

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Civil Revision Application No.S-57 of 2020

(Abdul Hameed & Ors Vs. Mst. Hakim Zadi (deceased) through her LRs & Ors)

Applicants : Abdul Hameed and others, *through*
Mr. Shakeel Ahmed S. Abro, Advocate.

Respondents : Mst. Hakim Zadi (Deceased) through
her LRs & others *through* Mr. Ghayoor
Abbas M. Shahani, Advocate.

Dates of Hearings : 28.08.2025, 01.09.2025, 15.09.2025.

Date of Decision : 15.09.2025.

Date of Reason : 19.09.2025.

JUDGMENT

Ali Haider 'Ada'.J:- Through this Civil Revision Application, the applicants have challenged the judgment and decree dated 06.05.2020 passed by the learned Additional District Judge-III, Larkana (Appellate Court), whereby the appeal filed by respondent No.1 was allowed. Consequently, the appellate court set aside the judgment and decree passed by the learned Senior Civil Judge-II, Larkana, (trial Court) through which the applicants' suit had been decreed. The applicants have, therefore, called into question the impugned judgment and decree of the appellate court through the present revision.

2. The present proceedings arise out of a second round of litigation. Prior to the institution of the civil suit by the applicants before the learned trial Court, respondent No.1, namely Mst. Hakim Zadi (now deceased), had earlier instituted Civil Suit No. 04 of 1987 before the learned Civil Judge, Ratodero, against the applicant party. In the said suit, respondent No.1 asserted that Qadir Bux, the father of the applicants, was the owner of a residential (Sikni) house (hereinafter referred to as the suit property), and that the same had been sold to her for a consideration of Rs. 3,000/-. It was further pleaded that a written agreement to that effect had been executed between the parties. However, the applicants were allegedly avoiding the

performance of the said contract. The applicants contested the said suit, and the learned Civil Judge Ratodero framed issues, the main issue being whether the agreement in question was valid and lawful. Upon conclusion of a full-fledged trial, the learned Civil Judge decreed the suit of respondent No.1 (Mst. Hakim Zadi) vide judgment and decree dated 27.03.1989.

3. The applicant party, being aggrieved by the judgment and decree dated 27.03.1989 passed in favour of respondent No.1 (Mst. Hakim Zadi), whereby her suit for specific performance was decreed, preferred Civil Appeal No. 74 of 1989 before the learned Additional District Judge-IV, Larkana. After hearing the parties, framing points for determination, and discussing the issues at length, the learned appellate court set aside the judgment and decree passed by the learned Civil Judge, Ratodero, and allowed the appeal vide judgment dated 01.03.1994.

4. Respondent No.1 (Mst. Hakim Zadi), being dissatisfied with the judgment and decree dated 01.03.1994 passed by the learned Additional District Judge-IV, Larkana in Civil Appeal No. 74 of 1989, preferred Civil Revision Application No. 140 of 1994 before this Court. Upon hearing the matter, this Court allowed the said revision and, vide judgment dated 03.02.2003, set aside the judgment and decree of the appellate court and restored and maintained the judgment and decree passed by the learned Civil Judge, Ratodero. As a result, respondent No.1 once again succeeded in establishing her claim for specific performance at the revisional stage. However, the litigation did not conclude there. The applicant party, being still aggrieved, filed Civil Appeal No. 1406 of 2005 before the Hon'ble Supreme Court of Pakistan, challenging the judgment passed by this Court as well as the judgment and decree of the learned Civil Judge, Ratodero. The Hon'ble Apex Court, after hearing the parties, was pleased to allow the appeal vide judgment dated 28.06.2010, whereby the judgment and decree passed by the learned Civil Judge, Ratodero, as well as the judgment of this Court in Civil Revision Application No. 140 of 1994, were set aside. Consequently, the judgment passed by the learned Additional District Judge-IV, Larkana in Civil Appeal No. 74 of 1989, was upheld and maintained.

5. As a result of the judgment passed by the Hon'ble Supreme Court, the claim of respondent No.1 regarding specific performance stood finally concluded and was rendered unsuccessful. The Hon'ble Apex Court, by maintaining the judgment and decree of the learned Appellate Court

(Additional District Judge-IV, Larkana), effectively set aside the relief earlier granted to respondent No.1, thereby bringing an end to her claim for specific performance.

6. Now, turning to the litigation initiated by the applicant party: the applicants have asserted their claim to ownership of the suit property on the basis of inheritance. In order to recover possession of the suit property, the applicants, as plaintiffs, instituted F.C. Suit No. 19 of 1999 (re-numbered as Suit No. 81 of 2013 and subsequently as Suit No. 48 of 2015) before the learned trial Court. The learned trial Court, after completing the necessary legal formalities and receiving the written statement from respondent No.1, framed the following issues:

Whether the plaintiffs inherited the house in suit from Qadir Bux their father?

