HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Civil Revision Application No.03 of 2007

[Mst.Fatima Parveen and another vs. Muhammad Younus]

Applicants by	:	Mr.Aqeel Ahmed Siddiqui, Advocate
Respondent by	:	Mr.Babar Ali Kazmi, Advocate
Date of hearing	:	**31.01.2025**
Date of Decision	:	**28.02.2025**

J U D G M E N T

ARBAB ALI HAKRO, J.- Through this Civil Revision Application under Section 115 of the Civil Procedure Code 1908 ("**C.P.C**"), the applicants have challenged the Judgment and Decree dated 01.12.2006, passed by the Additional District Judge-II, Badin ("the **appellate Court**") in Civil Appeal[1]. The appellate Court's decision overturned the Judgment and Decree dated 31.5.2003, passed by the Senior Civil Judge, Golarchi at Badin ("the **trial Court**") in a Suit[2], which had dismissed the suit of the Respondent/Plaintiff. As a result, the appellate Court decreed the suit in favour of the Respondent/Plaintiff.

2. The salient facts precipitating the aforementioned Civil Revision Application are that the Respondent/Plaintiff initiated legal proceedings for Specific Performance of Contract, Cancellation of Sale Deed No.930 dated 22.12.1997, and Permanent Injunction against the applicants. The respondent asserted that he had purchased suit land[3], from Applicant No.2 for a sum of Rs.180,000/- under an agreement to sell dated 07.01.1982, in the presence of witnesses attested by the Mukhtiarkar and F.C.M Shaheed Fazil Rahu. The respondent claimed to have paid the full and final sale consideration to Applicant No.2, and possession of the suit land was handed over to him. It is further averred that the agreement stipulated the suit land was a running grant and the respondent was responsible for paying the instalments to the Government. Upon full payment, applicant No.2 was obligated to execute the registered Sale Deed. The respondent invested a substantial amount in developing the suit land, which is now under his cultivation. According to the respondent,

---

[1] Civil Appeal No.79/2003 (Re: Muhammad Younis vs. Province of Sindh and others)

[2] F.C. Suit No.30/1999 (Re: Muhammad Younis vs. Province of Sindh and others)

[3] agricultural land bearing Block No.1006, admeasuring 16.00 acres, situated in Deh Girari No.03, Taluka Shaheed Fazil Rahu, District Badin

after the issuance of the T.O. Form and entry mutation in the record of rights on 10.12.1997, he approached Applicant No.2 for the execution of the registered Sale Deed. However, Applicant No.2 kept him on false assurances. Approximately one month before filing the suit, the husband of Applicant No.1 claimed that Applicant No.1 had purchased the suit land through a registered sale deed. Consequently, the respondent applied for a certified true copy of the sale deed on 04.10.1999, received it on 16.10.1999, and subsequently filed the suit.

3. The applicants have contested the suit and submitted their written statement, categorically denying the execution of the agreement to sell and asserting that it is a forged document. They have also denied the receipt of any sale consideration. Applicant No.2 claimed that he had conveyed the suit land to Applicant No.1 through a registered Sale Deed and that Applicant No.1 is presently in possession of the suit land.

4. After framing the issues and recording the pro and contra evidence of the parties, the trial Court dismissed the suit vide Judgment and Decree dated 31.5.2003. Dissatisfied with the judgment and decree of the trial Court, the respondent filed an appeal before the appellate Court. Upon hearing the parties, the appellate Court allowed the respondent's appeal, vide the impugned judgment and decree dated 01.12.2006 and decreed the suit of respondent. Consequently, this culminated in the present Civil Revision.

