

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

Civil Revision No. S-08 of 2024
[Disposed of as an appeal under s. 100 of the CPC]

Appellant : Ghulam Murtaza Kaka through Mr. Sikander Ali Kolachi, Advocate.

Respondent No. 1 : Muhammad Umer Kaka through Mr. Pervaiz Akhtar Talpur and Mr. Taimoor Ali Qureshi Advocates.

Respondents No. 2-4 : Sub-Registrar, Mirpurkhas and others through Mr. Ghulamullah Memon, Additional Advocate General Sindh and Mr. Muhammad Sharif Solangi, Assistant Advocate General Sindh.

Date of Hearing : 08.09.2026

Date of Judgment : 14.09.2026

JUDGMENT

Muhammad Humayon Khan, J.: On account of the nature of the case, this civil revision application under s. 115 of the Code of Civil Procedure, 1908 (hereinafter the “CPC”) is being converted into and disposed of as a second appeal under s. 100 of the CPC. Consequently, the Applicant is referred to as the Appellant, and the heading of the matter may be read as “Appeal under s. 100 of the CPC.” Office is directed to renumber the matter accordingly and to make necessary changes in red ink on the title of the case.

2. The Respondent No. 1 had instituted First Class Suit No. 88 of 2021 before the learned Senior Civil Judge-II, Mirpurkhas, for specific performance and injunction against the Appellant and the Respondents Nos. 2 to 4. His case was that he entered into a sale agreement dated 21.06.2017 (hereinafter the “Agreement”) with the Appellant purchasing an area of 03-00 acres on Survey Nos. 9, 10 and 11 in Deh 114, Taluka Hussain Bux Mari, District Mirpurkhas. The sale price is stated to be Rs.600,000/- of which the Respondent No. 1 pleads to have paid Rs. 430,000/- to the Appellant at the time of the agreement. Subsequently, it is pleaded that the sale transaction could not materialize in the form of a sale deed due to delays on the part of the Appellant followed by COVID-19 and other reasons pleaded in the suit. The remaining Rs.170,000/- are stated to have been agreed at the time of registration of sale deed, though it is the Respondent No. 1’s case that he paid the amount earlier on the request of the Appellant on phone-call to one Mian Lutf Muhammad son of Mian Ghulam Abbas on 31.03.2021 and against a commitment that the Appellant will execute a registered sale deed in the Respondent No. 1’s

favour on the next day, which would be 01.04.2021 and which according to him did not happen and ultimately led to the filing of the suit.

3. Against the suit, the Appellant filed his written statement, which appears to be in part admission and part denial of the Respondent No. 1's case. The crux of the Appellant's written statement is that:

- i) He does not own Survey Nos. 9, 10 and 11, but rather 88/1 to 16, 71/9 to 11 and 89/6 to 9 and 12 to 16 admeasuring around 26-00 acres. Consequently, he was not competent to sell Survey Nos. 9, 10 and 11.
- ii) He is a close relative (maternal uncle) of the Respondent No. 1 and he had given the land to him due to close blood relations and in exchange he received Rs. 470,000/-. The Respondent No. 1 obtained signatures of the Appellant on unwritten papers of sale agreement for his satisfaction. (There seems to be a material discrepancy between the amounts of Rs. 430,000/- and Rs. 470,000/- being received under the Agreement. Allowing the benefit of the doubt to the Appellant, I shall be proceeding further assuming the figure to be Rs. 430,000/- as there appears to be a genuine conflation between Rs. 430,000/- and Rs. 170,000/- being the two broken-up payments.)
- iii) The Respondent No. 1 did not disclose about any sale agreement nor enquired from him about the detail of the land according to the entry in the record of rights.
- iv) The Appellant many times approached the Respondent No. 1 for balance amount and executing sale agreement, however, on the contrary the Respondent No. 1 turned the course of the water supply of the entire land owned by him. He asked the Respondent No. 1 to settle the accounts and to return the water supply to its actual course but the Respondent No. 1 disclosed that he had purchased the land.
- v) The Appellant had never sent Mian Lutf Muhammad to take any amount, and the receipt is managed and that even the Respondent No. 1 had not approached the Appellant.

