

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT**  
**LARKANA**

***Civil Revision Application No. S-29 of 2014.***

***Before:***  
***Mr. Justice Ali Haider 'Ada'.***

**Applicant:**

Muhammad Saffar (Died) through his Legal Heirs, through  
Mr. Ghulam Dastagir Shahani, Advocate.

**Respondents No.1 to 5:**

Province of Sindh and others, *through* Mr. Mohsin Ali Khan  
Assistant Advocate General, Sindh.

**Respondent No. 6:**

Syed Zamir Ali Shah Advocate.

**Respondent No.7:**

M/s Rafique Ahmed K. Abro and Vinod Kumar Jessrani,  
Advocates.

Date of Hearing: 14.09.2026.

Date of Judgment: 05.10.2026.

**JUDGMENT**

**Ali Haider 'Ada' J.-** The Respondent No.7 instituted F.C. Suit No.10 of 2008 (Old), subsequently renumbered as F.C. Suit No.21 of 2012 (New), against the present applicant(died- his legal heirs having been substituted as applicants) and others, including Respondent No.6, namely Zafar Ali, seeking declaration, specific performance of contract, possession and permanent injunction. In parallel, the present applicant, Muhammad Safar, instituted Civil Suit No.04 of 2010 (Old), subsequently renumbered as F.C. Suit No.21 of 2010, against Jameel Ahmed, the plaintiff of F.C. Suit No.21 of 2012, (Respondent No.7), as well as against Zafar Ali, Respondent No.6, and others.

**2.** The learned Senior Civil Judge-II, Shikarpur, (trial Court) after conducting a trial and framing consolidated issues, vide judgment dated 09.06.2012, decreed the

suit instituted by Jameel Ahmed, (Respondent No.7), whereas the suit filed by the present applicant was dismissed. Consequent upon the judgment, decree was prepared on 16.06.2012. The present applicant preferred Civil Appeal No.33 of 2012 before the learned Additional District Judge-II, Shikarpur; (appellate Court), however, the learned appellate Court, after examining the matter, dismissed the appeal and maintained the judgment and decree passed by the learned trial Court.

**3.** The present applicant, Muhammad Safar, has therefore assailed both the judgments and decrees through the instant Civil Revision Application.

**4.** The case, in brief, is that the agricultural land bearing the relevant survey numbers situated in Deh Laliyoon, Taluka Shikarpur, admittedly belonged to Zafar Ali, Respondent No.6, and there is no dispute regarding his ownership thereof. The case of the present applicant is that the said Zafar Ali, being the owner of the property, entered into agreements to sell with the applicant on different occasions and ultimately executed an agreement to sell in July 2009, whereby he agreed to sell the agricultural land in question to the applicant.

**5.** According to the applicant, the total sale consideration agreed between the parties was Rs.34,43,000/-, out of which a substantial amount of approximately Rs.32,92,000/- had already been paid to the owner, leaving only an amount of Rs.1,51,000/- to be paid. It is the specific case of the applicant that despite receipt of the substantial portion of the sale consideration, Respondent No.6 failed to complete the transaction and execute the requisite sale documents in his favour. The applicant further asserts that possession of the property had also been delivered to him pursuant to the agreement.

**6.** It is further the case of the applicant that, despite having entered into the aforesaid transaction with him and having received a substantial amount of the sale consideration, Respondent No.6 already entered into another transaction concerning the same property with Jameel Ahmed, who thereafter instituted the suit which was decreed by the learned trial Court.

**7.** The owner, Zafar Ali, filed his written statement before the learned trial Court as Defendant No.3. His principal stance was that the total consideration agreed for the sale of the agricultural land was Rs.34,43,000/-, out of which the present applicant had paid Rs.31,57,000/- and the remaining amount of Rs.2,53,000/- had not been paid by him. According to Respondent No.6, the applicant committed default in fulfilling his contractual obligation and, on account of such alleged default; the agreement was cancelled /terminated.

