

**ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI**

**Revision Application No.54 of 2023**

( *Ms. Arifa Anjum v. Raja Muhammad Irfan & Others* )

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**DATE:** **ORDER WITH SIGNATURE(s) OF JUDGE(s)**

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1. For Hearing of CMA No.3366/2023 (Stay)
2. For Hearing of Main Case

**27-4-2026**

M/s Naveed Ahmed Khan & Obaid-ur-Rehman, Advocates for Applicant  
Mr. Muhammad Ibrahim, Advocate for Respondent No.3

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**ORDER**

1. **Sana Akram Minhas, J:** Through the present Revision Application, the Applicant has impugned the concurrent findings returned against her by the two Courts below.

**Background**

2. The learned Trial Court, vide Order dated 26.1.2022<sup>1</sup> (**Trial Court's Impugned Order**), allowed the application filed by private Respondent No.3 under Order 7 Rule 11 CPC<sup>2</sup> and rejected the Applicant's Plaint in Civil Suit No.1107/2019<sup>3</sup> (*Aarifa Anjum v. Raja Muhammad Irfan & Others*) (**"Civil Suit 1107"**) – titled "*Suit For Specific Performance, Cancellation, Compensation, Declaration And Permanent Injunction*".
3. Thereafter, the Applicant preferred Civil Appeal No.21/2022<sup>4</sup>, which was also dismissed vide the learned Appellate Court's Judgment and Decree dated 7.2.2023<sup>5</sup> (**"Appellate Court's Impugned Judgment"**). Despite repeated opportunities afforded to the Applicant to advance arguments in support of her Civil Appeal, she failed to appear.

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<sup>1</sup> At Court File Pg. 35

<sup>2</sup> At Court File Pg. 111

<sup>3</sup> At Court File Pg. 49

<sup>4</sup> At Court File Pg. 133-A

<sup>5</sup> At Court File Pg. 19

4. Through the said Civil Suit 1107, the Applicant had sought a declaration of ownership in respect of two plots of land, namely Plot No.R-58 and Plot No.R-59, Naiclass No.21, Deh Dozan, Sector 34-A, Scheme 33, Qasim Gabol Village, Safoora Chowrangi, Gulshan-e-Iqbal Town, Karachi, collectively measuring 240 square yards (**“Subject Plot R-58”** and **“Subject Plot R-59”**).

**Trial Court’s Impugned Order: Well Reasoned & Comprehensive**

5. In rejecting the plaint, the Trial Court – while erroneously referring to the Subject Plots No.R-58 and R-59 as R-48 and R-49 (an error addressed in paragraph 14(i) below) – primarily, and with considerable elaboration, observed as follows:

- i) The Applicant had asserted title to the same Subject Plots on three separate occasions through three distinct and mutually inconsistent modes of acquisition, namely:
- (a) In the first instance, the Applicant claimed to have purchased the Subject Plots through a Sale Agreement dated 2.4.2009<sup>6</sup> (**“Sale Agreement”**). However, she neither produced nor relied upon any title document in the name of the alleged seller (Respondent No.1, namely Raja Muhammad Irfan), thereby rendering the alleged transaction in favour of Applicant defective in the absence of the alleged seller’s transferable title.
- (b) In the second instance, the Applicant simultaneously claimed prior allotment of Subject Plot No.R-58 from a purported *“Gulshan-e-Qasim Welfare Society”* through an *“Allocation Letter”* dated 27.8.2008<sup>7</sup>, which, stands in direct contradiction to her subsequent claim of purchase of the same Plot from the Respondent No.1 under the aforesaid alleged Sale Agreement of 2009. In this regard, the Trial Court concluded that:
- No explanation was furnished as to why the Applicant would purportedly purchase the same Subject Plot No.R-58 in 2009 when she claimed to have already been an allottee in possession thereof since 2008.

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<sup>6</sup> At Court File Pg. 69

<sup>7</sup> At Court File Pg. 77

- The said “*Gulshan-e-Qasim Welfare Society*” was not shown to possess any lawful title, right, or interest (such as allotment, grant, lease, or sub-lease) in the land on which the Subject Plots are situated, thereby rendering its authority to allot or transfer the Subject Plots legally questionable and without basis.
  - Consequently, both the Applicant’s claim through the said Welfare Society, as well as the Welfare Society’s purported authority to allot the Subject Plot, were held to be questionable, unsupported, and devoid of legal sanctity.
- (c) In the third instance, the Applicant further claimed ownership based on a “*Sanad*”<sup>8</sup> allegedly granted under the *Sindh Gothabad (Housing Scheme) Act, 1987*, followed by an unspecified Village Form dated 29.9.1990<sup>9</sup>, indicating an even earlier grant of the same Plot. This earlier claim is self-contradictory, as it raises the question why the Applicant subsequently applied for allotment in 2008 and then again purchased the same Plot in 2009.