4. From the pleadings of the parties, the learned Senior Civil Judge framed five (5) issues. At the trial, the Respondent No. 1 as plaintiff examined the following witnesses:

- i) Himself as PW-1 (Exh-18). He produced the Agreement in original (Exh-18/A) and the alleged receipt in favour of Mian Lutf Muhammad (Exh-18/B) and he was cross-examined.
- ii) Mian Lutf Muhammad, Marginal Witness No. 1 of the Agreement and alleged recipient of Rs. 170,000/- from the Respondent No. 1 on the request of the Appellant, as PW-2 (Exh-19) and who was cross-examined but did not produce any document.
- iii) Dilbar Hussain, Marginal Witness No. 2 of the Agreement as PW-3 (Exh-20), who was cross-examined and did not produce any document.
- iv) Aijaz Ali son of Muhammad Ismail, Notary Public who allegedly notarized the Agreement as PW-4 (he is incorrectly mentioned in the R&Ps as PW-3) (Exh-PW-3) and who was cross-examined but did not produce any document.
- v) Zulfiqar Ali son of Amanullah as (PW-5) (incorrectly referred to as PW-4 in the R&Ps) (Exh-PW-4) and who was cross-examined and produced the original Register Entry relating to issuance of the stamp paper on which the Agreement is drawn.

On the other hand, the Appellant examined himself as DW-1 (Exh-D), was cross-examined and did not produce any document. He also examined a witness without oath, namely Mahesh Kumar, Supervising Tapedar, Mirpurkhas, as Official Witness (Exh-DW-1) who produced the Form VII-B Entry in his favour.

5. By Judgment and Decree dated 08.05.2023, the learned Senior Civil Judge dismissed the suit holding as follows:

- i) The record of rights reflect the ownership of the Appellant in respect of Survey Nos. 88, 71 and 89 and the survey numbers recorded in the Agreement (9, 10 and 11) are not mentioned in the revenue record and consequently, the Agreement is void for uncertainty under s. 29 of the Contract Act and therefore not specifically enforceable under s. 21(c) of the Specific Relief Act, 1877.
- ii) The Respondent No. 1 has himself admitted that he was only informed of the survey numbers by the Appellant but did not personally verify the same. Consequently, he failed to fulfill the

requirements of the principle of *caveat emptor* and would be liable for his own fault in the deficiency in the title of the Appellant.

- iii) Even the statements of the witnesses are contradictory in nature and do not support the case of the Respondent No. 1 and therefore the Agreement is not proved. The Respondent No. 1 is not entitled to specific performance.

6. Against the Judgment and Decree of the learned Senior Civil Judge, the Respondent No. 1 filed Civil Appeal No. 82 of 2023 before the learned District Judge, Mirpurkhas, and by Judgment dated 01.12.2023 and Decree dated 08.12.2023, the said appeal was allowed and the suit decreed as prayed. The learned District Judge has provided the following reasons for his judgment:

- i) On the own admissions and statements of the Appellant, the sale transaction is proved.
- ii) Survey Nos. 9 to 11 exist within Block No. 71 of Deh 114, Taluka Hussain Bux Mari, Mirpurkhas (the entries being in respect of Survey No. 71/9, 10 and 11), and it is reasonable to conclude that the sale transaction was for the said area which is owned by the Appellant. Consequently, the suit was decreed as prayed.

7. As against the Judgment and Decree of the learned District Judge, the Appellant now filed this revision application which, as I have mentioned, is being decided as a second appeal. The matter was taken up before me on 08.09.2026 when Mr. Sikander Ali Kolachi for the Appellant and Mr. Pervaiz Akhtar Talpur for the Respondent No. 1 filed their written synopses whereas Mr. Ghulamullah Memon, the Additional Advocate General, Mirpurkhas, filed a statement by Mr. Sanobar Ali Sipyo, Mukhtiarkar, Taluka Hussain Bux Mari, in respect of the VF-VII-B Entry in favour of the Appellant. I have perused the written synopses as well as the cases cited, and I shall be referring to them below in my discussion where and if required. I have also gone through the impugned Judgments to understand the reasons that prevailed with the learned Courts below.