5. It is pertinent to mention that, initially, this Court, after hearing the applicants and observing that the respondent had failed to appear despite several opportunities, consequently allowed this Revision Application vide judgment dated 10.5.2018. Aggrieved by this decision, the respondent preferred Civil Appeal No.928/2018 before the Supreme Court of Pakistan. The Supreme Court of Pakistan, after hearing the parties, remanded the matter to this Court vide Order dated 23.5.2022, with the following observations/directions: -

> *"In the forgoing circumstances, we are of the considered view that the judgment of the High Court could not be sustained and the Appellant is entitled to a hearing on merits before the High Court. The judgment of the High Court, consequently, is set aside. This appeal is allowed. The revision petition would be deemed pending before the High Court as it is remanded for decision afresh. All the parties present here are directed to appear before the High Court on 02nd June, 2022 and it is expected that keeping in view that the matter is very old, it would be decided afresh within a period of four month."*

6. At the outset, learned counsel representing the applicants submits that the appellate Court erred in law by holding that the execution of the agreement to sell was proved by the respondent. Such findings are neither

based on the evidence produced by the parties nor the law correctly applied regarding the proof of a document laid down by the superior Courts. He further contended that the appellate Court acted illegally by holding that the document was proved according to law by examining one of the attesting witnesses, as it was executed prior to the enforcement of the Qanun-e-Shahdat Order, 1984 ("**QSO, 1984**"). The appellate Court failed to consider that the subject agreement to sell was attested by two witnesses, and evidence before the trial Court was recorded when the QSO, 1984 was in existence. Counsel further argued that, as established in the case of Mst. Rasheeda Begum and others[4], the proof must align with the format of the document executed by the parties to the contract. When an agreement is attested by two witnesses, its execution must be proved in accordance with the provisions of Articles 17 and 79 of the QSO, 1984. He also highlighted material discrepancies in the evidence presented by the respondent's side, which were omitted by the appellate Court. Learned counsel further pointed out that the agreement to sell is silent regarding the delivery of possession of the suit land. The appellate Court ignored that the trial court held that the respondent failed to prove his possession of the suit land as part of the performance of the alleged agreement. He further contended that the respondent brought land revenue receipts on record, which only demonstrate that land revenue was paid by the respondent on behalf of Applicant No.2, and mere payment of land revenue does not prove possession of the suit land. In conclusion, he asserted that the appellate Court committed a legal error in decreeing the suit of the respondent, and therefore, the impugned judgment and decree are liable to be set aside.

7. Responding to the contention, the learned counsel representing the respondent defended the impugned judgment and decree of the appellate Court. He contended that the appellate Court recorded findings of fact grounded in a thorough evaluation of the evidence. He further contended that the agreement to sell was executed prior to the promulgation of the Qanun-e-Shahdat Order, 1984 ("QSO, 1984"), which has no retrospective effect. At that time, the Evidence Act was in existence, according to which only one attesting witness was required to prove the agreement to sell. He also contended that the alleged Sale Deed was executed in Hyderabad, despite the suit land being situated within District Badin, rendering the transaction illegal. He further argues that the possession of the suit land was handed over to the respondent in part performance of the sale agreement and the respondent has been in continuous cultivating possession of the same. In support of his arguments, he cited the case

---

[4] Mst. Rasheeda Begum and others vs. Muhammad Yousaf and others (2002 SCMR 1089)

law reported as **PLD 2006 S.C 318, 1999 SCMR 1245, 2016 CLC 553, 2020 MLD 100, and 1991 CLC Note 120**.

8. The arguments have been heard at length, and the available record has been meticulously evaluated with the assistance of the learned counsel for the parties, including the case law they rely upon. To determine whether justice has been dispensed, it is imperative to analyze the findings of both the Courts below.

