

**THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

**MR. JUSTICE YAHYA AFRIDI, CJ**  
**MR. JUSTICE SHAHID BILAL HASSAN**

**CPLA No. 1035 & 1104/2022**

[Against judgment dated 26.01.2022 passed in C.R.No.480 of 2015 by Islamabad High Court, Islamabad]

1. Muhammad Humayun and others  
(In CPLA No. 1035/2022)

2. Mst. Taj Bibi and another  
(In CPLA No. 1104/2022)

**...Petitioner(s)**

***Versus***

1. Shafqat Ali Nisar and others  
(In CPLA No. 1035/2022)

2. Shafqat Ali Nasir & others  
(In CPLA No. 1104/2022)

**...Respondent(s)**

For the Petitioner(s) : Agha Muhammad Ali, ASC  
(in CP 1035 of 2022)

Sh. Waqar UI Haq, ASC  
(in CP 1104 of 2022)

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For Respondent(s) No.1 : Mr. Muhammad Nazir Jawwad, ASC  
(in CP 1035 of 2022)

N.R.  
(in CP 1104 of 2022)

Date of Hearing : 03.03.2026

**JUDGEMENT**

**SHAHID BILAL HASSAN-J**: The present dispute concerns Plot No.1060 measuring 272 square yards, Category-III, situated in Sector E-12/3, Islamabad ("**the suit property**"), which was originally owned by Mst. Taj Bibi (Respondent No.4/Defendant No.1).

The case of Respondent No.1 (Plaintiff) is that he entered into an agreement to sell dated 22.09.2000 (Exh.P-1) with Mst. Taj Bibi for a consideration of Rs.600,000/-, which, according to him, was fully paid. It was further alleged that since the property was not transferable at that time, three General Powers of Attorney bearing Nos.2626, 2627 and 2628 dated 22.09.2000 were executed by the

vendor in favour of the Plaintiff. A construction agreement between the parties was also asserted.

According to the Plaintiff, after the property became transferable subject to payment of the prescribed transfer fee, the vendor avoided completing the transaction, compelling the Plaintiff to institute a suit for specific performance, possession and permanent injunction on 21.03.2005.

The Petitioners contested the suit and asserted that the claim was barred by limitation, the alleged agreement was forged and fabricated, and that the Plaintiff had no enforceable right in the property. The Petitioners further maintained that the suit property had been validly transferred through a lawful chain of title, whereby Shahid Mehmood Kiani purchased the property from the original owner Mst. Taj Bibi on 19.05.2004, and thereafter the property was purchased by Petitioner No.1, following which the Capital Development Authority transferred the property in favour of Defendant No.5 on 08.06.2004 after completion of all formalities. It was asserted that the purchase was made bona fide and without notice of any prior claim.

After recording evidence, the learned Trial Court decreed the suit vide judgment and decree dated 30.01.2013. The appeal filed by the Petitioners was dismissed by the learned Appellate Court vide judgment dated 15.05.2015. A civil revision (C.R. No.480 of 2015) filed before the Islamabad High Court also met the same fate and was dismissed vide judgment dated 26.01.2022. The Petitioners have therefore approached this Court seeking leave to appeal against the judgment of the High Court.

2. Learned counsel for the Petitioners contended that the entire case of the respondent-plaintiff rests upon the alleged agreement to sell dated 22.09.2000, which has not been proved in accordance with the mandatory requirements of Articles 17 and 79 of the Qanun-e-Shahadat Order, 1984. It was argued that the document in question was admittedly attested by marginal witnesses, yet the plaintiff failed to produce them before the Court and even no explanation was furnished for their non-production. In such circumstances, the agreement remained legally unproved and could not form the basis of a decree for specific performance. It was also submitted that where a document required by law to be attested is not proved through its

marginal witnesses, the party relying upon it must fail. Learned counsel further argued that the Courts below misapplied the settled principles governing proof of documents and granted the equitable relief of specific performance despite the fact that the plaintiff had failed to discharge the burden of proof cast upon him by law.

3. Conversely, learned counsel appearing for the respondent-plaintiff supported the concurrent findings recorded by the Courts below and submitted that the agreement to sell dated 22.09.2000 stood sufficiently proved through the oral and documentary evidence brought on record. It was contended that the Courts below had concurrently held the transaction to be genuine after appreciation of evidence, and such findings of fact ordinarily do not warrant interference in the discretionary jurisdiction of this Court. Learned counsel further submitted that the plaintiff had paid the entire sale consideration and had always remained ready and willing to perform his part of the contract, whereas the vendor avoided completion of the transaction. It was argued that in view of these circumstances the Courts below rightly exercised their discretion under the law governing specific performance. Accordingly, it was prayed that the petition may be dismissed.

4. Heard. Record Perused.

5. From the arguments advanced by the learned counsel for the parties and the record available on file, the controversy in the present case essentially revolves around two interrelated questions: first, whether the alleged agreement to sell dated 22.09.2000 was proved in accordance with the mandatory requirements of Articles 17 and 79 of the Qanun-e-Shahadat Order, 1984?, and second, whether, in the circumstances of the case, the Courts below correctly exercised their judicial discretion in granting the equitable relief of specific performance on the basis of such agreement?

