

Supreme Court Upholds Partial Specific Performance of Severable Property Sale Agreement

Pakistan's Supreme Court held that a seller who admitted a joint agreement remained bound for his distinct plot, while relief failed against the co-seller whose execution was not proved.

Supreme Court of Pakistan judgment analysis
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Case: Civil Petitions Nos. 1971 and 2395 of 2022

Court and date: Supreme Court of Pakistan | 17 July 2026

Bench: Chief Justice Yahya Afridi, Justice Irfan Saadat Khan and Justice Aqeel Ahmed Abbasi

Result: Leave refused; partial specific-performance decree maintained

The ruling in one sentence

The Supreme Court of Pakistan has upheld specific performance against a seller who admitted an agreement to sell his separately owned plot, holding that the enforceable obligation was severable from the disputed part concerning a second plot, but refused relief against the co-seller because the purchaser did not prove that co-seller's signatures, thumb impressions or consensus to contract.

In Bashir Ahmad and Javed Iqbal v respective respondents, Civil Petitions Nos. 1971 and 2395 of 2022, the Court dismissed both cross-petitions and refused leave to appeal. The result preserved a decree for Plot No. 312 against Bashir Ahmad while leaving the purchaser without specific performance of Plot No. 311 against Muhammad Saleem.

The agreement covered two separately owned plots

On 19 March 2002, Javed Iqbal entered into an agreement to purchase two plots in Margalla Town, Phase II, Islamabad. Plot No. 311 belonged to Muhammad Saleem and Plot No. 312 belonged to Bashir Ahmad. Each plot measured 36 by 50 feet.

The total sale price was Rs.1,400,000. An amount of Rs.220,000 was paid as earnest money, while the balance was to be paid at transfer after security clearance and verification. The sellers were also required to clear the outstanding Capital Development Authority dues connected with the plots.

When the transfers did not take place, Javed Iqbal filed a suit for specific performance together with permanent and mandatory injunctions. The litigation eventually produced cross-claims: Bashir resisted enforcement of the agreement against his plot, while Javed sought enforcement against Muhammad Saleem as well.

The long procedural history

The trial court initially decreed the suit only in relation to Plot No. 312. After appellate proceedings, the Islamabad High Court remanded the matter so that the disputed signatures of Muhammad Saleem could be examined in accordance with Article 84 of the Qanun-e-Shahadat Order, 1984.

The Federal Investigation Agency issued a handwriting report on 6 April 2018. The opinion was inconclusive because sufficient standard comparison material was unavailable. After remand, the trial court decreed the entire suit on 25 October 2018.

The Additional District Judge-V (East), Islamabad, modified that result on 17 May 2019. The decree was maintained against Bashir Ahmad for Plot No. 312 but the suit was dismissed against Muhammad Saleem for Plot No. 311. Both sides filed civil revisions. The Islamabad High Court dismissed those revisions through a combined

judgment dated 31 March 2022.

Bashir Ahmad and Javed Iqbal then brought separate civil petitions for leave to appeal before the Supreme Court. Because both arose from the same agreement and common questions, the Court decided them through one judgment.

Bashir Ahmad's admission remained decisive

Bashir Ahmad had expressly admitted the agreement to sell, receipt of earnest money and his promise to sell Plot No. 312. His defence was that the document was a single composite bargain and that failure to prove Muhammad Saleem's execution made the whole agreement invalid or tainted.

The Supreme Court rejected that approach. The agreement dealt with two distinct properties held by two different owners. Bashir's admitted obligation concerning his own plot was capable of being separated from the disputed obligation attributed to Muhammad Saleem.

The inability to enforce the agreement against one co-seller did not automatically release the other from a contractual commitment that he had admitted. A party cannot avoid his own separate promise merely because the claimant fails to prove that another owner made a parallel promise in the same instrument.

This is the judgment's central practical principle. The use of one agreement for more than one property or owner does not necessarily make every obligation indivisible. Courts must examine the language, ownership, consideration and promised performance to determine whether the lawful and proved part can operate independently.

Severability depends on the contract and the property interests

The ruling does not create an automatic rule that every multi-party sale agreement is severable. Severability depends on whether the enforceable portion can be identified and performed without rewriting the bargain or imposing an obligation that the parties never accepted.

Here, each seller owned a distinct plot. Bashir's admission fixed both his identity and the property subject to his promise. Enforcing the agreement against Plot No. 312 did not require the Court to treat Muhammad Saleem as having signed, nor did it transfer Saleem's property.

The decision therefore protects two principles at the same time. A proved and admitted promise should not fail merely because another separable promise is unproved; equally, a person who denies execution should not lose property unless the claimant establishes that person's agreement through legally sufficient evidence.

Time was not proved to be the essence

Bashir also argued that the purchaser failed to pay the balance after being notified that the security clearance was complete and that the agreement had therefore come to an end.

The Supreme Court reiterated that time is not ordinarily treated as the essence of a contract for the sale of immovable property. That proposition is not absolute. The express terms, surrounding circumstances and nature of the transaction may demonstrate a clear intention that performance by a particular date was fundamental.

In this case, Bashir did not establish the necessary stipulation and prejudice. More importantly, he did not prove that he had cleared the file or performed the reciprocal obligations required to make the final transfer possible. A seller who has not shown his own readiness to complete the promised steps cannot rely on unilateral rescission to defeat the purchaser's claim.

Evidence of CDA payments supported the purchaser

Javed Iqbal produced pay orders and Capital Development Authority records showing payment of restoration instalments connected with both plots. The CDA register supported those payments.