9. Firstly, here the question to be addressed is whether provisions of Article 17 and 79 of the QSO, 1984 have retrospective effect or whether provisions of Section 68 of the Evidence Act,1872 (the **"Act of 1872"**) are applicable in the circumstances of the present case. The circumstances of the present case are that an agreement to sell was entered into between the parties on 07.01.1982, before promulgation of the QSO, 1984; whereas perusal of the agreement to sell reveals that it was attested by two witnesses namely Rehmat Ali and Punhoon and respondent/plaintiff out of above two witnesses had only examined one witness namely Rehmat Ali, though the evidence of Respondent/plaintiff was recorded in the year, 2003, when the provisions of the QSO, 1984 was in existence, whereas the Act of 1872 was not in existence as it was repealed. To answer the above question, it would be imperative to reproduce Articles 17 and 79 of QSO, 1984, here under:

> *"**17. Competence and number of witnesses.--(1)** The competence of a person to testify, and the number of witnesses required in guy case shall determined in accordance with the injunctions of Islam as laid down in the Holy Qur'an 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 mattes, 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.*
>
> ***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 of 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 given 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."*

10. The above Article 17 of the QSO, 1984, provides the guidelines for determining the competence of a person to testify and the required number of witnesses in legal proceedings. According to this provision, the competence of a person to testify and the requisite number of witnesses must be determined based on the injunctions of Islam as laid down in the Holy Qur'an and Sunnah. This implies that the ability of a person to provide testimony in a court of law and the number of witnesses required must align with Islamic principles. In matters relating to financial or future obligations that have been reduced to writing, Article 17(2)(a) specifies that the document must be attested by two men, or one man and two women. The rationale behind this requirement is that one witness may remind the other if necessary, thereby ensuring the reliability of the testimony. This provision underscores the importance of having a sufficient number of witnesses to corroborate the validity of the document in financial matters. For all other matters, Article 17(2)(b) grants the Court the discretion to accept or act on the testimony of one man or one woman, or any other evidence deemed appropriate given the circumstances of the case. This flexibility allows the Court to consider various types of evidence and testimonies, taking into account the specific context and requirements of each case. The provision ensures that the Court has the authority to evaluate the credibility and sufficiency of the evidence presented before it.

11. Whereas Article 79 of the QSO, 1984, outlines the procedure for proving the execution of a document required by law to be attested. According to this provision, if a document must be attested by law, it cannot be used as evidence until at least two attesting witnesses have been called to prove its execution. This requirement applies only if the attesting witnesses are alive, subject to the Court's process, and capable of providing evidence. This provision aims to ensure the authenticity and validity of attested documents by requiring the testimony of witnesses who can confirm their execution. However, there is an exception to this rule. It is not necessary to call an attesting witness to prove the execution of any document (except for a will) that has been registered in accordance with the provisions of the Registration Act, 1908. This means that for registered documents, the registration itself serves as sufficient proof of execution, and the testimony of attesting witnesses is not required unless the execution of the document is specifically denied by the person who purportedly executed it. In cases where the execution of the document is disputed, attesting witnesses must be called to provide evidence to resolve the matter.

12. In summary, Articles 17 and 79 of the QSO, 1984, establish the legal framework for determining the competence of witnesses, the number of witnesses required, and the procedure for proving the execution of attested documents. These provisions are rooted in Islamic principles and aim to ensure the credibility and reliability of evidence presented in legal proceedings. They provide a structured approach to evaluating testimonies and attested documents, thereby upholding the integrity of the judicial process.

13. It is also propitious to reiterate the provisions of Section 68 of the Act of 1872, which are delineated as follows: -

> *"68. If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence."*

14. The bare reading of the above provisions pertains to the proof of execution of documents that are required by law to be attested. According to this provision, when a document is legally required to be attested, it cannot be used as evidence in a court of law unless at least one attesting witness has been called to testify about its execution. This requirement applies only if there is an attesting witness who is alive, subject to the process of the Court, and capable of giving evidence.

