IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S – 36 of 2005

Piyaro Gurgaje v. Ghulam Qadir Gurgage

Civil Revision No. S – 37 of 2005

Piyaro Gurgaje v. Ghulam Qadir Gurgage

Date of hearing: **14-02-2022**

Date of announcement: **08-04-2022**

M/s Abdul Qadir Shaikh and Abdul Aziz Shaikh, Advocates for the Applicant in both matters.
M/s Bhajandas Tejwani and Manoj Kumar Tejwani, Advocate for the Respondent in both matters.

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J U D G M E N T

Muhammad Junaid Ghaffar, J. **–** Through both these Civil Revisions, the Applicant has impugned a common judgment dated 08-01-2005 passed by the District Judge, Ghotki in Civil Appeals No.52 & 57 of 2003, whereby, while dismissing both the Appeals, a consolidated judgment dated 27-03-2003 passed in leading Suit No.21 of 2002 along with Suit No.22 of 2002 has been maintained, through which the Suit of Respondent was decreed and that of the Applicant was dismissed.

2. Heard learned Counsel for the parties and perused the record including the R & Ps.

3. It appears that the Applicant had filed a Suit for declaration and injunction being Civil Suit No.02 of 1998 (**New No.22 of 2002**) and sought the following relief(s):

> *(a) To declare that the Act of the defendants to harassing the plaintiff and interfering in the possession and enjoyment of the Suit Land is illegal and malafide.*
>
> *(b) To restrain the defendants their men, servants, agents, relatives, friends from dispossessing the plaintiff from the Suit Land or interfering in the same or harassing the plaintiff by way of permanent injunction.*
>
> *(c) To award the costs of the Suit to the plaintiff.*

(d) To grant any other suitable relief to the plaintiff under the circumstances of the case, which this Hon'ble Court deems fit and proper.

4. At the same time, the present Respondent also filed his Suit for specific performance and injunction being Suit No.17 of 1994 (**New Suit No.21 of 2002**) and sought the following relief(s):

(a) To direct the defendant to perform part of his contract and transfer Khata of the suit property in the name of plaintiff and in case of his failure to do so, the representative of this honourable court may be ordered to do so.

(b) To restrain the defendant, his sons and his representatives not to dispossess the plaintiff from the suit land without due course of law.

(c) To award cost of the suit to the plaintiff.

(d) To give any other relief to the plaintiff as deems fit under the circumstances of the case.

5. The learned Trial Court initially settled various issues; but it appears that thereafter both the Suits were consolidated and the following consolidated issues were settled by the Court:

1. Whether the leading suit No.17 of 1997 (21/02) reg: Ghulam Qadir Vs: Piyaro is time barred?

2. Whether the leading suit No.17 of 1997 (21/2002) is not maintainable under the law?

3. Whether in leading suit, the defendant had agreed and executed agreement dated 8-12-1965 on account of partition on Holy Quran to transfer the suit land to the plaintiff and the plaintiff paid the Government price of the suit land to the defendant?

4. Whether the plaintiff Ghulam Kadir is in possession and enjoyment of the suit land and paying the land revenue and other taxes to Government in respect of the same?

5. Whether any consideration paid by the plaintiff Ghulam Qadir to the defendant in respect of the suit land?

6. Whether the plaintiff's suit No.17/97 (21/02) Ghulam Qadir Vs: Piaro is undervalued?

7. Whether the plaintiff Ghulam Kadir in suit No.17/97 (21/2002) and the defendant No.1 in suit No.02/98 (22/2002) along with his sons illegally harassed the plaintiff Piaro in suit No.02/98 (22/2002)?

8. Whether the plaintiff Ghulam Kadir is in apprehension for forcible dispossession of the suit land by the defendant?

9. What should the decree be?

6. After evidence was led by the respective parties, the Trial Court came to the conclusion that the Suit of the Applicant does not merit any consideration and was accordingly dismissed; whereas, the Suit of

Respondent was decreed. The Applicant, being aggrieved, impugned the said judgment through two separate Appeals, and by way of the impugned judgment, the Appeals have been dismissed and the judgment of the Trial Court has been maintained.

