

JUDGMENT SHEET
THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Second Appeal No. S-56 of 2026

Appellant : Muhammad Ilyas through Mr. Muhammad Babar Sidhu, Advocate

Respondents : Muhammad Aslam and others (no notices issued)

Date of Hearing : 28.08.2026

Date of Judgment : 04.09.2026

JUDGMENT

Muhammad Humayon Khan, J.: This is a second appeal against concurrent findings of fact. The main dispute is relating to the proof and specific performance of a sale agreement which has been held by both the learned Courts below to be unproved.

2. The Appellant filed First Class Suit No. 28 of 2024 before the learned Senior Civil Judge-II, Sanghar, for specific performance and permanent injunction against the Respondent No. 1 pleading that he purchased an area of 12-00 acres in District Sanghar (described fully in the plaint and hereinafter referred to as the “land”) from the Defendant No. 1 by an Agreement to Sell on Stamp Paper No. 120 dated 20.03.2021 (hereinafter the “Agreement”). The Agreement is shown to be executed in the presence of Abdul Karim son of Haji Khan Mari and Muhammad Ishaq son of Muhammad Yaseen. He pleaded that the sale price of the land was Rs. 7,200,000/- of which he paid a sum of Rs. 4,000,000/- to the Respondent No. 1 as earnest money while Rs. 1,700,000/- were agreed to be paid on 10.12.2022 and Rs. 1,500,000/- on 15.06.2023 at the time of execution of a registered sale deed. He stated the possession of the land was also delivered to him and that he paid a sum of Rs. 1,500,000/- on 10.12.2022 vide a receipt at the end of the Agreement and then a sum of Rs. 200,000/- vide another receipt at the end of the Agreement. According to him, the date 15.06.2023 was fixed for full and final performance when he approached the Respondent No. 1 along with his witnesses approached but he did not execute the requisite conveyance deed in the Appellant’s favour and kept him on false hopes. The Appellant alleges to have acquired knowledge in

February 2024 that the Respondent No. 1 was trying to create third party interest in the Land. He pleaded that, some seven or eight days before the suit, the Respondent No. 1 had approached along with some armed individuals attempting to take over the land but could not succeed in doing so after intervention of the Appellant.

3. Against the suit, the Respondent No. 1 filed his written statement denying the averments of the plaint and stating that the land actually belonged to his predecessor upon whose death he has become a joint owner of only 40% of the land. He denied the Agreement and stated that the Appellant has committed fraud and framed a fabricated story. He has denied every single averment made in the plaint.

4. Upon the pleadings of the parties, the learned Senior Civil Judge framed five issues and the parties then recorded their evidence. The Appellant examined three witnesses, namely himself **(PW-1)** at Exh-27, Abdul Karim **(PW-2)** at Exh-28 and Muhammad Ishaque **(PW-3)** at Exh-29, on oath, and the stamp-vendor, Muhammad Asif without oath at Exh-31. The Respondent No. 1 examined himself **(DW-1)** at Exh-44 and finally the learned Senior Civil Judge summoned revenue record through Tapedar Khan Muhammad **(CW)** at Exh-48.

5. Finally, by Judgment and Decree dated 08.11.2025, the learned Senior Civil Judge dismissed the suit of the Appellant. The Appellant challenged the dismissal in Civil Appeal No. 202 of 2025 which too was dismissed by the learned Additional District Judge-II/ Model Civil Appellate Court, Sanghar, by Judgment and Decree dated 21.05.2026. The Appellant has now filed this second appeal against both the impugned Judgments and Decrees.

6. On 24.08.2026 I had extended a notice on the maintainability of this appeal to the Appellant and after hearing learned Mr. Muhammad Babar Sidhu for the Appellant I had by means of my Order dated 28.08.2026 reserved the matter.