15. Let's embark on an exhaustive judicial discourse and exegesis of the provisions enshrined in Articles 17 and 79 of the QSO, 1984, juxtaposed with Section 68 of the Act of 1872, within the purview of the present case. The pivotal question of whether Articles 17 and 79 of the QSO, 1984, possess retrospective applicability is elucidated in the case of ***Riazur Rahman and others***[5], wherein it was adjudicated as follows: -

> *"32. A question arose whether the amended definition of the word attested was retrospective. The Allahabad High Court in the case of Girjanandan v. Hanumandas 1927 A.I. (F.B) and the Calcutta High Court in the case of Nepra v. Saier Pramanik AIR 1927 Calcutta 763, held that the amendment was not retrospective in effect and the validity of the instrument executed, before the amending Act came into force had still to be decided in accordance with the rule laid down by the Privy Council in the case of Shamu Patter v. Abdul Qadir 16 LC. 250 (P.C.) Madras High Court, however, took a contrary view and held the amendment to be retrospective in the case of Balaji Singh v. Chakr Gongamma AIR 1927 Madras 85. The Legislature had again to step in and by Act X of 1927 and Act XII of 1927 it was clarified that the definition of the word attested in section 2 of Act XXVII of 1926 was retrospective. A Full Bench of the Madras High Court in the case of Veerappa Chettiar v. Subbrahmanya Ayyar AIR 1929 Madras 1, held that the amendment was*

[5] Riazur Rahman and others vs. Muhammad Urs (2005 MLD 1954)

retrospective. The Sindh Chief Court also held in the case of Thakurdas v. Topandas AIR 1929 Sindh 217 that the amendment was retrospective.

33. In the light of above discussion and keeping in view the fact that the law of evidence is a procedural/adjective law and every procedural law has the retrospective effect until and unless specified otherwise, it is held that the provisions contained in Articles 17 and 79 of the Qanun-e-Shahadat Order 1984 are retrospective in effect. At this stage I would like to clarify that in cases where documents have been executed prior to the promulgation of Qanun-e-Shahadat Order, 1984 and evidence to prove such documents has also been recorded prior to the enforcement of Qanun-e-Shahadat Order, 1984, the provisions contained in Articles 17 and 79 of the Qanun-e-Shahadat Order, 1984 shall not be applicable. Such documents shall be governed by the provisions contained in sections 67 and 68 of the Evidence Act, 1872. As held by the Honourable Supreme Court in the case of Abdul Wali Khan (supra). I C would further like to clarify that if a document referred to in sub-Article (2)(a) of Article 17 of the Qanun-e-Shahadat Order, 1984 is executed before the enforcement of Qanun-e-Shahadat Order, 1984 and the execution thereof is not denied, such document shall not be rendered invalid. However, if a document is executed prior to the enforcement of Qanun-e-Shahadat Order, 1984 in the matter pertaining to financial or future obligations including a sale agreement and there are two or more marginal witnesses, the execution whereof is denied, and the document is sought to be produced in evidence after the enforcement of Qanun-e-Shahadat, 1984, the provision contained in Article 79 of the Qanun-e-Shahadat, 1984 shall be applicable, and no such document shall 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."

16. The aforementioned judgment unequivocally elucidates that these provisions are procedural in nature, and as a jurisprudential principle, procedural laws possess retrospective applicability unless explicitly stipulated otherwise. Procedural laws govern the mechanisms and methodologies through which substantive rights and obligations are effectuated. Consequently, the retrospective application of Articles 17 and 79 signifies that they extend to cases that originated prior to their promulgation, contingent upon the evidence being recorded subsequent to their enforcement. This retrospective effect comports with the principle that procedural laws are designed to augment the administration of justice by ensuring that judicial proceedings are conducted with fairness and efficacy. The provisions delineated in Articles 17 and 79 of the QSO, 1984, delineate explicit requirements for the competency and quantum of

witnesses and the validation of the execution of attested documents. By applying these provisions retrospectively, the law endeavours to uphold the integrity and reliability of the evidence proffered in judicial proceedings, thereby fortifying the sanctity of the judicial process.

