HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Civil Revision Application No.141 of 2021

Present: Justice Jawad Akbar Sarwana

Applicants	:	Professor Syed Ismail Shah s/o Sulleman Shah (deceased) through LRs: 1) Muhammad Ali Shah : Son (minor) 2) Shahnawaz Shah: Son (minor) 3) Syeda Amna Shah: Daughter (minor) through real uncle/next friend Syed Abdul Sattar Shah, Advocate
Applicant No.4	:	Mst.Asia wd/o Syed Ismail Shah. Nemo.
Respondent No.1	:	Noor Muhammad s/o Gulbar Rustmani. Nemo.
Respondent No.2	:	Gulbar Rustamani. Nemo.
Respondent No.3	:	The Mukhtiarkar, Taluka Qasimabad. Nemo.
Respondent No.4	:	The Sub-Registrar, Registration Qasimabad, Hyderabad. Nemo.
Respondent No.5	:	The Province of Sindh. Nemo.
Date of hearing & Short Order	:	**22.10.2025**
Date of reasons	:	**24.10.2026**

O R D E R

JAWAD AKBAR SARWANA, J.: Professor Syed Ismail Shah s/o Sulleman Shah (deceased)("the Professor") through legal heirs, namely two sons (minor) and a daughter (minor) through their uncle and next friend Advocate Syed Abdul Sattar Shah, who is appearing in person and has filed and pleaded this revision in person on behalf of the LRs of late Professor Syed Ismail Shah (but not his spouse),[1] is aggrieved by the orders passed by the two lower forums below, that is, the Vth Additional District Judge Hyderabad ("the appellate Court")

[1] No Vakalatnama is available on record of Syed Abdul Sattar Shah in this revision application no.141/2021

appellate judgment dated 18.05.2021 and decree dated 21.05.2021 in Civil Appeal No.238/2019 and the VIIth Senior Civil Judge Hyderabad Order dated 13.09.2019 ("the trial Court") in F.C. Suit No.1454/2018. Essentially, the trial Court rejected the plaint filed by the Professor's LRs, and the appellate Court upheld the trial Court's Order.

2. The trial Court and the appellate Court both found the plaint filed by the LRs of the Professor liable to be rejected and/or not maintainable for the reason that the entire controversy concerning the Plot No.D/323 admeasuring an area of 80 sq. yds. (720 sq.ft.) Extension H.D.A Scheme No.II, Block IV, Phase II, Qasimabad in Deh Sari Taluka Qasimabad, Hyderabad ("Suit Property") was adjudicated in proceedings between the parties, earlier in time in F.C. Suit No.20/2010 (after the second round of litigation) by the IInd Senior Civil Judge, Hyderabad ("the 2010 trial Court") in the year 2016 and the same could not be re-agitated and/or re-adjudicated in F.C. Suit No.1454/2018 filed by the LRs of Professor before the VIIth Senior Civil Judge, Hyderabad ("the 2018 trial Court").

B A C K G R O U N D

3. On 21.01.2010, Professor Syed Ismail Shah filed F.C. Suit No.20 of 2010 before the IInd Senior Civil Judge, Hyderabad ("the 2010 trial Court") for Declaration, Specific Performance of Contract and Permanent Injunction concerning the Suit Property against the defendants, namely, among others, Ghulam Mustafa s/o Imdad Khan (defendant no.6), and Aslam s/o Noor Muhammad (defendant no.7). The said suit was decided by way of Judgment dated 15.07.2011 and decreed in favour of the Professor. However, when Ghulam Mustafa (defendant/judgment-debtor no.6) did not register the sale deed in respect of the Suit Property in favour of the Professor, the Professor filed Execution Application No.78/2011, which was allowed by the 2010 trial Court appointing the Nazir as Commissioner to execute the Sale Deed on behalf of Ghulam Mustafa in favour of the Professor, and

the Professor became the absolute and exclusive owner of the Suit Property as on 10.05.2012.

