

**ORDER SHEET****THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA**

Civil Rev. Appln No. S-49 of 2019

Applicant	Abdul Khalique Rind (In person)
Respondents	Raees Ali Akbar and others (called absent)
Official respondents	Through Mr. Abdul Waris Bhutto, Assistant Advocate General
Date of hearing	07-03-2025
Date of judgment	21-03-2025

**J U D G M E N T**

**Khalid Hussain Shahani, J.**- The applicant has sought the exercise of Revisional Jurisdiction of this Court to challenge the concurrent findings of the lower courts, wherein F.C. Suit No.02/2013 and Civil Appeal No.30/2019, instituted by the applicant, were dismissed by the learned Senior Civil Judge, Kambar, and subsequently by the II-Additional District Judge, Kambar.

**02.** The applicant, Abdul Khalique Rind, initiated a suit for Specific Performance of Contract and Permanent Injunction against private respondents No.1 and 2. It is asserted that respondent No.1 is/was the lawful owner of agricultural land comprising S. Nos.434, 438, 444, 430, 429, 440, 431, 442, 441, 372BA, and 372-2, situated in Deh Kurio Murad Ali, Taluka Kamber, District Kamber-Shahdadkot, admeasuring (32-38) acres. The applicant entered into a sale agreement with respondent No.1 on 16.06.2010, through agents of Nadi Ali Estate Agency for a total consideration of Rs.70,39,000/-. An advance payment of Rs.10,00,000/- was made via cheque in the presence of witnesses, and the agreement was duly attested by a notary public. The agreement outlined that a payment of Rs.25,19,500/- was to be made by 15.05.2011, upon which the Khata of (18-00) acres was to be mutated in favor of the applicant. The remaining amount of Rs.35,19,500/- was to be paid by 01.01.2012, after which the

remaining portion of land was to be transferred. Additionally, the agreement included terms pertaining to shared agricultural produce and financial penalties in the event of default. Subsequently, an addendum agreement was executed in March 2011, extending the final payment deadline to 01.01.2013. It is/was claim of the applicant that despite making partial payments amounting to Rs.40,00,000/-, respondent No.1 failed to execute the final transfer of ownership and took unlawful possession of the subject property. Efforts to resolve the matter through local authorities and legal petitions proved futile, as the courts classified the dispute as a civil matter. Consequently, the applicant sought judicial relief by way of a directive mandating the execution of a registered sale deed, a permanent injunction preventing the alienation of the disputed property, and an award of litigation costs.

**03.** Upon notice, official respondents No.03 and 04 failed to appear, resulting in their being declared ex-parte. Respondents No.01 and 02 submitted a written statement on 26.02.2013, wherein they contested the claims while conceding to the execution of the initial sale agreement. However, they denied its execution through the agents of Nadi Ali Estate Agency, asserting instead that it was executed in the presence of witnesses Muhammad Ali and Sharafuddin. They further acknowledged that Rs.10,00,000/- was paid as earnest money, with Rs.25,19,500/- due on 15.05.2011, out of the total remaining consideration of Rs.60,39,000/-. Upon payment of this amount, the Khata of (18-00) acres was to be mutated in favor of the applicant, while the balance of Rs.35,19,500/- was to be cleared by 01.01.2012, at which point the remaining land would be transferred to the applicant. It was mutually agreed that until the full payment was made, both the seller and purchaser would hold equal shares in the agricultural production. Respondent No.1 disputed that the agreement had been reduced to writing on 16.06.2010, asserting instead that it was executed in January 2011. Additionally, it was stated that after receiving Rs.40,00,000/-, including the earnest amount, Respondent No.1 cooperated with the applicant and granted him half Zameendari rights in compliance with the sale agreement. It was further claimed that Respondent No.1 was willing to execute the property registration in the presence of witnesses, but the applicant refused to proceed with the registration. Respondent No.1 specifically emphasized that as per paragraph 04 of

the plaint, the agreement stipulated that failure by the applicant to clear half the outstanding amount in 2011 and the remaining balance by January 2012 would result in a penalty of Rs.20,00,000/-, forfeiture of the earnest amount, and eviction of the applicant from the (18-00) acres of land. It was further contended that since the applicant had failed to fulfill the terms and conditions of the sale agreement, Respondent No.1 was under no legal obligation to perform his part of the contract.

