

THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision Application No. S – 192 of 2018

[Muhammad Tagial Maitlo v. Wazeer Ali Maitlo and 08 others]

Applicant by : Mr. Abdul Sattar Brohi, Advocate
Respondent No.1 by : Mr. Mushtaque Ahmed Shahani, Advocate
Respondent No.2 : Present in person
Respondents No.3 to 6 by : Nemo
Respondents No.7 to 9 by : Mr. Zulfiqar Ali Naich, Assistant A.G Sindh
Date of Hearing : **07.09.2026, 14.09.2026 & 21.09.2026**
Date of Announcement : **02.10.2026**

JUDGMENT

ARBAB ALI HAKRO, J. – Through this Civil Revision Application under Section 115 CPC, the applicant calls in question the judgment dated 11.10.2018 and the decree drawn up thereon, passed by the learned Additional District Judge (Hudood), Sukkur (hereinafter referred to as ‘**the appellate court**’) in Civil Appeal No. 31 of 2015 (the **impugned judgment**). By that judgment, the appeal of respondent No. 1 was allowed; the judgment and decree dated 26.02.2015 of the learned II-Senior Civil Judge, Sukkur (hereinafter referred to as ‘**the trial court**’) in F.C. Suit No. 71 of 2008 (New No. 174 of 2011) were set aside, and the suit was dismissed.

2. The applicant’s case was that Survey Nos. 584 (3-37) and 585 (3-01), Deh Panhwar, Taluka Rohri, totalling 6-38 acres (the **suit land**), belonged in equal shares to the late Sardar Sikandar Ali Khan Panhwar and the late Anwar Ali Khan Panhwar, who, in 1988, orally agreed to sell it to him at Rs.20,000 per acre for Rs.1,39,000. The full price was received in the presence of Bahram and Arbab, and possession was delivered. Anwar Ali died, and Sikandar Ali died in 1990, before a sale deed could be executed. Their heirs, respondents Nos. 2 to 6 (defendants Nos. 1 to 5), then minors and pardanashin ladies, promised to execute it once the minors came of age. When they went to the Sub-Registrar, Rohri, in 2005 for that purpose,

respondent No. 1 (defendant No. 6) objected on the basis of what the applicant called a false agreement, filed F.C. Suit No. 114 of 2005, and got registered sale deed No. 860 dated 26.04.2005 executed for 01-20 acres out of Survey No. 585. The applicant's earlier suit on the same land, F.C. Suit No. 142 of 2005, was withdrawn with permission to file afresh on 28.04.2008. The present suit was instituted on 16.06.2008 for specific performance, cancellation of the sale deed and of entry No. 124 dated 11.05.2005, and permanent injunction.¹

3. Respondents Nos. 2 to 6 filed a joint written statement on 29.06.2009 admitting the claim. It was filed by Muhammad Ibrahim Abbasi, described as their attorney. Respondent No. 1, in his written statement of 13.11.2008, pleaded that respondents Nos. 2 and 3 sold him 01-20 acres out of Survey No. 585 under a registered sale deed dated 26.04.2005, and that on the same day they agreed to sell him 2-00 acres out of Survey No. 584. He further pleaded that possession was delivered to him and that the suit was not maintainable and was barred. The official respondents were proceeded against ex parte.

4. Four issues were framed. The applicant examined himself and one witness, Arbab, and produced an attested copy of Form VII-B, sale certificate No. 512 dated 19.10.2005, and an affidavit dated 16.03.2007. Respondent No. 1 examined himself and Shahzad and produced the registered sale deed, Form VII-B, and the agreement dated 26.04.2005. The former notary public was examined at the applicant's application.² The trial court decreed the suit as prayed. The appellate court held that the suit was time-barred, that the oral agreement was not proved, and that the trial court had misread the evidence, and dismissed the suit. Before deciding the appeal, it also dismissed the applicant's application under section 151 CPC to summon the stamp vendor's record of stamp paper No. 2182 and the NADRA verification of the signatures of respondents Nos. 2 and 3.

¹ Memo of plaint, paras 1 to 16 and prayer clauses (a) to (e).

² Exhs. 21, 21-A, 21-B, 21-C and 22 (plaintiff's side); Exhs. 53, 53-A, 53-B, 53-C and 72 (defendant No. 6's side); Exh. 73 (Ghulam Sarwar Pirzada, former notary public).

