

# IN THE HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS

Second Appeal No.S-08 of 2023

*Before:*

Mr. Justice Amjad Ali Bohio,

Appellant: Muhammad Yaseen s/o Noor Muhammad Yousafzai

Respondents: 1. Shamshad Ali S/o Faiz Muhammad  
2. Mst. Naheed D/o Faiz Muhammad  
3. Mst. Allah Rakhi D/o Faiz Muhammad  
All by caste Yousifzai  
4. Sub Registrar Sanghar  
5. Mukhtiarkar Land Revenue Sanghar  
6. Province of Sindh  
through Secretary Revenue Karachi

Present: Mr. Yaseen Khaskheli, advocate for the appellant.  
Mr. Niaz Hussain Laghari, advocate for respondent No.1 to 3  
Mr. Ayaz Ali Rajpar, A.A.G Sindh.

Date of hearing: 05-11-2024

Date of judgment: 11-12-2024

## J U D G M E N T

**Amjad Ali Bohio, J:** Being aggrieved of the judgment and decree dated 13-10-2023, passed by the learned Additional District Judge-II (MCAC), Sanghar, in Civil Appeal No. 100 of 2022, whereby the judgment and decree dated 15-10-2022, passed by the learned 1st Senior Civil Judge, Sanghar, in F.C. Suit No. 143 of 2016, was set aside, and the suit filed by the appellant was dismissed, he has now preferred the instant second appeal challenging the dismissal of the suit.

2. The brief facts, as narrated in the plaint filed by the appellant in F.C. Suit No. 143 of 2016, are that the respondents/defendants 1 to 3, are the owners of the following agricultural land, admeasuring 04-36 acres:

Serial No.	Survey Nos.	Area
1.	616/1	03-32 acres
2.	2	04-00 acres
3.	3-A	0-32 acres
4.	B	03-00 acres
5.	4	03-19 acres
6.	617/1	02-01 acres
7.	2	04-00 acres
8.	621/2	03-25 acres
<b>Total 24-36 acres</b>		

3. The respondents Nos. 1 to 3, by virtue of Sale Agreement No. 2315 dated 13-05-2016, sold an area admeasuring 04-22 acres out of the aforementioned survey numbers to the appellant for a total consideration of Rs. 10,00,000/- (Rupees Ten Lacs only). Out of this amount, a sum of Rs. 7,00,000/- (Rupees Seven Lacs only) was paid to the respondent Nos. 1 to 3 in the presence of two marginal witnesses on the date of execution of the sale agreement. It was agreed that the remaining consideration of Rs. 3,00,000/- (Rupees Three Lacs only) would be paid on 13-09-2016. The possession of the suit land was also acknowledged by the respondents in favor of the appellant. It was further agreed that the registered sale deed would be executed upon full payment of the sale consideration on 13-09-2016, when the respondents Nos. 1 to 3 were to obtain the necessary "Fard" and "Intikhab." After arranging the remaining Rs. 3,00,000/- (Rupees Three Lacs only), appellant contacted the respondents Nos. 1 to 3 through mobile phone, who assured him of fulfilling their obligations by 13-09-2016. However, when the appellant arrived at the office of the Sub-Registrar, Sanghar, on 13-09-2016, the respondents failed to appear. Despite repeated contacts, they made false promises and failed to perform their part of the contract until 04-10-2016. Subsequently, 15 days prior to filing this suit, the appellant informed the Sub-Registrar about the sale agreement with the respondents Nos. 1 to 3. Furthermore, one week prior to filing this suit, the appellant approached the respondents, who misbehaved and ultimately refused to execute the sale deed. Aggrieved by this conduct, the appellant filed the aforementioned suit, seeking the following reliefs:

"a) That, this Hon'ble court may be pleased to direct to the defendant No 1 to 3 to execute final registered sale deed, in respect of Suit Land ie an area 04-22 acres from survey Nos. 616/1, area 3-32 acres, 2, area 4.00 acres, 3-A, area 00-32 acres, B, area 3-00 acres, 4, 03-19 acres, 617/1, area

2-01 acres, 2. 2-00 acres and 621/2 area 3-32 acres total area 24-36 acres situated in Deh Bakhoro, Taluka and District Sanghar as per terms and conditions of Sale Agreements No. 2315 Dated 15-01-2016. In case of failure of the Defendant No. 1. the Nazir may be directed to execute the registered sale deed in favour of the Plaintiff in respect of suit land.