7. Mr. Muhammad Babar Sidhu contended that the impugned Judgments are based upon misreading and nonreading of material evidence; that the Agreement was proved through evidence by the Appellant as well as his witnesses and the learned Courts below

failed to consider the evidence in its true perspective; that the Appellant had shown his willingness and readiness to perform the Agreement by depositing the sale consideration before the learned Senior Civil Judge; and that the impugned Judgments are contrary to the provisions of the Qanun-e-Shahadat Order, 1984 (hereinafter the “QSO”), the Specific Relief Act, 1877 (hereinafter the “1877 Act”) and the Code of Civil Procedure, 1908 (hereinafter the “CPC”) although he did not point out any specific provision. He contended that this appeal was fit to be allowed.

8. After perusing the record of the case, multiple important points have emerged and I shall be considering each of them seriatim. The following point is framed for determination on which the following discussion shall turn:

Whether there is, *prima facie*, any misreading or nonreading of evidence or any misinterpretation of law in the impugned Judgments and Decrees warranting interference in second appeal under Section 100 of the CPC?

9. The first point is that the Agreement is composed of two pages, where the first page is a stamp paper worth Rs. 100/- which is printed on both sides while the second page is an ordinary page, however, the first page (both front and back) is unsigned and only the second page is signed, although it is the first page which contains all the substantive contents of the Agreement namely the sale consideration, payment of the alleged advance amount of Rs. 4,000,000/-, delivery of possession and so on. It has been held in a number of cases, including *Akhtar Waheed v Muhammad Hussain and others* 2025 SCMR 551, *Allah Bakhsh deceased through LRs and others v Muhammad Riaz and others* PLD 2025 SC 63 and *Iftikhar Ali and others v Riaz-ul-Haq alias Riaz Ahmed and others* 2023 YLR 854, that if an agreement is on multiple pages, each page must be signed of all the parties and if this is not done then the agreement becomes doubtful and cannot be relied upon by the parties unless each page is independently proved to be in continuation of the signed last page. In *Zafar Iqbal and others v Mst. Nasim Akhtar and others* PLD 2012 Lahore 386, the learned Lahore High Court explicitly held that unsigned pages in an agreement would be worthless. The learned Courts below have correctly

appreciated this settled principle because it does in fact appear that no independent and reliable evidence has been recorded by the Appellant to prove the unsigned pages.

10. Even the signed last page is totally doubtful as rightly observed by the learned Courts below. The purported receipt of Rs. 1,500,000/- at the end of the Agreement bears a clear and manifest overwriting. The date “10.12.2022” in the alleged receipt has been clearly overwritten and something previously written seems to have been erased. Consequently, the learned Courts below have also correctly exercised the jurisdiction vested in them under Article 84 of the QSO to examine the writing on the receipt and have in my view approached the correct conclusion. It is well within the power of a court to examine signatures and handwriting under Article 84 of the QSO and such exercise of power cannot be questioned unless proved to be manifestly illegal and unexceptionably wrong. Reference may be made to *Ghulam Rasool and others v Sardar-ul-Hassan and another* 1997 SCMR 976 and *Khudadad v Syed Ghazanfar Ali Shah alias S. Inaam Hussain and others* 2022 SCMR 933.

11. The next point is that there is a clear contradiction between the evidence of the three witnesses (PWs-1 to 3) and the stamp vendor (Exh-31), whereby it has been stated by the three private witnesses that the Agreement was drawn and typed by the stamp vendor and signed by the parties there, while the stamp vendor has categorically stated that he had only issued blank stamp papers to the Appellant without any typing:

Witness	Statement
Muhammad Ilyas (PW-1) (Purchaser)	“Stamp was reduced into writing by Asif stamp vendor and got attested from Advocate Sultan Ahmed Randawa.”
Abdul Karim (PW-2) (Marginal witness)	“We went to Stamp vendor Asif where such stamp was written and I co witness, plaintiff and def. No. 1 signed there.”
Muhammad Ishaque (PW-3) (Marginal witness)	“We went to Stamp vendor Asif where such stamp was written and I, co-witness, plaintiff and def. No. 1 signed there. Thereafter, said agreement was attested from Sultan Randawa advocate situated at Kiyani Road.”

