

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

CP No.S-157 of 2026

Petitioner: Mst. Bushra and another through Mr.Muhammad Iqbal, Advocate.

Respondents No.1to18
and 22 to 25: None present.

Respondents No.19to21: Province of Sindh and others through Mr.Allah Bahcayo Soomro, Additional Advocate General Sindh

Date of hearing: 31.08.2026.

Date of decision: 31.08.2026.

ORDER

ZULFIQAR ALI SANGI, J: - The petitioners, through the instant Constitution Petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, have called in question the legality and propriety of the order dated 20.12.2025 passed by the learned IX-Additional District Judge/Model Civil Appellate Court, Hyderabad in Civil Revision Application No.192 of 2025, whereby the learned revisional Court set aside the order dated 20.10.2025 passed by the learned Senior Civil Judge-V, Hyderabad, and allowed the application filed by respondent No.25 under Section 12 (2), C.P.C., directing the learned trial Court to decide the said application afresh after recording evidence. The petitioners have also challenged the order dated 10.11.2025 whereby status quo in respect of the suit property was directed to be maintained.

2. The relevant facts, briefly stated, are that the petitioners/plaintiffs instituted F.C. Suit No.306 of 2019 seeking partition, separate possession, permanent injunction and mesne profits in respect of the suit properties. The suit was ultimately decreed vide judgment dated 21.09.2024, followed by decree dated 28.09.2024. Since the suit property was found incapable of partition by metes and bounds, the learned trial Court directed the Nazir to assess its prevailing market value and proceed with its sale through auction. In consequence thereof, the suit property was auctioned for a consideration of approximately Rs.90 million.

3. During the execution proceedings, respondent No.25, Ghulam Murtaza Keerio, came forward with an application under Section 12 (2), C.P.C., claiming that he had entered into an agreement to sell dated 09.03.2023 with defendant No.6, namely Ghulam Rasool Qureshi, during the pendency of the suit. It was alleged that substantial consideration had been paid and possession had been delivered to him. The respondent further alleged that the decree had been obtained through fraud, misrepresentation and concealment of material facts, and that he had been unlawfully excluded from the proceedings.

4. The learned Senior Civil Judge-V, Hyderabad, after examining the record and hearing the concerned parties, dismissed the application under Section 12 (2), C.P.C., vide order dated 20.10.2025. The learned trial Court, *inter alia*, observed that the alleged transaction relied upon by respondent No.25 had taken place during the pendency of the suit and, therefore, was hit by the doctrine of lis pendens embodied in Section 52 of the Transfer of Property Act, 1882. It was further observed that the alleged agreement to sell did not confer title upon respondent No.25 and that no cogent material had been produced to establish fraud, collusion, misrepresentation or concealment in obtaining the judgment and decree.

5. Feeling aggrieved, respondent No.25 preferred Civil Revision Application No.192 of 2025 before the learned IX-Additional District Judge, Hyderabad. The learned revisional Court, vide order dated 20.12.2025, set aside the order of the learned trial Court and allowed the application under Order XII Rule 2 CPC as stated in the impugned order, directing the trial Court to decide the application afresh after recording evidence. The learned revisional Court principally relied upon the allegations of respondent No.25 regarding his alleged possession and purchase of the property and the reports of the Commissioner dated 28.11.2024 and Director Land dated 22.11.2024.

6. Learned counsel for the petitioners contended that the impugned revisional order is wholly without jurisdiction, contrary to the record and the settled principles governing exercise of revisional jurisdiction under Section 115, C.P.C. It was argued that the learned trial Court had passed a well-reasoned order after considering the

material available on record and that the revisional Court, without identifying any jurisdictional defect, illegality or material irregularity, merely substituted its own view for that of the trial Court. It was further contended that the alleged agreement to sell was admittedly executed on 09.03.2023, almost four years after institution of the suit in 2019, and consequently respondent No.25 acquired no better right than his alleged vendor and remained bound by the eventual decree.

7. Conversely, learned A.A.G. Sindh contended that although respondent No.25 claimed an interest in the suit property under the agreement to sell dated 09.03.2023, the same was admittedly executed four years after institution of the suit in 2019; hence, the learned Senior Civil Judge-V, Hyderabad, rightly dismissed the application under Section 12(2) CPC. He further contended that the revisional jurisdiction under Section 115 CPC is confined to jurisdictional errors and material irregularity and does not extend to reappraisal of evidence or substitution of another possible view.

