

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Constitution Petition No. D- 1690 of 2023

(Muhammad Yousuf vs. Learned District Judge Sukkur & others)

| DATE OF HEARING | ORDER WITH SIGNATURE OF JUDGE |
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1. For orders on O/objection at flag-A.
2. For hearing of CMA No.7286 /2023
3. For hearing of main case.

Before
Adnan-ul-Karim Memon, J:
Mohammad Abdur Rahman, J

Date of hearing: **14 May 2024**
Date of order: **30 May 2024**

Mr. Muhammad Yousuf and Samandar Ali, Advocate for the Petitioner
Mr. Sohail Ahmed Khoso, Advocate for the Respondent No.7.
Mr. Touheed Nazeer, Advocate for the Respondent No.11.
Mr. Ghulam Abbas Kubar, AAG

ORDER

MOHAMMAD ABDUR RAHMAN, J Through this Petition, maintained under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 the Petitioner impugns an order dated 26 October 2023 passed by the IInd Additional District Judge Sukkur in Civil Revision No.54 of 2023 setting aside an order dated 3 August 2023 passed by the IIIrd Senior Civil Judge Sukkur in F.C. Suit No.74 of 2022 thereby allowing an application under Order VII Rule 11 of the Code of Civil Procedure 1908 that has been maintained by the Respondents No. 7,8, 9 and 10 in that *lis*.

2. F.C. Suit No.721 of 2022 had been presented by the Petitioner before the IIIrd Senior Civil Judge Sukkur *inter alia*, being a Suit for Declaration, Specific Performance of Contract and Permanent Injunction seeking the following relief:

“ ... a. To declare that the act of defendant No.02 to 05 for not creating register sale-deed in favour of plaintiffs void, ab initio without due course of law.

b. To direct the defendants No.2 to 5 to perform their part of contract and to execute the registered Deed in respect of Suit property i.e. Agricultural land measuring 2-26 Acres from Survey No.45 dehArain Taluka New Sukkur to plaintiff as plaintiff is ready to pay remaining amount as per agreement.

c. *To restrain the defendants from selling the property and creating interest of third party by restraining the defendants, their agents, servants, nominee, employees, associates, sub-ordinates, Labourers, Attorney(s) and/or anyone else acting, posing on their behalf from distributing the plaintiff or pressurize the plaintiff to cancel the sale agreement in respect of suit property viz. Agricultural land measuring 2-26 Acres from Survey No.45 Deh Arain Taluka New Sukkur, further restrain the defendants not to transfer to anyone else or create third party interest, without the consent/permission of the plaintiff, without due course of law and further may be pleased to restrain the defendants No.6 and 7 not to keep any entry of third person or change the record of rights till the final disposal of this suit.*

d. *To grant permanent injunction against the defendants and thereby restraining the defendants their agents, servants, nominees, employees, associates, subordinates. Labourers, Attorney(s) and/or anyone else acting, posing on their behalf from continuing their construction work on the said land till the matter is resolved and decided by this Honourable Court of Justice.*

e. *To direct the defendant No.08 to clear his position and restrained him for any agreement with defendants No.2 to 5.*

f. *That if any registered deed is executed by the defendants No.2 to 5 and 8 or any other person same may be cancelled as defendants No. 2 to 5 has already executed sale-agreement with the plaintiff.*

g. *Cost of the suit and /or any other relief which this Honourable Court may deems fit and proper in the circumstances of the case may be granted."*

3. The contention of the Petitioners is that they had on 26 March 2019 entered into an Agreement involving 2 Acres 26 Ghuntas of Agricultural land located in Survey No.45 Deh Arain Taluka New Sukkur, District Sukkur (hereinafter referred to as the "Said Property"). It was contended by the Petitioners that they intended to develop the land by getting a lay out plan approved by the requisite authority and then on the basis of the duly approved lay out plan carve out and sell plots delimited in that lay out plan. They contend that they were to pay to the Respondents No. 7,8, 9 and 10 a sum of Rs.1,450,000/- (One Million Four hundred and Fifty thousand) per Vesa, a sum of Rs. 5,000,000 (Rupees Five Million) to the Respondents No. 7,8, 9 and 10 at the time of the Execution of the Agreement and that a further sum of Rs. 30,000,000 (Rupees Thirty Million) was to be paid to the respondents No.7,8,9 and 10 at the time of the registration of Sub-Leases in favour of the allottees.