**04.** Following a thorough trial and a comprehensive evaluation of the evidentiary record, the learned trial court dismissed the suit. Subsequently, upon an independent appraisal of the factual matrix and legal contentions, the appellate court affirmed the findings of the trial court and dismissed the appeal accordingly, as stated supra.

**05.** The applicant was initially represented by Mr. Tahir Shah, Advocate, who was later noted as absent. The applicant, being present in court, requested to be heard in person and sought consideration of the synopsis placed on the record. In compliance, the court allowed him to present his arguments. He contended that both the trial and appellate courts failed to properly appreciate the material facts and legal aspects of the case, leading to a miscarriage of justice. The applicant maintained that he had lawfully entered into a sale agreement that was legally enforceable, made part payments towards the agreed consideration, yet the respondent willfully failed to fulfill his contractual obligations. He asserted that he was unjustly denied access to the original agreement, which significantly hindered his ability to substantiate his claim. He further argued that the respondents continued to unlawfully retain possession of the disputed property. The applicant strongly emphasized that the lower courts erred in failing to apply the well-established principles enunciated by the Supreme Court of Pakistan concerning the enforcement of contractual obligations and the doctrine of equity in matters of specific performance.

**06.** The learned counsel for the respondent was also absent. Mr. Bhutto, Assistant Advocate General, appearing on behalf of the official respondents, endorsed the concurrent findings of the lower courts and supported the judgments rendered therein.

**07.** The record indicates that the applicant entered into an agreement of sale with Respondent No.1 for the purchase of the subject property at a consideration of Rs.70,39,000/-. As part payment, the applicant paid Rs.10,00,000/-, while the remaining amount was structured into two installments: Rs.25,19,500/- payable by 15-05-2011, upon which the Khata of (18-00) acres was to be mutated in his favor, and the balance amount of Rs.35,19,500/- to be paid by 01-01-2012, upon which the remaining portion of the property was to be transferred to him. The agreement also stipulated that failure to make the payment by January 2012 would result in the imposition of a fine of Rs.20,00,000/-, forfeiture of the earnest money, and the applicant vacating possession of the (18-00) acres of land. This condition is acknowledged by the applicant in paragraph 04 of the plaint. While the Respondent No.1, in the written statement, did not deny the execution of the initial sale agreement, he disputed the applicant's claim that it was executed through Nadi Ali Estate Agency and in the presence of the witnesses identified by the applicant. It is undisputed that the amount of Rs.25,19,500/-, as per the initial agreement, was due on 15-05-2011 for the mutation of the Khata, but this amount was not paid within the stipulated timeframe. The applicant contends that the original contract was later modified through a second agreement, extending the final payment deadline to 01-01-2013. Therefore, the burden was on the applicant to establish, firstly, the execution of the sale agreement dated 16.06.2010 through Nadi Ali Estate Agency and in the presence of witnesses Muhammad Ali Shabrani and Sharafuddin Chandio, and secondly, the validity of the subsequent sale agreement executed in March 2011.