Muhammad Asif (CW) (Stamp- vendor)	“Further I says that I issued only blank stamp paper Serial No. T-418174 amounting to Rs. 100/- . This is my statement.”
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12. In my view, after the mutually exclusive statement of the stamp vendor, it was the duty of the Appellant to seek his examination on oath as a hostile witness under Article 150 of the QSO and to put him through cross-examination to satisfy this contradiction. Secondly, the Appellant could also negate this statement by re-examination of his own self and the purported marginal witnesses in rebuttal of this statement. However, both of these things were not done and accordingly the statement of the stamp vendor strongly undermines the case of the Appellant.

13. The next point is that the purported notary public, Mr. Sultan Ahmed Randhawa, Advocate, has not been called in evidence by the Appellant to verify or authenticate the execution of the Agreement. In this regard, reference may be made to Section 8(1)(a) of the Notaries Ordinance, 1961, according to which a notary public has the function to “verify, authenticate, certify or attest the execution of any instrument.” Consequently, the duty of the notary public is not merely that of a rubberstamping authority, but rather one which is highly significant. The words utilised in Section 8(1)(a) are not merely synonyms but broad and clear enough to show that the notary public has to verify the execution of the document by inquiring from the purchaser, buyer and marginal witnesses as to the contents of the document, to satisfy himself whether the document has been properly read and understood by the parties before signing. The obligations and duties of notary practitioners have recently been considered in the same perspective by the Federal Constitutional Court of Pakistan in *Mst. Bibi Aminah v Shamsullah and others* CPLA No. 143-Q of 2025 (unreported) at paras 43 to 45.

14. However, in the experience of the Court there is an unfortunate trend whereby notary practitioners resort to rubberstamping and signing documents without proper verification in terms of their duty. Such exercise of notary authority is a manifest violation of Section 8(1)(a) of the Notaries Ordinance, the result being

that, if a document is executed in such a manner the notarisation is invalid and therefore void.

15. In my view, therefore, once an instrument is attested by a notary public, then such a notary public becomes a necessary witness (though he is not at par with a marginal witness whose requirement is absolutely indispensable under Article 79 of the QSO) to bring evidence on the record to show that the notary public had in fact taken the required steps before authenticating the instrument. As such, it will follow that, if a notary practitioner is not produced before the trial Court to evidence his exercise of notarisation of the instrument as properly carried out, the presumption to be drawn under Article 129(g) of the QSO would be that such exercise was not lawfully carried out in terms of Section 8(1)(a) of the Notaries Ordinance.

16. I may observe that, although a notarisation is not required for the execution of a valid agreement to sell, in my considered view, once the party chooses to have its agreement notarised, it takes upon itself the additional obligation to prove the notarisation as having been done as per law. Simply for the reason that notarisation is not otherwise required, the exercise of the notary authority cannot be reduced to a nullity. I may clarify, however, that the non-production of the notary public will not be fatal, as in the event of non-production of marginal witnesses and in which case the statutory requirement of Article 79 of the QSO will not be fulfilled, but nonetheless it will be of an adverse implication on the case of the party who fails to produce the notary public.

17. Thus, to my mind, the failure of the Appellant to produce the notary public named in the Agreement damages his case and it is to be presumed that the notarisation, even if carried out, was unlawful and unsupportive of the Agreement. And even assuming it to be carried out lawfully, I am still convinced to make an adverse presumption that, for any other reason, the notary public, if produced, would not have supported the notarisation, and both situations do not benefit the Appellant.

18. The next point is the purported payments of Rs. 4,000,000/- in earnest money and then Rs. 1,700,000/- thereafter in part

payment. These payments were statedly made in cash and, upon the flat denial of the Respondent No. 1, there was a heavy burden upon the Appellant to prove such cash payments through reliable evidence.

19. I may observe that cash payments are usually a difficult to prove payment method as there is ordinarily no recorded proof of such payment and, if a written or unwritten receipt is denied by the alleged recipient, then the entire burden by compulsion of law lies on the claiming purchaser to draw up a proper chain proving such cash payments. The purchaser is bound to show and positively prove the source of such amount, such as bank withdrawal, sale of any other asset to buy the one under purchase, source of loan if it was obtained to make the payment, etc. The purchaser is further bound to affirmatively prove that, upon arranging the funds, the same were actually paid to and received by the seller. As such, if either of the two are not proved, the result would be that the entire payment would become doubtful and therefore remain unproved. In this regard reference may be made to *Kaniz Fatima through Muhammad Imran Irshad v Tamizul Haque and 2 others* 2024 YLR 890.

