

HIGH COURT OF AZAD JAMMU & KASHMIR

Civil Appeal No. 290/2019.
Date of Institution 09.10.2019.
Date of decision 13.05.2025.

Javed Haider s/o Haider Khan Caste Abbasi r/o Lamnian
Hattian Bala District Jhelum Valley, Azad Kashmir.

Appellant

VERSUS

1. Ghulam Mustafa;
2. Mohammad Mushtaq;
3. Mohammad Sadiq sons;
4. Mst. Perveen;
5. Mst. Nasreen;
6. Mst. Naseema;
7. Mst. Taskeen daughters;
8. Mst. Jany widow of Sain Caste Turk Khokhar Awan r/o
Lamnian Tehsil Hattian Bala District Jhelum Valley,
Azad Kashmir;

Real Respondents

9. Khani Zaman;
10. Ansar Haider;
11. Sajid Haider sons;
12. Khadija Begum wife of Mohammad Ayub;
13. Jameela Begum widow of Irshad;
14. Shaheen widow of Orangzeb;
15. Perveen widow of Shahzaman;
16. Fehmeeda wife of Mohammad Ejaz daughters of
Haider Khan r/o Nos.9 to 12, 14 Mozia Lamnian No.13
Parsa, No.16 Jhandgran Tehsil & District
Muzaffarabad, Nos. 9 to 14 Tehsil Hattian Bala District
Jhelum Valley Azad Kashmir.

Proforma Respondents

CIVIL APPEAL

Before:- Justice Syed Shahid Bahar, J.

PRESENT:

Maqbool-ur-Rehman Abbasi/Tariq Zia Abbasi, Advocate for the
Appellant.

Sakhawat Hussain Awan, Advocate for the Respondents.

JUDGMENT:

The captioned appeal has been directed against the judgment and decree passed by the learned District Judge Hattian Bala dated 27.07.2019, whereby, the judgment and decree passed by the learned Senior Civil Judge Hattian Bala dated 30.01.2019 was upheld.

2. Precise facts necessary for disposal of the instant appeal are that plaintiff/appellant, herein, filed a suit for specific performance of an agreement to sell dated 28.08.1997 on the ground that the land comprising khewat No.1337/119 min survey No.1073 new measuring 7 kanal 3 marlas situated at Mozia Lamnian Tehsil & District Hattian Bala alongwith all the rights was entered in the name of Mst. Shaheen widow of Manga in light of agreement to sell supra through mutation No.186. It has been averred that the suit land was transferred by one Sain s/o Manga in favour of Haider Khan in consideration of Rs.20,000/- and Haider Khan used the land being its lawful owner and, in his lifetime, Haider Khan made private partition and transferred the land to his son Javed Haider, hence, the plaintiff being the lawful owner is in exclusive possession of the said land and also gaining the ownership interests. As per stance of the plaint, both the predecessor in interest of the parties died and after their death, when the plaintiff asked the defendants for specific performance of the agreement to sell but they refused to do so, hence, the plaintiff was constrained to file the suit for specific performance of the supra-agreement to sell dated 28.08.1997.

3. After filing of the suit, the defendants fled written statement in the manner that plaintiff has no cause of action and the suit is liable to be dismissed as the land supra has been

transferred as their fractional shares and the defendants gave the land to the plaintiff for the purpose of cultivation and the plaintiff has regularly paid the half of the shares to the defendants and when the defendants for the purpose of personal needs, want to return the land, the plaintiff refused to give back the possession and by preparing a fake and fictitious an agreement to sell, claimed for its ownership. Lastly prayed for dismissal of the suit.

4. Respondents, herein, also filed a cross suit titled “Ghulam Mustafa & others Vs. Javed Haider” for declaration cum perpetual injunction and cancellation of the agreement to sell dated 28.08.1997 stating therein that the suit land is in the possession of plaintiffs through private partition and later on through mutation No.186 the same came into possession of the plaintiffs and the plaintiffs gave the land to the defendant for the purpose of cultivation who regularly paid the half of the shares to the plaintiffs and when the plaintiffs for the purpose of personal needs, want to return the land, the defendant refused to give back the possession and by preparing a fake and fictitious an agreement to sell, claimed for its ownership. The suit was also resisted by the other side by repudiating the version of the plaintiffs and also prayed for dismissal of the suit. The learned trial Court consolidated both the suits and framed 10 issues and after necessary proceedings, dismissed the suit filed by the appellant, herein, for want of proof and decreed the cross suit filed by respondents, herein, while cancelling the agreement to sell dated 28.08.1997 vide the impugned judgment and decree dated 30.01.2019. Feeling dissatisfied from the said judgment and decree, the plaintiff/appellant,

herein, preferred an appeal before the learned District Judge Jhelum Valley which also met the same fate vide the impugned judgment and decree dated 27.07.2019, hence, this appeal for setting aside the impugned judgments and decrees of both the Courts below.