b) That, this Hon'ble Court may be pleased to issue permanent Injunction restraining the defendant No. 4 and 5 from issuing sale certificate or to register sale deed in favour of stranger/third party, except of plaintiff and prohibiting the Defendant No.1 to 3 through Permanent Injunction from interfering into peaceful possession of the suit land, alienating, transferring, mortgaging, leasing, mutating or creating third party interest in the Suit Property without due course of law through themselves, their supporters, employees, servants or any other source or mean in any manners whatsoever.

c) Costs of the suit be borne by the defendants.

d) Any other relief, which this Hon'ble Court deems fit and proper, may be awarded to plaintiff."

4. Initially, during the first round of litigation, the respondents were declared ex parte on 14-09-2017. However, the appellant failed to adduce his evidence, and as a result, the suit was dismissed vide judgment and decree dated 28-02-2018. Aggrieved by this dismissal, the appellant preferred Civil Appeal No. 39 of 2018, which was allowed vide judgment dated 13-07-2019. The case was remanded with directions to decide the suit after providing the appellant a reasonable opportunity to present his case.

5. Subsequently, the appellant adduced evidence by examining himself and the marginal witnesses, Rashid Ali and Imran Khan. The respondents Nos. 1 to 3 were afforded the opportunity to cross-examine these witnesses. Additionally, the trial court examined Babu Rai, Clerk, Mukhtiarkar Office Sanghar, as an official witness.

6. After hearing counsel for both parties, the trial court decreed the suit to the extent of the share of respondent No. 1 only, vide judgment and decree dated 15-10-2022. Being dissatisfied, the appellant preferred an appeal before the 2nd Additional District Judge/MCAC, Sanghar. However, the appeal was dismissed, and the decree dated 15-10-2022, granting relief to the extent of respondent No. 1's share was also set aside through the impugned judgment dated 13-10-2023. As a result, the appellant has preferred the instant second appeal, challenging the impugned judgments and decrees passed by the lower courts.

7. The learned counsel for the appellant submits that the impugned judgments and decrees dated 13-10-2023 and 15-10-2022 are based on surmises and conjectures, contrary to the principles of law, equity, and good conscience. He contends that the learned appellate court, as well as, the trial court, failed to properly consider the documentary evidence produced by the appellant. It is further argued that the original sale agreement was corroborated by the testimony of two marginal witnesses, yet their evidence was disregarded by the lower courts. Additionally, the counsel emphasizes that the courts below did not take into account the fact that the appellant, being a co-sharer of the suit land, is already in peaceful possession of the said land. In light of the foregoing, the counsel prayed for the setting aside of the impugned judgments and decrees. In support of his contentions, he relied on the case of *Mst. Rasheeda Begum and others v. Muhammad Yousaf and others* (2002 SCMR 1089), *Ghulam Akbar v. Jahangir Ali & 3 others* (2011 MLD 803), *Muhammad Ibrahim and others v. Muhammad Ismail and others* (2005 SCMR 1335), *Mst. Baswar Sultan v. Mst. Adeeba Alvi* (2001 SCMR 1236), *Ali Ahmed v. Mukamil Shah and others* (2012 MLD 1227) and *Mst. Nur Jehan Begum through Legal Representatives v. Syed Mujtaba Ali Naqvi* (1991 SCMR 2300).

8. Conversely, the learned counsel for the respondents Nos. 1 to 3, along with the learned A.A.G., supported the findings of the appellate court, asserting that they are based on sound and valid reasoning. They contended that the appellate court correctly observed that the female executants were not known to the witness Rashid Ali and that the sale agreement produced in evidence failed to include the CNIC numbers of all executants, except for the witnesses Imran Khan and Rashid Ali. This omission, they argued, created doubts regarding the execution of the alleged agreement by the respondents Nos. 1 to 3. Furthermore, both attesting witnesses failed to testify that the respondents Nos. 1 to 3 had signed or affixed their thumb impressions in their presence. In the absence of such material evidence, the appellate court rightly set aside the findings of the trial court to the extent of the decree in favor of the appellant concerning respondent No. 1's share and dismissed the appellant's suit. Lastly, the learned counsel argued that the findings of the appellate court are well-reasoned and do not warrant any interference. Consequently, the instant appeal is liable to be dismissed.

9. I have heard the arguments advanced by the learned counsel for the appellant, the respondents Nos. 1 to 3, and the learned A.A.G. I have also carefully examined the material available on record with their assistance.