8. In my view, the learned District Judge has correctly appreciated the nature of the Agreement and the transaction. He has taken the statements and admissions of the Appellant in their true perspective and context to observe that the sale transaction was established on the Appellant's own admissions and for the same reasons I would also hold that the Agreement is proved to have been executed as

between the parties. For reference, the relevant portion of his cross-examination goes as follows (Exh-D; pp. 91 and 93 of the Trial R&Ps; emphasis added):

“It is fact to suggest that in para No. 1 of my Written Statement it is mentioned that I gave land to the Plaintiff being close relative and received an amount of Rs. 4,70,000/- from the Plaintiff [appears to be a *bona fide* conflation of Rs. 430,000/- with Rs. 170,000/-] and he obtained my signatures on a black [blank] paper for his satisfaction. *Voluntarily say I did not receive any amount from the Plaintiff and have no signed any blank paper, however my Counsel mentioned such things in my Written Statement.* I see Exh. 18/A that is Sale Agreement and it bears land under sale having S. No. 9, 10 and 11 total admeasuring 03-00 acres and it bears my signature and thumb impression on each page of the Sale Agreement. *Voluntarily say I was not aware about the contents of the Agreement and due to trust being close relative, I did whatever the Plaintiff asked me to do. It is fact to suggest that in para No. 2 of my Written Statement it is mentioned that I asked the Plaintiff for balanced amount and he deliberately avoided to pay the same...*”

9. Within his cross-examination (let alone in comparison with his Written Statement) there appear to be clear contradictions, in that in one place the Appellant has stated that his Counsel had on his own written para 1 of this Written Statement but then admitted that the stamp papers bear his signature and thumb impression and that he did whatever he was told to do by the Respondent No. 1 being his close relative. In my view, the Appellant cannot go against his own admissions by blaming his counsel for mentioning something in the Written Statement for at least two reasons. The first is that it was his duty as party to have verified and gone through the pleadings being filed by him and in his name, and the second is that he is bound by the acts of his Counsel done under valid authority from him.

10. The defence that the Appellant was made to sign on blank stamp papers the contents of which were either not written or, even if written, were unknown to him is unreasonable to accept and improbable in the circumstances of the case. It is an admitted position that the document bears the signatures and thumb impressions of the Appellant on each page, and there is no allegation that the documents were signed by duress or under grave compulsion or threat. Even accepting that the stamp paper, when it was signed, was blank, the Court can have sympathy for the Appellant that his trust was perhaps misused. However, the Court is unable to assist the Appellant anymore in this aspect of the matter for the reason that he was at least indolent in applying his own mind in willingly signing blank papers and for which, with all due respect, he has only himself to blame.

11. It has been argued by the Appellant, on the same lines as the learned Senior Civil Judge, that the mentioning of Survey Nos. 9, 10 and 11 had made the Agreement uncertain and therefore void under s. 29 of the Contract Act. In my

view, the learned District Judge has correctly concluded, with reference to the evidence available, that the mention of Survey Nos. 9, 10 and 11 was referring to Survey No. 71/9, 10 and 11 which are admittedly owned by the Appellant and in possession of which the Respondent No. 1 has been put. In this situation of confusion, the correct approach to be taken is provided in Arts. 105 and 106 of the Qanun-e-Shahadat Order, 1984, which, along with their supporting illustrations, read (emphasis in original):

“105. Evidence as to document unmeaning in reference to existing facts. When language used in a document is plain in itself, but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense.

Illustrations

A sells to B, by deed, ‘my house in Karachi’.

A had no house in Karachi, but it appears that he had a house at Keamari, of which B had been in possession since the execution of the deed.

These facts may be proved to show that the deed related to the house at Keamari.

106. Evidence as to application of language which can apply to one only of several persons. When the facts are such that the language used might have been meant to apply to any one, and could not have been meant to apply to more than one, of several persons or things, evidence may be given of facts which show which of those persons or things it was intended to apply to.

Illustrations

(a) A agrees to sell to B, for Rs. 1,000, ‘my white horse.’ A has two white horses. Evidence may be given of facts which show which of them was meant.

(b) A agrees to accompany B to Hyderabad. Evidence may be given of facts showing whether Hyderabad in the Dekkhan or Hyderabad in Sind was meant.”

