

# HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

## C.P No.S-564 of 2025

[Mukhtiar Ahmed vs. Ch. Rasheed Ahmed and Others]

## C.P No.S-565 of 2025

[Munawar Hussain and another vs. Ch. Rasheed Ahmed and Others]

## C.P No.S-566 of 2025

[Qasim vs. Ch. Rasheed Ahmed and Others]

### **Petitioner**

*In C.P No.S-564 of 2025*

: Mr. Imdad Ali Unar advocate

### **Petitioners by**

*In C.Ps No.565 & 566 of 2025*

: Mr. Muhammad Arshad Pathan advocate

### **Respondent No.1 by**

*In all petitions*

: Mr. Parkash Kumar advocate

### **Respondents 2 to 8 & 12 by**

*In all petitions*

: Nemo

### **Respondents 9 to 11 by**

: Mr. Muhammad Ismail Bhutto Additional A.G

### **Dates of Hearing**

: **19.01.2026 & 20.01.2026**

### **Date of Decision**

: **16.03.2026**

## **ORDER**

**ARBAB ALI HAKRO, J:-** As all three petitions arise from the same judgment and decree and raise a common question of law, they are being disposed of by this consolidated order.

2. The petitioners assert that they are lawful owners and possessors of residential plots carved out of Survey Nos. 315 to 317, admeasuring 9-37 acres, situated in Deh Mirzapur, Taluka and District Hyderabad. Their claim is based on registered lease deeds executed in their favour in 1998 and 2001 by respondent No.3. They maintain that respondents No.6 to 8 were the original owners of the land, which was purchased by respondent No.3 through his attorney (respondent No.4) via a registered sale deed dated 15.05.1995. The land was mutated in the name of respondent No.3, who thereafter obtained requisite approvals, converted the land to commercial use and established a housing scheme titled "Bypass Town, Hala Naka, Hyderabad." The petitioners state that, after due verification, they purchased plots in the said scheme and were put in possession. However, respondents Nos. 1, 3, 4, and 6 to 8 allegedly colluded to fabricate a false and

back-dated sale agreement in favour of respondent No. 1, who then instituted F.C. Suit No. 201 of 1996 before the IV Senior Civil Judge, Hyderabad, without impleading the petitioners. The suit was decreed on 24.12.2002, followed by a decree dated 08.01.2003. The petitioners claim they first learned of the litigation when respondent No.1 initiated execution proceedings. Their applications under Section 12(2), C.P.C., were dismissed on 09.02.2011, and the revisional Court maintained the dismissal on 20.10.2012, leading to the present petitions.

3. Learned counsel for the petitioners argued that both the trial Court and the revisional Court failed to appreciate the real controversy and passed orders that are illegal, perverse, and contrary to justice, equity and good conscience. It was submitted that respondent No.1 was fully aware that the land comprising Survey Nos.315, 316 and 317 had already been converted into an HAD-approved housing scheme, where numerous commercial and residential plots had been sold or booked to the general public, including the petitioners. Despite such knowledge, respondent No.1, in collusion with other respondents, procured false and back-dated sale agreements and instituted a collusive suit without impleading a single bona fide purchaser, thereby suppressing material facts from the Court. Counsel contended that the plaint itself acknowledges that defendants Nos.1 and 2 had sold plots and collected Rs.1,96,00,600/- from the public. Once such an admission existed, the plaintiff was bound to implead all affected purchasers. The deliberate omission to do so, despite full knowledge, constitutes fraud on the Court and renders the decree void. It was argued that the petitioners are bona fide purchasers holding registered lease deeds duly mutated in the revenue record, and their titles cannot be extinguished by a decree obtained behind their backs. It was further submitted that the original suit contained no prayer for possession. Yet, the trial Court framed issues relating to possession and decreed the suit in a manner wholly beyond the pleadings, an act which itself reflects collusion. Counsel also pointed out internal contradictions in the plaint, particularly regarding the area of Survey No. 133, further undermining

