

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Civil Revision Application No.48 of 1996
[Mateen Khan and others *versus* Muhammad Ishaque Ali Bux and others]

Date of hearings : 21.10.2024 and 28.10.2024

Applicants : Mateen Khan and 6 others, through
M/s. Barrister Jawad Ahmed Qureshi and
Osama Yousuf Parhyar, Advocates.

Respondent No.1 : Muhammad Ishaque Ali Buxs, through
Mr. Jaleel Ahmed Memon and Syed Jan
Muhammad Bukhari, Advocates.

Respondents No.2 and 3 : Province of Sindh and another, through
Mr. Allah Bachayo Soomro, Additional
Advocate General Sindh.

J U D G M E N T

Muhammad Faisal Kamal Alam, J.: This Revision is preferred by the Applicants against the impugned Appellate Judgment dated 03.03.1996 [Decree dated 12.03.1996], setting aside the Judgment and Decree dated 26.10.1995 and 01.11.1995, passed by the learned Trial Court.

2. The subject matter of the dispute is the agriculture lands in Survey Nos.164 and 177, 08-10 Acres and 05-31 Acres [respectively], Taluka Daulatpur, District Nawabshah. As averred in the Plaint that the Applicants No.1 and 2—Mateen Khan and Mst. Asghari [**Original Owners**], since deceased, now been represented by the Legal Heirs—the present Appellants, jointly own 44 paisas and 6 paisas in Survey No.177 and 25 paisas share in Survey No.164, thus their total shareholding was equal to Four Acres, Thirty Seven and a half Acres—**4.37 ½** Acres [in both Survey Numbers]—the ***Subject Land***, which **fact is not disputed in the Written Statement** filed by these Applicants as Defendants.

3. The above Subject Land, is claimed to have been purchased by Plaintiff / present Respondent No.1 [for the reference only, be referred as **First Purchaser**], since deceased, being represented by the Legal Heirs, from the Original Owners through their General Attorney, namely, Inam Ali son of Haji Fateh Muhammad, who has been impleaded as Defendant No.8 in the Suit No.71 of 1992, filed by present Respondent No.1 and is Respondent No.7 in the present Proceeding [since Deceased, represented by the Legal Heirs]. The Respondent No.1 [the “**First Purchaser**”] (as per Plaintiff) averred that the General Power of Attorney in favour of the above Attorney is of 26.07.1978, duly registered [Copy whereof produced in the evidence as Exhibit 76-F]. Total sale consideration was agreed to be Rs.98,750/- (rupees ninety eight thousand seven hundred fifty only), wherefrom Rs.50,000/- (rupees fifty thousand only) was paid to the Attorney Inam Ali in cash, acknowledged in the Sale Agreement dated 2nd March 1989 [produced in the evidence as **Exhibit 76-A**]-the **Subject Agreement**; remaining balance of Rs.48,750/- was payable in two installments of Rupees Fifteen Thousand each in following two years, and last payment of Rs.18750/- at the time of registration of Sale Deed. Averred that constructed a Water Course by contributing towards its cost of construction and the possession of the Subject Land was also handed over to him. Despite many reminders, the present Applicants [the “**Original Owners**”] did not finalize the sale transaction. The Respondent No.1 [Plaintiff] was approached by Defendants No.3 to 6 [M/s Ahmed Bux, Niaz Hussain and Ghulam Sarwar]-the **Subsequent Purchasers**, who are present Applicants No.3, 4 and 5, who informed the Respondent No.1—the First Purchaser that they had purchased the Subject Land from the Original Owners and demanded crop share from the First Purchaser. In this regard, it is alleged that through registered Sale Deeds dated 23.5.1989 and 02.08.1989 the Subject Land were sold to the Subsequent Purchasers

{Copies produced in the evidence as Exhibits 93-D and 93-E by the above named Attorney}, of which the First Purchaser / Plaintiff has sought cancellation.

