

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Rev. Appln. No. S-95 of 2020

Applicant : Ghulam Qadir s/o Muhammad Khan, Bhambhero
Through Mr. Khan Muhammad Sangi, Advocate

Respondents : Legal Heirs of Sadiq Kamil Mian and others,
Through Mr. Mian Mumtaz Rabbani, Advocate

The State : Through Mr. Ghulam Abbas Kubar, Asst. A.G

Date of Hearing : 04.12.2025

Date of Order : 19.12.2025

ORDER

KHALID HUSSAIN SHAHANI, J.— Applicant Ghulam Qadir Bhambhero, invokes the revisional jurisdiction of this Court against the impugned judgment dated 26th September, 2016 and decree dated 30th September 2016 passed by the learned 2nd Senior Civil Judge, Sukkur, as well as the subsequent judgment and decree dated 15th January 2020 passed by the learned 2nd Additional District Judge (Model Appellate Court), Sukkur, in Civil Appeal No.97 of 2016. The applicant seeks to have these judgments and decrees set aside and the case remanded back to the learned trial court with directions to reconsider and decide the matter afresh in light of the evidence and material on record.

2. Briefly, the facts of the case are that, the applicant Ghulam Qadir, filed First Class Suit No.81/2011, later renumbered as No.146/2016, before the 2nd Senior Civil Judge, Sukkur, for Specific Performance of Contract and Permanent Injunction valued at Rs.62,00,000/- against Sadiq Kamil Mian (now deceased) through his legal heirs and other revenue officials. The essential claim of the applicant is that the deceased respondent Sadiq Kamil Mian and he had entered into three separate sale agreements dated 17th May 1995, 12th December 1996, and 14th February, 2001 whereby the respondent agreed to sell agricultural lands situated at Deh Tarai, Taluka Salehpur,

District Sukkur, to the applicant in consideration of Rs.32,00,000/- for the original lands and Rs.62,00,000 for the complete package including lands granted in 1998-99 to the respondent's wife and daughters. The applicant contends that he has fully performed his part of the contract by making the entire payment of the sale price to the respondent, producing receipts of land revenue, water charges, and electricity bills in evidence. The applicant has been in continuous possession of the disputed lands since 1992 and has cultivated them and paid all statutory dues. The applicant further alleges that though he repeatedly approached the respondent for execution of registered sale deed and mutation of the record of rights, the respondent, particularly after the issuance of Transfer Orders in 2005, kept the applicant on false hopes and eventually refused performance. The applicant seeks directions for the respondent's legal heirs to perform the contract by executing registered sale deed and mutating the record of rights in his favour, or alternatively, for the Court to appoint its Nazir to execute such documents on their behalf.

3. The respondent's legal heirs, through their written statement, have denied the applicant's case in its entirety. They contend that the applicant was merely a lessee cultivating the land on the basis of a lease or partnership arrangement and did not pay any purchase price to the respondent. They further allege that the sale agreement dated 14th February, 2001 is a forged and manipulated document and that the applicant has illegally and forcibly occupied the lands after the respondent's death in 2004. The respondents have raised the counter-allegation that the applicant, with malafide intention, lodged FIR No.55 of 2003 for offences under Sections 420, 468, 471, and 34 PPC based on the alleged forgery in the sale agreement dated 14th February, 2001. The respondents also filed a criminal complaint for restoration of possession under the Illegal Dispossession Act. Notably, it is admitted in the written statement that the respondent accepted the sale agreements dated 17th

May, 1995 and 12th December, 1996 and no allegations of forgery or fabrication were raised against these two agreements.

4. The learned trial court, after examining the evidence, framed six issues and proceeded to hear the parties. The trial court's findings, as reflected in the judgment dated 26th September 2016, reveal a shallow and cursory treatment of the substantial evidence on record. The learned trial court held that the applicant had not established a case for specific performance and dismissed the suit with no order as to costs. The trial court's reasoning was centered on the conclusion that the respondent lacked title to the land inasmuch as no Transfer Order had been issued in his name at the time of the sale agreements, and that therefore any purported sale by him would be void. The trial court further observed that the sale agreement dated 14th February, 2001 was forged and fabricated based on allegations made by the respondents without conducting any proper forensic or documentary analysis. The trial court's judgment notably omitted any detailed discussion of the evidence presented by the applicant, including his own examination, the evidence of the witness Misri Khan, the receipts for revenue and utility payments, and the critical admissions made by the respondent's own witness, Mian Mumtaz Rabbani, who appeared as defendant witness (DW-1).

