

**IN THE COURT OF SHERAZ QAMAR,
CIVIL JUDGE-II, TAKHT BHAI (MARDAN)**

Civil Suit No.....502/1 of 2018

Date of institution.....21.04.2018

Date of decision.....30.01.2025

Wazir Zaman s/o Khani Zaman through LRs (*Mst. Eltaj Begum (widow), Sherin Zaman, Tariq Zaman, Anwar Zaman, Tahir Zaman (sons), Mst. Khafisa Begum and Mst. Naveen Begum daughters of deceased Wazir Zaman*) r/o Utman Khail Katigarhi, Tehsil and District Mardan **(Plaintiff)**

VERSUS

Ibrahim s/o Ajab Khan r/o Naeem Shah Korona, Ghano Dheri, Tehsil Takht Bhai, District Mardan**Defendant)**

**SUIT FOR SPECIFIC PERFORMANCE OF
AGREEMENT AND PERMANENT INJUNCTION**

JUDGMENT
30.01.2025

1. The plaintiff has instituted instant suit for specific performance and permanent injunction against the defendant.
2. Plaintiff sought in prayer “**Alif**” of the plaint specific performance of Iqrar Nama/compromise deed No. 399 dated 22.11.2017 in respect of property measuring 11 Kanals and 4 Marlas bearing Khasra No. 222/2 and Khata No. 11/12 as per Jamabandi for the year 2010/2011. In prayer “**Bay**” plaintiff also seeks permanent injunction by restraining the defendants from interference, attestation of mutation/ registry, alienation of suit property and making construction in the suit property.
3. Brief facts of the case are: that a dispute of property arose between parties and for settlement of said dispute a local

Jirga was convened by mutual consent of parties; that local Jirga scribed a compromise deed No. 399 dated 22.11.2017 with terms and conditions that till 22.01.2018 plaintiff will transfer property measuring 11 Kanals and 4 Marlas bearing Khasra No. 222/2 for sale consideration of Rs.600,000/- in the name of defendant, if, defendant failed in performing the said condition till 22.01.2018 then plaintiff will be entitled for registry/mutation of suit property from defendant in lieu of Rs. 600,000/-; that plaintiff asked defendant for transfer of suit property in his name in lieu of Rs. 600,000/- however, he denied the same; that plaintiff sent legal notice to defendant but he did not agree upon fulfilling the terms and conditions of Iqar Nama/compromise deed; that the plaintiff also seeks permanent injunction by restraining the defendant from interference, attestation of mutation/registry, alienation of suit property and making construction in the suit property; that the defendant was asked repeatedly for fulfilling the terms and conditions of agreement/compromise deed dated 22.11.2017, but initially defendant prevaricated but now straightaway refused claim of the plaintiff, hence the instant suit.

4. Defendant was summoned through process of the court, who appeared before the court and contested the suit by submitting his written statement, wherein, he resisted the claim of plaintiff on various legal and factual grounds.
5. Divergent pleadings of the parties were reduced into the following issues.

ISSUES

1. *Whether the plaintiff has got cause of action?*
2. *Whether suit of the plaintiff is maintainable in its present form?*

3. *Whether suit of the plaintiff is bad for non-joinder and mis-joinder?*
 4. *Whether proper court fee has been affixed?*
 5. *Whether suit of the plaintiff is within time?*
 6. *Whether the compromise deed dated 22.11.2017 is a valid and binding agreement between the parties?*
 7. *Whether plaintiff is entitled to decree of specific performance of agreement/compromise deed?*
 8. *Relief*
6. Both the parties were given ample opportunity to produce their respective evidence in support of their respective stance.

Crux of plaintiff's evidence are as under;

PLAINTIFF'S EVIDENCE.