**8.** It was further pleaded by Respondent No.6 that a legal notice had been issued to the present applicant, whereby he was informed that he had failed to fulfil his obligations under the agreement and, consequently, the amount paid by him stood forfeited and the agreement to sell was treated as cancelled. It is, however, pertinent to note that the possession of the property was admittedly or, at least, according to the case of the applicant, handed over to him.

**9.** So far as the suit instituted by Jameel Ahmed(Respondent No.6), is concerned, his case was also founded upon an agreement to sell allegedly executed by the owner, Zafar Ali, in his favour in the year of 2006, much prior to the agreement to sell of the present applicant. According to Jameel Ahmed, the owner agreed to sell the agricultural land to him for a total sale consideration of Rs.27,72,000/-, which amount, according to his case,

was paid through cheque transactions. However, despite receiving the agreed consideration, the land owner failed to fulfil his obligations under the agreement and did not complete the transaction in his favour. Consequently, Jameel Ahmed instituted the suit seeking enforcement of the agreement to sell.

**10.** Both suits were tried together. The learned trial Court framed consolidated issues and recorded the evidence produced by the respective parties. It is significant that although Respondent No.6, Zafar Ali, filed his written statement, he did not appear before the learned trial Court to record his evidence. After conclusion of the trial, the learned trial Court decreed the suit instituted by Jameel Ahmed, (Respondent No.6), whereas the suit filed by the present applicant was dismissed. The appeal preferred by the present applicant was thereafter dismissed by the learned Appellate Court.

**11.** Learned counsel for the applicant has contended that the agreements to sell relied upon by the applicant were executed at different points in time and that possession of the suit property was also handed over to the applicant pursuant thereto. According to learned counsel, despite the existence of such documents and the circumstances surrounding their execution, the learned Courts below failed to properly appreciate the same and erroneously rejected the claim of the applicant. It has further been argued that the owner (Respondent No.7), himself admitted receipt of a substantial amount of the sale consideration. According to learned counsel, there was no penal clause in the agreement authorizing forfeiture of the amount already paid by the applicant in the event of non-completion of the transaction. It was further contended that the failure to complete the transaction was attributable to the owner himself and not to the applicant, as the owner,

after receiving a substantial amount from the applicant, entered into another transaction concerning the same property with Jameel Ahmed (Respondent No.6). Learned counsel for the applicant has placed reliance upon the cases reported as NLR 1989 Supreme Court 11, 2007 CLC 1261, PLD 1962 Supreme Court 1, PLD 1964 West Pakistan (Lahore) 15 and AIR 1934 (1947 Patna) 1251.

**12.** On the other hand, learned counsel appearing for Jameel Ahmed Respondent No.7/decree-holder has opposed the instant revision application and submitted that the document relied upon by the present applicant was, in fact, not an enforceable agreement to sell in the manner alleged by him. Learned counsel has drawn the attention of the Court to paragraph No.5 of the plaint filed by the present applicant and contended that even from the applicant's own pleadings, the alleged payment was not established in the manner now being asserted before this Court, particularly as the plaint did not clearly disclose that the amount was paid as sale consideration for the land in question. Learned counsel for Respondent No.7 has further contended that the agreement to sell relied upon by the present applicant, allegedly executed in July 2009, was entered into during the pendency of the proceedings instituted by the decree-holder and, therefore, no right could be created in favour of the applicant to the prejudice of Respondent No.7. Learned counsel has additionally argued that the witnesses who allegedly attested the documents relied upon by Muhammad Safar were not produced before the learned trial Court for examination. Consequently, according to him, the applicant failed to establish the execution and legal enforceability of the documents upon which his claim was founded. It is further contended that, in view of the principle of *lis pendens*, no subsequent transaction concerning the property in dispute

could legally defeat the rights of the decree-holder during the pendency of the litigation. Learned counsel has relied upon the cases reported as 2011 CLC 1412, PLD 1993 Supreme Court 292, 2003 MLD 1970, 1997 MLD 385, 2002 YLR 989, 2007 CLC 177 and 2014 SCMR 168.