10. The record indicates that the appellant, Muhammad Yaseen, submitted his affidavit in ex-parte proof, along with the affidavits in evidence of the two attesting witnesses, namely Rashid Ali S/o Sikandar Khan and Imran Khan S/o Baboo Khan, who were the marginal witnesses to the agreement of sale (*Qabooliat*) dated 13-05-2016 (Ex.38). The agreement was allegedly executed at the shop of a stamp vendor in Sanghar, wherein the respondents Nos. 1 to 3, namely Shamshad Ali, Mst. Naheed Akhtar, and Mst. Allah Rakhi (the latter two being illiterate female executants), purportedly affixed their thumb impressions on the document (Ex.38), thereby selling the suit land for a total sale consideration of Rs. 10,00,000/-, with an earnest amount of Rs. 700,000/- allegedly paid at the time of execution. Upon perusal of the agreement of sale (*Qabooliat*), it is evident that the payment of the earnest money was recorded as having been made in the presence of witnesses. PW Imran Khan signed as both witness No. 1 and the "identifier." However, the agreement's text does not clarify whom he identified during the execution of the sale agreement. Additionally, the scribe and the attesting officer/Notary Public failed to document how the illiterate female executants, Mst. Naheed Akhtar and Mst. Allah Rakhi, as well as respondent No. 1, Shamshad Ali, were identified before them. In this context, during cross-examination, attesting witness Rashid Ali deposed as follows:

"I did not know the ladies, but she arrived with defendant No.1. Negotiation for sale and purchase has not been taken place in my presence."

11. The other attesting witness Imran Khan, in his affidavit-in-evidence, failed to mention that he identified the two illiterate women and respondent No. 1 at the time of the execution of the alleged agreement of sale. Moreover, he did not depose in his evidence that the executants were identified by him during the execution of the document (Ex.38). Consequently, the identification of the female Pardanashin and illiterate women at the time of the execution of the sale agreement (*Qabooliat*) remains unestablished. Under Muslim law, the status of a Pardanashin woman holds significant legal implications, particularly in agreements for property transactions, and the protection of

their interests. A Pardanashin lady referred to as woman who strictly observes the norms and ethics of seclusion and privacy, avoiding public appearances or direct communication with males outside her close relatives. The Holy Quran commands believing women to observe modesty, guard their chastity, and avoid displaying their adornments in public. When a document is executed by a Pardanashin lady, a time-honored principle places the burden of proof on the party relying on the deed. They must establish to the satisfaction of the court that:

- i) The document was read and fully explained to her.
- ii) She understood its contents.
- iii) She received independent and impartial advice regarding the transaction.

This principle extends to illiterate and ignorant women, even if they are not Pardanashin. In Muslim law, every woman is presumed to be a Pardanashin lady unless proven otherwise. Therefore, courts are obligated to exercise great care and caution in agreements and transactions involving illiterate Pardanashin women to ensure their rights and interests are protected.

12. The appellant, along with both attesting witnesses, during their evidence, failed to testify as to whether the contents of the agreement of sale (Ex.38) were read over to the two illiterate female executants. This omission is critical, as it is essential to prove a document purportedly executed by Pardanashin women, as emphasized in the case of *Jannat Bibi v. Sikandar Ali and others* (PLD 1990 SC 642), the Court emphasized that determining whether a woman is Pardanashin is a question of fact. The burden of proof, concerning a document purportedly executed by a Pardanashin woman affecting her rights or interests in immovable property, lies on the person claiming those rights under the document. If the woman is illiterate, the document must have been read over to her. The court also referred to the observation of Sir George Lowndes in *Valluri Ramanamma v. Marina Virana* (AIR 1931 Privy Council 100), which stated that for any disposition of property by Pardanashin women, the person benefiting from the disposition must affirmatively establish that the lady substantially understood the transaction and that it was her free and intelligent act. If the woman is illiterate, the contents of the document must be read over to her. If the terms of

the document are complex, they must be adequately explained to her. The lady's level of intelligence is also a relevant factor, although independent legal advice is not necessarily required. In light of these precedents, the failure to establish that the contents of the agreement were read over and adequately explained to the illiterate female executants weakens the appellant's claim.