5. Learned Assistant Advocate General placed on record an enquiry report dated 27.05.2023 by the Assistant Commissioner, Rohri. The applicant filed a statement on 12.08.2023 setting out the history of the connected litigation. Respondents Nos. 2 to 6 filed written arguments supporting the applicant, and on 21.09.2026 respondent No. 2 stated that he had no objection to the revision being allowed.

6. Learned counsel for the applicant argued that the agreement was proved by his own evidence and that of Arbab; that Bahram is his brother; that the price was settled at Rs.20,000 per acre; that a land revenue receipt had been produced before the trial court; that the heirs of the vendors had admitted the bargain; that the suit of respondent No. 1 on his agreement had failed at every stage; and that the appellate court ignored the evidence and wrongly held the suit barred.

7. Learned counsel for respondent No. 1 argued that the earlier suit was withdrawn under Order XXIII Rule 2 CPC and that the fresh suit was barred under Article 113 of the Limitation Act, 1908; that the witnesses and price named in the earlier suit were different; that the admissions of respondents Nos. 2 to 6 were made through an attorney, not by them in person; that possession is with respondent No. 1 and that no land revenue receipt was produced; that the plaint gives no date, time or month of the bargain, and that Article 79 of the Qanun-e-Shahadat Order, 1984 (hereinafter referred to as '**QSO, 1984**') was not complied with.

8. Learned counsel for respondent No.1 also objected that the counsel presently representing Respondents Nos.2 to 6 had previously represented the applicant before the Courts below. Accordingly, vide order dated 14.09.2026, notices were issued to Respondents Nos.2 to 6. Pursuant thereto, Respondent No.2 appeared in person and filed his statement along with certain documents. As he chose to address the Court in person, he was heard at length and adopted the submissions advanced on behalf of the applicant.

9. Learned Assistant Advocate General supported the impugned judgment and submitted that respondents Nos. 2 to 6 never sued for cancellation of the sale deed they themselves executed.

10. The questions are: (i) whether the finding that the oral agreement was not proved suffers from misreading or non-reading of evidence or any illegality; (ii) whether the sale deed and the revenue entry could be cancelled at the applicant's instance, and whether specific performance could go against respondent No. 1 in view of section 27(b) of the Specific Relief Act, 1877 (hereinafter referred to as '**the Act of 1877**'); (iii) limitation; and (iv) whether the stance of respondents Nos. 2 to 6 and the later developments alter the position.

11. Revisional jurisdiction is confined to errors of jurisdiction, illegality and material irregularity. A finding of fact is open to correction where it rests on misreading or non-reading of material evidence, or is perverse.³ Where the trial and appellate courts differ, the finding of the appellate court, being the final court of fact, is ordinarily to be preferred unless it is shown to be perverse or founded on reasons that cannot be sustained.⁴

12. One who sues for specific performance of an oral agreement to sell immovable property must plead with precision the date, time and place of the bargain, its terms, and the persons present when it was struck, and must then prove them by clear and independent evidence. Articles 17 and 79 of the QSO, 1984, speak of instruments reduced to writing; where there is no writing, the need for strict proof is greater, not less. The Supreme Court has recently set aside a decree upheld by three courts where the oral agreement was pleaded without such particulars.⁵

13. The plaint here states no more than "the year 1988". In cross-examination, the applicant admitted that his earlier suit concerned the same land, that the witnesses named in it were Arbab and Ahmed, not Bahram and

³ *Abdul Sattar Khan v. Umar Ayar* 2026 SCMR 812.

⁴ *Muhammad Hassan v. Khawaja Khalil-ur-Rehman* 2007 SCMR 576; *Muhammad Azam v. Muhammad Aijaz* PLD 2025 SC 567.

⁵ *Ghulam Ali v. Ali Sher* 2026 SCMR 966; *Muhammad Nawaz v. Haji Muhammad Baran Khan* 2013 SCMR 1300; *Sheikh Akhtar Aziz v. Mst. Shabnam Begum* 2019 SCMR 524; *Moiz Abbas v. Mrs. Latifa* 2019 SCMR 74.

Arbab, that the price stated there was Rs.80,000/-, not Rs.1,39,000/-, and that a party on the Anwar Ali side had been added only in the present suit. He could not say when or where he approached the heirs, and he conceded that no application for condonation of delay had been filed.⁶ These are not minor discrepancies. They concern the price, the parties and the witnesses to the very bargain sued upon, and they come from the applicant's own earlier pleading. The trial court did not advert to them at all and dismissed the inconsistencies as minor.⁷ That was a non-reading of material evidence.