17. Article 17 of the QSO, 1984 addresses the competence of witnesses and the required number of witnesses for different types of matters. In matters pertaining to financial or future obligations, if the obligation is reduced to writing, the document must be attested by two men or one man and two women. This requirement is designed to ensure that the testimony regarding the execution of the document is reliable and credible. The presence of multiple witnesses serves as a safeguard against potential fraud or false testimony. Article 79 of the QSO, 1984 further stipulates that if a document is required by law to be attested, it cannot be used as evidence until at least two attesting witnesses are called to prove its execution. This provision is intended to verify the authenticity of attested documents by requiring the testimony of persons who can confirm that the document was duly executed in their presence. The failure to call both attesting witnesses renders the document inadmissible, as it undermines the credibility of the document's execution.

18. Section 68 of the Act of 1872, required that if a document was legally required to be attested, it could not be used as evidence until at least one attesting witness was called to prove its execution. This provision was in effect before the QSO, 1984, was promulgated. However, once the QSO, 1984, came into force, it repealed the Act of 1872, and its provisions took precedence.

19. In the case at hand, the agreement to sell was executed on 07.01.1982, predating the promulgation of the QSO, 1984. The agreement was attested by two witnesses, specifically Rehmat Ali and Punhoon. However, the respondent/plaintiff only presented one attesting witness, Rehmat Ali, when the evidence was recorded in the year 2003. Given that the evidence was recorded subsequent to the enforcement of the QSO, 1984, the provisions encapsulated in Articles 17 and 79 are unequivocally applicable.

20. Pursuant to the judicial interpretation expounded in the case of ***Riazur Rahman and others*** (supra), the provisions encapsulated within Articles 17 and 79 of the QSO, 1984, are endowed with retrospective effect. Consequently, these provisions are applicable to cases wherein the evidence was recorded subsequent to their enforcement, notwithstanding that the transaction transpired prior to their promulgation. Article 79 unequivocally stipulates that a document mandated by law to be attested

cannot be admissible as evidence unless two attesting witnesses are summoned to substantiate its execution, contingent upon their being alive, subject to the Court's jurisdiction, and competent to provide testimony. In the instant case, the failure to summon the second attesting witness, namely Punhoon, constitutes a critical impediment to the admissibility of the document. Given that the respondent/plaintiff did not present both attesting witnesses, the agreement to sell is rendered inadmissible as evidence. The omission to summon the second attesting witness contravenes the explicit mandates of Article 79 of the QSO, 1984 and consequently impairs the credibility of the document's execution. In summation, the provisions enshrined in Articles 17 and 79 of the Qanun-e-Shahadat Order, 1984, possess retrospective applicability. The non-compliance with the requisite of summoning both attesting witnesses culminates in the document being inadmissible as evidence.

21. In light of the foregoing discourse, the Appellate Court's findings that the provisions of the QSO, 1984, which came into force on 26.10.1984, do not have retrospective applicability to previously executed documents as past and closed transactions are erroneous. The reliance on the cases of ***Muhammad Ameen***[6] and ***Muhammad Sadiq***[7] by the appellate Court is inappropriate. In these cases, it was not ascertainable whether the agreements/documents in question were attested by two witnesses or a single witness, nor whether the parties' evidence was recorded prior to or subsequent to the promulgation of the QSO, 1984. The case of ***Riazur Rahman and others (supra)*** elucidates that the provisions of Articles 17 and 79 of the QSO possess retrospective effect. These provisions apply to cases where the evidence was recorded after the enforcement of the QSO, 1984, even if the agreements/documents were executed prior to its promulgation. The rationale for this retrospective application is grounded in the principle that the law of evidence is procedural, and procedural laws customarily have retrospective effect unless explicitly stated otherwise. Hence, the appellate Court's findings that the provisions of the QSO, 1984, effective from 26.10.1984, would not apply retrospectively to previously executed documents as past and closed transactions are incorrect.