7. From perusal of the record placed before this Court, it reflects that insofar as the Suit filed by the Respondent is concerned, it was pleaded that somewhere in 1963 certain land was granted to the Applicant as well as the Respondent, and after that they entered into a private partition by virtue of which the Respondent was given certain survey numbers; whereas, in 1965 an *iqrarnama* was reduced into writing on Holy Quran to the extent of the property already partitioned in favour of the Respondent. It was further pleaded that Respondent was in possession to the extent of his land; whereas, in the evidence the Respondent examined himself as well as scribe of the *iqrarnama* and two witnesses namely Soonharo and Gullab. Insofar as the Applicant is concerned, he led his evidence himself along with supporting witness namely Allah Yar. Though the learned Trial Court as well as the Appellate Court have dilated upon all the issues in detail and have concurred in their findings to the effect that the Suit of Respondent ought to have been decreed; whereas, that of the Applicant be dismissed; however, this Court is of the view that the entire crux of the matter between the Applicant and the Respondent is dependent on the findings on Issue No.1 (*Whether the leading suit No.17 of 1997 (21/02) reg: Ghulam Qadir Vs: Piyaro is time barred?)* and Issue No.3 (*Whether in leading suit, the defendant had agreed and executed agreement dated 8-12-1965 on account of partition on Holy Quran to transfer the suit land to the plaintiff and the plaintiff paid the Government price of the suit land to the defendant?).* As to Issue No.1, the learned trial Court has been pleased to hold as under:

> Issue No.1
>
> The burden of proof of this issue lies upon the shoulder of the defendant and the defendant has totally failed to establish his case against the plaintiff that the case of the plaintiff is time barred, and could bring up anything against the plaintiff, that under which provision of law, the suit is time barred, and on the contrary the plaintiff has proved his case to be within time, as soon as he came to know about the khata of the suit land in favour of the defendant, he without loss of time, filed the suit against the defendant before the court, for getting relief accordingly, hence, is these circumstances, the Issue No.1 is answered accordingly in Negative.

8. As to the other issue regarding validity of the purported *iqrarnama*, the Respondent's Suit had been decreed on the ground that it was proved. It would be advantageous to refer to the evidence of Respondent Ghulam Qadir (Ex.44) who was examined twice (and surprisingly, only the second part of

his deposition has been placed in this Revision; however, the entire evidence is available in the R&P's), which reads as under:

> **"***Exam: in chief to Mr. Sahib Dino Solangi Advocate for the plaintiff*
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> *The defendant is my uncle. He was granted 5 survey numbers of Government land on Permanent Tenure from Gudu Barrage Authority during the year 1963/64. That during the year 1965 the defendant gave me S.Nos:82, 708 and 709 of Deh Dilwaro admeasuring about 4-05 Acres; and gave physical possession of it to me, and gave me in writing on holy Quran. The agreement on holy Quran was got written by we the parties through Haji Himmat Ali Solangi the then Primary Teacher of Primary School Village Dodo Kori, and we both the parties affixed L.T.I. of defendant and my signature. I produce photo stat of that agreement on holy Quran at Ex: No:44/A. I paid the installments of malkano proportionate to my area to the defendant who paid the same to the Government. The land was Barren; hence I brought it under cultivation by manual Labour and expenditure. That the Suit land is in my physical possession and enjoyment up till now.* ***The T.O. Form was issued and the land was brought on the khata of defendant.*** *I demanded khata of the Suit land from the defendant, but he refused to do so. And threatened me to handover the possession of the suit land to him, hence I will be ejected without due course of law.* ***I therefore filed the Suit which in the first instance was declaratory but I withdrew the same and filed the present Suit for Specific Performance of Contract and Permanent Injunction to get the khata and protect my physical possession of the Suit land.*** *I produce the original documents, the photo stat copy of which I have already filed with the plaint.*
>
> *Cross Exam: to Mr. Haji Jawed Advocate for the defendant*
>
> *It is correct that the Piyaro is my step uncle. The defendant is the brother of my father from his step mother and hence he is my uncle. The averments in respect of real uncle in my plaint that the defendant is my real uncle is not correct. It is correct to suggest that the S.Nos: shown in the plaint were granted to defendant Piyaro in open katchehry and I had applied for the grant of said land* ***but when the defendant applied for the same; then I withdrew my application.*** *I have not mentioned in the plaint in Para No:2 that I had applied for the grant of land but I withdrew the my said application after the application of the defendant. The settlement of partition of the Suit was taken place in the house of Piyaro / Defendant in presence of Khan Muhammad and Allah Ditto. Since from the year 1950/51 we remained together till 1965; thereafter I started living separately. The writing of Iqrarnama on holy Quran was made on the very day on which the settlement of partition was made. I see the said Iqrarnama which is not countersigned or attested by any respectable person or authority. The witnesses have been shown in the said Iqrarnama are* ***Allah Ditta S/o Mir Khan*** *and* ***Khan Muhammad S/o Salam Khan****. I reside in Deh Dilwaro and also in Deh Shahwali as there my father resides. It is correct to suggest that we were cultivating the land jointly before and after the grant of the Suit land. It is correct that I have not mentioned in the land that I was jointly cultivating the Suit land before the grant of Suit land. It is incorrect to suggest that the Iqrarnama is false, forged and fabricated. My family is consisting of six major persons and remaining are minors. I have got about 12 acres land under my cultivation; beside four acres of this Suit land. I have been the Hari of S.No:82, 708 and 709 of Deh Dilwaro. I have not been paying the Batai share to the defendant. It is correct to suggest that the son of defendant Muhammad Malook submitted an application to the Taluka Mukhtiarkar Ubaruo for the recovery of Batai share and possession of the land S.No:82, 708 and 709 against me. It is incorrect to suggest that I have*

been paying the Batai share of the said survey numbers regularly to the defendant. It is incorrect to suggest that the constructive as well as physical possession had remained with the defendant and I have been cultivating above three survey numbers. It is incorrect to suggest that the defendant Piyaro has been paying me money for making payment to Tapedar in respect of Dhal and other charges. ***It is correct to suggest that Dhal and other charges have been paid by me on behalf of defendant Piyaro.*** *It is correct to suggest that I have made no application in respect of ownership through partition of S.No:82, 708, 709 of deh Dilwaro to Revenue or any other legal authority. The Suit land is best one excepting one acre which is little bit colourish. I cannot say as what is the highest rate of the land of Deh Dilwaro, but the texture of the land is very good and it can fetch very good price.* ***The T.O form of the suit land was issued in the year 1987.*** *I have not made any demand or complaint in respect of above three survey numbers being cultivated by me* ***from 1987 to 1994****. After the year 1994 I have not approached or went in appeal before Colonization Officer, Addl: Commissioner of M.B.O.R. on the strength of Iqrarnama and private partition.* ***It is correct to suggest that the installments of the Suit land have been paid by the defendant****. I have been paying my share of installment to him.* ***I have no proof that I have paid him the share of installments of the Suit land****. I had not made any application or any Civil Suit to any authority excepting this Suit. It is incorrect to suggest that my claim over the Suit land is false and I am only the Hari of the Suit land. I know Himmat Ali since 1965 when he was teacher in our vicinity.*

Re-called and reaffirmed today on 22.02.2003. Examination-in-chief to Advocate for plaintiff.