- I. **PW.01**, Nasir Khan (Postman) post office, Takht Bhai, who appeared and exhibited registry receipt as Ex.PW.1/1 and copy of register AD card as Ex.PW.1/2.
- II. **PW.02**, Fazal Rabi (stamp vendor) r/o Kati Ghari, Mardan, who appeared in the witness box and exhibited Iqar Nama Ex.PW.2/1 and record of Iqar Nama as Ex.PW.2/2. He endorsed his handwriting, signatures and thumb impressions of witnesses and parties on deed as correct.
- III. **PW.03**, Saleem Khan s/o Mashal Khan (Jirga member) appeared before court and recorded his statement wherein he endorsed his signature on the Iqar Nama/compromise deed as correct.
- IV. **PW.04**, Noor Rahman s/o Ghani r/o Shero, Tehsil Takht Bhai, Mardan (Jirga member), who also appeared before court and recorded his statement wherein he endorsed his signature on the Iqar Nama/compromise deed as correct.

V. **PW.05, Sher Zaman s/o Wazir Zaman (special attorney for the plaintiff)**, who exhibited his special power of attorney as Ex.PW.5/1 and reiterated the stance already narrated by plaintiff in his plaintiff.

7. Thereafter evidence of plaintiff was closed.

DEFENDANT'S EVIDENCE

8. In defense, defendant himself appeared as DW.1, who during his examination-in-chief almost reiterated the stance already narrated in his written statement and thereafter closed his evidence.

9. I have heard the arguments of learned counsel for the parties and have gone through the record with their valuable assistance. My issue findings are as under:-

ISSUE NO.06

➤ *Whether the compromise deed dated 22.11.2017 is a valid and binding agreement between the parties?*

10. Issue No. 06 is the most important issue of this case; therefore, the same is being taken at the earliest for discussion in order to avoid unnecessary repetition of same facts.

11. Initial burden to prove Issues No. 06 was on the plaintiff.

12. The plaintiff's case is that a dispute existed between the parties concerning the suit property. To resolve this dispute, elders of the locality intervened and brokered a compromise. The terms of this compromise were allegedly read over to the parties who then signed the same in the presence of witnesses. The plaintiff further claims to have sent a written notice to the defendant prior to the suit.

13. The defendant, in his written statement, did not specifically deny the existence of compromise deed and contended that

the plaintiff's suit is based on falsehood and is liable to be dismissed. He has raised serious question about the circumstances surrounding the alleged compromise.

14. The plaintiff has relied on the testimony of several witnesses in order to prove his case. However, the evidence presented is riddled with inconsistencies and contradiction, casting serious doubt on the authenticity and validity of the compromise deed. The plaintiff's claim of sending a written notice to the defendant is weakened by the testimony of postman (PW.1), who admitted that the original notice was not placed on file and that the acknowledge due card lacked crucial details like CNIC number and parentage of the defendant and the date of receipt. This raises serious concern about the service of notice.
15. The testimony of stamp vendor and petition writer (PW.2) is particularly damaging to the plaintiff's case. PW.2 admitted to not being computer literate, despite the compromise deed being typed. He also admitted that the deed did not contain CNIC numbers of the marginal witnesses and that the defendant was not present when the deed was scribed. This contradicts the plaintiff's claim that the defendant signed the deed after the terms were read over to him.
16. The testimony of the marginal witnesses is also inconsistent and contradictory. PW.3, stated that the deed was not scribed in his presence and that the defendant did not sign the same in his presence. He then volunteered that he dictated the contents over the phone and the deed was taken to everyone's doorstep. PW.4, also admitted in his cross examination that the deed was not signed in his presence and that the defendant did not sign the same in his presence. PW.5, on the other hand, claimed that the deed was scribed and signed in his presence, with the defendant affixing his

thumb impression. Such conflicting accounts from the witnesses who were allegedly present at the time of execution of deed severely undermine the plaintiff's narrative.

