

THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD

IInd Appeal No. 01 of 2015

[Abdul Salam versus Saddik Ali and others]

Appellant : Abdul Salam son of Mir Muhammad Sarejo [*Since deceased*] through his Legal Heirs namely; (a) Mst. Huma Sarejo widow of Abdul Salam, (b) Mir Muhammad Sarejo son of Abdul Salam and (c) Mst. Veengus daughter of Abdul Salam, through their Special Attorney namely; Zulfiqar Ali Sarejo through M/s. Muhammad Sulleman Unar and Asad Ali Jatui, Advocates.

Respondents 1, 2(a) to (d): Saddik Ali son of late Muhammad Noherio and Malook @ Muhammad Malook son of Late Muhammad Noherio [*Since deceased*] through his Legal Heirs namely; (a) Mst. Ladhori (b) Khuda Bux, (c) Manzoor and (d) Mst. Aaskar, through Mr. Siraj-ul-Haque Memon, Advocate.

Respondents 3-8 : Mukhtiar (Revenue) Badin and others through Mr. Allah Bachayo Soomro, Additional Advocate General Sindh.

Dates of hearing : 21-09-2026 & 28-09-2026

Date of order : 14-10-2026

Date of Announcement : 19-10-2026

JUDGMENT

Zulfiqar Ali Sangi I. - Through the instant appeal, the appellant / defendant No.1, Abdul Salam son of Mir Muhammad, has called in question the legality, correctness and propriety of the judgment and decree dated 28.11.2014, passed by the learned 1st Additional District Judge, Badin, in Civil Appeal No.15 of 2011, whereby the appeal preferred by the appellant against the judgment and decree dated 22.12.2010, passed by the learned Senior Civil Judge, Badin, in F.C. Suit

No.89 of 2007, was dismissed and the decree in favour of respondents Nos.1 and 2/plaintiffs was maintained.

2. Briefly stated, the respondents/plaintiffs instituted F.C. Suit No.89 of 2007 seeking declaration, cancellation of registered sale deed, correction of revenue record and permanent injunction in respect of agricultural land bearing Survey Nos.133, 134, 135, 139, 140, 141 and 143, measuring in aggregate 41-08 acres, situated in Deh Dhandh, Tapo Waryaso, Taluka and District Badin. According to the plaintiffs, Survey Nos.133, 134 and 135, measuring 18-09 acres, had originally been granted in favour of plaintiff No.1, whereas Survey Nos.139, 140, 141 and 143, measuring 22-39 acres, had been granted in favour of plaintiff No.2 during the year 1962-63 by the competent Revenue Officer on harap conditions. The plaintiffs asserted that the land had been placed in their physical cultivating possession and, after payment of the requisite installments, the land had been fully paid up and the relevant T.O. forms were issued. Their names were thereafter reflected in the revenue record through the relevant entries. The plaintiffs further pleaded that plaintiff No.1, Sadik Ali, had died in the year 1972, whereas plaintiff No.2, Malook alias Muhammad Malook, had died in the year 1998. Their respective legal heirs consequently claimed the suit property through inheritance.

3. The controversy arose when, according to the plaintiffs, their legal heirs approached the revenue authorities in November 2007 for mutation of inheritance and were informed through Rubkari No.1282 dated 23.11.2007 that the suit property had already been recorded in the name of defendant No.1 on the basis of a registered sale deed. The plaintiffs thereafter obtained a certified copy of the impugned registered sale deed bearing Registration No.370 dated 16.03.2002, purportedly executed by Sadik Ali and Malook in favour of defendant No.1 for a consideration of Rs.4,00,000/-. The corresponding revenue entry was subsequently incorporated in Village Form VII-B. The plaintiffs specifically challenged the sale deed as forged, fictitious, fraudulent and void ab initio, primarily on the ground that both

alleged executants had died years before the date of the alleged transaction and, therefore, could not possibly have appeared before the Sub-Registrar or executed the instrument.

4. The appellant/defendant No.1 contested the suit. His case was that both Sadik Ali and Malook were alive at the time of execution of the sale deed; that they had themselves approached him with an intention to sell the property; that he had verified their title documents; that the sale consideration had been paid; and that the registered sale deed had thereafter been duly executed and registered. He further claimed to have obtained possession of the suit land from the vendors.

