

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

C.P No. S-385 of 2025

[Muhammad Rafique and others v. Khushi Muhammad & others]

Petitioner: Muhammad Rafique and others
through Mr. Altaf Sachal Awan,
Advocate.

Respondent Nos.1to7: Khushi Muhammad and others
through Mr. Abdul Jabbar Rajput,
Advocate.

Respondents No.8to10: Through Mr. Allah Bachayo Soomro,
Additional Advocate General, Sindh.

Date of Hearing: 26.01.2026.

Date of Judgment: 06.03.2026.

JUDGMENT

RIAZAT ALI SAHAR, J: - Through this Constitutional Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners have prayed for the following reliefs:-

- a) To set aside the impugned order dated 17.11.2023 passed by the learned Additional District Judge-IV Shaheed Benazirabad and maintain the order of learned trial Court.
- b) Any other relief(s) which this Honourable Court deems fit and proper in the favour of petitioner.

2. The background of the case is that the dispute has its start in an agreement of sale dated 30.07.2008 whereby respondents No.1to7/defendant No.1to10 in F.C. Suit No.75/2018 (“private respondents”), being owners of agricultural land measuring 14-00 acres out of Survey Nos. 452, 453, 454, 456, 457, 458 and 459, situated in Deh 18, Taluka Sakrand, District Shaheed Benazirabad, agreed to sell the said land to the

petitioners for a total consideration of Rs.2,62,06,250/-. The petitioners stated that the entire sale consideration was paid through post-dated cheques and a small cash payment, all of which were duly encashed and credited into the accounts of respondents. Possession of the land was delivered, whereafter the petitioners launched a housing scheme, incurred substantial development expenditure and sold plots to third parties.

3. Subsequently, disputes arose when respondents, despite receiving full consideration, avoided execution of registered sale deeds. An earlier suit filed by respondents (**F.C. Suit No.223 of 2015**) for cancellation and declaration was dismissed on 11.02.2017 after verification from concerned banks regarding encashment of cheques. The petitioners thereafter instituted F.C. Suit No.75 of 2018 for declaration, specific performance and injunction. Summons were issued; one defendant appeared while others did not file written statements. Ultimately, defendants were debarred from filing written statements, evidence was recorded *ex-parte* and the **suit was decreed on 03.08.2019**. Execution proceedings were also followed.

4. Respondents No.1 to 7 later filed an application under Order IX Rule 13 CPC seeking to set aside the *ex-parte* decree. The learned trial Court dismissed the application on 10.04.2023, holding it barred by limitation and finding service sufficient. In revision, the learned Additional District Judge-IV allowed the application vide order dated 17.11.2023, which has given rise to the present constitutional petition.

5. The respondents No.1 to 7 filed their comments wherein they submitted that the impugned order dated 17.11.2023 has been lawfully and rightly passed by the learned Revisional Court after proper appreciation of the record and by applying its

judicial mind, as the *ex-parte* judgment and decree were obtained without lawful service upon all defendants and in clear violation of mandatory provisions of Order V CPC. The petitioners themselves admitted defective service, while no substituted service was ever effected. They further submitted that upon acquiring knowledge of the *ex-parte* decree, they promptly approached the trial Court under Order IX Rule 13 CPC and the Revisional Court rightly restored their right of hearing. The allegations regarding agreement of sale, payment and knowledge are disputed questions of fact requiring evidence and cannot be adjudicated in constitutional jurisdiction. They further submitted that the petition is also hopelessly time-barred, having been filed after more than six months without any sufficient cause or valid medical proof for condonation. They also pointed out that the main suit has since been dismissed for non-prosecution, as such, instant petition has become infructuous. The petitioners' conduct reflects mala fides and abuse of process; hence, the constitutional petition is not maintainable and is liable to be dismissed with costs.

6. Learned counsel for the petitioners argued that the impugned revisional order is unlawful and unsustainable as the learned revisional Court exceeded its jurisdiction under Section 115 CPC by reappraising disputed questions of fact relating to service and limitation. He contended that service upon a male member of the joint family, who appeared and engaged counsel, constituted valid service under Order V Rule 15 CPC. He contended that respondents had full knowledge of proceedings as evident from their participation in execution proceedings through vakalatnama and power of attorney. He also contended that the application under Order IX Rule 13 CPC was filed after an unexplained delay of more than three years without seeking condonation under Section 5 of the Limitation Act; and that the conduct of respondents, having received full sale consideration

and benefited from the transaction, was *mala fide* and disentitled them from equitable relief. Learned counsel has further contended that the learned trial Court had rightly exercised its discretion and its order did not suffer from any jurisdictional defect warranting interference in revision. He, therefore, prayed that the petition may be allowed.