14. The only witness examined, Arbab, is the applicant's father-in-law. He stated that the land was about seven acres, less some ghuntas, placed the bargain in "1987/88", did not remember the other witnesses, and did not accompany the applicant to the heirs.⁸ Bahram, said to be the applicant's brother, and Ahmed were not examined, and no reason was given, which attracts the presumption under Article 129(g) of QSO, 1984. Nothing was produced to show payment of the price in 1988 or possession since then. No land revenue receipt is among the exhibits.⁹ The burden under Article 117 of QSO, 1984 lay on the applicant, and he had to succeed on the strength of his own case. The appellate court reached its conclusion on this very material.¹⁰ Its view is a proper reading of the evidence, and no evidence it ignored has been pointed out.

15. The trial court largely decreed the suit on the written statements of respondents Nos. 2 to 6 and the affidavit dated 16.03.2007. The written statement was signed by a person described as their attorney, without any authority shown, and none of them entered the witness box. An admission by one defendant does not bind a co-defendant, even when made in a written statement.¹¹ Under the proviso to Article 113 of QSO, 1984, the court may require an admitted fact to be proved otherwise, and it was bound to do so here, where the admission was used to defeat the registered title of a third person.

⁶ Exh. 21, cross-examination recorded on 30.01.2012.

⁷ Judgment of the trial court, para 16.

⁸ Exh. 22, examination-in-chief and cross-examination.

⁹ The exhibits produced by the applicant are only Exhs. 21-A, 21-B and 21-C (n.2 above).

¹⁰ Impugned judgment, paras 20 to 29.

¹¹ *Farzand Ali v. Khuda Bakhsh* PLD 2015 SC 187; *Shah Muhammad v. Dulla* 2000 SCMR 1588.

16. The affidavit was sworn by respondents Nos. 2 and 3 only, while the suit of respondent No. 1 was pending. The former notary said he did not write it and that it was brought to him ready; he could not produce his register.¹² Its deponents were never cross-examined, and its contents could not be treated as proved.¹³ The same two persons are the executants of the registered sale deed of 26.04.2005, and they never sued to have it set aside. Their later stance cannot, by itself, undo a registered conveyance. It also bears weight that counsel who conducted the applicant's case in both courts below now appears for respondents Nos. 2 to 6. Those respondents and the applicant are, in substance, on the same side.

17. A registered deed carries a presumption of genuineness and due execution under Articles 85(5) and 129(e) of the QSO, 1984, which is not displaced by a bare denial.¹⁴ The executants did not deny it on oath. The trial court cancelled it mainly because Shahzado was 14 or 15 years old in 2005. Shahzado spoke of the agreement signed at Neem-ki-Chari, not of attesting the registered deed, so the reasoning conflates the two documents. The trial court also read the sale certificate as showing that no land had been sold to respondent No.1. On its face, the certificate, issued in October 2005, shows 5-18 acres in the names of respondents Nos.2 to 6, that is, 01-21 acres in Survey No. 585 and 3-37 acres in Survey No. 584, which is the holding left after the 1-20 acres had been transferred.¹⁵ Besides, the plaintiff sought cancellation of entry No. 124 dated 11.05.2005, whereas the trial court ordered cancellation of entry No. 615 dated 29.06.2005, which was never prayed for.

18. An agreement to sell creates no interest in land.¹⁶ Once the applicant failed to prove his agreement, he was not a person against whom the deed could be void or voidable, and relief under section 39 of the Act of 1877 was not open to him. The appellate court said as much.¹⁷ Its finding on this point calls for no interference.

¹² Exh. 73.

¹³ *Muhammad Bashir v. Mst. Latifa Bibi* 2010 SCMR 1915.

¹⁴ *Mst. Nazeeran v. Ali Bux* 2024 SCMR 1271.

¹⁵ Exh. 21-B.

¹⁶ Section 54, Transfer of Property Act, 1882.

¹⁷ Impugned judgment, para 28.

