

*Judgment Sheet*

**IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA**

Civil Revision Application No. S-135 of 2022

Applicant : Abdul Sami Kehar s/o Bashir Ahmed Kehar  
Through Mr.Imdad Ali Mashori, Advocate

Respondents No.1 to4 : Amanullah and 03 others  
Through Mr.Zafar Ali Malgani, Advocate

Respondents No.5 to 9 : Through Mr.Munawar Ali Abbasi, Asst. A.G.

Date of hearing : **12.11.2024**

Date of Decision : **27.11.2024**

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

**ARBAB ALI HAKRO, J.-** Through the above-captioned civil Revision Application under Section 115 C.P.C, the applicant has called into question the Judgment and Decree dated 24.9.2022, passed by the Court of Additional District Judge, Ratodero ("the **appellate Court**"), whereby Civil Appeal<sup>1</sup> preferred by the applicant, was dismissed. Consequently, the Judgment and Decree dated 01.6.2021 passed in a Suit<sup>2</sup> by the Senior Civil Judge, Ratodero ("the **trial Court**"), dismissing the suit, was maintained.

2. Brief facts of the case are that the applicant/plaintiff has instituted a suit for specific performance predicated upon an oral agreement to sell and for a permanent injunction against the respondents/defendants. The gravamen of the applicant's contention was that he purchased land measuring 04-05 acres<sup>3</sup> (the "**suit land**") from respondents/defendants No.1 to 4, predicated upon an oral agreement to sell dated 17.11.2018, for a total consideration of Rs.1,600,000/-, in the presence of witnesses, namely Muhammad Jurial, son of Hussain Bux Dayo and Nadeem Ahmed, son of Ghundo Kehar. Of the total consideration, the applicant disbursed Rs.1,400,000/- as earnest money to respondents No.1 to 4, and he has been in possession of the suit land since then. It was covenanted between the parties that respondents No.1 to 4 would procure the Sale Certificate within six months, subsequent to which the remaining sale consideration would be

<sup>1</sup>Civil Appeal No.64/2021 (Re-Abdul Sami vs Amanullah and others)

<sup>2</sup>F.C Suit No.43/2020 (Re-Abdul Sami vs Amanullah and others)

<sup>3</sup>R.S No.461 (02-26) Acres and R.S No.462 (02-09) Acres situated in Deh and Tapo Khairodero, Taluka Ratodero, District Larkana

tendered by the applicant to the respondents before the Sub-Registrar at the time of executing the registered Sale Deed. However, post the elapse of the stipulated six months, respondents No.1 to 4 were remiss in obtaining the Fard/Sale Certificate and fresh Deh Form VII-B, despite the applicant's repeated requests and offers to pay the remaining Rs.200,000/- in the presence of the aforementioned witnesses. They continued to provide the applicant with specious assurances but failed to fulfill their obligations. It is further averred that the applicant and the father of respondents No.1 to 4 had a longstanding relationship based on mutual trust, being former (Hari). Thus, the transaction was undertaken in good faith. However, upon learning that respondents No.1 to 4 were endeavouring to alienate the suit land to notorious persons within the locality, the applicant was compelled to institute the suit.

3. The summons were duly served upon Respondents Nos. 1 to 4, and their counsel filed Vakalatnama on their behalf and sought time to file a written statement. However, they failed to file the same within the stipulated period. Consequently, the trial court debarred them vide an order dated 07.01.2021, and the suit proceeded ex parte.

4. Subsequently, the attorney of the applicant, Iqrar Ahmed Kehar, filed his affidavit-in-evidence in exparte proof along with affidavits of two witnesses, namely Naeem Ahmed and Muhammad Jurial, who were cross-examined by the learned counsel for Respondents No.1 to 4. Thereafter, the trial court, vide judgment and decree dated 01.06.2021, dismissed the suit of the applicant. The applicant's appeal against this decision was also dismissed by the appellate Court vide judgment and decree dated 24.09.2022. Hence, this civil revision.

5. At the very outset, learned counsel for the applicant contended that there are no contradictions in the evidence of witnesses concerning the payment, date, or place of the contract. He argued that Respondents No.1 to 4 failed to file their written statement, and the applicant had examined both the marginal witnesses, who fully supported the applicant's version. However, both the courts below failed to consider this evidence. He further contended that there is no mandatory requirement to obtain a receipt for earnest money. Additionally, he stated that the applicant is ready to pay the remaining consideration. The counsel asserted that the applicant had successfully proven the oral agreement to sell, but both lower courts dismissed the suit illegally

and erroneously. Finally, he argued that both lower courts committed legal errors and acted beyond their jurisdiction in dismissing the suit. In support of his contentions, he relied upon **2001 SCMR 1700, PLD 1962 Dacca 643, 1993 SCMR 183, PLD 1972 SC 25, 2021 MLD 1983, 1996 CLC 1758, 2000 SCMR 1647.**