That evidence mattered because it was consistent with the purchaser acting toward completion rather than abandoning the transaction. It also weakened the claim that the sellers had completed everything required from their side and were waiting only for the balance price.

In a specific-performance suit, readiness and willingness are assessed from the entire record. Payment documents, correspondence, authority records, notices and conduct before and after the agreed date may all become important. A party invoking reciprocal promises should identify precisely which obligation became due first and prove that the conditions triggering the other party's performance were fulfilled.

Why specific performance failed against Muhammad Saleem

The purchaser's cross-petition sought enforcement of the same document against Muhammad Saleem for Plot No. 311. Saleem consistently denied executing the agreement. That denial placed the primary burden on Javed Iqbal to prove the disputed execution.

The Supreme Court held that the purchaser did not discharge the heavy onus imposed by Article 177 of the Qanun-e-Shahadat Order, 1984. Saleem's signatures and thumb impressions were not verified through convincing independent evidence. The marginal witnesses did not substantiate execution against him, and the FIA handwriting opinion remained inconclusive.

An inconclusive expert report does not prove a disputed signature. It means the expert material did not yield a definite conclusion. The party bearing the burden must still establish execution through admissible and persuasive evidence.

The Court also found no cogent proof of consensus ad idem between Javed Iqbal and Muhammad Saleem. Specific performance compels actual contractual performance; it cannot be ordered against a person who continuously denies the transaction where mutual assent and valid execution have not been proved.

Article 177 and the burden of proving execution

Article 177 of the Qanun-e-Shahadat Order places the burden of proving a fact on the person who asks the court to believe in its existence, unless law places that burden elsewhere. A purchaser seeking specific performance on a disputed document must therefore first prove the contract against the person said to have executed it.

Evidence that an agreement existed with another seller does not itself prove that the denying owner joined it. Nor can the admission of one alleged executant be treated as an admission by the other.

For disputed property agreements, parties should preserve original documents, reliable specimen signatures, identity material, payment trails and the testimony of persons present at execution. Expert comparison can assist, but it does not remove the need for primary and corroborative proof, particularly when the expert result is inconclusive.

The limited scope of revision under Section 115 CPC

The Supreme Court found that the Islamabad High Court had correctly declined to interfere under Section 115 of the Code of Civil Procedure, 1908. Revisional jurisdiction is not a second appeal on facts.

Interference requires a jurisdictional defect, material irregularity, illegality, or a conclusion affected by misreading or non-reading of material evidence. The First Appellate Court's divided result was supported by the record: Bashir admitted his part of the agreement, while execution against Saleem remained unproved.

Neither petitioner identified the kind of legal or evidentiary defect that would justify disturbing those findings in revision. The High Court was therefore entitled to leave the appellate decree intact.

Final outcome

The Supreme Court dismissed both Civil Petition No. 1971 of 2022, filed by Bashir Ahmad, and Civil Petition No. 2395 of 2022, filed by Javed Iqbal. Leave to appeal was refused in both matters.

The partial decree accordingly remained in force. Javed Iqbal retained specific performance against Bashir Ahmad in respect of Plot No. 312, but could not enforce the document against Muhammad Saleem for Plot No. 311.

The judgment was authored by Justice Aqeel Ahmed Abbasi on a bench comprising Chief Justice Yahya Afridi, Justice Irfan Saadat Khan and Justice Aqeel Ahmed Abbasi. It was heard and decided at Islamabad on 17 July 2026. The supplied copy is expressly marked "not approved for reporting," and no reported citation is stated.

Practical guidance for property litigation

For purchasers, a suit involving several owners should plead each owner's title, promise, consideration and execution separately. If one seller denies the document, the claimant should not assume that another seller's admission will fill the evidentiary gap.

For sellers, a defence based on non-payment should be supported by proof that the seller performed or validly tendered the reciprocal steps required before payment. Clear contractual deadlines, notices and evidence of clearance or transfer readiness are essential where time is said to be fundamental.

For courts, a single document may contain obligations with different evidentiary outcomes. The court should

determine whether the proved part can be enforced independently while protecting the property of a person against whom execution remains unproved.

For document preparation, agreements involving multiple owners should allocate the price, earnest money, liabilities, completion steps and consequences of default for each property. A severability clause may reduce uncertainty, although its wording cannot replace proof of execution or permit enforcement of an unlawful bargain.

What the judgment does not decide

The ruling does not hold that every composite property agreement must be partly enforced. The facts must show that the valid obligation is genuinely severable.

It does not hold that time can never be the essence of an immovable-property contract. Express language and the surrounding circumstances may establish that intention.

It does not treat an inconclusive forensic opinion as proof of forgery. The Court held only that the purchaser failed to prove execution against Muhammad Saleem.

It does not permit specific performance without proof of the claimant's own readiness and performance. The purchaser succeeded against Bashir on the evidence and reciprocal obligations recorded in this case.

Finally, the judgment is not approved for reporting. It remains useful for understanding the Court's application of severability, admissions, proof of execution and revisional limits, but its status should be stated accurately whenever it is cited or discussed.

Conclusion

The decision shows how one property agreement can produce two legally different results. An admitted, separable promise concerning a seller's own plot remained enforceable. A disputed promise concerning another owner's plot failed because execution and mutual assent were not proved.

Its practical lesson is precise: severability can preserve a proved contractual obligation, but it cannot cure missing proof against a person who denies the contract. Courts must enforce what was lawfully established without extending the decree beyond the evidence.

This commentary is independent legal analysis for research and general information. The complete judgment, current statutory text and the record of a particular dispute should be checked before reliance in proceedings.