

**IN THE HIGH COURT OF SINDH AT KARACHI**

Present:  
Muhammad Shafi Siddiqui  
& Jawad Akbar Sarwana JJ

**Imran Razi Ahmed Hashmi v. Muhammad Arshad Awan and  
Four Others**

**Constitution Petition No.D-8194 of 2022**

Petitioner:	Imran Razi Ahmed Hashmi s/o S. Razi Ahmed Hashmi, through Mr Aijaz Ali, Advocate
Respondent No.1:	Muhammad Arshad Awan s/o Moinuddin, through Kashif Badar
Respondent No.2:	Sultan Ghazi s/o Muhammad Iqbal Ghazi. Nemo
Respondent No.3:	Sikandar Ghani s/o Muhammad Saleheen Ghani. Nemo
Respondent No.4:	The Learned XIth Additional District & Sessions Judge East, Karachi. Nemo.
Respondent No.5:	XIIth Senior Civil Judge, Karachi East. Nemo Sandeep Malani, AAG
Date of hearing:	07.12.2023
Date of decision:	07.12.2023
Date of decision with reasons:	28.12.2023

## **J U D G M E N T**

**Jawad A. Sarwana, J:** This Constitution Petition has been filed by the Petitioner/Applicant-Intervener (“Irfan Razi Ahmed Hashmi” / “Irfan Hashmi”) against the Order dated 12.12.2022 passed by the learned XIth Additional District Judge, Karachi East in Civil Revision Application No.99/2022 dismissing the Civil Revision filed by Imran Hashmi wherein he had impugned the Order dated 18.05.2022 passed by the learned XIIth Senior Civil Judge Karachi East in Civil Suit No.2494/2019 and Execution No.16/2020 (hereinafter referred to as the “trial court”). The trial court had dismissed Imran Hashmi’s two Applications, namely (i) Application under Section 47 CPC r/w Section 151 CPC, and (ii) Application under Order 21 Rule 58, 60, 99 CPC r/w Section 151 CPC. Imran Hashmi has impugned both the Addl District Court’s Judgment dated 12.12.2022 and the trial court’s Order dated 18.05.2022. He has contended that he is the real owner of the property, i.e. residential/commercial plot of land bearing No.123-C measuring 107 sq. yds. having two shops on the Ground Floor and a Flat on the First Floor, Central Commercial Area situated in Block No.2, PECH Society, Karachi, (hereinafter referred to as “Attached Property”) as he had executed a Sale Agreement dated 25.02.2019 with Sultan Ghazi (Judgment-Debtor in Suit No.2494/2019 and Execution No.16/2020) followed by a Sale Deed executed with him (Sultan Ghazi) on 02.03.2021. He submitted that, consequently, the Court auction of the Attached Property in execution proceedings was/is without lawful authority and beyond jurisdiction, hence this Petition.

2. The brief facts which emerge from the documents filed with the Petition, as narrated herein, and recorded in detail in the two impugned Orders, are that on 24.12.2019, Muhammad Arshad Awan (Respondent No.1) filed a Suit for Recovery and Damages against Sultan Ghazi and Another, which was decreed on 20.09.2020. During the execution proceedings, the Attached Property was identified as that of the Judgment-Debtor (Sultan Ghazi), culminating in the auction

proceedings. When Imran Hashmi learned about the auction, he filed the above-mentioned applications before the trial court to set aside the auction proceedings.

3. The learned Counsel for the Petitioner, Imran Hashmi contended that following the Agreement of Sale dated 25.02.2019 and the Sale Deed dated 02.03.2021, valuable vested rights have accrued to the Appellant-Intervener which cannot be dislodged. He further argued that the Sale Agreement was executed first in time on 25.02.2019 and was executed well before Muhammad Arshad Awan (the Decree-Holder) filed his claim against Sultan Ghazi (the Judgment-Debtor), i.e. on 24.12.2001. As Imran Hashmi's Agreement with Sultan Ghazi in relation to the sale of the Attached Property was already executed, the property could not be attached by the Court and put up for auction. Finally, the Attached Property was not the subject matter of the dispute between Muhammad Arshad Awan and Sultan Ghazi, therefore it could not be attached subsequently. Therefore, the auction proceedings should be set aside. The learned Counsel for Muhammad Arshad Awan (Decree-holder-Respondent No.1) vehemently opposed the arguments put forth by Imran Hashmi. He contended that the Agreement of Sale was simply a simple agreement of sale, and Imran Hashmi had not initiated any proceedings against Sultan Ghazi to obtain a decree for specific performance. He added that until a decree for specific performance crystallizes in favor of Imran Hashmi, the latter would not have any title in the Attached Property.

4. We have heard the arguments of both learned Counsels and perused the documents filed with the Petition.

5. The Sale Agreement dated 25.02.2019 between Imran Hashmi and Sultan Ghazi (Judgment-Debtor) was never registered. Further, while the Sale Agreement involved two parties, i.e. Imran Hashmi and Sultan Ghazi, the Sale Deed dated 02.03.2021 was a tripartite

instrument signed by (i) Sultan Ghazi (Judgment-Debtor), (ii) Imran Hashmi, and (iii) Waqas Naveed s/o Naveed-ur-Rehman. Naveed-ur-Rehman did not initiate any interlocutory proceedings even though he was a co-vendee of the Attached Property, along with Syed Imran Razi (Appellant). Finally, the Sale Deed dated 02.03.2021 was also not registered. The trial court rightly noted this lacuna and called for an ownership report from the Sub-Registrar, Sub-Register-I, Jamshed Town, Karachi. According to the impugned Order dated 18.05.2022 by the trial court, the Sub-Registrar confirmed that the Attached Property was still registered in the name of Sultan Ghazi (Judgment-Debtor) as of May 2022. The Sale Deed had neither been presented to his office nor executed before the Registrar. It is a trite proposition of law that an agreement of sale does not accrue any rights until it is either registered or a decree for specific performance on the basis of an agreement of sale has been passed by a Court of Law.

6. In addition to the above reasons for the dismissal of this Petition, this Petition is also liable to be dismissed in light of the observations of the Supreme Court of Pakistan in Muhammad Zahoor and Another v. Lal Muhammad and Two Others, 1988 SCMR 322. In the said judgment, the Supreme Court has held that the exercise of writ jurisdiction against revisional order has to be exercised in rare and exceptional circumstances only when it could be said that the order passed by the revisional Court has been passed without lawful authority, beyond jurisdiction and vested rights were curtailed.

7. In the present case, a Constitution Petition has been filed against an order passed in revision by the Additional District Judge. Although in certain situations, a writ petition is competent against a revisional order, the impugned Order cannot be said to have been passed without lawful authority or beyond the jurisdiction or curtailing the vested rights of the Petitioner/Intervenor. No arbitrariness or perversity in passing the impugned Order has been alleged or proved by the Petitioner/Applicant-Intervenor.

8. We are of the confirmed opinion that neither the Additional District Judge nor the trial court have fallen into any error while passing the impugned Order, which requires interference.

9. In view of the above, the impugned Order dated 12.12.2022 passed by the Additional District Judge and the trial Court's Order dated 18.05.2022 are proper based on facts and law. They do not suffer from any illegality that calls for interference in Writ Jurisdiction. Accordingly, this Petition was dismissed along with all listed applications vide our Short Order dated 07.12.2023. These are the reasons for our above-mentioned short order.

10. The parties are left to bear their own costs.

J U D G E

J U D G E