I produce the original "Iqrarnama" dated: 08.12.1965 at Exh:44/B, executed by the defendant. I produce (20) twenty dhal receipts at Exh:44/C to V, respectively and two original notice of Mukhtiarkar Ubauro at Exh:44/W & X. I produce original Khisragirdvari from the year 1971-72 upto 1982-83 in three sets at Exh:44/Y & Z & Z(a). I produce true copy of Khata of the disputed land mutated in the favour of defendant at Exh:45/A. I produce number shumari in true copy of the disputed land from the year 1986-87 upto 1990-91 at Exh:45/B. I also produce the number shumari from 1992-93 to 1994-95 in true copy at Exh:45/C. I also produce three dhall receipts at Exh:45/D to F, respectively. I produce original re-mokal notice and three land revenue receipts in original and one true copy of the application made to Mukhtiarkar at Exh:45/G to K, respectively. The case of the defendant against me for possession and mesne-profits is false and baseless, because the disputed land is my property and the defendant has got no right or any interest under the law.

Cross to Mr. Abdul Salam Arain, Advocate for the Defendant.

It is incorrect to suggest that I prepared false Iqrarnama dated: 08.12.1965 with the collusion of witnesses. It is also incorrect to suggest that thumb impression of defendant and witnesses on Iqrarnama are false and bogus. ***It is correct to suggest that the Iqrarnama is not agreement of purchase of land****.* ***It is fact that no any transaction of money in the Iqrarnama regarding land in question****.* ***PW Khan Muhammad*** *of Iqrarnama is alive.* ***It is fact that I did not adduce the evidence of both witnesses shown in the Iqrarnama.*** *PW Allah Ditto has expired away in last Ramzan-ul-Sharif. When I was examined before learned Civil Judge Ubauro, PW Allah Ditto was alive. It is fact that only produce dhall revenue receipts but I did not produce any receipt of payment of installments of Guddu Barrage. Voluntarily says I made payment of installments to the defendant. It is fact that Piyaro is holding the khata of suit land. It is fact that I have not produce any purchasing documents before this court. I had filed this suit in year 1994. It is fact*

> *that I have not given the names of witnesses namely Soonharo and Gullab till today before the court. It is fact that both witnesses are inimical terms with the defendant due to murder. Voluntarily says in such case both P.Ws were let-off by the police. It is incorrect to suggest that I had not filed any suit in year 1972 prior to this suit. Dispute over suit land arose in the year 1993-94. It is incorrect to suggest that defendant demanded Batai share from me, therefore, lodged the present suit against the defendant. It is incorrect to suggest that defendant restrained me to not cultivate any crop on the disputed land. It is incorrect to suggest that I have no right over the land in question but I have filed the present suit to harass the defendant. It is incorrect to suggest that I have produced the dhall receipts and other documents with the collusion of Tapedar of land revenue.***"***

9. If the aforesaid deposition including the cross-examination is looked into, it appears that there are certain loopholes in the evidence of Respondent, which apparently have not been looked into by the Courts below. As to the finding in respect of Issue No.1 it may be observed that the learned trial Court as well as the Appellate Court have seriously erred in law by their failure to attend to this most crucial aspect of the case of the Respondent. The issue of a *lis* being time barred or not, is not to be proved solely always by the adversary through evidence. The Court dealing with such issue has also an onerous responsibility to look into such aspect and decide the same. In this matter, the Respondent in his plaint has stated that the cause of action accrued to him some two months back when Applicant extended threats of dispossession and thereafter vide some notice by the Mukhtiarkar and finally when Respondent obtained true copy of the Khata of the suit land on 20.1.1994. This apparently on the face of it appears to be an attempt to extend the limitation which had already expired. The Respondents admits in his cross examination that ***The T.O form of the suit land was issued in the year 1987. I have not made any demand or complaint in respect of above three survey numbers being cultivated by me from 1987 to 1994.*** This admission on the part of the Respondent affirms that despite having knowledge he never made any attempt to seek his relief from any Court of law. It is also a matter of record that initially he filed a suit for declaration and thereafter withdrew it and then filed a suit for specific performance of the purported *iqrarnama*. In terms of Article 113 of the Limitation Act, a Suit for specific performance can be filed within three years from the date fixed for performance of the agreement or if no such dated is fixed, then from the date when performance is refused by a party. Reliance may be placed on the case of *Haji Abdul Karim*[1]. Though nothing was pleaded as to the time for performance in the *iqrarnama*; however, as

