

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT
LARKANA**

Civil Revision No. S-116 of 2021

Applicants : Mst. Shahjahan and others *through* Mr. Ajmair Ali Bhutto, Advocate.

Respondents : Mst. Farah and others *through* Mr. Nadeem Ahmed Khoso, Advocate and Mr. Shehryar Imdad Awan, Assistant Advocate General Sindh.

Date of Hearing : 04.09.2025.

Date of Decision : 11.09.2025.

JUDGMENT

Ali Haider 'Ada'.J:- Through this Civil Revision, the applicants have challenged the judgment and decree dated 09.12.2020, passed by the learned Senior Civil Judge-I, Jacobabad (the trial Court) in F.C. Suit No. 152 of 2017, filed by the respondent, Mst. Farah. The applicants had earlier assailed the same judgment and decree before the appellate Court; however, the learned Additional District Judge-II, Jacobabad, while acting as the appellate Court, upheld the findings of the trial Court and dismissed the applicants' appeal. Aggrieved by the concurrent findings of the Courts below, the applicants have now preferred the present Civil Revision.

2. The concise facts of the case are that Respondent No.1 filed a civil suit before the learned trial court, seeking a declaration, partition, possession, and permanent injunction against the applicants, who were cited as defendants in the said suit. It is pertinent to note that all parties are siblings, and one of the defendants is the mother of Respondent No.1 as well as the other applicants. The plea of Respondent No.1 before the trial court was that their father, Din Muhammad, passed away in the year 2001, leaving behind the applicants and herself as his legal heirs. He left the immovable properties: City Survey No. 643/2/1 (105-5 square yards), City Survey No.645 (39-1 square yards), City Survey No. 645/A (8-6 square yards), all situated at Dongar Mohallah, Jacobabad, City Survey No. 608/2 (161-6 square yards), situated at Gharibabad Mohallah, Jacobabad. According to Respondent No.1, the record of rights had not yet been mutated in the names of the legal heirs, and the name of the deceased father was still intact in the

official records of the suit properties. Being one of the daughters, she claimed possession of her rightful share through partition, claiming that the properties were currently under the exclusive possession and control of Defendant Nos. 1 and 2 (i.e., Applicant Nos. 2 and 3).

3. Upon issuance of notices, written statements were filed by the applicants. They admitted that the suit properties were originally inherited from the deceased father; however, they contended that after the death of Din Muhammad, all the legal heirs including Respondent No.1 had sold their respective shares to one Muhammad Bilal, who is the son of Rasool Bakhsh (one of the applicants/defendants), and therefore the nephew of Respondent No.1. Muhammad Bilal, who was also impleaded as a defendant in the trial proceedings, took the plea that on 15.06.2015, all legal heirs of Din Muhammad, including the plaintiff (Respondent No.1), had executed an agreement to sell the suit properties in his favour, and had received the full sale consideration. Therefore, the claim for partition and possession was alleged to be baseless and without merit.

4. On such account, the learned trial court framed the following issues for determination:

Whether the suit of plaintiff is not maintainable under the law?

Whether the plaintiff is co-sharer of suit property viz: CS No. 643/2/1 Ward No.3 area 105-5 square yards, CS No. 645 Ward No.3 admeasuring 39-1square yards, CS No.645/A Ward No.3 admeasuring 161-6 square yards, situated in Gharibabad Mohallah Jacobabad all consisting of four houses entered in the name of Din Muhammad Lashari, being the L.R (daughter) of Din Muhammad (the previous owner)?

Whether the plaintiff has sold out her share of property vide sale agreement dated 15-6-2015 to defendant No.11 Muhammad Bilal Rasool and has obtained her share from sale consideration?

Whether the plaintiff is entitled to the relief claimed?

What should the decree be?

5. After framing of issues, both parties were afforded the opportunity to lead their respective evidence. On behalf of Respondent No.1 (the plaintiff), her attorney Dr. Muhammad Afzal Khan (who is also her husband) appeared in the witness box. He produced the title documents of the suit properties, the heirship certificate, and the alleged agreement to sell. Thereafter, the applicants/defendants led their evidence. Defendant Rasool Bakhsh (father of Defendant Muhammad Bilal) was examined, along with Faiz Muhammad and Mehboob, who were produced as attesting witnesses

to the alleged agreement to sell. Subsequently, on behalf of Muhammad Bilal, one attorney namely Mehar Ali was also examined.

