Judgment Sheet

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Rev. Application No.S-245 of 2019

Applicants	:	Syed Shahid Hussain Shah through Attorney Through Mr. Tariq G. Hanif Mangi, Advocate
Respondent	:	Muhammad Ameen, through Mr. Ziaul Haq Kamboh, Advocate
Date of hearing	:	06.11. 2023 & 11.12.2023
Date of Decision	:	15.01.2024

J U D G M E N T

ARBAB ALI HAKRO, J.-Through this Civil Revision Application under Section 115, the Civil Procedure Code 1908 ("the Code"), the applicants have impugned Judgment and Decree dated 02.12.2019, passed by the Learned Additional District Judge(MCAC), Kandiaro ("appellate Court") in Civil Appeal No.15 of 2015, whereby, the Judgment dated 31.01.2015 and Decree dated 06.02.2015, passed by Senior Civil Judge, Kandiaro ("trial Court") in F.C. Suit No.15 of 2012, through which the suit of the respondent was decreed has been maintained by dismissing the Appeal.

2. The succinct facts leading to the captioned Civil Revision Application are that the respondent filed a Suit for Specific Performance before the trial Court against the deceased father of the applicants. The respondent claimed to have purchased a plot measuring 01-00 Acre from Survey No.253, situated in Deh Saleh Sahito Taluka, Mehrabpur District, Naushahro Feroze (the "suit plot"), through an agreement to sell dated 30.03.2008. The sale consideration amount was fixed as Rs.1,000,000/-, out of which the respondent paid Rs.355,000/- as earnest money when executing the agreement to sell. It was also alleged that the remaining balance consideration was agreed to be paid by the respondent in two instalments. The respondent also paid Rs.220,000/- on 23.04.2008

and Rs.300,000/- on 21.07.2008 to the deceased father of the applicants. In December 2008, the respondent attempted to contact the father of the applicants to pay the remaining balance consideration of Rs.125,000/-, but was unsuccessful. The respondent also learned that the record of rights was burnt, and the preparation of a fresh record was underway. Therefore, the father of the applicants could not obtain *Fardi Intikhab*. The respondent received a legal notice dated 19.01.2009 from the father of the applicant, demanding the remaining balance consideration. The respondent replied through his Advocate on 23.01.2009, asserting therein that he is ready to pay the remaining balance consideration of Rs.125,000/- subject to obtaining *Fardi Intikhab*. It is further alleged that the respondent served two notices upon the father of the applicants, informing him to receive the remaining balance consideration and execute the registered Sale Deed in his favour, but he did not receive the same. Finally, the respondent filed the suit.

3. During the pendency of the suit, the applicant's father passed away. Consequently, the applicants contested the suit and submitted their written statement. In their statement, they acknowledged the execution of the Agreement to Sell by their predecessor, the deceased Syed Shahid Hussain Shah, with the respondent. However, they contended that the deceased, Syed Shahid Hussain, did not own the suit plot. Therefore, they argued, he was not competent to enter into an Agreement to Sell with the respondent, as he had already sold his share to another person.

4. From the divergent pleadings of the parties, the trial court framed the following issues: -

i. *Whether suit is not maintainable at law?*
ii. *Whether the defendant Shahid Hussain Shah had executed the agreement in favour of the plaintiff or sale of the suit land for consideration of Rs.1,000,000/- on 30.03.2008?*

iii. *Whether the plaintiff had paid Rs.355,000/- to the defendant at the time of agreement as earnest money?*

iv. *Whether the plaintiff had made further payment of Rs.520,000/- to the defendant in two installments?*

v. *Whether there was exchange of legal notices in between the plaintiff and the defendant for payment of balance amount of Rs.125,000/-?*

vi. *Whether the defendant had failed to receive the balance consideration to execute registered Sale Deed and hand over possession of suit land of the plaintiff?*

vii. *Whether the suit is time barred?*

viii. *What should the decree be?*

5. In support of their claim, the respondent examined himself and produced relevant documents, so he also examined three other witnesses in his support. In rebuttal, the applicant No.1-A examined himself and one other witness in support of their claim. On completion of the case, the trial court vide Judgment dated 31.01.2015 and Decree dated 06.02.2015 decreed the suit filed by the respondent, which was challenged by the applicants through Civil Appeal No.15 of 2015; the appellate Court dismissed the Appeal vide Judgment and Decree dated 02.12.2019 and maintained the Judgment and Decree of trial Court.