Whether Qadir Bux entered into an agreement as alleged in W/S (written statement)? if so to what effect?

Whether Qadir Bux was owner of the house in suit?

Whether plaintiffs are entitled to got permission and compensation of Rs.500/- per month of the house in suit?

What should the decree be?

7. Thereafter, both parties adduced their respective evidence in support of their claims. Upon conclusion of the trial and after hearing the arguments advanced by the learned counsel for the parties, the learned Trial Court decreed the suit in favour of the applicants. The Court further directed the eviction of respondent No.1 from the suit property, ordered restoration of possession to the applicants, and also awarded mesne profits at the rate of Rs.300/- per month for a period of three years from the date of institution of the suit until delivery of vacant possession to the applicant.

8. The respondent side, being aggrieved by the judgment and decree passed by the learned trial Court in favour of the applicants, preferred an appeal before the learned Appellate Court. Upon hearing the matter, the learned Appellate Court set aside the judgment and decree of the trial Court. The applicants, being dissatisfied and aggrieved by the verdict of the Appellate Court, have now filed the instant Civil Revision Application before this Court.

9. Learned counsel for the applicants submitted that after the first round of litigation, respondent No.1 became unsuccessful before the Hon'ble Apex

Court, which held that respondent No.1 was not entitled to retain possession of the suit property on the basis of the alleged agreement to sell. Such verdict effectively discarded the validity of the agreement to sell. Furthermore, the applicant party, being the rightful owner of the suit property through inheritance, has been unjustly deprived of possession. The learned trial Court, therefore, rightly decreed the suit of the applicants. However, the learned Appellate Court, without properly considering these crucial aspects, erroneously allowed the appeal and set aside the decree of the trial Court. The decision of the Appellate Court is, thus, unsustainable in law. Accordingly, it is prayed that to maintain the decree passed by the trial Court and set aside the impugned judgment and decree of the Appellate Court.

10. On the other hand, learned counsel for the respondents contended that an agreement to sell was executed between Qadir Bux and the respondent party, whereby Qadir Bux sold the suit property to respondent No.1. Although the respondents were unsuccessful before the Hon'ble Apex Court, it is submitted that the Apex Court's decision primarily revolved around the limitation of the earlier suit. He further contended that in suit property there is also disputes concerning the description of the property. Therefore, the right to possession of the suit property has not been conclusively established in favour of the applicants. In support of this contention, reliance was placed upon the precedents: 1994 MLD 527, PLD 1954 Lahore 269, PLD 1963 Dacca 172, PLD 1970 BJ 5, 2005 CLC 83.

11. Heard the learned counsel for the parties and perused the material available on record.

12. First and foremost, it is imperative to consider the facts and legal position arising from the first round of litigation. Respondent No.1's claim was premised solely on possession of the suit property based on an agreement to sell executed with the predecessor of applicant party. According to respondent No.1, the predecessor of applicant party failed to perform the terms of this agreement, which led respondent No.1 to file a suit for specific performance of the contract. Initially, the suit was decreed in favour of respondent No.1 by the Court. However, the learned first Appellate Court, upon re-examination of the evidence and legal principles, set aside the decree passed by the Court. The Hon'ble Supreme Court

subsequently upheld the decision of the first Appellate Court, thus affirming that the claim of respondent No.1 could not be sustained.

13. This trial history clearly demonstrates that possession based on an agreement to sell, especially where such agreement has not been executed into a formal sale deed, cannot be the basis for conferring possessory or ownership rights. The law is well settled that an agreement to sell is not a title document and does not itself create any interest, ownership, or legal claim over the immovable property. It merely constitutes an executory contract, whereby one party agrees to sell and the other agrees to buy property at a future date, subject to the terms and conditions contained therein. Its purpose is limited to granting the right to execute a sale deed in the future. Support for these principles is found in the judgment of the Hon'ble Supreme Court in **Muhammad Iqbal and others vs. Nasarullah (2023 SCMR 273)**. In the present case, respondent No.1's claim to possession on the basis of the agreement to sell is devoid of legal merit and cannot be upheld. The possession of the suit property by the respondents on such grounds loses its legal efficacy and cannot be sustained under the law.