22. Upon reviewing the appellate Court's findings regarding the possession of the suit land, it is observed that the appellate Court relied heavily on the trial court's findings by reproducing the same in its judgment. The appellate Court held that the trial court's findings regarding possession were not challenged by the applicants/defendants before any

[6] Muhammad Ameen vs. Sardar Ali (PLD 2006 S.C 318)
[7] Muhammad Sadiq vs. Imamuddin (1994 CLC 102) (wrongly mentioned as Page No.101)

appellate forum. As such, these findings were considered to have attained finality. Consequently, the appellate Court concluded that the fact of the possession of the suit land by the respondent/plaintiff indicated the genuineness of the alleged agreement. However, a careful perusal of the judgment of the appellate Court reveals that the appellate Court reproduced the trial court's findings only up to the statement: **"It appears that the plaintiff is in possession of the suit land."** When the trial court's findings are read in their entirety, it is clear that the trial court also stated: "**It appears that the plaintiff is in possession of the suit land; however, he could not be able to prove his possession since the year 1982 in part performance of the alleged agreement.**" The appellate Court deliberately omitted this crucial part of the trial court's findings, which significantly impacts the assessment of the respondent/plaintiff's possession of the suit land. Furthermore, the agreement to sell involved in the present case is silent regarding the handing over of possession of the suit land to the respondent/plaintiff as part performance of the contract. During cross-examination, the respondent/plaintiff was asked about the fact of the delivery of possession, to which he replied: "**I do not know that the fact of delivery of possession to me is not mentioned in agreement Ex.81-A.**" This admission underscores the absence of any explicit provision in the agreement regarding the transfer of possession in part performance of agreement. Section 53-A of the Transfer of Property Act, 1882, provides protection to a transferee who has taken possession of a property based on a partially performed contract. This protection is available even if the contract itself is not fully registered or legally enforceable, as long as the transferee has acted in good faith and partially performed the terms of the agreement. This is commonly referred to as the "doctrine of part performance." However, in the present case, the respondent/plaintiff's inability to prove possession since the year 1982 and the lack of any mention of possession in the agreement to sell preclude the application of Section 53-A. Since the agreement does not explicitly provide for the delivery of possession, and the respondent/plaintiff could not substantiate his claim of possession through evidence, no protection under Section 53-A can be extended.

23. In conclusion, the appellate Court's findings regarding the possession of the suit land by the respondent/plaintiff are flawed. The omission of critical findings from the trial court's judgment and the lack of clear evidence of possession undermine the appellate Court's reliance on the genuineness of the agreement. The respondent/plaintiff's failure to prove possession since 1982 and the absence of an explicit provision in the agreement regarding possession negate the applicability of the

doctrine of part performance under Section 53-A of the Transfer of Property Act, 1882.

24. Furthermore, with regard to the sale consideration, the respondent/plaintiff, in his deposition, asserted that he remitted the sale consideration to Ishaque (applicant No.2) in the presence of a stamp vendor. However, the said stamp vendor was not summoned by the respondent/plaintiff to corroborate his assertion. One of the attesting witnesses, namely Rehmat Ali, examined by the respondent/plaintiff, remained reticent concerning the quantum of the sale consideration. Contrarily, he testified that "plaintiff paid the amount received by defendant No.5, but I cannot say specifically about the amount received by defendant No.5." In further cross-examination, he averred, "I do not remember that the sale consideration was paid prior to agreement or after the agreement." Pursuant to the terms and conditions of the agreement to sell, the remaining instalments were to be paid by the respondent/plaintiff to the Government. Upon the full payment of instalments, applicant No.2 would execute the registered sale deed in favour of the respondent/plaintiff. The respondent/plaintiff claimed to have remitted all instalments of the land grant to the Government. However, he failed to produce a single receipt to substantiate his obligation. Conversely, applicant No.2 produced the receipts of the instalments and the T.O. Form, which contravenes the respondent/plaintiff's version. In light of the aforementioned circumstances, it can be conclusively determined that the respondent/plaintiff has failed to substantiate the agreement to sell. Consequently, the appellate Court's decree to reverse the findings of the trial court and adjudicate the suit in favour of the respondent/plaintiff is legally untenable.