**13.** Learned counsel appearing for Respondent No.6, the land owner, has submitted that there is no dispute regarding the execution of the agreement relied upon by the present applicant; however, according to him, the applicant failed to fulfil his contractual obligations and, particularly, failed to pay the balance amount within the stipulated period. On account of such alleged default, the agreement was cancelled/terminated. Learned counsel for Respondent No.6 has further contended that the transaction in favour of Jameel Ahmed was also not properly acted upon by him, as he too allegedly failed to fulfil the conditions of the agreement within the stipulated period. It is therefore argued that the learned trial Court and the learned Appellate Court, without properly considering all these aspects, erroneously decreed the suit instituted by Jameel Ahmed. It has also been submitted that proper and necessary issues were not framed by the learned trial Court and that, consequently, the material controversies between the parties were not properly adjudicated. Learned counsel has relied upon the cases reported as 2023 SCMR 1371, 2022 SCMR 1216 and PLD 2016 Supreme Court 409.

**14.** Learned Assistant Advocate General, Sindh, appearing on behalf of the State, has submitted that the dispute between the parties is essentially private in nature. He has further argued that, at this stage, Respondent No.6 has no lawful basis to challenge the validity of the judgment and decree passed by the Courts below, particularly when he himself did not prefer any appeal

against the judgment and decree. Learned Assistant Advocate General has further pointed out that although Respondent No.6 filed his written statement before the learned trial Court, he did not enter the witness-box and did not subject himself to cross-examination in support of the stance taken by him. According to learned Assistant Advocate General, his subsequent stance, therefore, cannot be accepted in a manner contrary to the position adopted by him during the trial. He has ultimately supported the impugned judgment and decree.

**15.** Heard learned counsel for the parties and perused the record with their assistance.

**16.** At the very outset, it is evident from the record and the stance taken by the land owner (Respondent No.6) that he had received a substantial amount from the present applicant towards the sale consideration of the land in question. The transaction was admittedly intended to culminate in the sale of the property in favour of the present applicant; however, according to the owner, owing to non-fulfillment of the applicant's contractual obligation, the agreement was cancelled/terminated. Nevertheless, the fact remains that the owner acknowledged receipt of the consideration amount.

**17.** At the same time, the case of the decree-holder, namely Jameel Ahmed, is also founded upon a similar transaction, whereby, according to his case, the agreed sale consideration was paid to the same owner through cheque transactions. Despite having received the amount, the owner did not complete the transaction or execute the sale deed in favour of Jameel Ahmed and, instead, resiled from the agreement to sell. Thus, the record reflects that the owner entered into transactions concerning the same property with both parties and, after receiving substantial amounts, failed to complete

the respective transactions in accordance with the agreements relied upon by them.

**18.** Now, the question that arises for consideration is that, on the one hand, the value of the property in question is stated to be not more than Rs.3,000,000/-, whereas, on the other hand, Respondent No.6, being the owner of the land, admittedly received substantial amounts from both the present applicant as well as the decree-holder, Jameel Ahmed, under their respective transactions. This circumstance, viewed in the light of the overall conduct of Respondent No.6, does not demonstrate that he approached the matter with clean hands. Rather, the record indicates that he entered into transactions concerning the same property with both parties and received substantial amounts from each of them, but subsequently failed to honour the respective commitments.

**19.** The conduct of Respondent No.6 becomes further significant inasmuch as, despite having taken a specific defence in his written statement, he neither appeared before the learned trial Court to record his evidence nor subjected himself to cross-examination in support of the stance taken by him. Furthermore, he did not challenge the judgment and decree passed by the learned trial Court through any independent appeal. These circumstances, taken cumulatively, are relevant while appreciating the conduct and credibility of Respondent No.6 and the respective claims of the parties arising out of the transactions entered into by him.

**20.** The matter further requires consideration from another important aspect. The agreement to sell lastly executed between the present applicant and Respondent No.6 in July 2009 does not contain any specific penal or forfeiture clause authorizing the owner to forfeit the amount already paid by

the applicant in the event of alleged non-fulfillment of the contractual obligation. Despite this position, the learned trial Court proceeded to hold that Jameel Ahmed/Respondent No.7 had acquired a superior entitlement as compared to the present applicant, principally on the ground that the applicant had failed to properly prove the agreement to sell relied upon by him in accordance with the prescribed mode of evidence, notwithstanding the admission available on the other side regarding the transaction and receipt of the amount.