20. I now turn to each of the payments. As far as the first payment of Rs. 4,000,000/- is concerned, the recital of that is on the first page of the Agreement which, I have already agreed with the learned Courts below, is not proved. Secondly, it has been stated in the plaint without any breakup of payments that Rs. 4,000,000/- were paid as earnest money, while thereafter in evidence it has been stated by the Appellant that he first paid Rs. 1,500,000/- before the Agreement and then Rs. 2,500,000/- later on at the time thereof. In the plaint it has been stated that the payment of Rs. 4,000,000/- was made in the presence of witnesses. However, in evidence, it has been stated by both the marginal witnesses, Abdul Karim (PW-2) and Muhammad Ishaque (PW-3) that they only witnessed the payment of Rs. 2,500,000/- and that Rs. 1,500,000/- were already paid before the agreement. As such, the Appellant's pleadings in the plaint are contradicted by his own evidence and, even assuming that they are not, Abdul Karim (PW-2) and Muhammad Ishaque (PW-3) cannot be said to be witnesses of the earlier purported payment of Rs. 1,500,000/-. Consequently, the first payment of Rs. 4,000,000/-

in its whole has not been proved as rightly observed by the learned Courts below.

21. About the payment of Rs. 1,700,000/- allegedly due on 10.12.2022, I have already agreed with the learned Courts below that there is clear overwriting on the date mentioned against the receipt of Rs. 1,500,000/- making the receipt doubtful and therefore unproved. The only payment which remains to be considered now is that of Rs. 200,000/- purportedly made on 15.12.2022 but it is no longer necessary to deliberate on it granted that it will now turn on nothing.

22. The next point is the aspect of possession. It has been stated by the Appellant No. 1 in his plaint that he purchased an area of 12-00 acres owned by the Respondent No. 1 out of a total area of 32-00 acres. He has stated that he has been put in possession of the suit land in performance of the Agreement. However, during his cross-examination, he disproved his own case for possession by admitting as follows, and his admissions are self-explanatory:

“Date of agreement is not disclosed in my examination in chief so also neither acres as to how much I purchase and from which survey number and Deh. It is correct to suggest that neither date of given Rs. 15,00,000/- nor receipt thereof is deposed by me. It is correct to suggest that whatsoever I deposed the facts are not in agreement **Ex. 27/A**. It is correct to suggest that I did not produce receipt showing expenditure of amount over suit land. It is correct to suggest that I did not produce revenue and irrigation receipt so also any crop receipt justifying possession of suit land is with me. Over suit property my farmers are residing by making houses and shops. It is correct to suggest that the said farmers are not witnesses in this case. It is correct to suggest that I did not produce payment receipts/acknowledgement during my evidence in this Court. It is correct to suggest that first page of agreement does not bear either my signature or signature of seller/def No. 1...”

It will be seen that there are clear contradictions in the evidence with regard to the possession of the Appellant. The land is statedly not officially partitioned and, if that is so, then it remains unanswered which portion of the land, if any, was the Appellant put in the possession of. Secondly, it has been stated in evidence that the Appellant's farmers were/are in possession of the land but such farmers have not been produced in evidence to prove this aspect and which then leads to an adverse inference that the farmers, if any

and if produced, would not have supported the Appellant's possession. Thirdly, it is clear on the Appellant's own evidence that he could not produce any revenue/*dhal* receipt, any expenditure receipts, or other document showing his possession and which again negates his claim of being put into possession of the land by the Respondent No. 1.

