

IN THE COURT OF
CIVIL JUDGE CLASS
LAHORE

Civil CMS No:
Date of Institution
Date of Decision:

Parties name:

**SUIT FOR POSSESSION THROUGH SPECIFIC
PERFORMANCE OF AGREEMENT DATED
15.08.2008 AND 23.12.2021 ALONGWITH
PERMANENT INJUNCTION.**

Present: Learned counsel for the plaintiff,
Legal Adviser on behalf of defendant No.11 /LDA,
Learned counsel for defendants No.1 to 4,
Remaining defendants are ex parte.

JUDGMENT

Briefly stated facts of instant case are as under:-

That land measuring 5K-8M falling in khasra No.138 situated at Mauza Bhabhra Tehsil Model Town, Lahore was under the ownership and possession of

who died in the year 1949-50. That according to Jamabandi for the year 1969-70, the names of legal heirs of said Begum Bibi namely (daughter of

Begum Bibi) are present in the ownership column and mutation inheritance bearing No. dated was also sanctioned in favour of said legal heirs of Begum Bibi. That Mst. Fazal un Nisa, Mst. Ghulam Fatima, Mst. Ayesha Bibi daughters of Begum Bibi jointly declared as legal heirs being daughters. That said Mst Fazal un Nisa, Ghulam Fatima and Mst Ayesha Bibi have already been died. That Ayesha Bibi, Wilayat Begum, Wazir Begum are legal and shari heirs of Mst Ghulam Fatima, as said Mst Ghulam Fatima daughter of Begum Bibi has already died. That defendant No.11/LDA acquired the said land for establishment of Gulberg-III Housing Society and maintained the file for exemption bearing No.GE-123, Khasra No.138 Mauza Bhabra, Lahore against acquired land measuring 5-kanals.

marlas, defendant No.11 gave the exemption land measuring 3-Kanal, 14-marlas in shape of two plots bearing No.101-H, 102-H (measuring 1-k-16M each) in the name of Fazal un Nisa, according to exemption letter No.GE-123/20710 dated 02.05.1974 issued by LDA two qitats of plots bearing No.101-H land measuring 1k-16M and plot No.102-H land measuring 1K-16M situated in Gulberg-III, Lahore. That legal heirs obtained decree of legal and shari heirs of Ayesha Bibi's sons and daughters and Sardar Begum, Wilayat Begum, Wazir Begum daughters of Mst Ghulam Fatima from the learned Civil Court, Lahore vide order dated 23.10.2013. That defendants No.1 to 10 being legal heirs of said Ayesha Bibi, regarding above said two plots entered into an agreement to sell with the plaintiff dated 18/08.2008 and 23.12.2021 and sold the said plots to the plaintiff against total sale consideration amount Rs.65,00,000/- out of which plaintiff paid an amount of Rs.30,00,000/- as earnest money to defendants No.1 to 10 on 15.08.2008 through agreement to sell dated and also gave cheques (detail of which has been mentioned in the plaint) of different dates and cash amount and remaining amount Rs.5,75,000/- will be paid at the time of transfer of said plots in favour of plaintiff. That plaintiff also paid remaining amount Rs.5,75,000/- to defendants No.1 to 10 vide agreement to sell dated 18.01.2022 in presence of witnesses, whereas possession is still lying with the LDA department. That defendants No.1 to 10 also executed general power of attorney in favour of plaintiff regarding the above said plots and said defendants would be bound to clear the said property from defendant No.11 after exemption. That plaintiff approached to defendants No.1 to 10 to transfer the said plots in his favour but said defendants refused to do so, hence, this suit has been instituted.

2. Defendants No.5 to 10 were proceeded against ex parte after legal formalities and defendants No.1 to 4 conceded the claim of plaintiff. While defendant No.11 have contested the suit and prayed for dismissal of same with special costs.

3. Out of divergent pleadings of the parties, my learned predecessor following issues were framed which are as under:-

1. Whether plaintiff is entitled for the decree of possession through specific performance of agreement to sell dated 23.12.2021 alongwith permanent injunction as prayed for? OPP

2. Whether the suit of plaintiff is false, frivolous and liable to be dismissed? OPD

3. Whether the defendants are entitled for special cost under Section 35-A CPC? OPD

4. Relief.

4. After framing of issues, both the parties were directed to produce their respective evidence in order to discharge the onus of these issues. Plaintiff Shahzad Habib himself appeared as PW.1, Muhammad Razzaq appeared as PW.2, Babar Nisar appeared as PW.3. In documentary evidence, plaintiff produced document Ex.P.1 to Ex.P.17 and closed his oral as well as documentary evidence. On the other hand, right of defendant/LDA to produce evidence has been closed.