4. The Petitioners contend that pursuant to the Agreement they started developing the land and have to date paid a sum of Rs. 15,807,450 (Rupees Fifteen Million Eight Hundred and Seven Thousand Four Hundred and Fifty) to the Respondents No. 7,8, 9 and 10 when the COVID 19 Pandemic occurred and which disrupted the market for allotment and sale of such property. At around

this time, the Petitioners came to know that allottees of plots were paying amounts directly to the Respondents No. 7,8, 9 and 10 and who after admitting to receiving such amounts had agreed to repay such amounts that were received by them from such allottees and which the Petitioners contend amount to Rs. 24,257,634 (Rupees Twenty Four Million Two Hundred and Fifty Seven Six Hundred and Thirty Four). This dispute, they contend, was taken before various mediating parties and at which time, the Petitioners allege, the Respondents No. 7,8,9 and 10 agreed to sell the Said Property to them.

4. The Respondents No. 7,8, 9 and 10 while **admitting the execution of the Agreement** by the Respondent No. 7,8 and 9 allege that there have been interpolations on that document to the extent that the receipt of payment of Rs. 5,000,000 (Rupees Five Million) has been inserted thereon. They further contend that one of the co-owners of the Said Property i.e. the Respondent No. 10 never physically executed the Agreement and therefore the entire Agreement is not enforceable as against any of them. They however deny that they ever agreed to sell the Said Property to the Petitioners and that as the Petitioner breached the terms of the Agreement they have since sold out the Said Property to the Respondent No.11 who is a bona fide purchaser for value without notice of the agreement as between the Petitioner and the Respondents No. 7, 8, 9 and 10 who had, over the last two or three years developed a fish market on the Said Property without any objection from the Petitioner.

5. The Respondents 7,8, 9 and 10 maintained an Application under Order VII Rule 11 of the Code of Civil Procedure, 1908 in F.C. Suit No.721 of 2022 maintaining that:

- (i) admittedly the Agreement as between the parties was executed on 26 March 2019 and as F.C. Suit No.721 of 2022 was presented on 8 November 2022 the Suit was barred under Article 113 of the First Schedule read with Section 3 of the Limitation Act, 1908;
- (ii) the agreement was not signed, not witnessed and not registered and hence; was not enforceable, void and had no legal sanctity; and

- (iii) the agreement was not enforceable as it was executed as between persons who were not resident in the same district and as such until the agreement was attested by a magistrate it remained unenforceable.

6. The application was decided by the Illrd Senior Civil Judge Sukkur who was on 3August 2023 pleased to dismiss the Application holding that:

- (i) the Agreement did not contain any specific date for enforcement and hence the period from which limitation would be calculated would be from the date when performance was refused by the Respondents No. 7,8,9 and 10 and which being a mixed question of law and fact and which could not be determined without leading evidence; and
- (ii) the execution of the Agreement having not been denied the objections as to the attestation of the Agreement by a magistrate or that it was not signed, witnessed or registered were not sustainable.

7. The Respondents No. 7,8, 9 and 10 maintained Civil Revision No.54 of 2023 before the IInd Additional District Judge Sukkur who by it's order dated 26 October 2023 revised the order holding that:

- (i) that the Agreement did not contain any obligation on the part of the Respondents No. 7, 8, 9 and 10 to convey the Said Property in favour of the Petitioner;
- (ii) that as per the Agreement the Petitioner was liable to pay a sum of Rs. 30,000,000 to the Respondents No. 7,8,9 and 10 by 25 March 2019 and which was not honored and as such the Suit being presented on 8 November 2022 three years after that date, the Suit was barred under Article 113 of the First Schedule read with Section 3 of the Limitation Act, 1908; and
- (iii) that as the Agreement did not comply with the prescriptions of Sub-Article (2) of Article 17 of the Qanun-e-Shahdat Order, 1984, the Agreement was rendered unenforceable;

8. Mr. Muhammad Yousuf entered appearance on behalf of the Petitioner and contended that under Article 113 of the First Schedule of the Limitation Act, 1908 where a specific date has not been stipulated in an Agreement then the time period of 3 years would be calculated from the date of refusal of performance and which being a mixed question of law and fact could not have been determined summarily by the IInd Additional District Judge Sukkur in Civil Revision No.54 of 2023. In this regard he contended that order dated 26 October 2023 penned by the IInd Additional District Judge Sukkur in Civil Revision No. 54 of 2023 was not sustainable and was liable to be set-aside. He did not rely on any case law in support his contentions.

