

Judgment Sheet

IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA

Civil Revision Application No. S-43 of 2023

Applicant : Akhtiar Ali s/o Muhammad Moosa Bhutto,
Through Mr. Abdul Rehman A. Bhutto, Advocate

Respondents No.1 to 6 : Allahdino and 05 others
Through Mr. Sanaullah Bhutto, Advocate

Respondents No.7 to 9 : Through Mr. Abdul Waris Bhutto, Asst. A.G.

Date of hearing : **15.11.2024**
Date of Decision : **21.11.2024**

J U D G M E N T

ARBAB ALI HAKRO, J.- Through this Revision Application under Section 115 of the Civil Procedure Code, 1908 ("**C.P.C**"), the applicant impugns the Judgment and Decree dated 11.01.2023, passed by learned VI-Additional District Judge, Larkana ("**Appellate Court**"), whereby the applicant's appeal was dismissed, thus affirming the Order dated 01.12.2022 and Decree dated 05.12.2022, rendered in F.C Suit No.63/2022 by learned II-Senior Civil Judge, Larkana ("**Trial Court**"), which had rejected the plaint under Order VII, Rule 11 C.P.C.

2. The succinct narrative of this civil revision is that the applicant filed a suit for specific performance of a contract pertaining to a guava orchard delineated as Survey No. 34, admeasuring 01-39 ½ acres, situated in Deh Masu Hab, Tapo Akil, Taluka, and District Larkana (suit land). The suit land was the proprietary holding of the deceased father of Respondents/Defendants No. 1 to 5, who died in the year 2019. However, Respondents No. 1 to 5 procured a death certificate indicating the date of death as 31.01.2021. The applicant asserted that he had purchased the suit land from Respondent No.1, who, acting on his behalf and the other legal heirs(Respondents No. 2 to 6), executed an Agreement to Sell dated 22.06.2021. The aggregate consideration for the sale was determined to be Rs.2,850,000/-, of which the applicant had paid Rs.1,500,000/- in the presence of witnesses, with the

residual sale consideration of Rs.1,350,000/- stipulated to be remitted at the juncture of the registration of the Sale Deed. Moreover, it was articulated that pursuant to the stipulations of the Agreement to Sell, subsequent to the change of the Foti-Khata in the name of Respondents No. 1 to 6, they were obligated to procure the sale certificate. The possession of the suit land was handed over to the applicant contemporaneously with the execution of the Agreement to Sell. Nevertheless, upon the change of the Foti-Khata, Respondent No. 1 exhibited avarice and repudiated the execution of the Sale Deed in favour of the applicant, hence the suit.

3. Upon receipt of the summons, Respondents No.1 for self and the attorney of Respondents No.2 to 6 contested the suit by filing a written statement. They have also filed an application under Order VII Rule 11 C.P.C, seeking the rejection of the plaint. After hearing, the trial Court rejected the plaint vide Order dated 01.12.2022 and Decree dated 05.12.2022. Aggrieved by this Order and Decree, the applicant filed an appeal to the appellate Court. However, this was also dismissed vide impugned Judgment dated 11.01.2023 and Decree dated 11.01.2023. The applicant is now challenging the concurrent findings of the two lower courts through the instant revision application.

4. At the outset, the learned counsel for the applicant submits that both lower courts committed illegality and material irregularity by rejecting the plaint without considering the fact that Respondent No.1, being the elder brother of the other co-sharers (Respondents No.2 to 6), undertook to execute the sale deed both for himself and on behalf of the other co-sharers. This undertaking is also mentioned in the agreement to sell as well as in the contents of the plaint. He further contends that the observations of both lower courts, which deemed the agreement to sell unenforceable, are erroneous and should be determined after recording evidence. Additionally, he points out that Respondent No.1 is acting in his personal capacity and as the attorney for Respondent No.2 to 6. Lastly, he prays to allow the instant Revision Application and matter to be remanded to the trial court for a decision on the merits after the recording of evidence. He relies on case law reported as **2024 MLD 656** to support his contentions.

5. Conversely, the learned counsel for Respondents No.1 to 6 contended that the trial court had rightly rejected the plaint. This decision was duly

upheld by the learned appellate Court, with no material irregularity or illegality committed by either of the courts below. He further argued that the applicant had filed the suit as a counterblast, as the respondents had already filed a suit for possession before filing the applicant's suit. Moreover, he contended that at the time of the agreement to sell, Respondent No.1 was not the owner of the suit land and was, therefore, not competent to enter into the contract.

6. The learned Assistant Advocate General (A.A.G.) contended that the dispute is primarily between private parties, and consequently, no government interest is involved in the matter.

7. The contentions have been meticulously scrutinized, and the accessible records have been assiduously evaluated. To ascertain whether an adequate and exhaustive dispensation of justice was accomplished, it is imperative to scrutinize the concurrent findings articulated by both the courts below.

8. Undoubtedly, it is an incontrovertible tenet of jurisprudence that, when adjudicating a motion for the rejection of a plaint pursuant to Order VII Rule 11 C.P.C, the Court must meticulously scrutinize the averments articulated within the plaint and the corroborative documents annexed thereto. Should the content of the plaint incontrovertibly reveal that any statutory provision precludes the suit or that the plaintiff is devoid of a valid cause of action, or if the requisite court fee has not been duly remitted despite Court directives, the Court is vested with the authority to reject the plaint summarily.

9. In this particular case, the trial court rejected the plaint based on the premise that the applicant/plaintiff failed to address a key defence plea convincingly. This plea asserted that Respondent/Defendant No.1 would not inherit more than a 50% share of the suit land. Therefore, the trial Court concluded that even if the disputed sale agreement dated 02-06-2021 was proven, it would be deemed void and unenforceable under Section 12 of the Specific Relief Act, which governs the enforceability of contracts. The appellate Court subsequently upheld these findings. However, a closer examination of the agreement to sell dated 22-06-2021 reveals critical nuances. The agreement explicitly states that Respondent No.1, on behalf of himself and the other legal heirs, is bound to execute the registered sale deed in favour of the applicant. This clause indicates that Respondent No.1 was not acting solely on his behalf but was also representing the interests of the other

heirs. The contention that Respondent No.1, being only a co-sharer, lacks the competence to enter into an agreement to sell the entire suit land requires further scrutiny. The principle of law stipulates that a co-sharer is permitted to sell the property to the extent of his share. This principle is well-established and has been elaborately discussed by the Supreme Court of Pakistan in the case of *Muhammad Sharif and others*¹, which supports the proposition that a co-sharer can legally engage in such transactions. Moreover, whether Respondent No.1 was duly authorized by the co-sharers to enter into an agreement to sell is a factual issue. The trial court and the appellate Court's findings on this matter suggest that this question must be determined based on the evidence presented during the trial. This determination requires a thorough recording and examination of evidence to establish the extent of authorization granted to Respondent No.1 by the other co-sharers.

10. In addition, whether the contract in question is enforceable must be determined by the trial court after a comprehensive trial. It is important to note that the relief of specific performance is a discretionary remedy, meaning that the Court has the authority to decide whether to grant or deny it based on the particular circumstances of the case.

11. For the foregoing reasons, this Revision Application is **allowed**. As a result, impugned Judgment, Order and decrees are set aside being tainted with illegalities and material irregularities. The case is remanded to the learned trial court to decide the suit of the applicant/plaintiff after proper trial and recording of evidence in accordance with the law on merits and without being influenced by any of the observations contained herein above.

JUDGE

¹Muhammad Sharif and others vs Ghulam Hussain and another (1995 SCMR 514)