19. The position is no better for the applicant under section 27(b) of the Act of 1877. That clause allows specific performance of a contract to be enforced against a person claiming under a party to it by a title arising after the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract. This provision governs the rights of a prior agreement-holder against a later purchaser. It presupposes a proved and subsisting prior contract, and none was proved here. Even otherwise, the scheme of the clause is settled. The later purchaser claiming its protection must discharge the initial onus by showing that he paid value, acted honestly, and made the inquiry an ordinary prudent buyer would make.¹⁸ The central ingredient is want of notice of the earlier contract. Once the initial onus is discharged, the burden shifts to the plaintiff to show that the purchaser had notice, or that the transfer was without consideration or a colourable arrangement between the vendor and the purchaser.¹⁹ The Supreme Court has applied the same rule to refuse specific performance of an oral contract against purchasers for value in good faith.²⁰

20. Respondent No. 1 holds a registered conveyance for value from respondents Nos. 2 and 3, in whose names the land then stood in the record of rights, and the entry was kept in his favour.²¹

21. The recited consideration and his purchase were not challenged in his cross-examination, which was directed only at the agreement for Survey Nos. 376 and 584.²² That discharged the initial onus. The burden then lay on the applicant to show notice. A purchaser may be fixed with notice through the open possession of a prior vendee,²³ but the applicant proved no possession; his name appeared nowhere in the revenue record, and he himself said he did not know of the registered sale. The failure of respondent No. 1's separate agreement for other land does not show that he knew of an unrecorded oral bargain of 1988. The applicant also led no evidence that the sale was without consideration or collusive; the executants, who alone could

¹⁸ *Faqir Syed Anwar ud Din v. Syed Raza Haider* PLD 2025 SC 31.

¹⁹ *Gulzar Ahmad v. Ammad Aslam* 2022 SCMR 1433.

²⁰ *Muhammad Shafiq Ullah v. Allah Bakhsh (deceased)* 2021 SCMR 763.

²¹ Exhs. 53, 53-A and 53-B.

²² Exh. 53, cross-examination.

²³ *Rasool Bakhsh Naich v. Syed Rasool Bakhsh Shah* 2010 SCMR 988.

say so, never entered the witness box. Respondent No. 1 was therefore protected by section 27(b), and no decree could go against him for the 1-20 acres even if the agreement had been proved. The refusal of cancellation and specific performance on this part of the case calls for no interference.

22. The reasoning of the appellate court on limitation cannot be approved as it stands. Where no date is fixed for performance, time under the second part of Article 113 runs from the date the plaintiff has notice that performance is refused²⁴, not from the death of the vendor. The conclusion that the suit was barred “by about 12 years”, counted from 2005, is also not borne out by any computation.²⁵ At the same time, the applicant derives no benefit from the earlier suit. Under Order XXIII rule 2 CPC, he is bound by limitation as if that suit had never been filed²⁶, and his own case is that he knew of the adverse transaction in 2005. Oral assurances by the heirs are not an acknowledgment under section 19 of the Limitation Act, 1908, and the minority of defendants does not stop time running against a plaintiff. The grant of specific performance is also discretionary under section 22 of the Act of 1877, and seventeen years of silence after the alleged payment weighs against its exercise. As the suit fails on the merits, no final finding on limitation is needed, and the observations in paragraphs 17 to 19 of the impugned judgment stand disapproved to the extent stated.

23. The application under section 151 CPC before the appellate court concerned stamp paper No. 2182, that is, the agreement of respondent No. 1 for Survey Nos. 584 and 376, not the registered deed. In substance, it was a request for additional evidence under Order XLI Rule 27 CPC, and it was rightly refused. The failure of respondent No. 1’s own suit on that agreement, now concluded by this Court in Civil Revision Application No. S-55 of 2015, does not discharge the applicant’s burden to prove his own bargain. A plaintiff succeeds on the strength of his own case, not on the weakness of his opponent’s. For the same reason, the appellate court’s observation that Form VII-B was a photostat copy does not affect the result, as a revenue entry is not proof of the agreement.

²⁴ *Haji Abdul Karim v. Florida Builders (Pvt.) Ltd.* PLD 2012 SC 247.

²⁵ Impugned judgment, paras 17 and 19.

²⁶ *Muhammad Yousaf v. Nazeer Ahmed Khan (deceased)* 2021 SCMR 1775.

24. The no-objection statement of respondent No. 2 is not evidence. A revision is decided on the record of the courts below, and the consent of some respondents cannot bind a respondent who contests.

25. The trial court decreed the suit by relying on admissions that could not bind respondent No.1 and by failing to address the applicant's own contradictions. The appellate court corrected that error by properly reading the evidence. Its finding that the oral agreement was not proved, and the consequent refusal of cancellation and injunction, suffer from no illegality, material irregularity, or jurisdictional defect calling for interference under section 115 CPC.

26. The Civil Revision Application is accordingly **dismissed** and the impugned judgment and decree dated 11.10.2018 are upheld, subject to the observation made above regarding limitation. There shall be no order as to costs.

J U D G E

Abdul Basit