12. The situation at hand is clearly similar to the illustration and legal purpose of Arts. 105 and 106 of the QSO. It will be seen that on the pleadings of the parties, the possession of the area of 03-00 acres was/is with the Respondent No. 1. Therefore, by virtue of Arts. 105 and 106 of the QSO, the learned District Judge had the jurisdiction to appraise the evidence of the parties to see what the seemingly unmeaning reference to “Survey No. 9, 10 and 11” in the Agreement actually was, as he very rightly did. The learned District Judge was also correct in his application of mind to hold that the reference to 9, 10 and 11 was in fact specific to Survey Nos. 71/9, 10 and 11 from the evidence of the parties. The following evidence of

the Respondent No. 1 may be read in this regard (Exh-18 at p. 67 of the R&Ps of the Trial Court):

“It is correct to suggest that the block No. 88, 71 & 89 are not mentioned in the sale agreement. Voluntarily says that defendant No. 1 told me that survey No. 09, 10 & 11 are in the block No. 71, adjacent to my land at the time of sale agreement. It is incorrect to suggest that the survey Nos. 09, 10 & 122 are not in the name of defendant No. 01 in the record of rights. Voluntarily says that if the such survey number are not in the name of defendant No. 01, then it means he has committed fraud with me.”

13. In my view, this is more a case of poor drafting and not one of uncertainty of Agreement. The language of the Agreement was plain, but it was required to be seen what the reference to Survey Nos. 9, 10 and 11 meant according to the contents and terms of the Agreement and as to which the available evidence has established that the reference was to sub-survey Nos. 9, 10 and 11 in Block/Survey No. 71 owned by the Appellant, the same area of which the Respondent No. 1 has from the beginning claimed possession.

14. In this position, I can readily say, while relying on and subject to Arts. 105 and 106, that as a legal matter of construction of documents, the Courts are competent to read through bad or improper drafting to gather from within the language of the document the intention of the parties. In *Dar Okaz Printing and Publishing Limited Liability Company v Printing Corporation of Pakistan Private Limited* PLD 2003 SC 808, the Supreme Court ignored an entire clause denying arbitration which in its view was clearly conflicting with a clause allowing arbitration and it was held that the case was one of poor drafting. In *Mitsui Construction Co. Ltd v Attorney-General of Hong Kong* (1986) 33 BLR 1 (also (1986) 71 N.R. 285 (PC)), the Privy Council held as under (p. 9; the entirety may be read as emphasised):

“It is obvious that this is a badly drafted contract. This, of course, affords no reason to depart from the fundamental rule of construction of contractual documents that the intention of the parties must be ascertained from the language they have used interpreted in the light of the relevant factual situation in which the contract was made. But the poorer the quality of the drafting, the less willing any court should be to be driven by semantic niceties to attribute to the parties an improbable and unbusinesslike intention, if the language used, whatever it may lack in precision, is reasonably capable of an interpretation which attributes to the parties an intention to make provision for contingencies inherent in the work contracted for on a sensible and businesslike basis...”

Therefore, the findings of the learned District Judge as to the execution and proof of the Agreement are correct and in my respectful view the learned Senior Civil Judge erred in his (non-)application of Arts. 105 and 106 of the QSO.

15. With regard to payments, it has been admitted that Rs. 430,000/- were received by the Appellant (and which cannot be overturned in cross-examination nor has been sufficiently rebutted) and so this matter is beyond controversy. However, in my view, both the learned Courts below have misdirected themselves in ignoring the alleged receipt/payment of Rs. 170,000/-. As to the said payment, there is a material issue of fact which has not been determined by reason of illegality and therefore must be determined by this Court under s. 100 read with s. 103 of the CPC. That issue is stated and decided as now follows:

ISSUE

Whether the payment of Rs. 170,000/- purportedly made by the Respondent No. 1 to the Appellant was proved to have been made at the instance of the Appellant? If not, whether the Respondent No. 1 is entitled to claim specific performance?