13. Both attesting witnesses, in their affidavits in evidence, stated that the agreement dated 13-05-2016 (Ex. nil) bears their signatures, along with the signatures of other attesting witnesses and both parties. However, the agreement of sale contains thumb impressions instead of the signatures of Mst. Allah Rakhi and Mst. Naheed. Neither of the attesting witnesses provided any testimony regarding whether the document bore the thumb impressions of these two women, nor did they clarify whether the thumb impressions were made within their sight and in their presence. This omission means that the attesting witnesses failed to testify regarding the thumb impressions on the agreement of sale, and consequently, the appellant has not been able to prove the authenticity of the document. Furthermore, both attesting witnesses failed to confirm whether Mst. Allah Rakhi and Mst. Naheed were known to them, and whether these women affixed their thumb impressions on the agreement (Ex.38) in the presence and within the sight of the witnesses. It is well-established in law that to prove the execution of a document through attesting witnesses, the witnesses must state that the signature or thumb impression of the executants was made in their presence and within their view. This principle has been affirmed in various cases, including the case of *Mst. Kalssom Bibi and another v. Muhammad Arif and others* (2005 SCMR 135).

14. In transactions involving elderly, illiterate, or belonging to rural areas, there are certain settled conditions which include:

***Proper Identification:*** The identity of the Pardanashin lady must be established beyond doubt. This includes confirming that the woman is indeed the party executing the document and that her identity is clearly recorded.

***Reading and Explanation of the Document:*** For an illiterate woman, the contents of the document must be read aloud to her in a language and manner she can understand. If the document involves complex terms or legal concepts, they must be explained to her in detail.

***Presence of Independent Witnesses:*** The document must be executed in the presence of independent and credible witnesses who can confirm that the woman was fully aware of the nature and effect of the transaction.

***Free and Voluntary Consent:*** The party seeking to benefit from the transaction must prove that the Pardanashin woman freely and voluntarily consented to the terms of the agreement, without any coercion, duress, or undue influence.

***Independent Legal Advice:*** While not always mandatory, it is highly advisable to have the Pardanashin woman receive independent legal advice regarding the transaction. This ensures that her rights are adequately protected and that she understands the legal implications.

***Witnesses to Thumb Impressions or Signatures:*** If the Pardanashin woman is unable to sign the document due to illiteracy, her thumb impressions must be affixed in the presence of the witnesses, who must testify that the thumb impressions were made by the woman herself, and that she understood the nature of the document.

These conditions are designed to protect the interests of vulnerable individuals and ensure that transactions are conducted with fairness and transparency. Failure to meet these requirements can render the transaction suspect and may lead to its invalidation.

15. The burden is on the claimant to establish affirmatively that the woman substantially understood the document and that the execution of the document was indeed her free and intelligent act. If the woman is illiterate, it is required that the contents of the document be read over to her. Here I may quote the observation of *Sir George Lowndes in (Valluri) Ramanamma v. Marina Virana AIR 1931 Privy Council 100:--*

*"The law as to disposition of property by pardanashin ladies has been discussed by the Board on many occasions. It is for the person claiming the benefit of any such disposition to establish affirmatively that it was substantially understood by the lady and was really her free and intelligent act. If she is illiterate, it must have been read over to her; if the terms are intricate they must have been adequately explained, and her degree of intelligence will be a material factor; but independent legal advice is not in itself essential: See per Lord Sumner in Faridunnisa v. Mukhtar Ahmad AIR 1925 PC 204."*

16. Therefore, it is evident that the legal requirement to have the contents of the document read over and explained to a Pardanashin and/or illiterate woman was not fulfilled in relation to the 'Qabooliat' (Ex.38).



17. In the present case, it is an admitted fact that Mst. Allah Rakhi and Mst. Naheed were illiterate and Pardashin women. In such circumstances, the burden of proof rests heavily on the appellant, who seeks to benefit from the transaction involving these women. However, the appellant has failed to meet this burden, as the evidence presented lacks corroboration regarding the identification of the illiterate Pardashin women. Additionally, the document, purportedly signed by respondent No. 1, and the thumb impressions affixed by the illiterate Pardashin women, were not put in the sight of the witnesses as required. The witnesses failed to state these material facts during their evidence. Moreover, the absence of independent legal advice further undermines the appellant's claim. Consequently, the appellate Court rightly concluded that the appellant failed to prove its case. Therefore, the impugned judgment dated 13-10-2023 requires no interference, and the instant appeal, being without merit, is dismissed with no order as to costs.

**JUDGE**

“Ali Sher”