**08.** To substantiate his claim, the applicant examined himself as Exhibit-46 and produced photocopies of the order dated 15-08-2012 passed in Constitutional Petition No.S-646/2012 Re(Muhammad Mureed V. SHO Kamber and others), along with a photocopy of the first page of an agreement purportedly dated 08th March 2011. However, the second page of the agreement was blank, and the third and fourth pages did not bear signatures of either party or the scribe. During cross-examination, the applicant admitted that the agreement did not mention that it had been executed at Nadi Ali Estate Agency through the agents Dhani Bux, Mukhtiar Ahmed, Ahmed Kori, and Ghulam Muhammad Khashkheli. He further

conceded that the defendant No.1 was fully prepared and willing to fulfill his contractual obligations; however, due to certain breaches of the agreement's terms by the applicant, the transaction could not be finalized. Additionally, he acknowledged that the agreement explicitly stipulated that failure to make the required payment within the prescribed period would result in a penalty of Rs.20,00,000/-, and as per the terms of the agreement, an outstanding amount of Rs.32,29,500/- remained unpaid. From the evidence presented, it is established that the agreement of sale was not executed at Nadi Ali Estate Agency through the named agents, as alleged by the applicant. Furthermore, Respondent No.1 demonstrated his willingness to perform his part of the contract; however, due to the applicant's failure to comply with the agreed terms and conditions, he became liable to pay the penalty of Rs.20,00,000/- for defaulting on the payment obligation, which was a condition precedent under the agreement.

**09.** To support his claim, the applicant presented his son, Nek Muhammad, as a witness at Exhibit-47. However, during cross-examination, Nek Muhammad conceded that he was not an attesting witness to the sale agreement. The applicant also examined Ali Gohar, a stamp vendor, at Exhibit-48. Ali Gohar testified that the original agreement remained in his possession. However, during cross-examination, he admitted that the second agreement was authored by him but did not meet the legal requirements for validity. Besides, he failed to produce any documentary evidence substantiating the existence or execution of the alleged agreement.

**10.** From the evidence presented on record, it is evident that the applicant did not examine the two attesting witnesses of the agreements of sale. Instead, he opted to examine his son, who was not an attesting witness. Consequently, the applicant failed to meet the evidentiary requirements stipulated under Articles 17 and 79 of the Qanun-e-Shahadat Order, 1984. For reference, the relevant provisions are reproduced hereunder:

**Article 17: Competence and Number of Witnesses—** (1) *The competence of a person to testify, and the number of witnesses required in any case shall be determined in accordance with the injunctions of Islam as laid down in the Holy Quran and Sunnah.*

(2) *Unless otherwise provided in any law relating to the enforcement of Hudood or any other special law:*

*(a) In matters pertaining to financial or future obligations, if reduced to writing, the instrument shall be attested by two men, or one man and two women, so that one may remind the other, if necessary, and evidence shall be led accordingly; and*

*(b) In all other matters, the court may accept, or act on, the testimony of one man or one woman or such other evidence as the circumstances of the case may warrant.*

**Article 79: Proof of Execution of a Document Required by Law to be Attested—** *If a document is required by law to be attested, it shall not be used as evidence unless at least two attesting witnesses have been called for the purpose of proving its execution, provided they are alive, subject to the process of the court, and capable of giving evidence.*

*Provided that it shall not be necessary to call an attesting witness to prove the execution of any document, other than a will, which has been registered in accordance with the provisions of the Registration Act, 1908 (XVI of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.*

**11.** Upon a thorough examination of the submissions and an extensive review of the evidentiary record, it is evident that the applicant has failed to produce the original sale agreement, thereby rendering the claim legally untenable. It is a well-established principle of law that documentary evidence must be presented in its original form unless exceptional circumstances justify the reliance on secondary evidence. The applicant's reliance on photocopies, without fulfilling the necessary legal requirements for admissibility under the Qanun-e-Shahadat Order, 1984, lacks evidentiary weight. Additionally, significant discrepancies in witness testimonies and inconsistencies in the documentary evidence cast serious doubt on the authenticity and enforceability of the purported agreement.