6. The entire edifice of the plaintiff's claim rests upon the alleged agreement to sell dated 22.09.2000. The first and foremost requirement for granting a decree for specific performance is that the contract itself must be proved in accordance with law. It is, by now, well settled that where a document is required by law to be attested, its execution must be proved through the attesting witnesses, unless their absence is satisfactorily explained. This requirement flows directly from Articles 17 and 79 of the Qanun-e-Shahadat Order,

1984, which prescribe the mode of proof for such documents. The principle was authoritatively reiterated by this Court in Rafaqat Ali and others vs. Mst. Jamshed Bibi and others (2007 SCMR 1076) wherein it was held:

*“According to Articles 17 and 79 of Qanun-e-Shahadat Order, 1984, petitioners had to produce two attesting witnesses of the agreement in question... petitioners had produced only one witness to prove the agreement to sell, therefore, all the Courts below were justified to non-suit the petitioners.”*

Likewise, in Ainuddin and others vs. Abdullah and another (2019 SCMR 880) this Court again emphasized the mandatory nature of this requirement in the following terms:

*“Out of two marginal witnesses who had allegedly witnessed the execution of the agreement to sell, only one was produced... No explanation was offered explaining failure of the petitioners to produce the other witness.”*

The above pronouncements leave no manner of doubt that production of attesting witnesses is a mandatory requirement for proving such documents, and failure to comply with this requirement renders the document legally unproved.

7. In the present case, the execution of the agreement to sell was specifically denied by the defendants. In such circumstances, strict proof of the document was required. However, the record shows that the marginal witnesses of the agreement were not produced, nor any explanation was offered regarding their absence. This omission strikes at the very root of the plaintiff's case. In Mst. Hajyani Bar Bibi through L.R. vs. Mrs. Rehana Afzal Ali Khan and others (PLD 2014 Supreme Court 794), this Court highlighted the significance of producing marginal witnesses and observed:

*“It is admitted fact that neither the notary nor the marginal witnesses have been produced... no contention had been made by the petitioners that the notary and the witnesses were dead or not traceable.”*

The Court further stressed that where the execution of a document is disputed, failure to produce the marginal witnesses becomes fatal to the claim of the party relying upon the document. The factual background of the present case is patently similar. The plaintiff has relied upon a document whose execution was seriously contested, yet the most natural witnesses to the transaction, its attesting witnesses, were not produced.

8. The agreement to sell and the powers of attorney relied upon by the plaintiff were instruments creating financial obligations concerning immovable property, and therefore they fall squarely within the ambit of Article 17(2)(a) of the Qanun-e-Shahadat Order. In Maqsood Ahmad and others vs. Salman Ali (PLD 2003 Supreme Court 31), this Court elaborated the legal position in the following terms:

*“Whenever a document is executed with an authority to the Agent to deal with financial matters of the property on behalf of the Principal... the document squarely falls within the categories of the instruments which are required to be attested by two men or one man and two women in terms of Article 17(2)(a) of the Order and before a Court of law contents of documents are required to be proved as per the methodology of Article 79 of the Order.”*

The Court further held that:

*“Without its attestation by two witnesses it has been rightly found invalid... for want of non-compliance of the provisions of Articles 17 and 79 of the Order.”*

The above pronouncement clearly establishes that compliance with Articles 17 and 79, Order 1984 is mandatory, and a document not proved in accordance with these provisions cannot form the basis of a decree for specific performance<sup>1</sup>.

9. Even otherwise, the relief of specific performance is not granted as a matter of right. It is an equitable and discretionary relief. In Liaqat Ali Khan and others vs. Falak Sher and others (PLD 2014 Supreme Court 506), this Court observed:

*“The jurisdiction to decree specific performance is discretionary, and the Court is not bound to grant such relief merely because it is lawful to do so.”*

The Court further clarified:

*“It will be the peculiar facts and circumstances of each case... the conduct of the parties and other surrounding circumstances which will enable the Court to decide whether the discretion... ought to be exercised in favour of specific performance or not.”*

Thus, even where a contract is alleged, the Court must examine the entire factual controversy, the conduct of the parties, delay, and surrounding circumstances before exercising its equitable jurisdiction.

10. Applying the above settled principles to the facts of the present case, it becomes evident that the alleged agreement to sell was not

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<sup>1</sup> Hafiz Tassadug Hussain Vs. Muhammad Din through Legal Heirs and others (PLD 2011 Supreme Court 241).

proved in accordance with the mandatory requirements of law. The record shows that the attesting witnesses of the document were not produced and even no explanation was furnished regarding the non-production of the marginal witnesses, particularly when the execution of the document was categorically denied by the defendants. Therefore, adverse presumption as per Article 129(g) of Qanun-e-Shahadat Order, 1984 would arise against the respondent No.1/plaintiff that had he produced the marginal witnesses, they would not have supported his stance. In addition to this, the record further reflects that third-party rights had already been created through a transfer duly recognized by the Capital Development Authority. In these circumstances, the plaintiff clearly failed to discharge the burden of proof cast upon him by law. The Courts below, in our considered view, failed to properly appreciate the mandatory evidentiary requirements governing proof of such documents and proceeded to decree the suit despite the fundamental defects in the plaintiff's evidence, an approach which cannot be sustained in law.

11. For the reasons stated above, we are of the considered view that the plaintiff failed to prove the alleged agreement to sell in accordance with the mandatory requirements of the Qanun-e-Shahadat Order, 1984, and therefore was not entitled to the discretionary relief of specific performance. Consequently, the petition in hand is converted into an appeal and the same is allowed. The judgments passed by the Trial Court, the Appellate Court, and the Islamabad High Court are set aside, consequent whereof the suit instituted by the plaintiff/respondent No.1 stands dismissed, leaving the parties to bear their own costs.

**CHIEF JUSTICE**

**JUDGE**

Islamabad the  
03<sup>rd</sup> of March, 2026  
'APPROVED FOR REPORTING'  
M.A. Hassan