8. The respondent No.25 despite service has chosen to remain absent.

9. I have heard the learned counsel for the parties and have examined the available record with their assistance.

10. The first and foremost question requiring determination is whether the learned revisional Court, while exercising jurisdiction under Section 115, C.P.C., was justified in setting aside the order dated 20.10.2025 merely because it preferred a different view on the factual aspects of the matter.

11. It is settled law that revisional jurisdiction is materially narrower than appellate jurisdiction. The revisional Court does not ordinarily sit as a Court of appeal to reassess the entire evidence, substitute its own appreciation of facts or interfere merely because another view of the matter is possible. Interference under Section 115, C.P.C. is warranted where the subordinate Court has exercised a jurisdiction not vested in it by law, failed to exercise jurisdiction so vested, or acted in the exercise of its jurisdiction illegally or with material irregularity.

12. In the present case, the learned trial Court had jurisdiction to entertain and decide the application under Section 12 (2), C.P.C. The order dated 20.10.2025 demonstrates that the learned trial Court considered the nature of the applicant's claim, the alleged agreement to sell, the timing of the transaction, the pendency of the original suit and the absence of material establishing fraud or collusion. The learned revisional Court has not identified any jurisdictional defect in the order of the learned trial Court. Rather, it has reassessed the material and reached a different conclusion regarding the effect of the alleged transaction and the reports relied upon by respondent No.25. Such exercise, in my considered view, travels beyond the permissible limits of revisional jurisdiction. A revisional Court cannot convert its jurisdiction under Section 115, C.P.C. into appellate jurisdiction merely because it considers another interpretation of the facts or evidence to be preferable. The reliance placed by the learned revisional Court upon the reports of the Commissioner dated 28.11.2024 and Director Land dated 22.11.2024 also does not advance the case of respondent No.25 to the extent claimed. Even if such reports indicate that portions of the property had been dealt with or occupied by third parties, the same, by themselves, do not conclusively establish that respondent No.25 was the lawful purchaser or owner of the suit property, nor do they establish that the decree dated 28.09.2024 was procured through fraud, misrepresentation or concealment.

13. The jurisdiction under Section 12 (2), C.P.C. is exceptional in nature. A judgment or decree cannot be recalled merely upon making general or bald allegations of fraud. The person seeking relief under the said provision must establish the fraud, misrepresentation or want of jurisdiction which allegedly vitiated the judgment or decree. Fraud must be specifically pleaded and supported by material sufficient to demonstrate that the Court was deceived or that a material fact was deliberately concealed so as to obtain the judgment or decree. In the present case, respondent No.25 admittedly relies upon an agreement to sell dated 09.03.2023 allegedly executed by defendant No.6. The original suit, however, had already been instituted in the year 2019. Thus, the alleged transaction came into existence during the pendency of the litigation. The respondent has not placed on record any registered sale deed demonstrating transfer of title in his favour. An agreement to sell, by

itself, does not constitute a completed conveyance of title in immovable property.

14. More importantly, the alleged transaction is *prima facie* governed by the doctrine of lis pendens embodied in Section 52 of the Transfer of Property Act, 1882. The underlying principle is that during the pendency of litigation concerning immovable property, the subject property cannot be dealt with in a manner prejudicial to the rights ultimately determined by the Court. A transferee pendente lite takes the property subject to the result of the pending litigation and cannot claim a better position than that of his transferor. Consequently, respondent No.25, having allegedly entered into the transaction in 2023, whereas the suit had been instituted in 2019 and was pending adjudication, cannot legitimately contend that the subsequent transaction could defeat or override the rights which were being adjudicated in the pending suit. His alleged vendor, being a party to the litigation, could not convey a title free from the consequences of the pending proceedings.

15. As to the main stance of the respondent No.25 that he was not impleaded in the original suit also does not, by itself, render the decree fraudulent or void. The suit had already been instituted years before the alleged transaction. A person who subsequently claims to have acquired an interest in the property cannot ordinarily convert his subsequent transaction into a ground for impeaching an otherwise valid decree passed in proceedings instituted prior to his alleged purchase. Equally, the petitioners cannot be held responsible for not disclosing a private transaction allegedly entered into between defendant No.6 and respondent No.25 during the pendency of the suit, particularly when there is no material showing that the petitioners had actual knowledge of such transaction or that the alleged transaction had any legal effect upon the title and shares which were the subject matter of the original suit.