25. Notwithstanding, under Section 22 of the Specific Relief Act, 1877, a court's exercise of judicial discretion in decreeing the suit for specific performance of a contract is inherently discretionary and not a matter of absolute right for any party. The grant of specific performance is not obligatory and may be denied by the Court if the prevailing circumstances warrant such denial[8]. In the present case the respondent/plaintiff's non-compliance with the attestation requirements mandated by Article 79 of the QSO, 1984, by failing to call both attesting witnesses, renders the document inadmissible as evidence and undermines the credibility of the agreement's execution. Additionally, the respondent/plaintiff could not substantiate the payment of the sale consideration, as the testimony of Rehmat Ali, the attesting witness, was vague and did not corroborate the

[8] As held in the case of Muhammad Riaz Hussain vs. Zahoor ul Hassan (2021 SCMR 431)

payment. The respondent/plaintiff failed to produce receipts to prove the payment of instalments, further diminishing the strength of his claim. Given the discrepancies in the evidence and the respondent/plaintiff's inability to meet the legal requirements, granting specific performance would not be equitable, as the Court must ensure that the relief granted does not result in injustice or unfairness to any party. Therefore, in light of the discretionary nature of specific performance and the circumstances of the present case, the Court should exercise its discretion judiciously and decline to grant specific performance. The appellate Court's decision to reverse the trial court's findings and decree specific performance was not supported by the evidence and legal requirements.

26. The contention of the learned counsel for the Respondent/Plaintiff that the suit land is situated in District Badin and that the registered Sale Deed executed between Applicant No. 1 and Applicant No. 2 at Hyderabad is concerned is addressed here. Section 28 of the Registration Act, 1908 mandates that documents related to land must be presented for registration in the office of the Sub-Registrar within whose sub-district the property is located. Section 30 of the Act grants Registrars the discretion to register documents that could be registered by any Sub-Registrar subordinate to them and to register documents without regard to the property's location within Pakistan. In the instant case, the registration of the sale deed by the Sub-Registrar, Hyderabad, was conducted in compliance with Section 30 of the Act. Therefore, the terrestrial jurisdiction of the suit land in District Badin and the execution of the registered Sale Deed in Hyderabad do not render the sale deed void ab initio and inoperative. The Respondent/ Plaintiff's failure to substantiate the execution of the agreement to sell further weakens the claim that the sale deed is void based on its geographic execution.

27. In the case of ***Karim Bakhsh through L.R.s. and others***[9], the Supreme Court of Pakistan held that when the findings of the two courts below were at variance, the High Court was justified in appreciating the evidence to arrive at the conclusion as to which of the decisions was in accord with the evidence on record. Further, in the case of ***Abdul Rashid***[10], the Supreme Court of Pakistan held that where two courts below, while giving their findings on a question of law, had committed material irregularity or acted to read the evidence on point, which resulted in miscarriage of justice, the High Court had the occasion to re-examine the question and to give its findings on that question in exercise of revisional jurisdiction. The High Court was obliged to interfere in the

[9] Karim Bakhsh through L.R.s. and others v. Jindwadda Shah and others (2005 SCMR 1518)
[10] Abdul Rashid v. Muhammad Yasin and another (2010 SCMR 1871)

findings recorded by the courts below while exercising power under Section 115 C.P.C.

28. For the foregoing reasons, I am of the opinion that the appellate Court has acted with material irregularity in exercising its jurisdiction by decreeing the suit. This civil revision is accordingly **allowed**. The impugned judgment and decree dated 01.12.2006 of the appellate Court are set aside while the Judgment and Decree dated 31.5.2003, passed by the trial Court dismissing the suit of the respondent/plaintiff, is restored. The parties, however, are left to bear their costs.

J U D G E

Sajjad Ali Jessar