the credibility of the plaintiff's case. Learned counsel argued that the trial Court wrongly treated the cheques produced by the plaintiff as proof of payment to the sellers, whereas the evidence shows that the cheques were encashed by the plaintiff himself or by defendant No.1. No proof exists of any payment to the true owners. It was also argued that the suit was barred under Section 69(2) of the Partnership Act, that the valuation was defective, and that the declaration sought on the basis of an unregistered agreement was contrary to Section 42 of the Specific Relief Act. Counsel further submitted that the petitioners' lease deeds have never been cancelled by any competent Court, nor has any suit been filed to challenge their titles. The Courts below ignored this vital aspect. It was also argued that a dissolution deed and a compromise existed between respondent No.1 and the defendants, pursuant to which the disputes were settled, and respondent No.1 received land and plots in the same scheme, but this fact was suppressed while obtaining the decree. Finally, it was argued that both Courts below misread and ignored material evidence, failed to apply the correct legal principles governing Section 12(2) CPC, and exercised jurisdiction arbitrarily; the impugned orders, being based on misreading, non-reading, and conjectures, warrant interference by this Court.

4. Despite repetition of notices, no effective appearance on behalf of private respondents No.2 to 8 and 12.

5. On the other hand, learned counsel for respondent No.1 opposed the petitions and maintained that the petitioners themselves acted fraudulently, as the sale agreement in favour of respondent No.1 predates the petitioners' alleged lease deeds. He submitted that the trial Court had framed issues on the petitioners' applications under Section 12(2), C.P.C., evidence was duly recorded, and the petitioners failed to establish their allegations. According to him, the petitioners were afforded full opportunity to substantiate their claim, which they failed to do and therefore nothing remains undecided. He argued that the petitions are devoid of merit and are liable to be dismissed.

6. Learned AAG submits that official respondents are a formal party; therefore, no arguments are advanced.

7. I have heard learned counsel for the petitioners at considerable length, examined the impugned orders and minutely re-evaluated the material available on record. The controversy, though sprawling in its factual canvas, ultimately converges upon a narrow but determinative question: whether the petitioners have succeeded in demonstrating that the Judgment dated 24.12.2002 and Decree 08.01.2003 was procured by fraud or misrepresentation within the contemplation of Section 12(2) CPC and whether the Courts below committed any jurisdictional error, perversity, or misdirection warranting interference in constitutional jurisdiction.

8. The contentions raised by the counsel for the petitioners, though forcefully advanced, must be examined within the narrow statutory confines of Section 12(2), C.P.C., which does not permit a collateral appeal on merits but only a challenge on the grounds of fraud, misrepresentation or want of jurisdiction. Fraud, in this context, is not to be presumed lightly; it must be specifically pleaded and strictly proved and must be of such nature as to subvert the judicial process itself. A decree cannot be annulled under Section 12(2) merely because a party believes that the Court erred in framing issues, appreciating evidence, or granting reliefs beyond the prayer clause. Such matters fall within the domain of appeal or revision, not within the ambit of Section 12(2).

9. When the plaint in the original suit is examined, it becomes evident that the plaintiff did not suppress the existence of the housing scheme or the sale of plots. On the contrary, the plaint expressly acknowledges that defendants Nos.1 and 2 had booked and sold plots to the general public and had collected substantial sums, quantified at Rs.1,96,00,600/- and that the plaintiff sought rendition of accounts in respect thereof. This admission negates the allegation that the plaintiff concealed the existence of purchasers. The fact that the plaintiff did not implead every purchaser does

not, by itself, constitute fraud on the Court. The law does not require that every person who may be indirectly affected by a decree be impleaded; the decree binds only the parties, and those claiming under them, and third-party purchasers retain the right to assert their independent titles in appropriate proceedings.

10. At this juncture, the petitioners invoked Section 41 of the Transfer of Property Act, 1882, asserting that they were bona fide purchasers from an ostensible owner. Section 41 protects a transferee who purchases property from an ostensible owner with the consent, express or implied, of the real owner, provided the transferee acts in good faith and after taking reasonable care. The record, however, does not demonstrate that the original owners or respondent No. 1 ever held out respondent No. 3 as an ostensible owner with authority to transfer the entire land free from dispute. The petitioners' own witnesses admitted that they did not verify the litigation status, did not issue any public notice and were unaware of the pendency of the suit. The requirement of "reasonable care" under Section 41 is not satisfied merely by the existence of a registered instrument. The protection of Section 41 is therefore not attracted on the present record.

