, Advocate.
Date of hearing:	17.06.2025

JUDGMENT:

***Raza Ali Khan, J*:-** This direct appeal emanates from the judgment dated August 13, 2024, whereby the High Court allowed the appeal preferred against the

judgment and decree dated July 29, 2019, rendered by the District Judge, Jehlum Valley, thereby reversing the decree passed in favour of the present appellants.

2. The core of the dispute revolves around a suit for specific performance coupled with a prayer of perpetual injunction, instituted by Mirza Asif and others before the District Judge, Jehlum Valley. This was contested along-side a suit for declaration, possession and perpetual injunction filed by Zahir Hussain Shah before the same forum. Both matters were contested adversarially through respective pleadings, and were eventually consolidated. After framing of issues and conclusion of evidence, the trial Court decreed the suit filed by Mirza Asif, simultaneously dismissing the counter suit filed by Zahir Hussain Shah. Aggrieved, Zahir Hussain Shah preferred a first appeal before the High Court, which, vide judgment dated October 25, 2023, allowed the appeal and remanded the matter for *de novo* adjudication, with a direction to reframe and revisit issues settled afresh by the High Court. Dissatisfied by the remand order, Mirza Asif and others filed an appeal before this Court, which, while setting aside the High Court's remand order, directed the High Court to adjudicate upon the matter afresh, strictly in accordance with the framed points by the High Court and within a timeline of two months. Pursuant to said directive, the High Court, vide judgment dated August 13, 2024, dismissed the suit filed by Mirza Asif on grounds of evidentiary insufficiency, whilst decreeing the suit filed by Zahir Hussain Shah, thereby declaring him entitled to ownership and possession of the suit land. Consequently, the instant appeal has been preferred, impugning the

legality, validity and sustainability of the judgment dated August 13, 2024.

3. Raja Sajjad Ahmed Khan, counsel for the appellants, argued that the High Court's judgment dated August 13, 2024, is vitiated by serious legal infirmities. He submitted that the High Court, having earlier framed six pivotal questions of law and fact, was obligated, under this Court's directive to adjudicate the matter comprehensively in light of those issues. However, the High Court confined its analysis to a single point, disregarding the remainder, thereby violating directive of this Court and breaching its duty under Order XX, Rule 5 of Code of Civil Procedure, 1908, (CPC) which mandates adjudication upon all material issues of law and fact. He further contended that the Court misread the record by erroneously observing that the *Jirga* decision was not exhibited, whereas, it was properly exhibited, available at page 43 of the paper book, and corroboration by three marginal witnesses. The said document, he asserted, was never challenged within limitation and stood duly ratified by the respondents' predecessor, who signed it in the presence of witnesses. The High Court, however, disregarded this critical evidence, thereby rendering the dismissal of the suit hastily and *per incuriam*. Accordingly, he concluded that the judgment is unsustainable and liable to be set-aside.

4. Conversely, Barrister Humayun Nawaz Khan, appearing for the respondents, defended the impugned judgment as being legally sound and factually unassailable. At the outset, he raised a preliminary objection that when

the certified copies were obtained from the High Court on behalf of appellant, Raja Sajjad Ahmed Khan did not possess a power of attorney from the appellant. Therefore, the copies were obtained by an unauthorized person and on this basis, the appeal is not competent in the light of Supreme Court Rules. On merits, he submitted that the *Jirga* decision dated December 18, 2009, is a fabricated and legally void document lacking essential attributes of valid agreement to sell. He argued that even assuming its genuineness, the document offends Section 17 of the Registration Act, 1908, rendering any unregistered instruments affecting immovable property inadmissible in evidence. Reliance was placed on *Jamal Din v. Mst. Mahmooda Begum* (2002 CLC 361) and *Muhammad Ismail v. Bashir Ahmad* (2005 SCMR 1079). He further argued that Section 53-A of the Transfer of Property Act, 1882 is inapplicable, as the appellants have been in possession since 2005, long prior to the alleged *Jirga*, thereby, negating any plea of lawful part performance. In addition, he asserted that the alleged agreement lacked the essential contractual elements of offer, acceptance, and consideration as mandated under section 2(e) of the Contract Act, 1872. For this proposition, reliance was placed upon on *Mst. Nazeer Begum v. Syed Abid Hussain Shah* (PLD 2005 Lahore 419). Conclusively, he submitted that the appeal is grounded in misapplication of law and merits outright dismissal.

5. We've carefully heard counsel for both sides and meticulously perused the record. It emerges that the dispute stems from mutually opposing suits instituted before the District Judge, Jehlum Valley. Initially, the trial Court

decreed the suit filed by the appellants and simultaneously dismissed the counter-suit of the respondents vide judgment dated July 29, 2019. However, upon appellate scrutiny, the High Court, while setting aside the said judgment and decree, remanded the matter to the trial Court with a direction for fresh adjudication in light of the following six determinative points framed for resolution:

> "i. whether the decree of Jirga (counsel of elders) comes within the definition of Contract as envisaged in Section 12 of the Specific Relief Act and Contract Act and whether the same can be regarded as a concluded contract between the parties;
>
> ii. Whether the alleged recital decision of Jirga through which amount of more than seven lacs rupees is alleged to be paid to the other party and rest of the amount is outstanding, in such like eventuality was not required to be registered in view of Section 17 of the Registration Act 1908;
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> iii. Whether presence of only three persons is sufficient to constitute a "Jirga" and can be regarded as such particularly when the head of the meeting has not produced as a witness;
>
> iv. Whether a decree passed by a competent Court of law can be nullified merely on the basis of decision of an alleged "Jirga" and whether such like decree even erroneous or void can be set-aside without challenging the same under law;
>
> V. Whether both suits have been filed within prescribed period of limitation in view of Article 3 of the Limitation Act;
>
> vi. Whether the decree of 1983 passed in favour of the respondents was validly and competently passed by the Court dealt with the matter."