The Applicant’s multiple and inconsistent claims of title were held to be self-destructive and undermined the credibility of her case.

- ii) The Applicant had previously filed Suit No.82/2012 (*Aarifa Anjum v. Raja Muhammad Irfan & Others*) – which was ex parte decreed<sup>10</sup> vide an ex parte judgment dated 28.5.2014<sup>11</sup> but later set aside – on the same cause of action, but omitted the relief of specific performance of the Sale Agreement of 2009. By omitting such relief in the earlier Suit, the Applicant was deemed to have relinquished that claim. The Trial Court recorded that:
- (a) The subsequent Civil Suit 1107 was, therefore barred under Order 2 Rule 2 CPC, as well as Section 11 CPC (doctrine of constructive res judicata), on account of impermissible splitting of the cause of action.
  - (b) Although the earlier ex parte decree dated 28.5.2014 was subsequently set aside – on an application filed by private Respondent No.3 under Section 12(2) CPC, which was allowed – and the Applicant thereafter failed to pursue Suit No.82/2012, the omission to claim the relief of specific

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<sup>8</sup> At Court File Pg. 87

<sup>9</sup> At Court File Pg. 91

<sup>10</sup> At Court File Pg. 109

<sup>11</sup> At Court File Pg. 103

performance in the said Suit nonetheless operated as a bar to subsequent litigation on the same cause of action.

- iii) The Civil Suit 1107 for specific performance was also held to be barred by limitation, as it was not filed within three (3) years from the date of refusal of performance – as the Applicant’s earlier filed Suit in 2012 (i.e. Suit No.82/2012) itself reflected that such refusal had already occurred by that time. Therefore, the present Civil Suit 1107 instituted on 7.12.2019 was held to be time-barred under Article 113 of the *Limitation Act, 1908*.

### **Appellate Court’s Impugned Judgment**

6. The Appellate Court, while maintaining the Trial Court’s Impugned Order, held in its Impugned Judgment that the rejection of the Plaint was rightly ordered after due appraisal of the record.

### **Respective Submissions**

#### **Applicant’s Submissions**

7. When confronted with the aforesaid aspects, learned Counsel for the Applicant categorically stated that even though the Applicant’s Civil Suit 1107 is titled “*Suit For Specific Performance, Cancellation, Compensation, Declaration And Permanent Injunction*”, for the purposes of the present Revision Application, **the Applicant confines her claim/prayer solely to a declaration of title, and that too only in respect of Subject Plot No.R-58, while expressly abandoning all other reliefs, including cancellation.**
8. Counsel drew support for the aforesaid submission from paragraph 1 of the Plaint, wherein it is stated that the Applicant has raised construction upon and is residing with her family on Subject Plot No.R-59, whereas Subject Plot No.R-58 (measuring 120 square yards) is an open plot, surrounded by a boundary wall.
9. With respect to the Trial Court’s Impugned Order, he specifically asserted as follows:
- i) As is patent from the Plaint, the Subject Plots are described as Plot Nos.R-58 and R-59, whereas the Trial Court has referred to them as Plot Nos.R-48 and R-49. This demonstrates that the Trial Court

dealt with an altogether different property and failed to apply its judicial mind to the controversy in issue.

- ii) Without prejudice to the above, the Applicant ought to have been afforded an opportunity to lead evidence in order to address the alleged deficiencies, if any.

*Respondent No.3's Submissions*

- 10. Learned Counsel for the Respondent No.3, while supporting the Impugned Order and Impugned Judgment, contended that:
  - i) First, no village/goth by the name "*Qasim Gabol Village*" or "*Goth Qasim Gabol*" exists;
  - ii) Second, the alleged Subject Plot No.R-58 is in fact an urban property bearing Plot No.R-106, situated in Naiclass No.21, Deh Dozan, Sector 34-A, Scheme 33, District Malir, measuring 120 square yards, which belongs to Respondent No.3, as evidenced by the registered Sale Deed dated 28.3.2014 executed in his favour (annexed with Respondent No.3's counter-affidavit);
  - iii) Third, the Applicant's shifting stance regarding his claimed source of title over the Subject Plots exposes the falsity of his claim, rendering the Plaint rightly rejected.

**Decision**

- 11. The matter has been heard at length and the record perused.

*Evaluation of Respondent No.3's Submissions*

- 12. Before addressing the Applicant's submissions, it is pertinent to note that Respondent No.3's assertion regarding the non-existence of any village/goth by the name "*Qasim Gabol Village*" or "*Goth Qasim Gabol*" stands contradicted by his own document (annexed with Respondent No.3's counter-affidavit<sup>12</sup>), namely, an "*Affidavit*" executed by Respondent No.2 (the alleged seller/owner of Plot No.R-106).
- 13. This "*Affidavit*" expressly states that Plot No.R-106 is situated at "*Qasim Gabol Village*". This contradiction raises a further unanswered question as

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<sup>12</sup> At Court File Pg. 25

to how the land, once claimed to be part of a village/goth, was subsequently treated as an urban property. When confronted with this contradiction and called upon to explain the chain of documents purportedly establishing that the Subject Plot No.R-58 corresponds to Respondent No.3's Plot No.R-106, Counsel for Respondent No.3 was unable to offer any response.