7. Learned counsel for respondents No.1 to 7 supported the impugned order and contended that mandatory provisions of Order V CPC were not complied with, as no proper personal or substituted service was effected and no specific order declaring the defendants *ex-parte* was passed. He contended that one of the defendants had died during pendency of the suit and no legal heirs were impleaded, rendering the decree void. He further contended that limitation under Article 164 of the Limitation Act would commence from the date of knowledge, which was disputed and required evidence and that revisional interference was justified to prevent grave miscarriage of justice. As such, he prayed for dismissal of the constitutional petition.

8. Learned Additional Advocate General, Sindh contended that the matter mainly involved private rights between the parties. He contended that constitutional jurisdiction is discretionary and should be exercised only where clear illegality, jurisdictional error or violation of law is established on the face of record.

9. I have thoughtfully considered the submissions of learned counsel for the parties and examined the record with utmost care. The controversy essentially turns upon three interrelated questions (i) whether respondents No.1 to 7 were duly served and had knowledge of the proceedings; (ii) whether their application under Order IX Rule 13 CPC was within limitation;

and (iii) whether the learned revisional Court acted within the scope of its jurisdiction.

10. As regards service, the record clearly demonstrates that summons were served upon a male member of the respondents' joint family residing at the same address. **Said person not only acknowledged service but also appeared through counsel.** Order V Rule 15 CPC expressly recognizes service upon an adult male member of the family as valid service. Once such service is effected and appearance is entered, the plea of non-service becomes untenable, particularly when the same party subsequently participates in execution proceedings. The law does not countenance a hyper-technical approach whereby litigants, having knowledge of proceedings, later seek to invalidate decrees on procedural facts. Equally significant is the aspect of knowledge and limitation. **The *ex-parte* decree was passed on 03.08.2019. Execution proceedings ensued and respondents admittedly appeared through counsel in March 2020.** This appearance unmistakably establishes knowledge of the decree. Article 164 of the Limitation Act prescribes a period of thirty days for filing an application under Order IX Rule 13 CPC from the date of knowledge. The application, having been filed on 18.03.2023, was *ex facie* barred by time. The absence of any application under Section 5 of the Limitation Act further renders it incompetent. It is well settled that limitation is not a mere technicality but a substantive provision of law intended to ensure certainty and finality in litigation.

11. The plea regarding death of one defendant during pendency of the suit is equally unavailing. No credible material was produced before the trial Court to establish the date of death or to show that the decree was passed against a deceased person without substitution of legal heirs. Such bald assertions, raised

belatedly, cannot be used as a device to unsettle concluded proceedings.

12. Turning to the scope of revisional jurisdiction, it is trite law that the power under Section 115 CPC is confined to correcting jurisdictional errors, illegal exercise of jurisdiction, or failure to exercise jurisdiction vested by law. The Revisional Court is not empowered to reassess evidence or substitute its own findings on disputed questions of fact merely because another view is possible. The learned trial Court had exercised its discretion judiciously after appreciating the record, particularly on the issues of service and limitation. The interference by the learned revisional Court, therefore, amounted to an excess of jurisdiction. Furthermore, the conduct of respondents also merits consideration. They received the entire sale consideration, delivered possession, permitted development of a housing scheme and even executed sale deeds for third-party purchasers. Equity and conscience do not permit such parties to approbate and reprobate, benefiting from a transaction on one hand while seeking to repudiate it on the other. Courts exercising equitable and constitutional jurisdiction must guard against abuse of process and protect the sanctity of finalized transactions, especially where third-party rights have intervened.

13. After considering the material holistically, it appears that the impugned order dated 17.11.2023 suffers from material illegality, misapplication of law relating to service and limitation, and transgression of the limits of revisional jurisdiction. Allowing such an order to stand would challenge the finality of judicial proceedings and encourage frivolous attempts to reopen settled decrees.

14. Keeping in view the circumstances of the case, MA No.4749/2024 is accepted and the instant constitutional petition is

allowed. The impugned order dated 17.11.2023 passed by the learned Additional District Judge-IV, Shaheed Benazirabad, in Civil Revision No.20 of 2023 is set aside and the order dated 10.04.2023 passed by the learned Senior Civil Judge-II, Shaheed Benazirabad, dismissing the application under Order IX Rule 13 CPC is restored. Consequently, the *ex-parte* judgment and decree dated 03.08.2019 passed in F.C. Suit No.75 of 2018, along with the execution proceedings arising therefrom, shall remain intact. However, there shall be no order as to costs.

15. Let the R&Ps of the Courts below be returned forthwith.

JUDGE

Abdullah Channa/PS