

Order Sheet
IN THE HIGH COURT OF SINDH, KARACHI
Revision Application No.33 of 2023

Date	Order with signature of Judge
1.	For Orders on CMA No.2057/2023 [u/s 149 CPC]
2.	For Orders on CMA No.2058/2023 [Limitation]
3.	For Orders on CMA No.2059/2023 [Exemption]
4.	For Orders on CMA No.395/2023 [U/O 41 R-27 and 28 CPC]
5.	For hearing of Main Case.

30.01.2026

Mr. Ameeruddin, Advocate for the Applicanty.

ARSHAD HUSSAIN KHAN, J.- Through this Civil Revision Application filed under Section 115 read with Section 151, Civil Procedure Code, the applicants have called in question the judgment dated 19.10.2022, passed by the learned IX-Additional District Judge, Karachi [West] in Civil Appeal No.142 of 2022, whereby the appeal preferred by the applicants was dismissed, affirming the judgment and decree dated 26.02.2022, passed by the learned VI-Senior Civil Judge, Karachi-West, in Suit No.842 of 2021, with the following prayers :

- (a) *Allow the present Revision Application by setting aside the impugned judgment dated 19.10.2022 passed by learned IX-Additional District Judge, Karachi West and in consequence thereof also to set aside the judgment and decree passed by learned VI-Senior Civil Judge, Karachi West and decree the suit filed by the applicants in the interest of justice.*
- (b) *Costs and any other relief which this Hon'ble Court may deem fit and appropriate in the circumstances of the case.*

2. Learned counsel for the applicants has argued that both the courts below acted illegally and with material irregularity in dismissing the suit and appeal without proper appreciation of the documentary evidence produced by the applicants, particularly the proof of payment of sale consideration, delivery of possession and execution of an irrevocable general power of attorney in favour of their father. It was submitted that the findings recorded are the result of non-reading and misreading of material evidence and that the courts below failed to consider the explanation regarding non-production of attesting witnesses. Learned counsel has further contended that the appellate court affirmed the trial court's judgment without meaningful reappraisal of the evidence,

thereby occasioning failure of justice, warranting interference by this Court in revisional jurisdiction under Section 115 C.P.C.

3. Heard learned counsel for the applicants and perused the material available on the record.

4. From perusal of the record, it appears that despite service of notices through all modes, none appeared on behalf of the defendant/respondent before the trial court, as a result whereof the suit proceeded ex-parte. Nevertheless, the learned trial court dismissed the suit on the grounds that the applicants failed to examine the mandatory attesting/marginal witnesses to prove the execution of the sale agreement and the general power of attorney. Although, the learned trial court noted the legal requirement under the Qanun-e-Shahadat Order, 1984, but it failed to consider the explanation offered by the applicants that one attesting witness had passed away while the other was of advanced age and bedridden. The learned trial court further did not afford an opportunity to the applicants to produce such witnesses or to lead alternative evidence to prove the execution and delivery of the said documents.

5. The appellate court affirmed the findings of the trial court without adequately considering the explanation regarding non-production of attesting witnesses and without directing the trial court to allow the applicants an opportunity to adduce such evidence. The appellate court also did not examine the documentary evidence produced by the applicants in detail, including payment receipts, possession of the property, and execution of the irrevocable general power of attorney. As a result, the findings of the appellate court suffer from material irregularity and require reconsideration.

6. In view of the above, it is evident that the applicants were not afforded a proper opportunity to prove their case in accordance with law. Both the trial court and the appellate court have failed to consider the totality of evidence and explanations provided by the applicants. Accordingly, this revision application is allowed to the extent that the matter is remanded to the learned trial court for fresh adjudication. The trial court shall decide the suit afresh in accordance with law and on merit, after giving the applicants a reasonable opportunity to produce the

attesting witness or any other evidence. The impugned judgments of the courts below are set aside for the purpose of remand.

The trial court is further directed to commence the proceedings from the stage of evidence and conclude the same within a period of three months from the date of receipt of this order. It is clarified that no adverse inference shall be drawn against the applicants on account of the earlier non-production of attesting witnesses, in view of the explanation regarding death and ill-health of the said witnesses.

The instant Civil Revision Application stands disposed of along with all pending applications.

JUDGE

jamil