9. Mr. Sohail Ahmed Khoso who entered appearance for the Respondent No. 7,8, 9, and 10 contended that the order dated 26 October 2023 passed by the IInd Additional District Judge Sukkur in Civil Revision No.54 of 2023 was correct. He submitted that the Plaint was clearly barred under Article 113 of the First Schedule read with Section 3 of the Limitation Act, 1908 and as now the Said Property had been sold to the Respondent No. 1, it was not possible to order for Specific Performance on the Agreement. He added that the Agreement had not been attested in accordance with clause (a) of Sub-Article 2 of Article 17 of the Qanun-e-Shahdat Order, 1984 and as such Specific Performance could not be ordered on such an Agreement. He finally contended that the Agreement had not been registered as mandated under Section 17 of the Registration Act, 1908 and on this ground as well, the Plaint could not be specifically performed. He also did not rely on any case law in support his contentions.

10. Mr. Touheed Nazeer entered appearance on behalf of the Respondent No. 11 and contended that the Respondent No.11 was a bona fide purchaser for value without notice of the agreement as between the petitioner and the respondents No .7, 8, 9 and 10 and who has developed a fish market on the Said Property and which fish market has been operational for two or three years without any objection from the Petitioner. In the circumstances the Agreement cannot be ordered to be performed and was hence liable to be rejected. He did not rely on any case law in support his contentions.

11. We have heard Mr. Muhammad Yousuf, Mr. Sohail Ahmed Khoso and Mr. Touheed Nazeer and have perused the record.

12. The Supreme Court of Pakistan has in the decision reported as **Haji Abdul Karim vs. Messrs Florida Builders (Private) Limited**¹ outlined the basis for deciding an application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 and wherein it was held that:

“ ... 12. After considering the ratio decidendi in the above cases, and bearing in mind the importance of Order VII, Rule 11, we think it may be helpful to formulate the guidelines for the interpretation thereof so as to facilitate the task of courts in construing the same. Firstly, there can be little doubt that primacy, (but not necessarily exclusivity) is to be given to the contents of the plaint. However, this does not mean that the court is obligated to accept each and every averment contained therein as being true. Indeed, the language of Order VII, Rule 11 contains no such provision that the plaint must be deemed to contain the whole truth and nothing but the truth. On the contrary, it leaves the power of the court, which is inherent in every court of justice and equity to decide whether or not a suit is barred by any law for the time being in force completely intact. The only requirement is that the court must examine the statements in the plaint prior to taking a decision

Secondly, it is also equally clear, by necessary inference, that the contents of the written statement are not to be examined and put in juxtaposition with the plaint in order to determine whether the averments of the plaint are correct or incorrect. In other words the court is not to decide whether the plaint is right or the written statement is right. That is an exercise which can only be carried out if a suit is to proceed in the normal course and after the recording of evidence. In Order VII, Rule 11 cases the question is not the credibility of the plaintiff versus the defendant. It is something completely different, namely, does the plaint appear to be barred by law.

Thirdly, and it is important to stress this point, in carrying out an analysis of the averments contained in the plaint the court is not denuded of its normal judicial power. It is not obligated to accept as correct any manifestly self-contradictory or wholly absurd statements. The court has been given wide powers under the relevant provisions of the Qanun-e-Shahadat. It has a judicial discretion and it is also entitled to make the presumptions set out, for example in Article 129 which enable it to presume the existence of certain facts. It follows from the above, therefore, that if an averment contained in the plaint is to be rejected, perhaps on the basis of the documents appended to the plaint, or the admitted documents, or the position which is beyond any doubt, this exercise has to be carried out not on the basis of the denials contained in the written statement which are not relevant, but in exercise of the judicial power of appraisal of the plaint.”