17. While the defendant admitted that elders of the locality attempted to effect compromise. He categorically denied that the compromise deed was read over to him. He stated that he was not given a copy of the deed and that his thumb impression was obtained at a funeral at night. Under circumstances that suggests otherwise. He also stated that he was not present during the elders' decision making process and that his signature was obtained before he was even informed of the decision.
18. Based on the above, it is held that the plaintiff has failed to prove the due execution and validity of Ex.PW.2/1. The inconsistencies and contradictions in the testimonies of plaintiff's witnesses, coupled with the defendant's categorical denial of the circumstances surrounding the signing of deed, create a serious doubt about the authenticity of the documents and the voluntariness of the defendant's alleged consent. The evidence suggests that the defendant thumb impression might have been obtained under dubious circumstances, without a clear understanding of the terms of the alleged compromise.
19. In light of foregoing, this court of the considered view that the plaintiff has failed to prove the authenticity and validity of the compromise deed, on a preponderance of evidence. Therefore, issue No. 6 and 7 are decided in negative and against the plaintiff.

ISSUE NO: 5

➤ *Whether suit of the plaintiff is within time?*

20. The onus to prove this issue was on the plaintiff.

21. The plaintiff has based his claim on the strength of deed allegedly executed on 22.11.2017. Article 113 of Limitation Act provides time for enforcement of contract as three years, but the same Article is split into two folding clauses i.e. one clause provides that time shall commence from the time fixed in the contract and second clause provides that when no such time is mentioned in said contract, then time shall run when the plaintiff noticed that performance is refused. The plaintiff has mentioned in Para No.7 of his plaint that he also sent a notice to the defendant to resolve the dispute on the terms of the Ex.PW.2/1 however, he refused. The said notice was allegedly sent on 09.04.2018 while the present suit has been filed on 21.04.2018. Hence, issue is decided in affirmative.

ISSUES NO.02 & 03

- Whether suit of the plaintiff is maintainable in its present form?
- Whether suit of the plaintiff is bad due for non-joinder and mis-joinder?

22. The onus to prove these issues was on the defendant. However, he has not succeeded to bring on record any evidence as to how the suit of plaintiff is not maintainable. He has further failed to lead any evidence with regard to the fact that suit of the plaintiff is bad for mis joinder or non joinder of parties. Hence, issues No.2 & 3 are decided in negative.

ISSUE NO: 04

- *Whether proper court fee has been affixed?*

23. The plaintiff has brought the instant suit for specific performance and perpetual injunction on which maximum court fee is applicable. However, the plaintiff has not affixed any court.

24. Hence, issue is decided in negative.

ISSUES NO.01 & 07

- *Whether the plaintiff has got cause of action?*
- *Whether plaintiff is entitled to decree of specific performance of agreement/compromise deed?*

25. Burden of proving this issue was on the plaintiff.

26. In light of the detailed discussion above, particularly under issues No. 06, the plaintiff has miserably failed to prove his stance with cogent and reliable evidence. Hence, issue No. 01 and 07 are hereby decided in negative against the plaintiff.

RELIEF:

27. As a sequel to issue-wise above findings especially under Issue No. 06; the plaintiff has failed to prove his case. Therefore, the instant suit is hereby dismissed.

28. Costs of the suit shall follow the event.

29. File be consigned to the record room after its necessary completion and compilation.

Announced

30.01.2025

(Sheraz Qamar)
Civil Judge-II, Takht Bhai

CERTIFICATE

Certified that this judgment consists of (08) pages and each page has been signed by me after the necessary correction made therein.

(Sheraz Qamar)
Civil Judge-II, Takht Bhai

**IN THE COURT OF SHERAZ QAMAR,
CIVIL JUDGE-II, TAKHT BHAI (MARDAN)**

**Wazir Zaman vs Ibrahim
Suit No. 502/1 of 2018**

Order-----
30.01.2025

1. Parties present. Arguments of learned counsel for the parties already heard. Record perused.
2. Vide my detailed Judgment of today separately placed on file consisting of 08 pages, the plaintiff has failed to prove his case. Therefore, the instant suit is hereby dismissed.
3. Costs of the suit shall follow the event.
4. File be consigned to the record room after its necessary completion and compilation.

Announced
30.01.2025

**(Sheraz Qamar)
Civil Judge-II, Takht Bhai**