5. The applicant thereafter preferred Civil Appeal No.97 of 2016 before the 2nd Additional District Judge (Model Appellate Court), Sukkur. The appellate court, while purporting to conduct a review of the trial court's judgment, essentially affirmed the dismissal without undertaking any independent assessment of the evidence or critically evaluating the trial court's findings. The learned appellate court merely stated that the trial court had ascertained the facts and evidence on record and that the appeal lacked merit. The appellate court's judgment is equally deficient in discussing the crucial evidence that emerged during the trial, particularly the admissions made by

the respondents themselves and the documentary evidence relating to the applicant's payments and possession.

6. The applicant has now approached this Court in revision and has raised several material grounds of complaint against both the trial court's and appellate court's judgments. First and foremost, the applicant submits that both courts below have failed to apply section 17 of the Contract Act, 1872 as adopted in Pakistan, which recognizes admission by a party as against that party. The respondents, through their written statement, have expressly admitted that the sale agreements dated 17th May, 1995 and 12th December 1996 are genuine and binding, and they have not denied the applicant's signatures on these documents. The respondent's own witness, Mian Mumtaz Rabbani, during his examination as DW-1, was confronted with various questions but did not deny that his late father (respondent No.1) had executed these agreements. Furthermore, the witness admitted that he had not produced any lease agreement to substantiate the respondents' claim that the applicant was merely a tenant. The applicant argues that in the face of such admissions by the respondents themselves, the trial court had no legal basis to reject the applicant's claim or to pronounce the agreements as forged and fabricated.

7. The applicant further contends that the trial court's finding that respondent No.1 lacked title to execute the sale agreement because no Transfer Order had been issued in his name is patently erroneous. It is well-established law that the right to sell land is not contingent upon the existence of a Transfer Order. What is relevant is whether the person has legal or equitable rights over the property. The respondents were allotted the lands through A-Forms issued by the Colonization Officer, Sukkur Barrage, and these A-Forms vested legal rights in them. The respondent, as a holder of A-Form rights, was legally entitled to execute a valid sale agreement. Moreover, the law recognizes that

Transfer Orders are subsequent administrative procedures and their absence does not invalidate anterior transactions based on legal rights already vested.

8. The applicant emphasizes that the trial court's treatment of the third agreement dated 14th February, 2001 was procedurally and substantively flawed. While the respondents denied the execution and attestation of this agreement and alleged forgery, they did not file a suit for cancellation of this agreement. Instead, they relied on the existence of an FIR lodged at the instance of respondent No.1. Significantly, on the direction of this Court, a Direct Complaint No.146 of 2004 was filed in the criminal court, and the applicant and his witnesses were acquitted vide judgment dated 26th April, 2008. The criminal acquittal is a strong indicator that the allegations of forgery were not substantiated beyond a reasonable doubt in a criminal proceeding, where the burden of proof is significantly higher than in a civil suit. The trial court ought to have given considerable weight to this criminal acquittal and to the fact that the FIR itself was registered against only the third agreement while the respondents expressly admitted the first two agreements.

9. The applicant further points out that both the trial court and the appellate court have conspicuously failed to discuss or engage with critical pieces of evidence on record. The applicant himself was examined as Ex-54 and produced receipts for payment of land revenue (Ex-57-A to 57-H), electricity bills (Ex-59-A to 59-Q), and water charges (Ex-58-A to 58-D). The witness Misri Khan, examined as Ex-61, categorically stated in his examination that the agreements were executed in his presence and that the applicant paid the full consideration to respondent No.1. The respondent's own witness, Mian Mumtaz Rabbani (DW-1), in his cross-examination, admitted that no lease agreement was produced before the court despite the respondents' claim that the applicant was merely a tenant. The witness further admitted that electricity bills of the tube well installed on the land had been paid by the

applicant up to the year 2001. These admissions and pieces of evidence directly support the applicant's case and contradict the respondents' narrative of a tenancy relationship.

10. It is a well-established principle in civil jurisprudence that every issue framed by the court must be decided separately and with reference to the evidence adduced by the parties. In the judgment dated 26th September 2016, the trial court addressed Issue No.1 regarding maintainability in the affirmative, yet proceeded to dismiss the suit without properly deciding the remaining issues in light of the evidence. Issue No.2 pertained to whether the sale agreements were forged and fabricated, and this issue required a meticulous examination of documentary evidence, expert opinion if necessary, and the admissions of the parties themselves. Issue No.5 specifically asked whether the respondents were bound to perform the contract in respect of the disputed land, which was the very crux of the applicant's claim. The trial court's failure to discuss these issues separately and to analyze the evidence bearing on each issue constitutes a fundamental breach of the mandatory requirements of the Code of Civil Procedure and renders the judgment defective, if not wholly void.