13. Against the criteria, as opined by the Supreme Court of Pakistan, we have perused the Agreement dated 26 March 2019 and are clear that the Agreement is not an Agreement for Sale whereby the Respondent No. 7, 8, 9 and 10 agreed to sell the Said Property to the Petitioner. Rather, the Agreement was one of the nature of a joint venture or a partnership as between the Petitioner and the Respondent No.7, 8, 9 and 10, whereby the Respondent No. 7, 8, 9 and 10 would provide capital in the form of the Said Property and which would thereafter be developed and sold by the Petitioner for mutual profit. While the Specific Performance of such an Agreement by itself might well have attracted the bar

¹ PLD 2012 SC 247

contained in Sub-Section (1) of Section 69 of the Partnership Act, 1932, we note that the Petitioners have also contended that while their obligation *inter se* were originally regulated by the Agreement that at some point that agreement was modified and whereby the Respondents No. 7, 8, 9 and 10 agreed to sell the Said Property to the Petitioners, it being specifically contended in paragraph 10 of the Plaint that:

“ ... *That defendants have always promised to transfer title of the said land in the name of plaintiff, on many occasions the defendant No. 02 to 05 have admitted that they are under duty to do by they always tried to avoid it by one pretext to another...*”

It is therefore apparent that while the Petitioners originally contended that their obligations *inter se* were in the nature of a joint venture or partnership it later stood amended whereby obligations were purportedly cast on the Respondents No. 7,8,9, and 10 to sell the Said Property to the Petitioners. It is necessary to point out that the contents of paragraph 10 of the Plaint has specifically been denied by the Respondents No. 7,8,9 and 10 in their Written Statement, therefore making this a contested issue as between the Petitioners and the Respondent No. 7, 8, 9 and 10.

13. On the basis of the pleadings, we are therefore of the opinion that while the IInd Additional District Judge Sukkur who heard and decided Civil Revision No. 54 of 2023 was, in his order dated 26 October 2023, correct in holding that that the Agreement did not contain any obligation on the part of the Respondents No.7,8, 9 and 10 to convey the Said Property in favour of the Petitioner; he erred by ignoring the pleadings of Petitioner as contained in Paragraph 10 of the Plaint whereby a contention was made that there was an understanding as between the Petitioners and the Respondents No.7,8,9 and 10 to sell the Said Property to the Petitioners and which, for the purposes of determining the Application under Order VII Rule 11 of the Code of Civil Procedure, 1908, have to be taken as true. Having perused the pleadings, we have no doubt that the pleadings in F.C. Suit No.721 of 2022, put forward by the Petitioners, lack detail in as much as not all the terms of the Agreement have been spelt out, however we are of the opinion that this is not fatal to maintaining a suit for specific performance. Clarity is given in Order VI Rule 12 of the Code of Civil Procedure, 1908 which states that:

“ ... *12. Whenever any contract or any relation between any persons is to be implied from a series of letters or conversations or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters, conversations or circumstances without setting them out in detail. And if in such case the person so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from such circumstances, he may state the same in the alternative.*”

While it is therefore necessary, when drafting pleadings, to state as to the existence of an agreement and clarify that such an agreement is based on conversations or from a combination of written documents and conversations, it is not necessary for the Plaintiff to spell out the entire contract in detail but rather only to make a general statement as to the contract which he is attempting to enforce. If the court finds the pleadings to be ambiguous, it can ask for further and better particulars to have been filed by the Plaintiff under the provisions of order VI Rule 5 of the Code of Civil Procedure, 1908. It however cannot be the case that just because the terms of the agreement have not all been spelt out in detail that the Agreement must be treated as unenforceable and must automatically be rejected under Order VII Rule 11 of the Code of Civil Procedure, 1908. While I am willing to accept the contention that if the pleadings did not identify an agreement that was enforceable by a Court the Plaint could be rejected under Order VII Rule 11 of the Code of Civil Procedure, 1908, this is however not the case over here. The Petitioners have maintained in their Plaint that they had entered into an agreement with the Respondent No. 7,8,9 and 10 and which fact the Respondent No. 7,8,9 and 10 have denied in their Written Statement, and which would as such become an issue in F.C. Suit No. 721 of 2022. Either way we cannot uphold the finding on this issue of the IInd Additional District Judge Sukkur in the order dated 26 October 2023 passed in Civil Revision No. 54 of 2023 that as there was no terms of the Agreement dated 26 March 2019 which sought the conveyance of the Said Property in favour of the Petitioners, Specific Performance could not be granted to the Petitioners as clearly in this pleadings, the Petitioner has contended otherwise and which contention contentions for the purpose of an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 has to be taken as true.