6. After recording the evidence and hearing the arguments of both sides, the learned trial Court proceeded to pass judgment in favour of Respondent No.1 (the plaintiff). A preliminary decree was passed, directing the partition of the suit properties as per the legal entitlements of the parties. Aggrieved by the said judgment and decree, the applicants preferred an appeal before the learned appellate Court; however, the same was dismissed and the findings of the trial Court were upheld. Hence, the applicants have filed the present Civil Revision, challenging the concurrent findings of the courts below.

7. Learned counsel for the applicants contended that there is no dispute regarding the ownership of the suit properties originally standing in the name of Din Muhammad (father of the applicants and Respondent No.1). However, the core contention is that after the demise of Din Muhammad, all his legal heirs, including his widow (the mother of the parties), sold the properties to Muhammad Bilal through an agreement to sell executed in the year 2015. It was further argued that the said agreement to sell has never been challenged by Respondent No.1, as no suit for cancellation of the same was ever filed. Even the learned trial Court did not frame any specific issue regarding the cancellation of the agreement to sell. Counsel emphasized that, except for Respondent No.1, all other legal heirs have admitted to having sold their shares in the suit properties to Muhammad Bilal. He further submitted that prior to 2015, the properties were under the possession of the applicants, and following the sale, the possession was transferred to Muhammad Bilal. It was therefore contended that Respondent No.1's claim is mala fide and devoid of merit. Regarding the appellate proceedings, learned counsel argued that the judgment passed by the learned appellate Court suffered from non-compliance with the mandatory provisions of Order XLI Rule 31 of the Code of Civil Procedure (CPC), as it lacked proper reasoning and issue-wise findings. In support of his contentions, learned counsel placed reliance upon the cases as reported in 2020 YLR 871, 2021 CLC 1987, 2021 CLC 2011, PLD 2021 Lahore 533, 2021 SCMR 829, 2020 SCMR 832, 2021 SCMR 305.

8. On the other hand, learned counsel for Respondent No.1 submitted that the suit properties are still intact in the name of the deceased Din

Muhammad. The applicants' claim that the properties were sold to Muhammad Bilal in 2015 is not supported by any valid legal documentation or subsequent action particularly the absence of any mutation or transfer of title in favour of Muhammad Bilal. It was argued that the reason for non-mutation is that no genuine sale took place; rather, the alleged agreement to sell was a fabricated attempt to deprive Respondent No.1 of her legal share. Learned counsel contended that the fact that other legal heirs are supporting Muhammad Bilal does not carry legal weight, especially when the Respondent No.1, as a legal heir, has not received any sale consideration nor voluntarily relinquished her share. It was further submitted that the evidence of the attesting witnesses of the agreement to sell was inconsistent. Moreover, the agreement itself is defective, as it does not even mention the name of the purported purchaser, thereby rendering the entire transaction suspicious and lacking legal validity. Learned counsel argued that the story of the sale was concocted with the intention to usurp the share of Respondent No.1, and that there exists neither binding sale agreement nor any payment ever made to her. He thus supported the judgment and decree of both the learned trial and appellate courts.

9. The learned Assistant Advocate General submitted that the matter in dispute is a purely private one between the parties, and no government interest is involved. On merits, he submitted that no one can be deprived of their legal share in inheritance. Furthermore, it was pointed out that no suit for specific performance of the alleged agreement to sell was ever filed by the applicants, particularly Muhammad Bilal, even after Respondent No.1 explicitly denied the transaction in her pleadings and evidence.

10. Arguments of the learned counsel for the parties were heard, and the record was perused with due care and caution.

11. First of all, it is important to consider the fact that the civil suit was filed in the year 2017. The claim of the applicants/defendants is that, in the year 2015, one of the defendants, namely Muhammad Bilal, purchased the properties from all the co-sharers/co-owners/legal heirs of the deceased father. However, when this claim was denied by one of the legal heirs or co-sharers, the appropriate course of action under the law was to file a suit for specific performance. Despite this legal remedy being available, the applicants/defendants failed to initiate such proceedings within the prescribed time period. Instead, they chose to remain silent and inactive. It is

a well-established principle of law that "*the law assists the vigilant, not those who sleep on their rights.*" Therefore, once the claim was denied by a co-owner, the applicants were under a legal obligation to approach the competent court and assert their claim against Respondent No. 1 / Plaintiff. Their failure to do so raises serious questions about the credibility and maintainability of their present stance. This inaction reflects gross negligence and demonstrates a lack of bona fide intent, especially in matters relating to partition of joint property and enforcement of alleged sale agreements. Accordingly, the benefit of any equitable relief cannot be extended to those who have failed to act within the legal framework and prescribed time limits.