5. I have heard the arguments of both the learned counsel for the parties and perused the record. My issue wise findings are as under:-

Issue No.1.

5. Onus to prove issue No.1 was placed upon the plaintiff. Plaintiff Shahzad Habib himself appeared as PW.1 and corroborated his stance on oath. He further deposed that land measuring 5K-8M falling in khasra No.138 situated at Mauza Bhabhra Tehsil Model Town, Lahore was under the ownership and possession of Mst Begum Bibi wife of Khair Din who died in the year 1949-50. That names of legal heirs of said Begum Bibi namely Fazal un Nisa, Mst Ghulam Fatima, Mst. Ayesha Bibi (daughters of Begum Bibi) are present in the ownership column and mutation inheritance bearing No.556 dated 25.05.1974 was also sanctioned in favour said legal heirs of Begum Bibi. That Mst. Fazal un Nisa, Mst. Ghulam Fatima, Mst. Ayesha Bibi daughters of Begum Bibi jointly declared as legal heirs being daughters. That said Mst Fazal un Nisa, Ghulam Fatima and Mst Ayesha Bibi have already been died. That Ayesha Bibi, Wilayat Begum, Wazir Begum are legal and shari heirs of Mst Ghulam Fatima, as said Mst Ghulam Fatima daughter of Begum Bibi has already died. That defendant No.11/LDA acquired the said land for establishment of Gulberg-III Housing Society and maintained file for exemption bearing No.GE-123, Khasra No.138, Mauza Bh

4.
Lahore against acquired land measuring 5-kanals, 8-marlas, defendant No.11 gave the exemption land measuring 3-Kanal, 14-marlas in shape of two plots bearing No.101-H, 102-H (measuring 1k-16M each) in the name of Fazal un Nisa, according to exemption letter No.GE-123/20710 dated 02.05.1974 issued by LDA two qitats of plots bearing No.101-H land measuring 1k-16M and plot No.102-H land measuring 1K-16M situated at Gulberg-III, Lahore. That defendants No.1 to 10 being legal heirs of said Ayesha Bibi, regarding above said two plots entered into an agreement to sell with the plaintiff dated 15.08.2008 and 23.12.2021 sold out the said plots to the plaintiff against total sale consideration amount Rs.65,00,000/- out of which plaintiff paid an amount of Rs.30,00,000/- as earnest money to defendants No.1 to 10 on 15.08.2008 through agreement to sell dated and also gave cheques of different dates and cash amount and remaining amount Rs.5,75,000/- will be paid at the time of transfer of said plots in favour of plaintiff. That plaintiff also paid remaining amount Rs.3,75,000/- to defendants No.1 to 10 vide agreement to sell dated 18.01.2022 in presence of witnesses, whereas possession is still lying with the LDA department. That defendants No.1 to 10 also executed general power of attorney in favour of plaintiff regarding the above said plots and said defendants would be bound to clear the said property from defendant No.11. That plaintiff approached to defendants No.1 to 10 to transfer the said plots in his favour but said defendants refused to do so, hence, this suit has been instituted. PW.1 was cross-examined by defendant LDA. Muhammad Razzaq, appeared as PW.2 and corroborated the stance of plaintiff on oath. Babar Nasir appeared as PW.3 and also corroborated the version of the plaintiff. Remaining PWs were also cross-examined. Plaintiff also produced documentary evidence in support of oral version. Defendants namely Mst. Ishrat Bibi, Muhammad Younas, Ghulam Murtaza, Mst. Shamim Begum appeared before court got recorded their statement to the effect that they concede the claim of plaintiff and have no objection if suit of the plaintiff be decreed and they received the entire amount.

7. Defendants No.1 to 4 have conceded the claim of plaintiff and submitted that they have entered into an agreement to sell with plaintiff and after payment of entire consideration amount, they have exemption of impugned plots be issued in favour of plaintiff in the record of LDA/defendant No.11, rest of the defendants

were proceeded against ex parte. While defendant No.11/LDA has contested the suit through his legal advisor on the grounds that no record of file for exemption bearing documents No.GE-123, Khasra No.138 Mouza Bhabra, Lahore exists in their record. However, no oral as well as documentary evidence was produced by defendant No.11/LDA and request of plaintiff as well as original exemptee was declined for issuance of exemption letter of both plots No.101 & 102.