6. At the very outset, the learned counsel representing the applicants contended that one of the attesting witnesses, namely Muhammad Aish, has not been examined by the respondent to prove the agreement to sell. He contended that the applicant had not deposited the decretal amount within the stipulated time before the trial Court. He also argued that the deceased, Syed Shahid Hussain, was not the owner of the suit plot as he had already sold it to another person. Therefore, he was not competent to execute the alleged agreement to sell. Lastly, he contended that both the Courts below

committed patent illegalities and irregularities in passing the impugned judgments and decrees. Therefore, same are liable to be set aside. In support of his contentions, the learned counsel for the applicants relied upon case law reported in PLD 2011 S.C 241, PLD 2015 S.C 187, 2023 SCMR 344, PLD 1972 S.C 25, 2003 SCMR 1261, 2015 SCMR 01, and 2017 CLC 277.

7. Conversely, while refuting the contention, the learned counsel representing the respondent argued that the applicants had not denied the execution of the agreement to sell. The respondent has examined one attesting witness and the scribe of the agreement to sell; therefore, there is no need to examine another attesting witness. He contended that there is a penal clause against the applicants. The execution application has been allowed, and the respondent has deposited the remaining balance amount within the stipulated time. He also contended that the Revision is not sustainable under the law. It is a case of concurrent findings, and in the Revisional Court, the facts recorded by the inferior Courts cannot be disturbed. Therefore, this Revision is not maintainable under the law.

8. The arguments have been heard at length, and the available record has been carefully evaluated with the valuable assistance of the learned counsel for the parties. I have also scrutinized the accuracy and thoroughness of the judgments and decrees of both the lower Courts, providing a fair opportunity for the learned counsel for the applicants to convince me about any illegal actions or material irregularities committed by the Courts below in the exercise of their jurisdiction.

9. Before delving further into the merits of the case, it is pertinent to underscore that the Revisional jurisdiction of this Court is inherently circumscribed, particularly when there are concurrent findings of both the trial and appellate courts. The scope of re-evaluation under the Revisional jurisdiction does not extend to a re-assessment of the evidence or a re-interpretation of the law, but

rather, it is confined to ensuring that the proceedings have been conducted in accordance with the principles of natural justice and that the decision rendered does not suffer from any patent illegality or material irregularity. In its Revisional jurisdiction, it is not within the purview of this Court to disturb or overturn the concurrent findings of the lower courts unless it is demonstrated that such findings are perverse or have resulted in a gross miscarriage of justice.

10. The primary point of dispute raised by the learned counsel for the applicant centres around the fact that one of the attesting witnesses, specifically Muhammad Aish, has not been examined by the respondent to substantiate the execution of the agreement to sell. This contention, however, is juxtaposed against the fact that the execution of the agreement to sell has not been refuted by the applicants. On the contrary, they acknowledged it in their written statement. In addition, it is noteworthy that the respondent has examined one of the marginal witnesses, Muhammad Akram, and the scribe, Sher Din. These individuals have unequivocally supported the execution of the Agreement to Sell. Their testimonies stand unscathed, as their version of events has not been discredited or contradicted during the course of their cross-examination by the applicants. The respondent has produced cogent and effective evidence to prove the execution of the agreement to sell, the subsequent acknowledgement of the said agreement, and the further payments made by the respondent. The argument put forth by the applicant's learned counsel, that the execution of the agreement to sell is not proven due to the production of only one attesting witness instead of two as required by Article 79 of the Qanun-e-Shahadat Order,1984 lacks merit. Firstly, the admissibility of the said documents cannot be questioned in light of Articles 31, 81, and 113 of the same order, as the rule of Estoppel applies. It is clear from the aforementioned legal provision that when the execution of a document is admitted or not denied, such admission is sufficient

proof of its execution. In this context, I refer to the case of Muhammad Afzal (Deceased) through L.Rs. and others vs Muhammad Bashir and another (2020 SCMR 197), where it has been ruled as follows: -

> *"We have heard the learned counsel for the parties and find that the sale agreement has been attested by two witnesses and the omission to produce one attesting witness is of no legal consequence in terms of Article 81 of the Qanun-e-Shahadat Order, 1984. The said Article reads as under:-*
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> > *"81. Admission of execution by party to attested document.---The admission of a party to an attesting document of its execution by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested."*
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> *Article 81 is an exception to the general rule that where a document is required by law to be attested the same cannot be used in evidence unless two attesting witnesses are called for the purposes of proving its execution. The simple reading of Article 81 shows that where the execution of a document is admitted by the executant himself, the examination of attesting witnesses is not necessary."*