14. The Supreme Court of Pakistan has in the decision reported as Haji Abdul Karim vs. Messrs Florida Builders (Private) Limited² also clarified how the provisions of Article 11 of the First Schedule of the Limitation Act, 1908 are to be considered while deciding an application Order VII Rule 11 of the Code of Civil Procedure, 1908 and wherein it was held that:

“ ... *In the context of interpreting Article 113 of the Act, the provisions for the facility of reference are reproduced below:-*

² PLD 2012 SC 247

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| | | |
| For specific performance of a contract | Three Years | The date fixed for the performance, or, if no such date is fixed when the plaintiff has notice that performance is refused |

And for the purpose of the above, it seems expedient to touch upon the legislative history of the Article. The prior Limitation Acts of 1871 and 1877, had in each of them the corresponding provision as in Article 113. However, the words in 1871 Act, were "when the plaintiff has notice that his right is denied", postulating that the second part of Article 113 was the only provision then regulating the limitation for the suits for specific performance and the commencement of three years period was dependent on the proof of the fact of notice of denial and the question of limitation was accordingly to be decided, having no nexus with the date even if fixed by the parties for the performance of the contract. The said provision however was expanded and these words were substituted in the subsequent Act of 1877, as are also found in the third column of the present Act. The change brought by the Legislature in 1877 Act was retained in Article 113 of the Act, by including the first part that the time would run from the '**date fixed**' for the performance is thus purposive and salutary in nature, which contemplates and reflects the clear intention of the legislature to prescribe the same (three years) period of limitation, however, providing that the parties who otherwise have a right to fix a date of their own choice in the agreement for the performance thereof, such date in consequence of law shall also govern the period of limitation as well for the suits falling in this category. Thus now the three years period mentioned in Column No. 3 of the Article runs in two parts:-

(i) from the date fixed for the performance; or

(ii) where no such date is fixed when the plaintiff has notice that performance is refused.

Thirdly, and it is important to stress this point, in carrying out an analysis of the averments contained in the plaint the court is not denuded of its normal judicial power. It is not obligated to accept as correct any manifestly self-contradictory or wholly absurd statements. The court has been given wide powers under the relevant provisions of the Qanun-e-Shahadat. It has a judicial discretion and it is also entitled to make the presumptions set out, for example in Article 129 which enable it to presume the existence of certain facts. It follows from the above, therefore, that if an averment contained in the plaint is to be rejected, perhaps on the basis of the documents appended to the plaint, or the admitted documents, or the position which is beyond any doubt, this exercise has to be carried out not on the basis of the denials contained in the written statement which are not relevant, but in exercise of the judicial power of appraisal of the plaint.

The reason for the said change as stated above is obvious. In the first part, the date is certain, it is fixed by the parties, being conscious and aware of the mandate of law i.e. Article 113, with the intention that the time for the specific performance suit should run therefrom. And so, the time shall run forthwith from that date, irrespective and notwithstanding there being a default, lapse or inability on part of either party to the contract to perform his/its obligation in relation thereto. The object and rationale of enforcing the first part is to exclude and eliminate the element of resolving the factual controversy which may arise in a case pertaining to the proof or otherwise of the notice of denial and the time thereof. In the second part, the date is not certain and so the date of refusal of the performance is the only basis for computation of time. These two parts of Article 113 are altogether independent and segregated in nature and are meant to cater two different sorts of specific performance claims, in relation to the limitation attracted to those. A case squarely falling within the ambit of the first part cannot be adjudged or considered on the touchstone of the second part, notwithstanding any set of facts mentioned in the plaint to bring the case within the purview of