**21.** The question, therefore, is not merely confined to the proof of the agreement relied upon by the present applicant, but also concerns the respective rights of the parties claiming through the same owner in respect of the same immovable property. In such circumstances, the statutory protection available to a prior transferee or agreement-holder assumes considerable significance.

**22.** For a proper determination of the controversy, **Section 19 of the Specific Relief Act, 1877**, is attracted to the facts and circumstances of the present case. The said provision specifically deals with the persons against whom a contract for specific performance may be enforced and, therefore, requires consideration while determining the competing claims of the present applicant and Respondent No.7. For ready reference, Section 19 of the Specific Relief Act, 1877, is reproduced as under:

***19. Power to award compensation in certain cases.—***  
*Any person suing for the specific performance of a contract may also ask for compensation for its breach, either in addition to, or in substitution for, such performance.*

*If in any such suit the Court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant and that plaintiff is entitled to*

*compensation for that breach, it shall award him compensation accordingly.*

*If in any such suit the Court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.*

*Compensation awarded under this section may be assessed in such manner as the Court may direct.*

*Explanation.— The circumstance that the contract has become incapable of specific performance does not preclude the Court from exercising the jurisdiction conferred by this section.*

*Illustrations of the second paragraph—*

*A contracts to sell a hundred mounds of rice to B. B brings a suit to compel A to perform the contract or to pay compensation. The Court is of opinion that A has made a valid contract and has broken it, without excuse, to the injury of B but that specific performance is not the proper remedy. It shall award to B such compensation as it deems just.*

*of the third paragraph—*

*A contracts with B to sell him a house for Rs. 1,000, the price to be paid and the possession given on the 1st January, 1877. A fails to perform his part of the contract, and B brings his suit for specific performance and compensation, which is decided in his favour on the 1st January, 1878. The decree may, besides ordering specific performance, award to B compensation for any loss which he has sustained by A's refusal.*

*of the Explanation—*

*A, a purchaser, sues B, his vendor, for specific performance of a contract for the sale of a patent. Before the hearing of the suit the patent expires. The Court may award A compensation for the non-performance of the contract, and may, if necessary, amend the plaint for that purpose. A sues for the specific performance of a resolution passed by the Directors of a public company, under which he was entitled to have a certain number of shares allotted to him, and for compensation for the non-performance of the resolution. All the shares had been allotted before the institution of the suit. The Court may,*

*under this section, award A compensation for the non-performance.*

**23.** The power to mould the relief is required to be exercised in accordance with the facts and circumstances of each case and with due regard to the nature of the contractual obligation, the conduct of the parties, the evidence available on record and the relief actually warranted in the circumstances. Reliance in this regard is placed upon the case of **Messrs Dada Steel Mills v. Metalexport and 5 others**, reported as **2009 CLD 1524**, wherein it has been held as under:

*On reading section 19 along with sections 21 and 22 of Specific Relief Act, where Court came to the conclusion that plaintiff is entitled for specific performance, on the ground of unfair advantage over the defendant or hardship of the defendant which he did not foresee, Court can refuse to grant relief of specific performance and can award compensation for which plaintiff is entitled on the date of judgment. In the matter, where contract cannot be specifically enforced the plaintiff would be entitled for compensation, keeping in view the principle of awarding compensation under section 73 of the Contract Act.*

**24.** However, even where a particular relief has not been specifically prayed for, the Court, in appropriate and peculiar circumstances, is not precluded from granting such relief where the facts and circumstances of the case so warrant. Where, for any reason, specific performance of the contract cannot conveniently or effectively be enforced, the Court may mould the relief in order to do complete justice between the parties and to avoid causing undue hardship or injustice. Such jurisdiction may be examined in the light of Section 19 of the Specific Relief Act, 1877, as well as Section 73 of the Contract Act, 1872. Reliance in this regard is placed upon the case of **Rashid Naseem v. Mrs. Amina Fahim and another**, reported as **PLD 2009 Karachi 390**.