11. The applicant has also pointed out that respondent No.1 did not file the written statement himself. The record shows that respondent No.1 expired in February or March 2004, whereas the suit was filed by the applicant in 2006. The written statement was filed on 30th August 2008, long after the respondent's death and by his legal heirs. This temporal gap is significant because respondent No.1 himself never formally denied the applicant's version of the facts or the execution of the agreements during his lifetime. He neither filed a suit for cancellation of the agreements nor filed a written statement denying his own signatures. Adverse inferences should have been

drawn against the respondents for this failure, yet neither the trial court nor the appellate court alluded to this critical factual circumstance.

12. Furthermore, the respondents have at no stage filed a suit for cancellation of any of the three agreements or for recovery of possession based on the alleged forgery. If the respondents genuinely believed that the agreements were forged and that the applicant was merely a trespassing tenant, they were legally bound to institute appropriate proceedings within a reasonable time. The law does not countenance a situation where a party makes diametrically opposed claims in different forums or pursues a passive defense while simultaneously asserting rights inconsistent with those very defenses. The respondents' conduct of admitting the first two agreements in writing while denying the third and simultaneously alleging that the applicant is a mere tenant creates an internal contradiction that the trial court should have carefully analyzed and resolved against the respondents.

13. The applicant further contends that the decisions of both courts below are vitiated by non-reading, misreading, and a manifest failure to apply the established principles of contract law and evidence. The trial court's reliance on the absence of a Transfer Order as a basis for invalidating the sale agreement runs counter to well-settled jurisprudence. The appellate court's affirmation of the judgment without undertaking an independent and critical re-assessment of the evidence demonstrates an abdication of its appellate responsibility. Both courts appear to have proceeded on the assumption that the respondents' allegations carried greater weight than the applicant's evidence and the respondents' own admissions, without articulating any principled basis for such preference.

14. The applicant emphasizes that he has not merely been denied a monetary relief but has been deprived of his proprietary rights over land valued at Rs.62,00,000/- for which he claims to have paid the full

consideration. He has cultivated the land, paid all statutory obligations, and demonstrated continuous possession for nearly three decades. The manner in which the courts below have resolved this matter, without engaging with the substance of the evidence and without separately deciding the framed issues, violates fundamental principles of natural justice and the right to be heard. The judgment appears to be mechanical and formulaic, lacking the hallmark of reasoned adjudication.

15. Learned counsel for the applicant has placed reliance upon numerous precedents establishing the principle that where a trial court fails to discuss evidence or materially misreads it, the High Court is justified in exercising its revisional powers to remand the case. It is further submitted that admissions made by a party under section 17 of the Contract Act cannot be lightly brushed aside and constitute binding admissions against that party unless they were made under duress or fraud, neither of which has been alleged here. The counsel further contends that the acquittal of the applicant in the criminal proceedings is a significant circumstance that ought to have been considered by both the trial court and the appellate court in arriving at their conclusions.

16. Conversely, the respondents' counsel has argued that the impugned judgments are sound and that the trial court correctly held that respondent No.1 lacked authority to sell the entire suit land inasmuch as much of it was granted individually to other members of the family. It is submitted that the applicant's claim is inherently flawed because the respondent could not have granted what he did not own. Furthermore, it is contended that the sale agreement dated 14th February, 2001 bears clear marks of forgery and manipulation, particularly with regard to the date of attestation, and that the respondents cannot be held bound by a forged document. It is also argued that

the applicant was at all times merely a tenant or had some other arrangement with the respondent and that no genuine sale ever took place.

17. Having examined the entire record, including the plaints, written statements, documentary evidence, depositions of witnesses, and the judgments of both the trial court and the appellate court, this Court is compelled to hold that both courts below have failed in their judicial duty to apply the evidence to the issues framed and to decide the case in accordance with law. The fundamental defect in the trial court's judgment lies in its refusal to grapple with the evidence presented by the applicant and the admissions made by the respondents themselves. The trial court's finding that the respondent lacked title because no Transfer Order had been issued is based on a misunderstanding of the law. Under the land colonization scheme, A-Forms vested legal rights in the allottees, and these rights were sufficiently valid to form the basis of a contract for sale. The respondents themselves never disputed this proposition; what they disputed was whether they had authorized the respondent to sell the remaining lands granted to other family members. However, even this dispute is answered by the respondents' express admission of the first two agreements, wherein the respondent purportedly agreed to sell his own lands to the applicant.

18. The trial court's treatment of the third agreement is equally problematic. The respondents alleged forgery, yet neither produced forensic evidence nor expert opinion to substantiate the allegation. They relied instead on the FIR lodged by respondent No.1 and the denial of the stamp vendor and the oath commissioner. However, the applicant and his witnesses were acquitted in the criminal case, and the criminal court found sufficient reason to acquit them despite the serious allegations. This acquittal is a material fact that the trial court should have considered. The absence of any discussion of

this acquittal in the judgment suggests that the trial court did not give proper weight to it or overlooked it altogether.