*Evaluation of Applicant's Submissions*

14. The submissions advanced on behalf of the Applicant are devoid of merit and liable to be rejected for the following reasons:
- i) As regards the alleged erroneous reference in the Trial Court's Impugned Order to the Subject Plots as R-48 and R-49 instead of R-58 and R-59, the same is nothing more than a clerical/typographical error, as is evident from a holistic reading of the said Order. The remaining particulars of the Subject Plots, including their location within Scheme 33, measurement, surrounding features, and the contentions of the Applicant's Counsel recorded therein, leave no manner of doubt that the Trial Court was seized of the correct subject matter and adjudicated upon the same dispute. The said inadvertent error, being confined solely to the plot numbering while all other identifying particulars are correctly recorded, is therefore inconsequential and does not affect the correctness or legality of the findings.
  - ii) Where a suit is ex facie barred by limitation, the recording of evidence becomes an exercise in futility. In *Mushtaque Ali Shah v. Bibi Gul Jan* (2016 SCMR 910), it has been held that when a plaint itself discloses a legal bar, the Court is not required to permit the matter to proceed to evidence.
  - iii) Even otherwise, the Applicant's contention during the course of hearing that she seeks to abandon the relief of cancellation does not improve her case. The underlying Civil Suit 1107 is independently barred under Order 2 Rule 2 CPC, inasmuch as the Applicant, having previously instituted Suit No.82/2012 on the same cause of action, omitted to seek the relief of specific performance arising out of the alleged Sale Agreement of 2009. Such omission constitutes a relinquishment of part of the claim, thereby precluding the Applicant from re-agitating the same relief in subsequent proceedings founded on the same cause of action.

- iv) Without prejudice to the foregoing, the alleged *Sanad*<sup>13</sup> relied upon by the Applicant is, on its face, wholly deficient and unreliable. It is pertinent to note that:
- (a) It neither bears a date of issuance nor discloses the tenure of allotment; the area mentioned therein is 240 square yards, which contradicts the Applicant's own case that each of the Subject Plots measures 120 square yards; the name and designation of the issuing authority are indiscernible; and it has not been shown to have been issued by any competent authority under the *Sindh Gothabad (Housing Scheme) Act, 1987* or otherwise. When confronted with these deficiencies, Counsel for the Applicant was unable to offer any explanation.
- (b) Moreover, when his attention was specifically drawn to the letter dated 23.8.2022<sup>14</sup> issued by the Mukhtiarkar, Sindh Gothabad Scheme, District Malir, Karachi, placed on record before the Appellate Court, categorically stating that the purported "... .. **Sanad of Plot No.58 is fake, false & fabricated having not been issued from this office**", the Applicant's Counsel was unable to controvert the same. Instead of addressing these material defects, he sought to evade the issue and took refuge in repeatedly requesting an opportunity to lead evidence to cure the glaring inconsistencies and contradictions in the Applicant's case.
- v) Lastly, the Applicant's insistence upon an opportunity to lead evidence is misconceived in law. It is well-established that a litigant must stand or fall on the strength of the pleadings as originally framed and cannot be permitted to improve, substitute, or reconstruct a defective case through evidence. Evidence is meant to substantiate pleaded facts, not to cure inherent legal or factual defects in a plaint. In the present case, the very foundation of the Applicant's claim of title is self-contradictory, resting upon three mutually inconsistent sources, namely: (a) the alleged Sale Agreement dated 2.4.2009, (b) the purported Allocation Letter dated 27.8.2008 from an unverified Welfare Society, and (c) an alleged prior *Sanad*. These assertions are not only irreconcilable but are mutually destructive of one another, thereby rendering the

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<sup>13</sup> At Court File Pg. 87

<sup>14</sup> At Court File Pg. 133-L

Plaint inherently implausible and incapable of being cured through evidence.

### **Conclusion**

15. In view of the foregoing, the Applicant has failed to establish any lawful entitlement to the Subject Plots. No legal infirmity is discernible in the concurrent findings of the Courts below, which reflect a proper appreciation of the record and correct application of the law. The Revision Application, being devoid of merit and constituting a vexatious abuse of the process of this Court, is hereby ***dismissed with costs*** of Rs.50,000/- (*Rupees Fifty Thousand*), along with the pending application(s). The costs must be deposited within twenty (20) days from today into the account of the High Court Clinic, and the receipt shall be submitted to the Office.

**JUDGE**