[1] Haji Abdul Karim v Florida Builders (Pvt.) Limited (PLD 2012 SC 2470

soon as the khata was mutated in favor of the Applicant, the cause of action accrued, if not from 1965 when the said *iqrarnama* was executed, but at least from 1987 when the khata was mutated and Respondent was in a position to transfer the suit land. Notwithstanding the denial of execution of any iqrarnama by the Applicant, the date of refusal of performance of the same would be counted from 1987, when as per the own knowledge of the Respondent the T.O. Form was issued in favor of the Applicant. By this count the Suit for specific performance was hopelessly time barred, and mere assertion that the cause of action started when true copies of the khata were obtained, is nothing but a blatant attempt to enlarge the limitation which had already expired. If this is permitted, then the limitation as prescribed by law would never end; rather will always remain alive by such apparent false claims which are belied by the evidence of the Respondent itself. How this has been ignored by the Courts below is surprising and astonishing. The trial Court cannot remain oblivious and put the entire burden on the parties to prove the same, as it being a mixed question of fact and law, must also be appreciated by the trial Court. Therefore, from the record as above and the pleadings and the evidence led by the Respondent, it is abundantly clear that the Suit of the Respondent was hopelessly time barred, whereas, the Courts below have failed to decide this issue in accordance with the available facts and law; hence, the said issue is answered in the affirmative, against the Respondent by holding that his Suit was time barred.

10. Coming to the second Issue that whether there was an *iqrarnama* entered into by the parties, and if so, whether it has been proved in accordance with law. The Respondent in his evidence as above has clearly admitted that PW Khan Muhammad of the *iqrarnama* is alive and it is a fact that he has not adduced evidence of both the witnesses as shown in the *iqrarnama*. He has further admitted that when he was examined before the learned Civil Judge, Ubauro, PW Allah Ditto was alive at that point of time and had expired thereafter. He further admits that he has only produced *dhal* revenue receipts but not receipts of payment of installments to Guddu Barrage authorities. He further admits that the two witnesses produced by him in Court admittedly were not the attesting witnesses to the *iqrarnama* but were purportedly present at the relevant time; whereas, not only the Respondent but so also both the witnesses have admitted in their cross-examination that they are not on good terms with the Applicant; rather have

been involved in various criminal cases having some nexus to the Applicant; though finally have been let off. The Applicant's case is that the land was owned by him; it is recorded in his name in the revenue records to which there is no dispute; whereas, the Respondent was his *hari* and was cultivating the land and so also was paying the *batai* share to the Applicant. All these assertions have not been controverted except the plea that there was an *iqrarnama*; whereas, possession was also given and now specific performance is being sought. It is also noteworthy that the Respondent had entered into the witness box for his deposition and was also cross examined and had failed to bring on record material documents and had no proper answers to various questions put to him by the opposing Counsel. Thereafter, he was once again recalled and then made an attempt to produce such documents which he had failed to produce earlier. This has also gone unexplained and as to why he was permitted to do so. Nonetheless, even otherwise he was unable bring on record any material which could have altered the earlier position when he was examined in the first round.

11. Similarly, it would also be relevant to look into the evidence of two witnesses which were produced by the Respondent in support of his case namely Soonharo and Gullab, and the same reads as under:

> **Evidence of PW Soonharo (Ex.60)**
>
> **"***Examination-in-chief to Advocate for plaintiff (Rao Asghar Ali).*
>
> *I know the plaintiff as well as defendant so also land in question. Plaintiff is a nephew of defendant. In the year 1965, Iqrarnama was prepared at School written by Himat Ali Head Master between the plaintiff and defendant in presence of P.Ws Khan Muhammad and Allah Ditto as well as plaintiff signed it and thumb impression of defendant, on Iqrarnama. The land in question is in possession of plaintiff Ghulam Qadir. The land revenue is also paid by the plaintiff.*
>
> *Cross to Mr. Abdul Salam Arain, Advocate for the Defendant.*
>
> *The father of the plaintiff is step brother of defendant. After filing of the present suit, Plaintiff and defendant are not visiting terms with each other also with whole Gurgage brothery.* ***It is fact that defendant nominated me in case of murder of his nephews but police let-off me and challaned Shars by castes****. It is also fact P.Ws Gullab's sons was also nominated in murder case by the defendant, which also let-off by the police during course of investigation. One Ali Sher is my uncle. It is fact that S.No:702 of deh Dalwaro was disputed between the defendant and one Ali Sher my uncle. Firstly grant regarding S.No:702 was cancelled against defendant then again it was granted in the name of defendant.* ***It is fact that there are civil cases of defendant, against us****. It is fact that I have been brought by the plaintiff to given the evidence. It is incorrect to suggest that due to inimical terms with the defendant, I am deposing falsely against him.* ***It is fact that on the Iqrarnama, I have***

> ***not been shown as witnesses but I was present at that time.*** *It is incorrect to suggest that bogus Iqrarnama was prepared by the plaintiff and land in question is in possession of defendant.***"**
>
> **Evidence of PW Gullab (Ex.61)**
>
> **"***Examination-in-chief to Advocate for plaintiff (Rao Asghar Ali).*
>
> *I know the plaintiff as well as defendant so also land in question. Plaintiff is a nephew of defendant. About 40 years back Iqrarnama was prepared in School by one Head Master Himat Ali between plaintiff and defendant in presence of P.Ws Khan Muhammad and Allah Ditto, such Iqrarnama was signed by the plaintiff and thumb impression of defendant. The land in question is in possession of Ghulam Qadir. At the time of writing of Iqrarnama P.W Soonharo was also available.*
>
> *Cross to Mr. Abdul Salam Arain, Advocate for the Defendant.*
>
> *One Bahadur is my son.* ***It is fact that in the murder of nephew of defendant, my son was nominated as an accused but during course of investigation, police let-off my son.*** *I was not made the witness in the Iqrarnama, but I have witnessed the same, while such Iqrarnama preparing. It is fact that there are so many cases are pending against us filed by the defendant. It is incorrect to suggest that the plaintiff has prepared false Iqrarnama for filing this case. It is fact that I have been brought by the plaintiff for giving evidence. Disputed land is in the name of defendant. It is incorrect to suggest that land in question is in possession of defendant. It is incorrect to suggest that I am deposing falsely against the defendant.***"**

Perusal of the aforesaid deposition of both these witnesses clearly reflects that they are not the attesting witnesses of the *iqrarnama* and have only claimed that the *iqrarnama* was signed in their presence. Why the available attesting witness of the *iqrarnama* was not examined by the Respondent nor any effort was made to seek his presence as a Court witness has gone unexplained and that is seriously affecting the credibility of the Respondent's evidence including that of the scribe of the *iqrarnama*. Once it has come on record that one witness was still alive and was never examined to support the case of Respondent; and second, the other witness was though alive when the evidence of Respondent was recorded, but as to why no immediate effort was made to also examine the said witness, has gone unexplained. Rather, other non-relevant witnesses have been examined and on the basis of their evidence, the Suit has been decreed by the two Courts below. These things create a serious doubt as to the credibility of Respondent's case. It is settled law that withholding of best evidence always leads to an inference of an adverse view against the person withholding it[2]. It is also a settled proposition that when better evidence than that which is offered is withheld, it is only fair to presume that

[2] Muhammad Sarwar v Mumtaz Bibi (2020 SCMR 276), Dilshad Begum v Nisar Akhtar (2012 SCMR 1106), Mhammad Boota v Mst. Bano Begum (2005 SCMR 1106).

the party has some sinister motive for not producing it, which would be frustrated if it were offered. Therefore, the finding of the two Courts below that the agreement was proved in accordance with law does not seem to be a correct appreciation of facts and law.