**25.** In the instant matter, Respondent No.6, being the owner of the property, has not furnished any satisfactory or reasonable explanation as to why the amounts received by him from the respective parties were not returned, particularly when he subsequently resiled from the transactions entered into with them. The circumstances become more significant because Respondent No.6 admittedly received substantial amounts from both the present applicant and Respondent No.7 in respect of transactions concerning the same property. Reliance in this regard is also placed upon the case of **Mrs. Bilquis Mohsin Butt and 3 others v. Ghulam Rasool Unnar and 4 others**, reported as **2019 CLC 1227**.

**26.** Accordingly, while considering the ultimate relief, the amount admittedly or satisfactorily established to have been received from the respective claimant may appropriately be directed to be refunded by the person liable therefore, together with such compensation as may be permissible in law, so that the parties are placed, as far as practicable, in a just and equitable position.

**27.** The principle of balancing the equities and moulding the relief in order to avoid injustice finds support from the judgment of the Honourable Supreme Court in **Muhammad Abdur Rehman Qureshi v. Sagheer Ahmad**, reported as **2017 SCMR 1696**..

**28.** It is well settled, and also recognized as a matter of procedural law, that the grant of a decree for specific performance is discretionary and does not follow as a matter of course merely upon proof of a contract. However, such discretion is not to be exercised arbitrarily or capriciously; rather, it is required to be exercised judiciously, reasonably and in accordance with the principles of fairness and equity. The discretion vested in the Court must advance the ends of

justice and must be exercised upon sound judicial principles. Reliance in this regard is placed upon the case of **Ghulam Rasool v. Muhammad Hussain and others**, reported as **PLD 2011 Supreme Court 119**.

**29.** There is no cavil with the proposition that revisional jurisdiction is to be exercised with great care and caution, particularly where the learned Courts below have concurrently recorded findings of fact. It is equally well settled that there is no inflexible rule that, despite the existence of material legal infirmities, misreading or non-reading of material evidence, or jurisdictional defects falling within the parameters of Section 115, C.P.C., the revisional Court must abdicate its jurisdiction merely because the findings happen to be concurrent. Where it is demonstrated from the record that the findings of the Courts below suffer from material illegality, irregularity, misreading or non-reading of material evidence, or have been rendered in disregard of the settled principles governing the exercise of jurisdiction, this Court, in exercise of its revisional jurisdiction under Section 115, C.P.C., is competent to correct such errors and to ensure that the subordinate Courts have acted within the bounds of their lawful jurisdiction. In this regard, reliance may appropriately be placed upon **Imam Din and 4 others v. Bashir Ahmed and 10 others**, reported as **PLD 2005 Supreme Court 418**, and **Malik Muhammad Khaqan v. Trustees of the Port of Karachi (KPT) and another**, reported as **2008 SCMR 428**.

**30.** Keeping in view the foregoing facts and circumstances of the case, the instant Civil Revision Application is hereby disposed of in the following terms:

**(i)** The judgment and decree passed by the learned Courts below, whereby the suit instituted by Jameel Ahmed/Respondent No.7 was decreed, are maintained to the extent of the decree granted in his favour.

**(ii)** However, the impugned judgment and decree are modified to the extent that Respondent No.6, namely Zafar Ali, being the original owner of the suit land and having admitted receipt of an amount of **Rs.31,57,000/-** from the present applicant, shall be liable to refund the said amount to the applicant, in the peculiar facts and circumstances of the case and in exercise of the jurisdiction available to the Court under **Section 19 of the Specific Relief Act, 1877.**

**(iii)** The amount of **Rs.31,57,000/-** shall be recoverable from Respondent No.6, Zafar Ali, in accordance with law. The learned trial Court shall be competent to exercise its jurisdiction in execution proceedings for recovery of the aforesaid amount from Respondent No.6 and to ensure implementation of this modified decree in accordance with law.

**(iv)** The decree in favour of Respondent No.7/Jameel Ahmed shall remain operative to the extent already granted by the learned Courts below and shall not be disturbed by the present modification.

**(v)** The parties shall bear their own costs.

31. The instant Civil Revision Application stands disposed of in the above terms.

**JUDGE**