4. In the Written Statement, the transaction is denied, but the status of Inam Ali [Attorney] is not disputed. Averred in the joint Written Statement filed by the Original Owners and Applicant No.5 [one of the Subsequent Purchasers], that the Subject Agreement is a forged one. Disputed that any Water Course was jointly built by the First Purchaser and the Original Owners. Claimed that it is well within knowledge of the First Purchaser / Respondent No 1 [Plaintiff] that the Subject Land was already sold to the Subsequent Purchasers through the registered Sale Deeds [*supra*], whereafter, entries in the record of rights were effected in favour of Subsequent Purchasers. The total sale price paid by the Subsequent Purchasers to the Original Owners is Rs.2,90,000/-.Both the registered Sale Deeds are prior in time to the alleged Subject Agreement relied upon by the Respondent No.1.

5. From the pleadings of the Parties, following Issues were framed by learned Trial Court.

- 1. Whether the defendants No.1 and 2 entered into contract through their attorney defendant No.5 to sell the land in dispute to Plaintiffs for total consideration of Rs.98,750/- and received Rs.50,000/- towards part payment of sale consideration?*
- 2. Whether the sale agreement was executed by defendant No.8 and bears his genuine signature?*
- 3. Whether sale agreement is forged and fabricated documents?*
- 4. Whether defendants had agreed to receive balance sale consideration amount in installments?*

5. *Whether plaintiffs are in possession of land in dispute in written sale agreement?*
6. *Whether defendants are in possession of land in dispute in pursuance of Registered Sale deed executed by defendant No.8 in their favour as attorney of defendants No.1 and 2?*
7. *Whether the sales of land made by defendants No.1 and 2 through defendant No.8 are illegal, void at law, in effective and pass no title in favour of defendant No.3 to 6?*
8. *Whether suit for plaintiff is under valued and proper Court fee stamps is not paid?*
9. *Whether cause of action has accrued to plaintiffs to file the present suit ?*
10. *What should the decree be?*

6. Barrister Jawad Ahmed Qureshi along with Mr. Usama Yousuf Parhyar, Advocate [representing the Applicants] have argued, *inter alia*, that the impugned Appellate Decision is contrary to the principle laid down through various judicial pronouncements about non-examination of second marginal witness, besides, the impugned Judgment is a result of misreading of the evidence, thus, is liable to be set at naught.

7. Whereas, M/s Jaleel Ahmed Soomro and Syed Jan Muhammad Bukhari [for the private Respondents] supported the impugned Judgment and requested for dismissal of this Revision Petition; it is pointed out that there are two Orders of 23.09.2014 and 11.04.2017 about maintainability of the present Revision, because a Second Appeal should have been filed by the Applicants and thus this Revision is not maintainable. In support of his arguments, he has cited the following Case Law_

- i. **2020 C L C 583**
[Province of Sindh, through Secretary and 4 others *versus* Hoat Ali];

- ii. **1993S C M R1955**
[*Sheikh Faqir Muhammad versus Muhammad Din*];
- iii. **2022S C M R 616**
[*Dost Muhammad versus Mian Riaz Hussain and others*] – **Mian Riaz Case**; and
- iv. **2024Y L R 871**
[*Allah Bakhsh versus Ghulam Mustafa and another*] – **Allah Bakhsh Case**.

8. Arguments heard and Record Perused.

9. The question of maintainability can be decided after considering the evidence because it is an old *Lis* of year 1996.

10. Summary of Case Law cited by counsel for Respondent No.1 is that revisional jurisdiction of this Court is limited in scope, *inter alia*, can be exercised only when the Subordinate Courts have either exceeded or did not properly exercise the jurisdiction. The applicant [of the reported Judgment] had to file a Second Appeal under Section 100 of CPC [Civil Procedure Code], which was not filed and since the available remedy was not exhausted within the timeframe, therefore, Civil Revision Application is held to be not maintainable. Revision can only be preferred to the High Court in cases where no Second Appeal is provided, otherwise the Revision will not be maintainable. The **Mian Riaz Case** [*supra*] relates to the dispute of Specific Performance. Facts are quite similar to the present *Lis*, where the Defendants / Applicants have denied the sale transaction with Respondent No.1 [plaintiff of the reported Judgment] and states that the Agreement is a bogus one, *whereas*, other Respondents are claiming the status of *bona fide* Purchaser for value without notice. Since the Plaintiff / Respondent produced the marginal witnesses as well as petition writer and all corroborated the testimony of plaintiff as purchaser, whose evidence was not shaken in the cross-examination, as against that of the Appellant [defendant], thus the appeal was dismissed by the Honourable Supreme Court and the Decree for Specific Performance was maintained in favour of