4. The Professor's rights did not last very long, when on 12.09.2012, one Gul Bahar s/o Khan Muhammad filed an application u/s Section 12(2) CPC in Execution Application No.78/2011 (F.C. Suit No.20/2010). The Professor first contested the Section 12(2) CPC proceedings, and after his death on 06.06.2013, his Counsel apparently continued to contest them (this aspect, inter alia, is/was still undecided by the 2010 trial Court when this Civil Revision No. 141/2021 was filed on 16.06.2021). Ultimately, the 2010 trial Court allowed the Section 12(2) CPC application on 02.10.2014, directing the filing of an amended title and the impleadment of Gul Bahar s/o Khan Muhammad as defendant no.8 in F.C. Suit No.20/2010. Accordingly, defendant no.8 (and not the plaintiff) filed the amended title on 12.01.2015. Thereafter, pursuant to the orders passed on 19.09.2015 in the suit proceedings to notify the LRs of the Professor, publication was also made in the daily Kawish on 03.10.2015, but none of the Professor's LRs appeared in F.C. Suit No.20/2010. The 2010 trial Court, viz. the IInd Senior Civil Judge, Hyderabad, dismissed the suit on merits vide judgment and decree dated 14.05.2016 ("the 2016 judgment"), but the Professor's LRs received no intimation.

5. On 02.11.2018, the LRs of the Professor instituted F.C. Suit No.1454/2018 in the Court of the VIIth Senior Civil Judge, Hyderabad ("the 2018 trial Court") against, among others, Noor Muhammad s/o Gulbar Rustamani (defendant no.1), Gulbar Rustamani s/o unknown (defendant no.2) and official defendants. They did not implead the named defendant no.8, Gul Bahar s/o Khan Muhammad, from F.C. Suit No. 20/2010, in the fresh/new suit, F.C. Suit No.1454/2018, which suit concerned the same Suit Property as in the earlier F.C. Suit No. 20 of 2010 filed by the Professor, which had culminated in the 2016 Judgement and decree dated 14.05.2016 setting aside the decree of specific performance dated 15.07.2011. On 18.01.2019, defendant

nos. 1 and 2, in F.C. Suit No. 1454/2018, filed their Written Statement and an application under Order 7 Rule 11 CPC seeking rejection of the plaint filed by the LRs of the Professor before the 2018 trial Court.

6. Meanwhile, on 12.01.2019, Gul Bahar (defendant no.8) filed an application under Section 144 CPC in Execution No.78/2011 (F.C. Suit No. 20/2010) for restitution as the Suit Property which was still in the name of the Professor with the Land Registry. The Professor's LRs also entered appearance in the 2010 proceedings and filed an application under Order IX Rule 13 read with Sections 12(2), 141 & 151 CPC (hereinafter referred to collectively as "application under Section 12(2) CPC, etc." and/or "Section 12(2) CPC application, etc.", as the case may be) in the 2010 trial Court seeking setting aside of the judgment and decree dated 14.05.2016. On 24.12.2020, the trial Court directed the parties to lead evidence in the proceedings under Section 12(2) CPC, etc., while deferring the application under Section 144 CPC pending the final outcome of the proceedings under Section 12(2) CPC, etc. On 27.02.2021, Syed Abdul Sattar Shah, Advocate, who has described himself as Uncle and next friend of the Professor (and is pleading this revision in person, without any Vakalatnama on record on behalf of the appellants), deposed his examination-in-chief in the said proceedings, and cross-examination was reserved for the next hearing date.

7. During the pendency of the application under Section 12(2) CPC, etc. before the 2010 trial Court in 2019, in the meanwhile, the 2018 trial Court in F.C. Suit No.1454/2018 vide Order dated 13.09.2019, as mentioned above, rejected the plaint filed in F.C. Suit No.1454/2018, and the appellate forum too upheld the dismissal order on 18.05.2021.

8. The Counsel for the Professor's LRs has pleaded that the plaint in F.C. Suit No.1454/2018 could not be rejected summarily, and the 2018 trial Court ought to have given the Professor's LRs an

opportunity to prove their claim against the defendants. Meanwhile, Counsel for the respondent/defendant nos. 1 and 2 vehemently opposed the Professor's LRs' contentions and contended that the 2018 trial Court rightly rejected the plaint and that the appellate Court's judgment upholding such rejection is in accordance with law.

9. Heard Counsel and perused the record.

DECLARATION AND CURRENT RIGHTS OF THE PROFESSOR'S LRS

10. The professor had filed F.C. Suit No.20/2010 seeking specific performance, and when he obtained a favourable judgment and decree in 2011, a right in property crystallised in his favour by virtue of the decree for specific performance. However, when the judgment in the suit was set aside in 2016, this right was extinguished as well. So long as the 2016 judgment remains in force, the Professor's LRs can claim neither any right in the Suit Property nor any subsequent (ancillary) relief, such as possession and/or any other ancillary relief, because following the 2016 judgment they no longer have a decree of specific performance in their favour through the Professor until the 2016 judgment is set aside.