6. The earlier judgment of the High Court, which was set aside by this Court, was rightly held to be in derogation of its appellate obligations. This Court had unequivocally observed that the High Court, having the complete evidentiary record before it having no necessity for further evidence, was bound to adjudicate upon the matter on merits. Its decision to remand the case was deemed an abdication of its appellate jurisdiction. In compliance with this Court's directive, the High Court rendered the impugned judgment dated August 13, 2024. However, a plain reading of the said judgment reveals a glaring procedural omission, the High Court failed to reproduce, analyze, or adjudicate upon the six points it had itself earlier formulated. Instead, it restricted its deliberation exclusively to the *Jirga* document and decided the entire controversy based on that singular aspect, this approach stands in direct contravention of this Court's binding instructions mandating adjudication on all six formulated issues. Furthermore, the impugned judgment is marred by clear misreading and non-reading of material evidence and record. The High Court erroneously held that the document relied upon by the appellants was an unexhibited and unproven piece of plain paper containing a *Jirga* decision. This finding is demonstrably incorrect. The record clearly establishes the said document dated 18th December, 2009, as Exhibit P.A., as reflected at page 43 of the paper book and substantiated by the three marginal witnesses who testified to the execution and authenticity before the trial Court. Despite this, the High Court failed to undertake a comprehensive and impartial evaluation of the evidentiary record. Its conclusion that the document was not

exhibited or proved is palpably erroneous and reflects a flawed and superficial judicial approach. This failure constitutes material illegality and impropriety, rendering the judgment legally unsustainable. The relevant portion of the High Court's judgment, which embodies this fallacy, is reproduced hereinbelow for reference:

> "Furthermore, in the suit, the plaintiffs have mainly claimed performance of agreement / contract dated 18.12.2009. From perusal of said agreement, it reveals that document claimed to be an agreement to sell between the parties is just a decision of Jirga written on simple paper, even the same has not been exhibited in evidence and the document, which has not been tendered in evidence, cannot be taken into consideration. After excluding the alleged agreement to sell dated 18.12.2009 from consideration, there remains nothing in favor of plaintiffs regarding decree of specific performance of contract"

7. It is, of course, a settled principle that where adjudication on a single determinative issue completely resolves the lis, the Court may forgo findings on ancillary matters. However, such a principle is entirely inapplicable in the present context. The controversy at hand is not centered upon a singular dispositive issue, but rather upon a matrix of factually complex and interrelated questions, formulated by the High Court itself. These issues required distinct and cumulative adjudications. The impugned judgment, regrettably, reflects a dereliction of judicial duty, the High Court neither engaged with full body of evidence nor applied its judicial mind to principal document in controversy i.e. *Jirga* decision dated 18th December, 2009 which lies at the substantive core of the appellant's claim. Although respondents' counsel correctly submitted that resolution of

a central issue may in appropriate cases, obviate the need for further findings, that doctrine is limited to cases where such restriction conclusively extinguishes the entire dispute. That is not the factual landscape here. The points formulated are substantive, not collateral; integral, not redundant. The High Court's omission to adjudicate upon them perpetuates legal ambiguity and risks multiplicity of litigation. While finality of litigation is a cornstore of judicial powers, such finality must emerge from comprehensive adjudication, not judicial evasion.

8. The learned High Court also fell into serious error in its penultimate paragraph, wherein, it held that the oral evidence adduced by both the parties stood in equal footing and on the basis declined to evaluate it further. Such a blanket equivalence is devoid of legal foundation. In Civil jurisprudence adjudication is to be carried out on the preponderance of probabilities nor by resorting to mechanical equivalence or categorical prioritization of one form of evidence over another. The refusal to scrutinize oral evidence on the premise of ostensible parity is irrational and legally untenable. If the evidence of both sides, was indeed in equipoise the rational for preferring one party's version over another remain wholly unarticulated. This omission reflects non-application of mind and constitutes a failure to discharge the duty imposed upon first appellate Court. The Court was obligated to conduct a comparative and qualitative assessment of all evidence, both oral and documentary. Its failure to do so amounts to misdirection in law. The presumption that documentary evidence necessarily prevails over oral testimony is, at best, a

rebuttable inference, not a fixed rule. The judgment is, therefore, vitiated by jurisdictional error and perversity, warranting reversal.

9. In light of the foregoing, this Court is constrained to hold that the High Court failed to determine the matter in accordance with this Court's binding directions and its own formulated points. The impugned judgment dated 13.08.2024 is, accordingly, set-aside. The case is remanded to the High Court for fresh decision in conformity with this Court's directions and after comprehensive adjudication on all issues. To avoid further delay, the High Court is directed to decide the matter within a reasonable time. We remand this case with heavy heart, not as comment on merit of either side, but in faithful observance of the foundational principles of justice, the pursuit of truth, the right to fair trial and solemn duty of the Court to ensure that justice is both done and seen to be done. This remand is necessitated to ensure a just and lawful adjudication in accordance with due process. No order as to costs.

JUDGE **JUDGE**

Rawalakot,
23.06.2025