16. The maxim caveat emptor—let the buyer beware—also assumes significance in the circumstances of the case. A person proposing to acquire an interest in immovable property is expected to undertake due diligence regarding the title and the existence of pending litigation. Where the property is already the subject matter of a pending judicial proceeding, a subsequent purchaser/transferee cannot ordinarily claim ignorance of the legal consequences attaching

to the transaction. I am also unable to agree with the learned revisional Court that the mere assertion of possession and reliance upon the alleged agreement to sell necessarily required the decree itself to be disturbed under Section 12 (2), C.P.C. At the highest, such assertions may give rise to an independent dispute regarding the alleged transaction, but they do not, without more, establish that the judgment and decree in the original suit were obtained by fraud or misrepresentation.

17. The learned revisional Court has further observed that the claim of respondent No.25 required an in-depth inquiry and recording of evidence. However, before directing a fresh exercise of jurisdiction, it was incumbent upon the learned revisional Court to first demonstrate that the learned trial Court had committed a jurisdictional error, material irregularity or illegality in dismissing the application. No such jurisdictional defect has been identified in the impugned order. The distinction between an erroneous decision and an erroneous exercise of jurisdiction must be maintained. The former does not, by itself, justify interference in revision. The revisional jurisdiction cannot be invoked simply to obtain a second appraisal of factual material which has already been considered by the competent Court. The Supreme Court of Pakistan, in 2025 SCMR 2092, has reiterated the principle that where a lawful jurisdiction has been exercised by the trial Court, the revisional or constitutional Court cannot substitute its own view merely because it may have reached a different conclusion, unless the case falls within the parameters prescribed for revisional interference. The said principle squarely applies to the controversy before us.

18. I also find that the direction for maintaining status quo, passed without affording the petitioners a meaningful opportunity of hearing, suffers from an independent procedural infirmity. The principle of audi alteram partem is a fundamental component of natural justice and fair trial. An order adversely affecting the rights or enjoyment of property of a party should ordinarily not be passed without affording such party a reasonable and meaningful opportunity of hearing, particularly where execution of a decree has already proceeded to an advanced stage. Article 10-A of the Constitution reinforces the requirement of fair trial and due process. The right of hearing is not an empty formality; it requires a meaningful opportunity to present one's case. In the circumstances of

the present case, the impugned status quo order, insofar as it affects the petitioners' adjudicated rights and the execution proceedings, could not properly have been passed without compliance with the principles of natural justice. The fact that the decree dated 28.09.2024 had already attained finality and execution proceedings had commenced is another material circumstance which could not be lightly disregarded. The execution of a decree lawfully passed by a competent Court should not ordinarily be obstructed at the instance of a subsequent transferee on the basis of an unregistered/private agreement to sell, particularly where the alleged transaction was entered into during the pendency of the original litigation. It is, therefore, evident from the record that the learned trial Court had exercised its jurisdiction in accordance with law and had assigned cogent reasons for dismissing the application under Section 12 (2), C.P.C. The learned revisional Court, instead of confining itself to the jurisdictional parameters of Section 115, C.P.C., reassessed the factual controversy and substituted its own opinion for that of the learned trial Court. Such exercise cannot be sustained.

19. The observations made herein shall not prejudice any independent remedy which respondent No.25 may otherwise be entitled to pursue in accordance with law in respect of any separate claim arising out of the alleged agreement to sell. However, such alleged transaction cannot, in the circumstances of the present case, constitute a lawful basis for recalling or reopening the final judgment and decree on the ground of fraud under Section 12 (2), C.P.C. For the foregoing reasons, I am of the considered view that the impugned order dated 20.12.2025 passed by the learned IX-Additional District Judge/Model Civil Appellate Court, Hyderabad in Civil Revision Application No.192 of 2025 is not sustainable in law. Likewise, the consequential order dated 10.11.2025 directing maintenance of status quo, having been passed without affording the petitioners a meaningful opportunity of hearing and having the effect of obstructing the execution of the final decree, cannot be allowed to stand.

20. Accordingly, the instant Constitution Petition is **allowed**. The impugned order dated 20.12.2025 passed by the learned IX-Additional District Judge/Model Civil Appellate Court, Hyderabad in Civil Revision Application No.192 of 2025, as well as the consequential order dated 10.11.2025, are hereby **set aside**.

Consequently, the order dated 20.10.2025 passed by the learned Senior Civil Judge-V, Hyderabad, whereby the application under Section 12(2), C.P.C. was dismissed, is **restored**. The learned Executing Court shall proceed with the execution proceedings strictly in accordance with law, subject to any lawful order passed by a competent Court in any independent proceeding. Needless to observe that nothing contained in this order shall be construed as adjudication upon any independent claim which respondent No.25 may otherwise be entitled to establish against his alleged vendor in accordance with law. The parties shall bear their own costs.

JUDGE

Abdullahchanna/PS