5. On the basis of the pleadings, the learned Trial Court framed nine issues, including the maintainability of the suit, ownership of the plaintiffs, death of Sadik Ali and Malook, possession over the suit land, genuineness of the impugned sale deed, authenticity of the documents produced by the plaintiffs and their entitlement to the relief claimed. The plaintiffs examined, inter alia, PW-1 Sarwar Ali, Secretary Union Council Khetlari, who produced the relevant death-register entries; PW-2 Allah Bachayo, Tapedar, who produced the relevant revenue entries; and PW-3 Khuda Bux, who produced the death certificates, NADRA documents, electoral record, revenue entries, Rubkari, the impugned sale deed and other documents. After the earlier ex parte decree was set aside and the matter was remanded for recording the evidence of the defendant, the appellant produced DW-1 Lutf Rehman, District Sub-Registrar, DW-2 Muhammad Hashim, Stamp Vendor, DW-3 Habib-ur-Rehman, his attorney, and DW-4 Abdul Latif. Various documents, including the registered sale deed, installment receipt, land revenue receipts, Form-A and an agreement, were brought on record. Upon conclusion of the evidence, the learned Trial Court decreed the suit through judgment and decree dated 22.12.2010, holding, inter alia, that the plaintiffs had established their title; that Sadik Ali and Malook had died in 1972 and 1998 respectively; that the impugned sale deed was forged and fictitious; and that the plaintiffs were entitled to the relief claimed.

6. The appellant challenged the judgment and decree before the learned 1st Additional District Judge, Badin, through Civil Appeal No.15 of 2011. The learned appellate Court, after examining the record and hearing the parties, dismissed the appeal through judgment dated 28.11.2014. The learned appellate Court treated issues Nos.4 and 6 as the material issues. It considered the evidence relating to the deaths of Sadik Ali and Malook and thereafter examined the evidence produced by the appellant in support of the alleged sale transaction. It concluded that the evidence of the appellant's attorney could not be relied upon in view of the limited authority conferred upon him through the power of attorney. The appellate Court also considered the testimony of the Stamp Vendor and the other witnesses and noticed material circumstances concerning the identity documents allegedly used at the time of registration of the sale deed. The learned appellate Court ultimately held that the findings recorded by the Trial Court were supported by the evidence and did not warrant interference.

7. Learned counsel for the appellant has contended that both the Courts below failed to properly appreciate the registered nature of the impugned sale deed and the evidence of the attesting witnesses and the Sub-Registrar. It is argued that a registered document carries a presumption of genuineness and that the appellant had established the execution of the sale deed as well as his possession over the suit property.

8. Conversely, learned counsel appearing for the respondents has supported the concurrent findings of the Courts below and submitted that the very foundation of the appellant's claim stands demolished by the documentary evidence showing that the alleged vendors had died long before the purported sale transaction of 2002. It is maintained that no person can execute a sale deed after his death and that the surrounding circumstances established that the persons appearing before the registering authority were not the true owners.

9. I have examined the record with the assistance of learned counsel for the parties.

10. The principal question requiring determination is whether the impugned registered sale deed could lawfully convey any right or title in favour of the appellant when the evidence on record establishes that the persons shown as its executants had already died before the date of its alleged execution. The plaintiffs produced the relevant death-register entries through PW-1 Sarwar Ali, Secretary of the concerned Union Council. They also produced death certificates issued by the Union Council as well as documents emanating from NADRA. The evidence of PW-3 Khuda Bux further supported the plaintiffs' case regarding the dates of death and their relationship with the deceased persons. Significantly, the appellant's own witnesses did not furnish any convincing or consistent account capable of displacing this documentary evidence. The mere fact that the death entries were incorporated in the register in the years 2004 and 2005, rather than immediately after the respective deaths, does not by itself establish that the underlying dates of death were false. What was material was the cumulative effect of the documentary and oral evidence. The learned Trial Court considered this aspect and the learned appellate Court independently examined the same. More importantly, the appellant's case suffers from a fundamental difficulty. The sale deed is stated to have been executed in March 2002, whereas the evidence accepted by both Courts below establishes that Sadik Ali had died in 1972 and Malook in 1998. If those findings are correct and I find no lawful basis in the evidence to disturb them the alleged vendors were not alive in 2002 and, therefore, could not have appeared before the Sub-Registrar, executed the instrument, acknowledged its contents or received the alleged sale consideration. The registered character of a document cannot cure a fundamental defect in the identity or existence of its executants. Registration establishes that an instrument was presented and dealt with by the registering authority; it does not, by itself,

conclusively establish that the persons represented as executants were in fact the true persons entitled to execute the document.