respondent No.1 [of the reported Case]; however, it is necessary to mention, that the rights and interest of other Respondents, who have invoked the doctrine of *bona fide* purchaser for value without notice, has been accepted, on the basis of the record and to that extent the Suit of respondent was dismissed. In Allah Bakhsh case [*ibid*], the learned Lahore High Court, while agreeing with the findings of learned First Appellate Court to Decree the Specific Performance Suit, has discussed the effect of non-appearance of second marginal witness in terms of Article 17 of the Qanun-e-Shahdat Order, 1984 [**“Evidence Law”**]. The second marginal witness [in the reported case] of the agreement could not give evidence because he was residing in the United States of America [**USA**]. The learned High Court is of the view, that in presence of overwhelming evidence, including that of Notary Public regarding attestation of agreement, goes unshattered, one of the marginal witnesses gave a detailed testimony, not contradicted as such in the cross-examination, in these circumstances, it was decided that in the absence of second witness who is unable to give evidence would not be fatal to the case of purchaser.

11. Testimony of Respondent No.1 as Plaintiff is at *page-125* of the present *Lis* record. Deposed in support of his Plaint. Produced, *inter alia*, the following documents_

- i. Agreement of Sale [the **Subject Agreement**] of the Subject Land – Exhibit 76/A;
- ii. Mutation Entry in favour of above named Original Owners – Exhibit 76/B;
- iii. Extract of Form VII-B, showing that subject land has been mutated in the names of Ghulam Sarwar, Mureed Ali and Muhabat Ali – Applicants No.3, 4, 5 and 6 – Exhibit 76-B and Exhibit 76/C;

- iv. General Power of Attorney in favour of Inam Ali [Attorney of the Original Owners] – Exhibit 76/F; and

12. Stance of the Respondent No.1 / First Purchaser, about possession of the land as he produced receipts for dhal payment, is contradicted in his cross-examination, when he stated that Exhibit 76-H-3 and 4 pertained to his own land, *whereas*, Exhibit 76-H-5 and 6 paid on behalf of Central Government as the land belonged to the Government at the relevant time. Also acknowledged the fact that one land owner / khatedar can pay revenue assessment on behalf of the other. Admitted the fact that Exhibit 76-B and C [produced by the Respondent No.1 / First Purchaser] show that the Subject Land was sold to the Subsequent Purchasers. Admitted that he does not have any share in Survey No.164. Admitted that the above Attorney registered a criminal case against him [present Respondent No.1] and the two witnesses [Hamzo and Bachal, both sons in law of Respondent No.1] for forging the Signatures, and the case is *sub judice* and they are on bail. **Admitted** that no receipt was taken from the Attorney [above named Inam Ali], when the alleged advance payment was made in cash. Acknowledged that the Respondent No.1 has a Bank Account, but payment was made in cash. Admitted that said Attorney [Inam Ali] sold out the Subject Land “to Sarwar and his brother prior to the sale of suit land to me” and delivered the possession. This is an admission that the Subject Land was sold to the Subsequent Purchasers along with the delivery of possession.

13. Hamzo, one of the marginal witnesses of the subject Sale Agreement [Exhibit 76-H] deposed and corroborated the evidence of Respondent No.1. Has acknowledged that he has been brought to the Court by the Respondent No.1 without receiving the summons. Denied that the Subject Land has been sold out to present Applicants No.3 to 6 and the possession is also handed over, *whereas*, this very reply is contradictory to the testimony of

Respondent No.1 [*supra*], when he admitted the fact about sale of the Lands to the present Applicants No.3 to 6.

14. Bachal, the other Marginal Witness of the Subject Agreement, did not appear, instead one Hassan [brother of the above Witness Hamzo] testified. In his examination-in-chief, he has corroborated the stance of Plaintiff / Respondent No.1, *whereas*, in his cross-examination, his testimony was disproved, when he failed to answer any question, most importantly, the time of the alleged sale transaction.