11. In the realm of law, admitted facts are those aspects of a case that have been accepted as true by all parties involved and, hence, do not require further proof in a court of law. This principle is rooted in the aim to streamline legal proceedings and focus on disputed matters. For instance, if in a contract dispute, both parties agree on the existence and validity of the contract, then that fact is considered "admitted" and does not need to be proved again during the trial. The Court accepts these admitted facts without necessitating additional evidence, allowing for a more efficient legal process. However, it's crucial that such admissions are made willingly and with a clear understanding of their implications. This principle underscores the importance of truth and acknowledgement in the pursuit of justice. Here, I would rely on the case of Mst.Rehmat and others vs. Mst.Zubaida Begum and others (2021 SCMR 1534), wherein it has been held as under: -

"It is an established principle of law that facts admitted need not be proved, reference can be made to Article 30 of the Qanun-e-Shahadat Order, 1984 and the case of Nazir Ahmed v. M. Muzaffar Hussain,[20] wherein Paragraph No.8 of the Judgment this Court observed that:

> *8. So far as the execution of agreement is concerned, the appellant Nazir Ahmad who appeared as D.W.1 admitted the execution of the agreement for sale of the property in dispute for consideration of Rs.50,000 and the execution of the agreement was further testified by Allah Ditta Scribe of the document who appeared as D.W.4. The said witness appeared twice in the Court; firstly as P. W.1 and secondly as D.W.4 and admitted the thumb impression of Nazir Ahmad and signatures of Rashid Ahmad appellants on the agreement to sell (Exh.P.1). It means that the execution of agreement is admitted not disputed and it is well settled proposition of law that the admitted facts need not to be proved. The admission has been defined in Article 30 of the Qanun-e-Shahadat Order, 1984 which reads as under:-*
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> *"30. Admission defined. An admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned."*

[Emphasis Supplied]

12. Another question raised by the applicants' learned counsel is whether the deceased, Syed Shahid Hussain, was the owner of the suit plot, as it was allegedly sold to another person prior to his death. In this regard, the applicants have only provided verbal claims, with no documentary proof showing that the deceased, Syed Shahid Hussain, sold the suit plot to another person. Regardless, the trial court has issued a conditional decree. Therefore, it would be beneficial to reproduce its operative part as follows: -

> *"In view of my findings on the above issues, I am of the humble view that the suit of the plaintiff is hereby decreed to the extent of prayer clause "A" with no order as to costs. The defendant are hereby directed to execute registered sale deed for suit land in favour of plaintiff within one month after receiving balance consideration of Rs.1,25,000/-. In case of failure on the part of defendant the Nazir of this Court is*

> *hereby directed to obtain FARDI INTIKHAB from Mukhtiarkar Revenue Mehrabpur and execute registered sale deed in favour of plaintiff after receiving balance consideration. In case, there is no suit land in the name of legal heirs of defendant, then the legal heirs of Syed Shahid Hussain Shah are hereby directed to compensate the amount of Rs.8,75,000/- to plaintiff including return original amount of Rs.8,75,000/- to the plaintiff within one month."*
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> *(Emphasis supplied]*

13. In the above-given circumstances, the concurrent findings of the facts recorded by the Courts below do not appear to suffer from jurisdictional defect. In the case of Haji Wajdad v. Provincial Government Through Secretary Board of Revenue Government of Balochistan, Quetta and others (2020 SCMR 2046), it was held by the Honourable Apex Court that:

> *"There is no cavil to the principle that the Revisional Court while exercising its jurisdiction under section 115 of the Civil Procedure Code, 1908 ("C.P.C."), as a rule is not to upset the concurrent findings of fact recorded by the two courts below. This principle is essentially premised on the touchstone that the appellate Court is the last Court of deciding disputed questions of facts. However, the above principle is not absolute, and there may be circumstances warranting exception to the above rule, as provided under section 115, C.P.C. gross misreading or non-reading of evidence on the record; or when the courts below had acted in exercise of its jurisdiction illegally or with material irregularity".*

14. The applicants have not been able to show that the concurrent findings of facts recorded by the courts below are unsustainable. I do not find any infirmity, illegality or misreading and non-reading of evidence in the impugned judgments and decrees, which do not require any interference by this Court; therefore, the instant Revision application is devoid of merits, which is accordingly dismissed.

J U D G E

Faisal Mumtaz