5. The learned counsel for the parties in compliance of the Court order dated 24.04.2025 submitted their written arguments, wherein, the grounds already taken in the pleadings have mostly been reiterated, therefore, the same needs not to be repeated. The learned counsel for the appellant also referred to and relied upon [PLD 1998 Lah. 444, PLD 1996 Karachi 475, 2012 CLC 1726, 2003 MLD 131]. While in juxtapose, [2006 SCR 94, 2006 SCR 414, 2007 SCR 125] were also referred and relied upon by the learned counsel for the respondents.

6. I have gone through the written arguments offered by the counsel for the parties as well as record of the case with my due care and caution.

7. After perusal of the issue wise findings of both the Courts below, I am of the view that no misreading or non-reading of evidence is found. Findings of both the Courts are in line with the scheme of law and aftermath of the conclusion rightly drawn from the evidence. Finding upon all the 10 issues is concrete. The entire case of the appellant resolved around the agreement to sell (اقرارنامہ) which is an unregistered document which carries no weight in view of Section 17 of the Registration Act. It is useful to reproduce Section 17 of the said Act as infra:-

17. Documents of which registration is compulsory. (1) The following documents shall be registered, if the property to which they relate is situate in a district in which and if they have been

executed on or after the date on which, Act, No.XVI of 1864, or the Pakistan Registration Act, 1866, or the Pakistan Registration Act, 1871, or the Pakistan Registration Act, 1877, or this Act came or comes into force namely;

- (a) Instruments of gift of immovable property;
- (b) Other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;
- (c) non-testamentary instruments [(other than the acknowledgement of a receipt or payment made in respect of any transaction to which an instrument registered under clause (o) relates)] which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest;
- (d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent; and
- (e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent of the value of one hundred rupees and upwards, to or in immovable property.”

8. Even otherwise, the appellant has failed to prove

the agreement to sell (اقرارنامه) **by producing scribe of the document. Mere alleging in pleadings *ipso facto* bears no weight qua claiming a favorable decree or decision. In order to ask for a decree or decision, first of all a fact is specifically described in pleadings, if not admitted by other side, issues are framed and parties are required to produce evidence, resultantly, civil lis is to be decided on the basis of Doctrine of preponderance of probabilities of evidence, for or against.**

9. Issues No.1, 2, 3, 4, 5 & 6 are of pivotal importance, particularly issue No.1 which is the first brick and foundation pillar of the case of the appellant but the appellant could not prove the issues, even has failed to point out any perversity, misreading or non-reading by any angle before this Court. Finding of the Court of 1st instance as outcome of the conclusion drawn from the evidence, **that too, endorsed by the 1st Appellate Fora has got immunity qua interference in second appeal, unless the decision is contrary to law, or some material issue has been left and remained unattended and undecided or for that matter, any substantial error or defect in the procedure is found (procedural defect in a sense which is deviation of mandatory procedure and non-adherence of which might resulted miscarriage of the justice).**

(emphasis supplied)

Scope of Section 100 qua entertaining second civil appeal is narrow. It is useful to reproduce Section 100 CPC as infra:-

“Section 100. Second appeal. Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to a High Court on any of the following grounds, namely;

- (a) the decision being contrary to law or usage having the force of law;
- (b) the decision having failed to determine some material issue of law or usage having the force of law;
- (c) a substantial error or defect in the procedure provided by this Code or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon the merits.”

No misreading or non-reading of evidence found, appeal under Section 100 CPC fails as ground agitated and argued does not match with grounds of attack provided in Section 100 *ibid*. I am fortified to follow the dicta of the Apex Court laid down in the following cases;

- (1) Nazir Begum Vs. Mohammad Ayub 1993 SCR 321;
- (2) Karam Dad Vs. Barkat Jan 2002 SCR 155;

- (3) Mohammad Irshad Khan Vs. Mst. Hanifa Begum 2006
SCR 358.

The sequel of above discussion is that appeal at hand
is bereft of merit is hereby dismissed, no order regarding costs. The
file shall be kept in record room.

Muzaffarabad.

13.05.2025 (Saleem)

JUDGE

Note. Judgment is written and
duly signed. The office is
directed to intimate the parties
or their counsel accordingly.

JUDGE

(APPROVED FOR REPORTING)

JUDGE