12. Another important aspect that comes to light is the plea of the applicants that Muhammad Bilal purchased the properties from all the co-sharers in the year 2015. If that is indeed the case, then the question arises: why have they not mutated the record of rights in his favour to date? Even if they claim that Respondent No. 1 (the plaintiff) did not agree to the sale, what prevented the remaining co-sharers from executing a registered sale deed in favour of the alleged purchaser for their respective shares? No such step was taken, nor was any application made for mutation based on the alleged transaction. This inaction casts serious doubt on the genuineness and bona fides of the applicants' claim. If a valid and lawful sale had truly occurred in 2015, it would have been duly reflected in the revenue record and appropriate legal formalities such as registration of the sale deed and mutation would have been completed. The absence of these essential steps undermines the credibility of their claim.

13. If, the depositions of the applicants'/defendants' side are carefully perused as recorded before the learned trial Court, it becomes evident that the reliability of their version is highly questionable. One of the defendants, Rasool Bakhsh, deposed that an agreement to sell was executed in Karachi, and that Respondent No.1 (the plaintiff) received the sale consideration in the presence of witnesses and even in the presence of her husband, who is said to be her duly appointed attorney. However, significantly, the said attorney who also appeared as a witness did not affirm or corroborate the version put forth by Rasool Bakhsh. Moreover, one of the alleged witnesses to the agreement to sell deposed that he had no knowledge about where the agreement was drafted, which further undermines the authenticity of the transaction. In addition, although the defendants claim that the agreement to sell was attested by a Justice of Peace in Karachi, mere attestation does not

establish the valid execution or consent of all co-sharers, especially in the absence of independent and consistent corroborative evidence. The overall evidence presented by the defendants/applicants lacks coherence, consistency, and legal reliability. The contradictions between the statements of key witnesses cast serious doubt on the genuineness of the agreement to sell and reflect an attempt to create a false narrative.

14. The applicants have failed to satisfy the Court regarding the exclusive title claimed by one of the applicants/defendants, namely Muhammad Bilal, solely on the basis of the agreement to sell. Such a document, especially where doubts arise about its genuineness, cannot confer any proprietary right or ownership. It is a well-established legal principle that an agreement to sell does not create any title over the property; it does not confer ownership of the land. Consequently, a person in whose favour such an agreement is executed cannot claim a decree of title. Even if the agreement includes an acknowledgment of receipt of earnest money or partial payment, it merely grants a right to seek execution of another document, the sale deed. Until the sale deed is duly executed and registered, and the title formally transferred. In support of this principle, reliance can be placed on the decision in **Muhammad Israr vs Jehanzeb and others (2025 SCMR 841)**. Similarly, in **Muhammad Iqbal and others vs Nasrullah (2023 SCMR 273)**. Therefore, the claim based solely on the alleged agreement to sell, especially when its authenticity is disputed, cannot succeed.

15. It is, unfortunately, a common occurrence in society that females are often deprived of their rightful inheritance. In the present case, the father of the parties passed away in 2001. It was only when the daughter/sister of the applicants sought her lawful share in the inheritance that the applicants suddenly raised the plea that she had sold her share. The right of inheritance of vulnerable members of society, including females, is a fundamental right that must be protected. Islamic law (Shariah) and statutory provisions clearly guarantee inheritance rights, and any attempt to deprive legal heirs of what is rightfully theirs must be viewed with strict scrutiny. Regrettably, a disturbing practice has developed where parties, in defiance of Shariah and the law, resort to nefarious and frivolous pleas to deprive rightful heirs of their shares. This calls for the Courts to vigilantly safeguard the inheritance rights of women and other vulnerable heirs. In this context, reliance is placed on the judgment of the Honorable Supreme Court in **Tanvir Sarfraz Khan vs Federation of Pakistan (2025 SCMR 98)**, where it was underscored that the

rights of vulnerable heirs, especially females, must be zealously protected against any unlawful encroachments.

16. On this aspect, since the applicants have completely failed to establish any circumstance in their favour or produce any reliable evidence, mere production of a document cannot affect the rightful claim of the plaintiff, whose existence as a legal heir is undisputed. Therefore, no interference is warranted in the judgment and decree passed by the learned trial Court as well by Appellate Court. Accordingly, this Civil Revision is hereby dismissed with no order as to costs, along with the listed applications.

JUDGE