12. Lastly the evidence of the scribe has been vehemently relied upon by the trial Court. The same reads as under;

> **Evidence of PW Himmat Ali Solangi (Ex.45)**
>
> **"***Exam: in chief to Mr. Sahib Dino Solangi Advocate for the plaintiff.*
>
> *I know the parties. I was serving as Primary teacher in Primary School Dodo Kori, in Deh Dilwaro, Taluka Ubaruo. I had written agreement of partition of land of the parties on holy Quran. I see the photostat of that Iqrarnama written on 8.12.1965 it is in my writing. I obtained L.T.I. of defendant Piyaro and two witnesses and also signed myself. I produce it at Ex. No:45/A. Witnesses of the agreement were Allah Ditto and Khan Muhammad by caste Gurgej.*
>
> *Cross Examination to Mr. Haji Jawed Advocate for the defendant.*
>
> *It is correct to suggest that I have become acquainted in year 1965 when I was posted as Primary Techer in Deh Dilwaro. There were about 10/15 persons along with the plaintiff and defendant when they had come to me in my Primary School. The Wadera Shah Muhammad was also with them. The said Iqrarnama was written by me on a white paper on holy Quran. It is correct to suggest that this Iqrarnama was not written on the Paper of holy Quran affixed in the binding of Quran Sharif as bounded with Quran Sharif which are mostly used for writing purpose. The Iqrarnama is written on the paper of half of the full size, and it was separate paper not attached on holy Quran. The L.T.Is were taken by me personally. Thereafter the Iqrarnama was taken away by Ghulam Qadir. No copy of this Iqrarnama was provided to Piyaro. Ghulam Qadir informed me that he has mentioned his name about the writing of Iqrarnama in his plaint. It is incorrect to suggest that I am deposing falsely due to friendship with the plaintiff. It is also incorrect to suggest that all the L.T.Is of defendant Piryaro, witness Allah Ditto and Khan Muhammad are forged one. I have come to this court for giving evidence at the request of plaintiff.***"**

The learned trial court as well as the appellate Court only had the above evidence as independent evidence as to the veracity of the *iqrarnama*, as the evidence of the Applicant and Respondent was word against word, whereas, the two other witnesses as above have admitted that they had not witnessed the said iqrarnama. The finding of the trial Court while dealing with this piece of evidence is that since he was a school teacher, some affirmation on the holy Quran as alleged was also made and that he was more than 60 years of age. These are hardly any grounds to prove and accept execution of an agreement (iqrarnama) in law. Since the matter pertains to period prior to the promulgation of The Qanoon-e-Shahdat Order, 1984, therefore, it was required to be proved in accordance

with section 68 of the Evidence Act, and in this regard reliance may be placed on the observations of the Hon'ble Supreme in the case of *Mst. Rasheeda Begum v Muhammad Yousf (2002 SCMR 1089)*, wherein the it was held as under;

> It would thus follow that where an agreement to sell executed prior to promulgation of Qanun-e-Shahadat Order, 1984 has been reduced into writing and attested by witnesses its execution must be proved in accordance with the provisions of section 68 of the erstwhile Evidence Act notwithstanding the fact that the same apply only to that document which is required by law to be attested.

Once the Respondent failed to bring in the two attesting witnesses before the Court, which admittedly he could have done, then, he had no case to prove the *iqrarnama*. It is not the entire discretion of the Court which empowers it to accept or reject any claim of a party. Even if it is, though in a limited manner, the same is circumscribed by law and the precedents enunciated by the Courts of law for accepting and proving an instrument. The court in absence of such corroborating evidence and the deposition of the attesting witnesses, cannot say that since available evidence is of a teacher of more than 60 years of age, the same is reliable and must be accepted. This course will leave the Court with unfettered discretion at its hands, and then will not be bound by law anymore. The appreciation of such an evidence of a reliable person, if any, is always to be done when there is a situation of may be comparing the evidence of two persons, out of which one is more reliable by his qualification. At the same time, that too has to be looked into as a whole and must not merely be dependent on the qualification itself. Here in this case, without there being corroborating evidence as mandated by law, the Courts below have accepted and believed the evidence of one single person who was the scribe of the iqrarnama. This was not a correct approach, neither on facts; nor in law.