19. The evidence regarding the applicant's possession and payment of statutory dues is uncontradicted. Neither the respondents nor the respondents' counsel disputed that the applicant had been in possession since 1992, had paid revenue taxes, water charges, and electricity bills. In fact, respondent's witness Mian Mumtaz Rabbani admitted during cross-examination that the applicant had paid electricity bills up to 2001. These facts are inconsistent with the respondents' characterization of the applicant as a mere tenant. A tenant does not normally assume the role of a purchaser by paying such charges in his own name; at most, a tenant would be liable to reimburse the actual owner or the lessor. The trial court's disregard of these facts amounts to a misreading of the evidence.

20. Furthermore, the principle of admission under section 17 of the Contract Act has been completely overlooked by the trial court. The respondents, through their written statement, did not deny the first two agreements or the respondent's signatures thereon. This amounted to an admission of the execution of these agreements. The burden then shifted to the respondents to prove that these agreements were subsequently annulled or that the applicant had breached them, but no such proof was forthcoming. Instead, the respondents merely asserted that the agreements were abrogated due to the applicant's non-performance, yet they produced no documentary evidence or credible testimony to support this assertion. In law, an admission is a statement made by a party acknowledging the existence of a fact relevant to the issue, and unless the admission was made under duress, fraud, or by mistake, it operates as an estoppel against the admitting party.

21. The trial court's dismissal of the suit without separately deciding Issue No.5, which pertained to whether the respondents were bound to

perform the contract, is a grave procedural irregularity. The judgment must show how the court applied the evidence to each issue and arrived at its findings. The mere assertion that the suit is dismissed without engaging with the evidence does not constitute a judgment in the eye of law. The appellate court's affirmation of this judgment without rectifying this fundamental defect compounds the error.

22. In light of the foregoing analysis, this Court is of the considered view that both the trial court and the appellate court have acted with material irregularity and have failed to apply the law to the facts. The judgments are vitiated by non-reading and misreading of evidence, by failure to decide the framed issues separately, by disregard of the admissions made by the respondents, and by overlooking the significance of the criminal acquittal. The applicant has made out a strong case for remand, and it would be in the interest of justice and in furtherance of the ends of justice to set aside the impugned judgments and remand the case to the trial court with specific directions to consider the evidence afresh and to decide the matter in accordance with law.

23. Accordingly, this application is allowed with the following directions. The judgment dated 26th September 2016 and the decree dated 30th September 2016 passed by the learned 2nd Senior Civil Judge, Sukkur, and the judgment and decree dated 15th January 2020 passed by the learned 2nd Additional District Judge (Model Appellate Court), Sukkur, are hereby set aside. This Court further observes that while the trial court framed six issues in the original proceedings, no specific issue was framed to separately determine the validity, execution, and binding nature of the third sale agreement dated 14th February 2001, despite this being the most seriously disputed document in the entire case. The respondents have specifically alleged that this agreement is forged and fabricated, while the applicant has produced evidence of his acquittal in criminal proceedings arising from the same allegations. The question of whether the third

agreement dated 14th February 2001 was genuinely executed by respondent No.1 and whether it is legally binding upon the respondents is a distinct and material issue that requires independent determination based on the evidence adduced by both parties. Accordingly, the trial court is hereby expressly directed that upon remand, in addition to reconsidering the six issues already framed, the court shall frame a separate and specific issue to the following effect: *Whether the sale agreement dated 14th February, 2001 was validly executed by respondent No. 1 and is binding upon the respondents, and whether the allegations of forgery and fabrication raised by the respondents have been established?* The trial court shall decide this additional issue in light of all relevant evidence including the testimony of the attesting witnesses, the stamp vendor, the oath commissioner, the evidence relating to the FIR and the criminal proceedings, the judgment of acquittal dated 26th April, 2008 and any other material on record. This issue shall be decided separately and independently, and the trial court shall record clear findings thereon with reasons. The trial court is further directed to pay due regard to the established principles of contract law, including the doctrine of admissions and recessions of Contracts embodied under the Contract Act, and to apply the burden of proof as required by the Code of Civil Procedure. The trial court is also directed to consider whether any adverse inferences should be drawn against the respondents for their failure to file a suit for cancellation of the agreements within a reasonable time after the alleged forgery or for their delayed filing of the written statement long after the death of respondent No.1. The trial court shall decide the matter and pass a fresh judgment and decree within a period of six months from the date of remand. The operation of the impugned decrees is hereby suspended until the final disposal of the remanded proceedings.

J U D G E