

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. S – 863 of 2025

Petitioner : Imtiaz Ahmed s/o Allauddin,
through Mr. Muhammad Irfan, Advocate

Versus

Respondent No.1 : Mumtaz Ahmed s/o Allauddin, Nemo

Respondent No.2 : DDO Korangi Town KDA Wing Karachi, Nemo

Date of Hearing : **17.09.2025**

Date of Decision : **17.09.2025**

ORDER

Jawad Akbar Sarwana, J.: This Writ Petition involves a dispute between two blood brothers over House No.L-81, Sector 41-B, Korangi 2 1/2, Korangi Township, Karachi (“Subject Property”). Imtiaz Ahmed/the Defendant-Judgment-Debtor is aggrieved by the Judgment dated 25.09.2023 passed by Vth Senior Civil Judge Karachi West in Civil Suit No.2735/2021 (“trial Court”), and thereafter by the trial Court’s Order dated 24.02.2025 dismissing Imtiaz Ahmed’s Application under Section 12(2) CPC alleging that his brother, Mumtaz Ahmed/the plaintiff-respondent No.1 had obtained the aforesaid Judgment by playing a fraud on the trial Court. Imtiaz Ahmed filed a civil revision against the trial Court’s Order dated 24.02.2025, but the District Judge Karachi East also dismissed the same vide Order dated 31.07.2025. Petitioner, Imtiaz Ahmed, alleges that the orders passed by the two forums below are “without lawful authority” and “of no legal effect” and has invoked the writ jurisdiction of this regular bench, hence this petition.

2. The brief background of the matter is that Mumtaz Ahmed/respondent no.1 filed a suit for possession, mense profit and injunctive relief against his brother/the petitioner. According to the Judgment dated 25.09.2023 available on file, after the said suit was instituted on 08.12.2021, service was affected on the brother/petitioner-defendant by registered post A/D, TCS, Bailiff, pasting and

publication and also by E-Notice. However, none appeared on behalf of the brother/petitioner. No intimation was received. Thereafter, service against the defendant was held good vide order dated 20.05.2022. The matter then proceeded exparte against the defendant/petitioner. None on behalf of the petitioner-defendant appeared before the trial Court to cross-examine the respondent-defendant and Judgment and Decree were announced on 25.09.2022.

3. Heard Counsel and perused the record available on file. Learned Counsel for petitioner-defendant contends that no TCS Delivery Report was present in the file before the trial Court. He argued that the trial Court had sight of the TCS Courier receipt only, and this is/was not proper service. Counsel's submission disregards the alternate modes of service, including substituted service effected on the petitioner-defendant in the suit. He has not denied these alternate modes of service of summons. The address of petitioner-defendant has been accepted by him and has remained the same, yet the petitioner-defendant avoided appearance. In the circumstances, I do not find any strength in Counsel's submission to set-aside the entire judgment and decree on this score of alleged fraud arising out of service of summons.

4. Counsel next submitted that the petitioner-defendant had allegedly executed a sale agreement with the previous allottee/owner of the Subject Property. He contended that the plaintiff-respondent committed fraud by concealing this material evidence from the Court. However, if this were the case, then the petitioner-defendant did not demonstrate any positive action taken on his part to safeguard his interest in terms of filing a suit for specific performance to determine his legal rights in the property.

5. I have perused affidavit filed by the petitioner in trial Court and note that the petitioner-defendant, in Paragraph-6 of his affidavit in support of his Application under Section 12(2) CPC which he has sworn

on oath has stated that the respondent-plaintiff had placed original property documents with his mother and his got transferred the subject property in his name on 01.10.2010 with malafide intention and ulterior motive without his prior permission and consent. Yet the petitioner-defendant remained silent about the matter, which does not inspire confidence.

6. I do not find any irregularity or any other defect in the two impugned Orders passed by the lower forums below. No case for setting aside the Judgment passed by the trial Court under Section 12(2) CPC is made out. Consequently, in view of the above reasons, this petition is dismissed.

J U D G E