11. When the Professor's LRs filed this Revision in 2021, their challenge to the 2016 judgment was still in play before the 2010 trial Court, which was/is yet to adjudicate the application under 12(2) CPC, etc. Further, the losing party in such proceedings will also have a right of appeal. In such circumstances, it cannot be conclusively assumed that the Professors LRs have any right in the Suit Property at the moment. Suffice it to say, their interests are/were safeguarded under the Order dated 24.12.2020 passed by the 2010 trial Court in Execution No.78/2011 (F.C. Suit No.20/2010) until the contest under Section 12(2) CPC, etc. and Gul Bahar's restitution application is/are finally adjudicated/decided by the 2010 trial Court, subject to the right of appeal, etc.

12. Given the above, the trial Court cannot be said to have erred in rejecting the plaint.

DOUBLE TRACK CAUSE OF ACTIONS NOT MAINTAINABLE SIMULTANEOUSLY BEFORE TWO DIFFERENT COURTS

13. The Professors' LRs are pursuing simultaneous double-track reliefs from two different civil courts, and in the facts and circumstances, a cause can be made out concerning the Subject Property in only one and not both the proceedings before the two trial Courts, i.e. in the instant case, before the 2010 trial Court alone and not before the 2018 trial Court. The Professors' LRs have challenged the 2016 judgment and decree in F.C. Suit No.20/2010 before the 2010 trial Court. To this end, the Professors' LRs are arguing that the 2016 judgment should be set aside for the reasons stated therein (challenge under Section 12(2) CPC, etc.). They preferred such a challenge instead of filing an appeal against the 2016 judgment and decree. As discussed hereinabove, they cannot now claim the same relief the Professor claimed in 2010 in a fresh suit in 2018 by arguing that the prayer clause in the 2010 suit differs from the prayer clause in the 2018 suit. The Professor claimed specific performance and ancillary relief in relation thereto in the 2010 suit. The Professors' LRs cannot ingeniously argue that, because they did not pray for declaration and specific performance in the second suit, the second suits is maintainable being different from the first one. As discussed earlier, the Professors' LRs cannot claim possession without demonstrating title in the Suit Property and/or seeking declaration of title and/or specific performance, etc. The Professors' LRs are attempting to claim title by challenging the 2016 judgment and decree. They must first exhaust their challenge to the 2016 judgment and decree, as they did before the 2010 trial Court, before taking any further action, such as, for example, seeking a claim for reimbursement of the purchase price deposited with the Court following the setting aside of the decree of specific performance in 2014/2016, or any other relief, etc.

14. There is another aspect which requires consideration. The appellate Court observed on page 4 of its judgment dated 18.05.2021, third paragraph, that "[the]. . . sale deed becomes infructuous and the concerned official is required to cancel it." The appellate Court cannot decide this aspect in appellate jurisdiction, or even this bench exercising revisionary jurisdiction, as the outcome of the challenge raised by the Professors' LRs to the 2016 judgment was sub judice before the 2010 trial Court in 2021. The 2016 judgment has not attained finality until the application under Section 12(2) CPC, etc., is decided, and, in light of the Order dated 24.12.2020 passed by the 2010 trial Court, which order was also apparently in force when the appellate Court passed its judgment dated 18.05.2021, the matter of cancellation of the sale deed is yet to be decided. The final order passed on the applications filed on behalf of the Professor's legal heirs under Section 12(2) CPC, etc., and Gul Bahar s/o Khan Muhammad's application for restitution under Section 144 CPC will finally decide the status of the Suit Property between the contesting parties. Be that as it may, the Professors' LRs' plaint filed in F.C. Suit No. 1454/2018 was/is not maintainable, and the two forums below rightly held it to be so. In view of the reasons expressed hereinabove, I dismissed the Revision Application vide my Short Order dated 22.10.2025, and the above are my reasons.

15. For removal of doubt, it is clarified that the observations made by me hereinabove are tentative and for the purpose of deciding this revision. Courts below shall not rely on them in relation to the Professors' LRs' challenge to the 2016 judgment and decree, which will be decided on its own merits, based on the facts and circumstances of the case.

16. The revision application stands dismissed in the above terms.

JUDGE

AHSAN K. ABRO