the later part. In other words, as has been held in the judgments reported as Siraj Din and others v. Mst. Khurshid Begum, and others (2007 SCMR 1792) and Ghulam Nabi and others v. Seth Muhammad Yaqub and others (PLD 1983 SC 344) "when the case falls within first clause the second clause is not to be resorted to". However, the exemption, the exclusion and the enlargement from/of the period of limitation in the cases of first part is permissible, but it is restricted only if there is a change in the date fixed by the parties or such date is dispensed with by them, but through an express agreement; by resorting to the novation of the agreement or through an acknowledgment within the purview of section 19 of the Act. And/or if the exemption etc. is provided and available under any other provision of the Act however, to claim such an exemption etc. grounds have to be clearly set out in the plaint in terms of Order VII Rule 6, C.P.C. We have examined the present case on the criteria laid down above, and find that according to the admitted agreement between the parties, 31-12-1997 was/is the 'date fixed' between them for the performance of the agreement, which has not been shown or even averred in the plaint to have been changed or dispensed with by the parties vide any subsequent express agreement. In this behalf, it may be pertinent to mention here that during the course of hearing Mr. Abdul Hafeez Pirzada, on a court query, has stated that there is no agreement in writing between the parties which would extend/dispense the date fixed and that he also is not pressing into service the rule of novation of the contract. We have also noticed that the petitioners have neither alleged any acknowledgment in terms of Article 19 of the Act, which should necessarily be in writing, and made within the original period of limitation nor any such acknowledgment has been pleaded in the plaint or placed on the record. Besides, no case for the exemption etc. has been set-forth in the plaint and the requisite grounds are conspicuously missing in this behalf as is mandated by Order VII, Rule 6, C.P.C."

As per a literal reading of Article 113 of the First Schedule of the Limitation Act, 1908 where a specific date for performance is specified in an Agreement and by which date an obligation contended in that agreement is not honoured, the date from which the time period for limitation for instituting a suit to be specifically perform that Agreement would be calculated that date. If however no specific date is indicated in the Agreement, then the starting point from which such time period would be calculated would be the date from when the person obligated to perform on their Agreement refuses to honour their obligation. In their Written Statement in F.C. Suit No. 721 of 2022, the Respondents No. 7,8,9 and 10 have denied ever entering into any Agreement to convey their right, title and interests in the Said Property to the Petitioners. That being the case, it would first be incumbent on the Petitioners to prove that an Agreement existed as between the Petitioners and the Respondent No. 7,8,9 and 10 and where after the issue of whether or not the Respondent No.7,8,9 and 10 had or had not agreed to honour such obligation by a particular date or not or as to whether there were a refusal to perform on such an obligation on the part of the Respondents No.7,8,9 and 10 would be determined. Clearly it would only be after this is determined that a Court would be able to consider as to the time period for the enforcement of such an obligation for the purposes of determining limitation. As the Agreement is contended to be oral, we cannot see how any of these issues, without evidence being led, can be determined. The question of limitation to our mind would

therefore be a mixed question of law and fact and which cannot be determined without recording evidence. On this issue as well, we are therefore are unable to agree with the findings of the IInd Additional District Judge Sukkur in the order dated 26 October 2023 passed in Civil Revision No. 54 of 2023 that as the Petitioner was under the terms of the Agreement liable to pay a sum of Rs. 30,000,000 to the Respondents No.7,8,9 and 10 by 25 March 2019 and which was not done on that date the Suit being presented i.e. on 8 November 2022 after three years from that date, was barred under Article 113 of the First Schedule read with Section 3 of the Limitation Act, 1908 for the reason that such obligation are in the pleadings contended to have been modified and which pleadings have to, for the purposes of determining an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 are to be considered to be true.

15. The final ground that persuaded the IInd Additional District Judge Sukkur in Civil Revision No.54 of 2023 in granting the application under Order VII Rule 11 of the Code of Civil Procedure, 1908 was that the Agreement that had been entered into as between the Petitioners and the Respondent No. 7, 8, 9 and 10 was not attested by two witnesses as mandated by clause (a) of Sub Article (2) of Article 17 of the Qanun e Shahdat Order, 1984. The provisions of that article read as hereinunder:

“ ... 17. Competence and number of witnesses:

(1) *The competence of a person to testify, and the number of witnesses required in any case shall be determined in accordance with the injunctions of Islam as laid down in the Holy Qur’an and Sunnah.”*

(2) *Unless otherwise provided in any law relating to the enforcement of Hudood or any other special law: —*

*(a) in matters pertaining to financial or future obligations, **if reduced to writing**, the instrument shall be attested by two men or one man and two women, so that one may remind the other, if necessary, and evidence shall be led accordingly; and*

(b) in all other matters, the Court may accept, or act on the testimony of one man or one woman or such other evidence as the circumstances of the case may warrant.”