14. Now, with regard to the title of the applicants, it is significant to note that before the learned trial Court, in the written statement filed by respondents, the ownership of the applicants was expressly admitted. The ownership of the applicants has never been denied by the respondents, which constitutes an admission against their interest. When a party entitled to a declaration of ownership is admitted as such by the opposing party, the ownership documents in their favour cannot be rendered meaningless merely because possession is withheld. In this context, the applicants have been deprived of possession of the suit property despite their undisputed ownership. This deprivation appears to be solely on the basis of the respondent's claim founded on the agreement to sell, which, as discussed earlier, has lost its legal efficacy following adverse judicial pronouncements. Furthermore, the documents establishing ownership in favour of the applicants have not been challenged or disputed by the respondents. Therefore, the legal right of the applicants to restore possession of the suit property is well-founded and must be protected.

15. It is further observed that the respondents are currently in possession of the suit house; however, such possession cannot confer any legal right or

title upon them, nor will it benefit them in the present case. This possession, being without lawful authority, especially after the dismissal of the respondent's suit for declaration of title based on the agreement to sell, cannot be equated with ownership or lawful possession. The record of the case clearly establishes that the suit filed by the applicant party is grounded on ownership proof and pertains to the very same property boundaries as described in the present suit. This fact further corroborates the applicant party's rightful claim to possession and ownership of the suit property. In this context, reliance is placed upon the judgment of the Hon'ble Supreme Court in the case of **Amjad Ali and others vs. Anwar Shah and others (2025 SCMR 211)**, wherein it was held that:

The argument of the learned counsel for the respondents is that they are in possession of the suit house and the electricity consumption meter is also in their name will not bear any fruit for them and also will not affect the merits of the case. Such entries can never be termed as equivalent to ownership. The record of the case would further confirm the fact that the suit filed by the predecessor of respondents on the strength of adverse possession had the same boundaries, which have been given in the present suit of the petitioners. It is unacceptable that the predecessor of the respondents once claimed ownership of the suit house on the strength of adverse possession against the predecessor of petitioners and thereafter denies the title of his defendant by alleging a sale by some co-sharer in his favour through an unregistered sale deed and then the same has not been proved in accordance with the law. For what has been discussed above, we are clear in our mind that the predecessor of the petitioners was the owner of the suit house and after his death, the petitioners have stepped into his shoes. The status of the predecessor of the respondents was that of a tenant and thereafter, the present respondents have stepped into his shoes. The sale mutations, as discussed above, are of no help to them and their possession of the house, henceforth will not be less than a trespasser. The Trial Court had rightly granted a decree in favour of the petitioners whereas the findings in appeal and the civil revision are totally against the record and the law. Hence, instant petition is converted into appeal and allowed. Resultantly, the judgment and decree of the Peshawar High Court and the Appellate Court are hereby set aside and that of the Trial Court gets restored with costs throughout.

16. In the above backdrop, it is pertinent to emphasize that the mere passage of time or long possession by a party without lawful title or authority does not extinguish the ownership rights of the rightful owner. Illegal possession, no matter how prolonged, cannot confer title nor can it validate or legitimize the possession of an unlawful occupier. The doctrine of adverse possession or limitation does not apply unless all the essential legal conditions are fulfilled, including possession being hostile, continuous, and

under claim of right for the statutory period. The law is well settled that ownership is a substantive right, and possession without lawful authority, even if extended over a considerable period, cannot defeat or extinguish the title of the true owner. Such possession remains unlawful and is always subject to challenge by the owner, who retains the right to reclaim possession through appropriate legal remedies. Support is drawn from the cases of **Muhammad Zaman v. Nazir Ahmed and others (2003 CLC 1628)**, **Gulzar Hussain v. Muhammad Asif Nazir (2016 YLR 315)**, **Sultan Khan and another v. Muhammad Nawaz (deceased) through Legal heirs and others (2025 MLD 428)**. As a result, in the present matter, the prolonged possession of the respondents over the suit property, which is without lawful authority and after dismissal of their claim based on the agreement to sell, cannot prejudice or affect the ownership rights of the applicants, who are the admitted owners of the property. The applicants' right to possession and enjoyment of their property remains intact and enforceable.

17. In view of the facts and circumstances of the case, and after careful consideration of the foregoing reasons and discussion, this Court finds that the decree and judgment of the Appellate Court warrant interference under the scope of this Civil Revision Application. Accordingly, this Civil Revision Application is hereby allowed. The decree and judgment dated 06.05.2020, passed by the learned Additional District Judge-III, Larkana (Appellate Court) in Civil Appeal No. 33 of 2020, is set aside. The decree and judgment of the trial Court dated 11.05.2019 are maintained.

18. With the above terms, this Civil Revision Application stands disposed of along with all listed applications, with no order as to costs. These are the detailed reasons for the short order dated 15.09.2025.

JUDGE