15. Evidence of Muhammad Bux [Exhibit No.54] has to be discarded, because he has clearly admitted that he is deposing because of his relationship with Respondent No.1. He did not see the record of the subject land but had heard about it. This evidence being hearsay, cannot be accepted.

16. Inam Ali, predecessor-in-interest of present Applicant No.7 testified on behalf of the Original Owners [Sellers] / Applicants No.1 and 2 [Mateen Khan and Mst. Asghari]. Testified in detail about the Subject Sale Transaction with the Subsequent Purchasers [*supra*] through Sale Agreements and Receipts. Exhibits 93/A, 93-B and C. Registered Sale Deeds, produced in the evidence as Exhibits 93-D and E, dated 02.08.1989, 24.05.1989, respectively. Total sale consideration paid was Rs.290,000/-. Possession was handed over to the above Purchasers. Has categorically denied that executed any Sale Agreement with Respondent No.1 / First Purchaser, neither any possession was handed over to him. Has denied his signature on the Exhibit 76-A [the Subject Sale Agreement, *ibid*]; stated that it is a forged Agreement and he filed a complaint against all three, viz. Respondent No.1 [Muhammad Ishaque] and his two purported witnesses, namely, Bachal and Hamzo.

In his cross-examination, he remained consistent about not entering into any Sale Agreement or transaction with Respondent No.1 [Muhammad Ishaque] in respect of the subject land. Denied his possession, when it was suggested to him during cross-examination. His material assertions about the sale transaction in question could not be impeached during cross examination.

17. **Applicant No.5** – Ghulam Sarwar [Subsequent Purchaser] has testified for self and on behalf of other Co-Purchasers. Has explained the entire sale transaction amongst the Applicants *inter se* [Original Owners and Subsequent Purchasers]. Reiterated that Plaintiff forged the Subject Sale Agreement [Exhibit 76-A, *ibid*] in collusion with Hamzo and Bachal. Stated that possession is [was] with the Subsequent Purchasers [present Applicants 3 to 6]. Produced **Mukhtiarkar Certificate** and Certified Copy of the record of rights in their favour as Exhibits 94-B and C. Stated that it was in the knowledge of Respondent No.1 that the Applicants / Subsequent Purchasers purchased the land from the above named Attorney Inam Ali. **Denied the suggestion** in cross-examination that Sale Deeds in respect of the Subject Land were secretly executed amongst Applicants *inter se*, being Sellers and Purchasers, in order to deprive the Respondent No.1 of his right to claim pre-emption. Has denied the suggestion about having knowledge of the sale transaction of Respondent No.1 with the Original Owners. Denied that Respondent No.1 is in possession of the Subject Land. The overall cross-examination is in conformity with his examination-in-chief and the evidence has not been disproved, as no apparent contradiction has surfaced.

18. Ali Gohar appeared as witness No.4 on behalf of the Applicants. Corroborated the evidence of the Applicants' witnesses. In his cross-examination, he has mentioned in detail that which portion of Survey

No.177 is in possession of Applicants and Respondent No.1 [because undisputedly, Respondent No.1 is a co-sharer in Survey No.177]. No contradiction appeared during cross-examination.

19. The Appellate Court has not framed the Points for determination, to show that it has applied its independent judicial mind to the facts, testimonies and the record of the *LIS*, but handed down the impugned Decision on the Issues framed by the learned Trial Court. Even if this requirement is condoned, the Appellate Court being the Court of final facts has not appreciated the evidence correctly. It has overlooked the Judgments of the Superior Courts with regard to non-production of the second Marginal Witness of an agreement. None of the factors mentioned in Article 79 of the Qanun-e-Shahadat Order, 1984, were present in the case, which can condone the non-examining of second purported attesting witness of the Subject Agreement in dispute, for instance, the second witness is not alive, or, living abroad [*as the evidence was recorded in the year 1995, when present Modern Devices for on-line Session were not available*] or any other judicially recognized incapability. The absence of an attesting witness can be condoned in terms of Article 80 of the above Law, which requires leading of further evidence by a Party seeking condonation that either witness has died or could not be found, which certainly is not done in the present case, because even the second attested / marginal witness of the Subject Agreement (Exhibits 76-A) was the son-in-law of Respondent No.1.