The Article is much opined on in the law reports. However, if one is consider the literal reading of the Article, it is clear that in a matter pertaining to financial or future obligations, the requirement of attestation is only mandated **if those obligation are reduced to writing**. Where, such as has been contended by the Petitioners, the Agreement is to be determined on the basis of an oral agreement

or by oral agreements and correspondence as the obligations have not been reduced to writing, we see no requirement imposed by that Article or for that matter any other provision of law that mandates that an Agreement cannot be oral and must be in writing to be enforceable. The IInd Additional District Judge Sukkur in the order dated 26 October 2023 passed in Civil Revision No. 54 of 2023 has misread the pleadings and misapplied the law and which order hence cannot be sustained.

16. Having dealt with the order dated 26 October 2023 passed by the IInd Additional District Judge Sukkur in Civil Revision No. 54 of 2023 we would also consider the contention raised by Mr. Sohail Ahmed Khosa that the Agreement is not enforceable as it has not been registered in accordance with Section 17 of the Registration Act, 1908. We are unable to understand this argument. Broadly speaking the provisions of Section 17 of the Registration Act, 1908 mandate that a right, title or interest in immovable property can only be transferred when a document transferring such right, title or interest from the legal owner of such immovable property is registered before the Registrar of Rights and Assurances. In the case of an executory obligation as under an Agreement of Sale, clearly no right, title or interest can pass to the purchaser and where obligations under such an Agreement are not honoured by the seller, a suit for Specific Performance can be maintained by the purchaser to compel performance on that Agreement of Sale to seek for such a document to be executed and registered so as to convey the right, title and interest in the immovable property in favour of the purchaser. There is however, no provision in Section 17 of the Registration Act, 1908 which prohibits a person from maintaining such a *lis* for specific performance before this Court and the contentions of Mr. Sohail Ahmed Kohsa cannot therefore be accepted.

17. Finally, we are left to address the argument raised by Mr. Touheed Nazeer that as the Respondent No.11 is bona fide purchaser for value without notice of the agreement as between the Respondents No.7, 8, 9 and 10 and the Petitioner hence the suit filed by the Petitioner is not maintainable and liable to be rejected.. This argument is premised on clause (b) of Section 27 of the Specific Relief Act, 1877 which reads as hereinunder:

“ ... 27. Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against ...

(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract”

While it may well be open to the Respondent No. 11 to defend the claim maintained by the Petitioners on the ground that the Respondent No. 11 was a person who was a “transferee for value” who has acted in “good faith” and didn’t have “notice” of the agreement as between the Petitioners and the Respondent No. 7, 8, 9 and 10, clearly the issue as to whether the Respondent No.11 is in fact a transferee for value or as to whether he has acted in good faith or as to whether he didn’t have notice of the agreement as between the Petitioners and the Respondent No.7, 8, 9 and 10 are each questions of fact which would warrant evidence to be recorded before specific performance on the Agreement can be refused. As such we cannot see how such a contention can be maintained at this stage on an Application under Order VII Rule 11 of the Code of Civil Procedure, 1908 and which contention is accordingly rejected.

18. For the foregoing reasons we are of the opinion that the order dated 26 October 2023 passed by the IInd Additional District Judge Sukkur in Civil Revision No. 54 of 2023 setting aside an order dated 3August 2023 passed by the IIIrd Senior Civil Judge Sukkur in F.C. Suit No.74 of 2022 thereby allowing an application under Order VII Rule 11 of the Code of Civil Procedure 1908 that has been maintained by the Respondents No. 7,8, 9 and 10 in that *lis* cannot be sustained and is set aside. F.C. Suit No. 72 of 2022 is restored with directions to the IIIrd Senior Civil Judge Sukkur to record evidence and decide that *lis* within a period of 4 months from the date of this Order. The Petition is allowed in the above terms with no order as to costs.

JUDGE

JUDGE

Ihsan/-