11. The petitioners' reliance on their registered instruments must also be examined in light of Section 52 of the Transfer of Property Act, which embodies the doctrine of *lis pendens*. The suit was instituted on 24.08.1996. Many of the petitioners' lease deeds are of 1996, 1998, 1999 and even 2001. Section 52 renders any transfer pendente lite subordinate to the outcome of the litigation, irrespective of notice. The Supreme Court in the case of **Muhammad Ashraf Butt**<sup>1</sup> has authoritatively held that even a bona fide purchaser for value without notice is bound by the result of the *lis* and must "swim and sink" with his transferor. The doctrine is not founded on notice, but on necessity and expediency, for otherwise litigation would never attain finality. The Explanation to Section 52 further extends the pendency of the

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<sup>1</sup> Muhammad Ashraf Butt v. Muhammad Asif Bhatti (PLD 2011 SC 905)

suit until the decree has been satisfied or has become inexecutable by lapse of limitation. Thus, even transfers made after the trial decree but within the limitation period for appeal or revision are hit by *lis pendens* if the decree is subsequently reversed.

12. In the present case, the petitioners' transfers were effected during the pendency of the suit or during the limitation period for challenge to the decree. Their transferors were either already parties to the suit or were impleaded during its pendency. The petitioners, therefore, stepped into the shoes of their transferors and cannot claim an independent right to challenge the decree under Section 12(2), C.P.C., on the ground that they were not impleaded or that their vendors were allegedly not properly arrayed. Their rights are coextensive with, not superior to, those of their transferors. The Supreme Court, in Muhammad Ashraf Bhatti (*supra*), has categorically held that a transferee pendente lite has no locus standi to maintain an application under Section 12(2), C.P.C., on the ground of non-impleadment or alleged fraud in the conduct of the *lis*.

13. The petitioners also relied on Sections 115 and 117 of the Transfer of Property Act. Section 115 deals with the effect of forfeiture of a lease and the rights of the lessor and lessee in such circumstances. Section 117 exempts agricultural leases from the operation of Chapter V of the Act. Neither provision has any bearing on the present controversy. The petitioners' instruments are not agricultural leases, and the decree is not based on any forfeiture question. These provisions do not assist the petitioners in establishing fraud or misrepresentation under Section 12(2), C.P.C.

14. The petitioners further relied on the dissolution of the partnership and alleged compromise between respondent No.1 and the original defendants. These documents, even if genuine, regulate the inter se rights of the partners and do not demonstrate that the earlier suit was prosecuted in conscious violation of a concluded compromise or that the Court was misled about the existence of the partnership. The trial Court considered these documents and

found that they did not establish fraud on the Court. The revisional Court concurred.

15. The plea that the suit was barred under Section 69(2) of the Partnership Act or that the valuation was defective, or that the suit was not maintainable without a prayer for specific performance, are all matters that go to the correctness of the decree, not to its jurisdictional validity. Section 12(2) cannot be used to resurrect objections that should have been raised in the appeal.

16. Having carefully examined the impugned orders, I find that both the trial Court and the revisional Court applied the correct legal principles governing Section 12(2), C.P.C., evaluated the material on record, and returned findings that are neither arbitrary nor perverse. No jurisdictional defect, illegality, misreading or non-reading of evidence, or violation of law has been demonstrated that would justify interference in constitutional jurisdiction. The petitioners have not succeeded in establishing fraud, misrepresentation or want of jurisdiction. Their grievance, at its highest, concerns the effect of the decree on their independent rights as purchasers, which must be adjudicated in separate proceedings, not by a collateral attack under Section 12(2).

17. For the reasons recorded above, all three above petitions are **dismissed**. Consequently, the order dated 09.02.2011 passed by the learned V-Senior Civil Judge, Hyderabad and the revisional order dated 20.10.2012 passed by the learned VII-Additional Sessions Judge, Hyderabad, are upheld and maintained.

**JUDGE**