20. The Hon'ble Supreme Court in the reported Judgment handed down in the Case of *Sheikh Muhammad Muneer vs. Mst. Feezan (PLD 2021 Supreme Court 538)* has reiterated and elaborated on the proving of an Agreement in terms of Article 79 of the above Law. In the reported Judgment, the Petitioner was seeking specific performance of an

Agreement and where the said Agreement was denied by the Defendants. The provisions of Articles 79 and 17 (1) and (2) of the Qanun-e-Shahadat Order, 1984, were incorporated from the point of Islamic Injunction and it was held that only attesting witness was produced, therefore, compliance of the above provisions was not made. While clarifying, that evidence of an ascribe cannot replace of a Marginal Witness.

21. Similarly, the claim and evidence of possession of present Respondent No.1, is also misread in the impugned Judgment, because admittedly the Respondent No.1 is co-owner of a portion of Survey No.177, and remaining portion whereof Owned by the Original Owners along with the other Survey Number [ibid] was sold out to the Subsequent Purchasers through the above Registered Sale Deeds. The testimony of the Attorney (Inam Ali) is discarded by the learned Appellate Court on the ground that the status of the Attorney is not disputed by the First Owners, **but at the same time, overlooking** the crucial and consistent testimonies of the said Attorney together with other Applicants, which stood the test of cross-examination, that the Subject Land was not sold to the Respondent No.1, but to the Applicants / Subsequent Purchasers.

22. The admission of Respondent No.1 (Purchaser) in his cross-examination that the Subject Land was sold to the Subsequent Purchasers prior to its sale to him (Respondent No.1), along with delivery of possession, is to be decided in favour of the Applicants / Subsequent Purchasers, and they will be protected under the doctrine of *bona fide purchaser for value without notice, inter alia*, because subsequently, the sale transaction amongst the Applicants, *inter se*, viz. Original Owners and Subsequent Purchasers, was finalized through the Registered Sale Deeds and Mutation was effected.

23. With regard to the assertion of Respondent No.1 (Plaintiff) that he was paying charges to the Officials, could not be proved, because he did not deny, when he was confronted with those Receipts, that they pertained to the other land.

24. The Court has inherent jurisdiction to convert the nature of proceedings, *particularly*, in view of the fact, when the evidence of the witnesses is on record and the matter is many decades old. In the cases of *Manager Jammu and Kashmir Property versus Khuda Yar* [P L D 1975 Supreme Court 768] and *Muhammad Yousuf versus Mst. Kharian Bibi* [1995 S C M R 784], the Honourable Supreme Court has ruled that revisional jurisdiction under Section 115 of CPC is akin to *Certiorari*, and there is no strict rule that if other remedy is available, High Court cannot exercise revisional jurisdiction. In Yousuf case [*supra*] the Honourable Supreme Court maintained the Decision of the Lahore High Court for converting the Second Appeal to a Revision Petition, further elucidating that this can be done even on a verbal prayer made by the Party concerned. Conclusion is that filing of Revision Petition instead of Second Appeal would not be a fatal error but rectifiable, in particular, when the conclusion of the evidence has shattered the Claim of a Plaintiff [in the instant case, the present Respondent No.1], relating to the proprietary rights and interest of the opposite side, based on the registered documents [which remained intact with no adverse finding] and the mutation entries.

25. In view of the above discussion, Case Law cited by the learned Counsel for the Respondents is clearly distinguishable, *inter alia*, in view of the above mentioned Case Law of the Hon'ble Supreme Court and the relevant Case Law regarding *bona fide* purchaser of this Court reported in **2025 CLC 40** (*Haji and another vs. Shabbir Ahmed and others*).

26. The conclusion is that the Appellate Court has unlawfully exercised its jurisdiction and the impugned Judgment is violative of the Decisions and principle laid down by the Superior Courts in such nature of Cases; therefore, it is set-aside and the Judgment and Decree of the learned Trial Court is restored.

JUDGE

Karachi.

Dated: 19.08.2025.

Riaz / P.S.