8. Plaintiff while appearing as PW.1 has corroborated his stance on oath. Two marginal witnesses as required by Article 79 of Qanun-e-Shahdat Order 1984 have been produced by plaintiff to corroborate the contents of agreement to sell duly executed between plaintiff and defendants No.1 to 10. Plaintiff has duly burdened the issue No.1 that he executed the agreement to sell with defendants No.1 to 10 for total consideration amount Rs.65,00,000/- and after payment of total consideration amount, he was entitled for exempted land from defendant No.2 or alternative plots. Hence, he is entitled to execution of agreement to sell dated 15.09.2008 and 23.12.2021.

9. Learned counsel for the plaintiff has also placed reliance in reported case titled "Tahir Jameel vs. Lahore Development Authority through Director General, Lahore and two others, 2024 CLC 996 where it has been held that petitioner (awardee) invoked constitutional jurisdiction of the High Court challenging letter correspondence issued by the respondent (Director Land Development, Lahore Development Authority) where he was advised to contact his vendors in order to recover the claimed compensation. Contention of the petitioner was that he was entitled for execution of his acquired land and the same was granted pursuant to order passed by the concerned Commissioner, but subsequently the same had been given to some other person on the basis of an ex parte decree, which had already been set aside. Validity—It was not discernable from the record as to whether any notice was served upon the petitioner or he was associated while conducting and finalizing Exemption proceedings in favour of decree-holders of ex parte decree, which was subsequently set aside—It was unimaginable that when the entire process of exemption was completed, how could the Award be cancelled even without issuing any notice or affording any opportunity of hearing to the petitioner merely on the basis of an e-parte decree—Any order passed against

an aggrieved person, without providing him/her proper hearing or giving any reasons, is un-sustainable in the eye of law as the public functionaries are obliged to follow the principles of natural justice while deciding rights of the parties—Petitioner had paid the entire development charges as directed by the LDA in the year 1998, hence, the process of subsequent exemption in favour of another party could not have been finalized without associating the earlier exemptee—Petitioner was entitled to due process, right to be treated fairly at all times, right to procedural fairness and right to procedural property—Petitioner, being a citizen of the Pakistan, had the right to fair procedure guaranteed constitutionally—High Court set-aside impugned letter/correspondence, declaring the same as illegal and without lawful Authority, and remitted the matter to the concerned respondent (Director Land Development) with direction to redress petitioner's grievance strictly in accordance with law, after appreciating the available record as well as applicable law and contentions of the petitioner—Constitutional petition was allowed, in "circumstances".

10. The decision of defendant No.11/LDA to decline for ssuance of exemption letters are in violation of natural justice as no notice was issued to plaintiff as well as original exemptees for cancellation of their exemption letters. Rather LDA has not produced any oral as well as documentary evidence that exemption of land of plaintiff as well as original allottees have been cancelled. Learned counsel for plaintiff has rightly pointed out that without any cogent grounds and plausible reasons and documentary proof, their exemption of land of impugned plots cannot be declined. Plaintiff has duly burdened the issue No.1 through oral as well as documentary evidence. Hence, he is entitled for execution of agreement to sell as well as issuance of exemption letter of impugned plots or he is also entitled for alternate plots in absence of exemption letters of original plots. Therefore, issue No.1 is decided in favour of plaintiff.

Issues No.2 & 3.

11. Onus to these issues No.2 & 3 was placed upon the defendants, that plaintiff has no cause of action and locus standi to file the suit and plaintiff has filed this suit with mala fide intention, with ulterior motives and liable to be dismissed with special costs. In support of issues No.2 & 3, defendants have not produced any

oral as well as documentary evidence. Since no oral as well as documentary evidence has been adduced by defendant No.11 on these issues. Therefore, issues No.2 & 3 are disposed off accordingly.

Relief.

For what has been discussed above, instant suit for possession through specific performance of agreement to sell dated 15.09.2008 and 23.12.2021 is decreed in favour of plaintiff and against the defendants. Defendant No.11/LDA is directed to implement the agreement to sell in the record of defendant/LDA and issue exemption letters in favour of exemptees and plaintiff or give alternative plots after payment of outstanding dues. Decree sheet be prepared accordingly. Parties are left to bear their own costs. File be consigned to the record room after its due completion.

Announced
31.03.2026

Civil Judge Class-I,
Lahore

Certified that this judgment comprises (07) pages which have been dictated, read corrected and signed by me.

Announced

Civil Judge Class-I,
Lahore