**12.** The plaintiff's failure to produce the original sale agreements has significantly weakened the claim. The burden of proof lies upon the party asserting a claim, and such a party must substantiate its case through credible and admissible evidence. The plaintiff's reliance on secondary evidence, without adhering to the requisite legal conditions prescribed under the Qanun-e-Shahadat Order, 1984, renders the claim legally untenable. Moreover, it is a well-established principle of law that a party cannot merely rely on highlighting deficiencies in the opponent's case; rather, it must independently establish its own claim through cogent and legally admissible evidence.

**13.** The legal framework governing the admissibility of documentary evidence necessitates the submission of primary evidence unless the exceptions outlined under Article 76(a) & (c) of the Qanoon-e-Shahadat Order, 1984, are met. Secondary evidence is admissible only in instances where the original document is demonstrably unavailable. However, in cases where the execution and subsequent loss of the original document remain unverified, secondary evidence lacks evidentiary weight.

**14.** The Supreme Court of Pakistan has reaffirmed this principle in *Nazir Hussain vs. Amjad Hussain* (2014 MLD 1100). Similarly, in *Syed Adnan Ashraf vs. Syed Azhar-ud-Din* (2014 MLD 342), the court held that when the authenticity of a document is contested and the original is not produced, a certified copy cannot be relied upon as evidence. Additionally, in *Hyderabad Development Authority vs. Abdul Majeed* (PLD 2002 SC 84), the Hon'ble Supreme Court ruled that the mere presentation of a document does not automatically confer evidentiary value unless its contents are established in accordance with the requirements for primary or secondary evidence under Articles 75 & 76 of the Qanoon-e-Shahadat Order, 1984.

**15.** These provisions outline the evidentiary principles regarding the authentication of documents. The submission of a photocopy, without proper verification through primary or legally recognized secondary evidence, holds no probative value. Furthermore, if a document is placed on record subject to its admissibility, yet no effort is made to establish its authenticity per Articles 75 & 76, such a document cannot be deemed admissible in evidence. The Supreme Court of Pakistan has consistently maintained that documentary evidence must adhere to legal standards, and unless a document's authenticity is conclusively proven, its mere presentation before the court does not suffice to establish its evidentiary worth.

**16.** It is a well-established legal principle that the mere production of photocopied copies of a sale agreement, without substantiating the existence and execution of the original document, lacks evidentiary weight and cannot be relied upon as conclusive proof. Additionally, in accordance with the evidentiary requirements set forth in Article 76 of the Qanoon-e-Shahadat Order, 1984, secondary evidence is admissible only in exceptional circumstances where the stipulated legal conditions are duly met and proven before the court. The

simple submission of a copy, without fulfilling these legal prerequisites, does not grant it any probative or evidentiary value in judicial proceedings.

**17.** In the present case, the applicant has neither pleaded nor provided any substantiating evidence regarding the loss or destruction of the original documents annexed with the plaint. Furthermore, no effort has been made to invoke the provisions of Articles 75 and 76 of the Qanoon-e-Shahadat Order, 1984, which prescribe the conditions for the admissibility of secondary evidence. In the absence of adherence to these legal prerequisites, and in view of the well-established jurisprudence of the Hon'ble Supreme Court of Pakistan, the suit lacks legal sustainability on this ground alone.

**18.** Considering the foregoing discussion and the legal principles established by the Hon'ble Supreme Court of Pakistan, there is no indication of misreading or non-reading of material evidence in the concurrent findings of the courts below. Furthermore, no jurisdictional defect or procedural irregularity has been identified that would justify interference under the Revisional Jurisdiction. The scope of Section 115 of the Code of Civil Procedure, 1908, is confined to addressing jurisdictional errors and misapplications of law, and no such legal infirmity has been established in the present case. Consequently, given the settled legal position and the absence of any extraordinary circumstances warranting intervention, the instant Civil Revision is dismissed along with all listed application(s). However, Respondent No.1 is directed to refund the earnest amount of Rs.40,00,000/- to the applicant in accordance with the judgment and decree dated 15-03-2019, passed by the learned Senior Civil Judge, Kamber.

**J U D G E**