11. The defence evidence, when examined in its entirety, does not satisfactorily answer this fundamental question. DW-2 Muhammad Hashim, the Stamp Vendor, stated that the persons whose photographs were affixed to the document appeared before him. However, in cross-examination he admitted that he did not personally know the parties and could not say whether the persons appearing before him as Sadik and Malook were fictitious persons or whether their identity documents had been managed. Similarly, DW-4 Abdul Latif claimed to have witnessed the transaction and stated that he knew Sadik and Malook. Yet, in cross-examination, he could not state when the alleged vendors had died. His evidence, therefore, did not satisfactorily establish that the persons who appeared before the registering authority in 2002 were in fact the original grantees. The evidence of DW-3 Habib-ur-Rehman, the attorney of the appellant, also does not provide the necessary corroboration. The learned appellate Court examined the power of attorney and found that the authority conferred upon the witness did not extend to giving evidence on behalf of the appellant on matters lying within the personal knowledge of the appellant. The appellate Court consequently excluded his evidence from consideration. This approach cannot be said to suffer from any perversity. A witness appearing under a power of attorney cannot, merely by virtue of that authority, testify to facts which were personally known only to the principal unless the law permits him to do so and the authority and circumstances otherwise justify such testimony.

12. Another circumstance which assumes considerable significance is the discrepancy noticed between the photographs affixed to the registered sale deed and the photograph appearing on the original NIC produced in respect of Malook. The Trial Court itself examined the original material available on the record and noticed that the photographs did not correspond. It further noticed circumstances

concerning the dates of issuance of the NICs, the identical issuing particulars and similarity in handwriting appearing on the documents. These circumstances were not considered in isolation; rather, they were examined together with the evidence concerning the deaths of the alleged vendors. The cumulative effect of these circumstances created a serious and reasonable doubt regarding the identity of the persons who purportedly appeared before the registering authority. The appellant's contention that the registered instrument should nevertheless be accepted merely because it bears the endorsement of the registering authority cannot be sustained. The Court is required to examine the transaction as a whole where the very identity and legal existence of the alleged executants are seriously disputed and the evidence establishes circumstances inconsistent with their having executed the document.

13. The question of possession was also considered by both Courts below. The appellant asserted that possession had been delivered to him pursuant to the sale transaction. However, none of the defence witnesses furnished convincing independent evidence establishing his actual physical possession over the suit land after the alleged purchase. The revenue receipts produced by the defence principally related to earlier periods and stood in the names of the deceased original grantees rather than the appellant. On the other hand, the plaintiffs asserted possession through their legal heirs. Although the plaintiffs did not produce extensive documentary evidence of current possession, once the impugned sale transaction itself was found to be fictitious and ineffective, the claim of the appellant based upon such transaction could not constitute a lawful basis for displacing the plaintiffs' established claim.

14. It is significant that the learned Trial Court, after recording the evidence of both sides pursuant to an earlier remand, reached a reasoned conclusion on each material issue. The learned First Appellate Court thereafter independently examined the evidence and specifically considered the material questions concerning the death of

the alleged vendors, the genuineness of the sale deed, the authority of the appellant's attorney, the testimony of the Stamp Vendor and the question of possession. The appellant has not been able to identify any material piece of evidence which was either ignored or misread in such manner as would render the concurrent findings perverse or legally unsustainable. Mere disagreement with the appreciation of evidence is not sufficient to warrant interference with findings which have been recorded after proper appraisal of the record. The earlier remand by the appellate Court is also of significance. The defendant was afforded an opportunity to produce his evidence, and pursuant thereto he examined his witnesses and produced documents. Thus, the grievance that the appellant was deprived of an opportunity to establish his defence does not survive for consideration.

15. Upon an overall appraisal of the evidence, I am of the considered view that the respondents/plaintiffs successfully established the original grant of the suit land, their succession to the rights of the deceased grantees and, most importantly, the fact that the persons shown as executants of the impugned sale deed had died before the date of the alleged transaction. Once the alleged executants were proved to have died before the execution of the sale deed, the very foundation of the appellant's title disappeared. The subsequent entry in the revenue record could not validate an instrument which itself was found to be fictitious and incapable of transferring title. The learned Trial Court, therefore, rightly decreed the suit, and the learned First Appellate Court correctly maintained the decree after independently examining the evidence. No misreading or non-reading of any material evidence has been demonstrated before us so as to justify interference with the concurrent findings.

16. For the foregoing reasons, the appeal is found to be without merit and is accordingly dismissed. The judgment and decree dated 28.11.2014, passed by the learned 1st Additional District Judge, Badin in Civil Appeal No.15 of 2011, whereby the judgment and decree dated

22.12.2010 passed by the learned Senior Civil Judge, Badin in F.C. Suit No.89 of 2007 were maintained, are hereby affirmed.

17. The parties shall bear their own costs.

JUDGE