13. The upshot of the above discussion is that both the Court(s) below have miserably failed to appreciate the evidence properly and it is a fit case of misreading and non-reading of evidence led by the parties, whereas, the Courts have also failed to dilate upon the issue of limitation which goes to the root cause that whether the Court had any jurisdiction to entertain a Suit at such a belated stage, and therefore requires interference by this Court while exercising its revisional jurisdiction, in view of the dicta laid down by the Hon'ble Supreme Court in the case of, ***Nazim-Ud-Din v Sheikh Zia-Ul-***

Qamar **(2016 SCMR 24)[3],** and ***Islam-Ud-Din v Mst. Noor Jahan (*****2016 SCMR 986)[4].*** Further reliance may also be placed on the cases reported as ***Nabi Baksh v. Fazal Hussain*** (**2008 SCMR 1454**), ***Ghulam Muhammad v Ghulam Ali*** (**2004 SCMR 1001**), & ***Muhammad Akhtar v Mst. Manna*** (**2001 SCMR 1700**). Since both the Court(s) below have failed to exercise the jurisdiction so vested in them and have completely misread the evidence on record while decreeing the Suit of the private respondents and dismissing the Suit of the Applicants; therefore, both these Civil Revision Applications merits consideration and are accordingly allowed. The impugned judgment of the Appellate Court dated 08.01.2005 and that of the trial Court dated 27.03.2003 are hereby set-aside. As a consequence, thereof, Suit No. 17 of 1994 (**New Suit No.21 of 2002**) filed by the Respondents stands dismissed, whereas Suit No. 02 of 1998 (**New No.22 of 2002**) filed by the Applicant is hereby decreed as prayed.

Dated: 08-04-2022

J U D G E

Abdul Basit

[3] ….."It is settled law that ordinarily the revisional court would not interfere in the concurrent findings of fact recorded by the first two courts of fact but where there is misreading and non-reading of evidence on the record which is conspicuous, the revisional court shall interfere and can upset the concurrent findings, as well as where there is an error in the exercise of jurisdiction by the courts below and/or where the courts have acted in the exercise of its jurisdiction illegally or with material irregularity"

[4] 9. Mr. Gulzarin Kiani, the learned counsel for the siblings, contended that the High Court in exercise of its revisional jurisdiction could not have set aside the findings of the two courts below and if at all it should have remanded the matter. In this regard the learned counsel had cited a few cases (above). In the case of Sailajananda Pandey, which was referred to in the case of Gul Rehman, the matter was remanded because "further investigation of some necessary facts" was required where after "many different principles" of law were to be dilated upon. However, there is no need of any further investigation in the present case nor the need to consider many different [legal] principles as a consequence thereof In Iftikhar-ud-Din Haidar Gardezi's case it was held that judgments in revisional jurisdiction could only be assailed in terms of section 115 of the Code of Civil Procedure ("the Code"). We entirely agree. However, in the present case the trial and appellate courts had exercised jurisdiction vesting in them illegally or with material irregularity, as they disregarded Article 79 of the Qanun-e-Shahadat Order and misread or did not read the evidence as noted above. Since the parties had already lead evidence and the material facts had clearly emerged the High Court had correctly exercised its revisional jurisdiction under the Code. It was held in Nabi Baksh v Fazal Hussain (2008 SCMR 1454) that concurrent findings of the courts below can be set aside by the High Court in its revisional jurisdiction if the same, "were based on misreading or non-reading of the material available on record".