23. Lastly, and in the peculiar circumstances of this case, I was persuaded to proceed with a careful exercise under Article 84 of the QSO to examine the alleged signatures of the Respondent No. 1 on the Agreement against his admitted signatures on the R&Ps of the file and particularly in the following original documents in the R&Ps of the learned Senior Civil Judge:

- i) Two signatures on the second-to-last page of his written statement (Exh-10) and one signature on his biometric verification supporting the said written statement.
- ii) One signature in his counter-affidavit (Exh-11) and another on his biometric verification supporting the said counter-affidavit.
- iii) One signature in his affidavit supporting an application under Order VII Rule 11 of the CPC (Exh-12 and 13) and one signature in his biometric verification in support thereof.
- iv) One signature in his affidavit supporting an application under Order XIII Rule 2 of the CPC (Exh-41) and one signature in his biometric verification supporting it.
- v) One signature in his Vakalatnama to Mr. Muhammad Tahir, Advocate (Exh-6).

24. I also examined the following documents in the R&Ps of the learned Additional District Judge to compare the Respondent No. 1's admitted signatures versus his alleged signatures:

- i) One signature on the last page of his counter-affidavit/objections to Civil Appeal No. 202 of 2025 (Exh-7) and

one signature on the biometric verification in support thereof.

- ii) One signature on his adjournment application (Exh-04) and one signature in the biometric verification supporting it.
- iii) One signature in his Vakalatnama to Mr. Muhammad Tahir, Advocate (Exh-05).

25. After carefully comparing these signatures, including the strokes, pressure and general character, it appears to me that the signatures in the Agreement attributed to the Respondent No. 1 are not tallying with each other. The signatures on the admitted documents are considerably rough and in a particularly shaky handwriting with clearly uneven pressure, whereas in the Agreement they are quite evenly pressured with a clear, single and firm stroke. I am therefore quite clear in my mind that the signatures in the Agreement attributed to the Respondent No. 1 are not his but probably fake and managed.

26. In view of my above discussion, I hold that the Agreement has not been proved by the Appellant in the least as rightly observed by the learned Courts below. In the overall circumstances of the case, it *prima facie* seems to me that the case is based on a fake and manufactured instrument and false evidence was tendered in Court based on the said agreement. In *Notice to Police Constable Khizar Hayat son of Hadait Ullah on account of his false statement* PLD 2019 SC 527, it was observed by the Hon'ble Supreme Court at para 21:

“We may observe in the end that a judicial system which permits deliberate falsehood is doomed to fail and a society which tolerates it is destined to self-destruct. Truth is the foundation of justice and justice is the core and bedrock of a civilized society and, thus, and compromise on truth amounts to a compromise on a society's future as a just, fair and civilized society...”

27. In *Ameer Rehman and others v Ameer Mumtaz and others* 2015 SCMR 1373, it was observed at para 3 that “perjury and fabrication of documentary evidence are to be taken very seriously by Courts. This is necessary for ensuring that the administration of justice is not undermined and that baseless and false litigation is also

deterred...” In my view, perjury and tendering false evidence is not merely a crime against the society that goes to the roots of the dispensation of justice but also a crime against God Almighty who has thoroughly forbidden falsehood in the normal course much less under oath. The only reason why a Court attaches so much sanctity to a person’s evidence on oath is that they depose under the threat of the wrath of God Almighty and next under the threat of perjury; however, it is a most unfortunate state of affairs that even that is being misused and ignored in tendering evidence. It is, therefore, most necessary for the Court to take measures in attempting to secure the efficacy and respect for the legal system, lest we place it in a position from where one can no longer distinguish between when a witness is speaking the truth or lying. Therefore, I was in fact inclined to initiate proceedings for perjury under Section 476 read with Section 195 of the CrPC, but I have exercised a most abundantly cautious view in not doing so.

28. For these reasons, I dismiss this appeal in *limine* along with any listed applications and with costs of Rs. 200,000/- of which Rs. 100,000/- are to be paid to the High Court Bar Association, Mirpurkhas, for the purchase of books and the remaining to the Respondent, both within fifteen days of this judgment failing which the same may be recovered as arrears of land revenue. The original Agreement is on the record and it shall not be returned to the Appellant or anyone claiming through him. The learned Senior Civil Judge shall place a note in red ink on each page of the Agreement that it has been impounded.

29. All listed applications are disposed of. R&Ps may be returned.

JUDGE

APPROVED FOR REPORTING
FAISAL