16. On the payment of Rs.170,000/-, the Respondent No. 1 pleaded in his suit that the same was supposed to be made upon the execution of a registered sale deed but was made earlier, on 31.03.2021, upon instructions by the Appellant, to Mian Lutf Muhammad (Marginal Witness and PW-2) through a receipt signed by him. This is the one aspect which has been vehemently denied by the Appellant throughout the course of the proceedings and therefore the burden to prove it fell on the Respondent No. 1. On the evidence of the parties, even if I were to allow the Respondent No. 1 his best case and accept that he had in fact paid Rs. 170,000/- to Mian Lutf Muhammad, it still remains to be proved that the payment was made on behalf of the Appellant and under his specific instructions in lieu of performance to be done in his favour. However, it will be seen that no evidence has been recorded to prove the alleged phone call on which the Appellant instructed the Respondent No. 1 to make the remaining payment on his behalf to Mian Lutf Muhammad. No specific time of the phone call nor the phone number from which the call was made has been provided. No record relating to the phone call has been produced to ascertain whether the call, if ever made, was by the Appellant. There is no record of the call which could be forensically verified to prove it. Consequently, this aspect is based on oral assertions without any supporting material, and it cannot be safely held that Rs. 170,000/-, even if paid, were paid upon the instructions of the Appellant and therefore qualified as performance in his favour.

17. Mian Lutf Muhammad (PW-2) has stated in his evidence that the payment of Rs. 170,000/- was received by him against some business transaction between him and the Appellant, however, no proof of this transaction has been produced and I am not inclined to accept the mere assertion of the parties in this regard. It has been admitted by Dilbar Hussain (Marginal Witness and PW-3) that he was not a

witness to the payment of Rs. 170,000/- and so he has also not supported this payment. That being so, I hold that:

- i) the payment of Rs. 170,000/- was not proved and the burden to prove it was not discharged by the Respondent No. 1 upon denial;
- ii) even if such a payment was made, it is not proved that it was made upon the instructions of the Appellant.

18. Now, if the situation was such that the payment of Rs. 170,000/- was due on a certain date and which had lapsed, I would have held that specific performance cannot be enforced. However, on the language of the Agreement itself, that is not so. It will be seen that according to Clause 9 of the Agreement, the payment of the remainder of Rs. 170,000/- would be due upon execution of the registered sale deed and which has admittedly not been done yet. To put it another way, this payment was connected or reciprocal to the execution of the sale deed, and consequently, in my view, the complete bargain would materialize when it is performed in this reciprocal manner and not otherwise. I now turn to whether the record shows readiness and willingness on the part of the Respondent No. 1 to perform his part of the contract. On this aspect, since it has been the Respondent No. 1's case that the payment of Rs. 170,000/- has already been made, the Court has to work through reasonable inferences from the record from which it appears that the Respondent No. 1 is already in possession of the land. It is also in evidence that the Respondent No. 1 has approached the Appellant from time to time to perform the contract. Therefore, there is material to reasonably infer readiness and willingness on the part of the Respondent No. 1. As such, I answer the Issue partly in the negative by holding that the payment of Rs. 170,000/- has not been proved to have been made in satisfaction of the Agreement, and partly in the affirmative by holding that, upon payment of Rs. 170,000/-, the Respondent No. 1 will be entitled to the specific performance on the part of the Agreement against the Appellant by execution of a registered sale deed.

19. For these reasons, this civil revision, now converted into a second appeal, is partly allowed, the impugned Judgment and Decree of the learned District Judge, Mirpurkhas are maintained subject to the following modification and those of the learned Senior Civil Judge are set aside. Consequently, a decree is passed and ordered to be prepared in the following terms:

- i) The suit of the Respondent No. 1 is decreed subject to him depositing the balance consideration of Rs. 170,000/- before the

learned Senior Civil Judge within fifteen (15) days of this Judgment without failure.

- ii) The said amount shall be deposited in the appropriate Shariah-compliant profit-bearing scheme, and the Appellant shall be entitled to withdraw the same upon execution of a registered sale deed in favour of the Respondent No. 1.
- iii) In case of the Respondent No. 1's failure to deposit the balance amount in the Court within the prescribed period, the suit shall be deemed to be dismissed automatically and specific performance declined. In case of the failure of the Appellant to execute a duly registered sale deed upon the said deposit, the Nazir of the learned Senior Civil Judge/Trial Court shall do the same.
- iv) All pending applications are disposed of. There shall be no order as to costs.
- v) The R&Ps of matter may be returned to the respective courts and to the learned Senior Civil Judge they shall be returned with a copy of the present judgment and decree for information and compliance.

20. Before parting, I may place on record my note of appreciation for Mr. Sikander Ali Kolachi and Mr. Pervaiz Akhtar Talpur, learned Advocates, for their elaborate and helpful assistance in the matter.

JUDGE

APPROVED FOR REPORTING

****Faisal****