6. Conversely, learned counsel for Respondents No.1 to 4 supported the impugned judgments and decrees, asserting that both lower courts recorded concurrent findings of fact based on a meticulous appreciation of evidence. He argued that there are contradictions in the evidence provided by the applicant's witnesses, which were rightly discussed by the trial court. There is no evidence of misreading or non-reading of evidence, nor has any legal infirmity been identified that would warrant this Court's interference under its revisional jurisdiction under Section 115 of the C.P.C. He further contended that Respondents No.1 to 4 possess the suit land, and the applicant's claim of possession in part performance of an oral agreement to sell is false. He relied upon the case law reported as **2021 SCMR 605.**

7. The arguments have been adduced with great prolixity, and the extant record has been scrupulously scrutinized with the sagacious assistance of the learned counsel for both parties.

8. In the present case, the claim of the applicant/plaintiff hinges on the assertion of an oral agreement to sell. To substantiate such a claim and to secure the decree for Specific Performance as prayed for, it is imperative that the plaintiff meticulously delineates the particulars of an agreement in the plaint. Firstly, the plaintiff must unequivocally state the exact date, month, time, and the names of the persons/witnesses before whom an oral agreement to sell was purportedly concluded. This specificity is crucial, as it anchors the claim to a definite time and setting, enhancing its credibility. Secondly, the plaintiff must comprehensively outline the complete terms and conditions of the sale. This includes the agreed consideration, the payment schedule, the description of the property, and any other relevant stipulations agreed upon by both parties. Such detailed articulation ensures that the Court can ascertain the contractual obligations and expectations of the involved parties. Thirdly, and perhaps most critically, the plaintiff must provide a cogent and satisfactory explanation for why the terms and conditions of the sale were not reduced to writing. This explanation should address any contextual or practical reasons that precluded the formal documentation of

the agreement at the time. Beyond these foundational elements, the plaintiff is also required to corroborate the oral agreement through reliable evidence, both oral and documentary. Witness testimonies from credible individuals who were present at the time of the agreement are paramount. These witnesses must consistently affirm the plaintiff's account of the agreement. Additionally, any documentary evidence that indirectly supports the existence of the agreement, such as receipts for part payment or records of communication between the parties, can significantly bolster the plaintiff's claim. Only through such rigorous and detailed presentation of evidence can the Court be persuaded to issue a decree for Specific Performance based on an oral agreement to sell. The legal threshold for proving an oral agreement is inherently high due to the absence of written documentation, thus necessitating a robust and meticulous evidentiary approach to satisfy judicial scrutiny.

9. In the case of *Hafiz Qari Abdul Fateh through L.Rs<sup>4</sup>*, the Honourable Supreme Court of Pakistan laid down crucial principles for proving an oral agreement to sell, wherein emphasized that the burden lies squarely on the party seeking specific performance of such an agreement to demonstrate mutual agreement and consensus regarding the terms unequivocally. This principle was affirmed in the case of *Maqbool Ahmad<sup>5</sup>*, where it was ruled that the definition of an agreement under Section 2(h) of the Contract Act, 1872 must be satisfied for an oral contract to be enforceable. It is further articulated that in order to substantiate the existence of an oral agreement, the party must specify the date, time, place, and names of witnesses in their pleadings, such as the plaint or written statement. These details are indispensable (*sine qua non*) for proving an oral agreement to sell, as reiterated in the case of *Muhammad Riaz and others<sup>6</sup>*. The rationale behind this requirement is to mitigate the risk of dishonest enhancements in evidence and pleadings, a common issue in cases relying on oral agreements.

10. In the present case, several significant deficiencies in the plaintiff's claim undermine the credibility of the asserted oral agreement to sell. Firstly, the plaintiff fails to specify the time and place where the agreement was purportedly concluded. This lack of detail is critical as it prevents the Court from verifying the exact circumstances under which the agreement was made. Secondly, there is no receipt of earnest money documented in writing or

---

<sup>4</sup>Hafiz Qari Abdul Fateh through L.Rs vs Ms.Urooj Fatima and others (2024 SCMR 1709)

<sup>5</sup>Maqbool Ahmad v. Suleman Ali (PLD 2003 SC 31)

<sup>6</sup>Muhammad Riaz and others v. Mst. Badshah Begum and others (2021 SCMR 605)

produced as evidence. The absence of such documentation leaves a substantial gap in the plaintiff's evidence, as it provides no concrete proof of the payment that would typically substantiate the existence of an agreement to sell. Thirdly, the plaintiff does not offer any satisfactory explanation as to why the terms and conditions of the agreement were not reduced to writing. Instead, the plaintiff merely states that the father of the defendants and the plaintiff were on good terms, being old Hari and that the transaction was made in good faith. However, the respondents have expressly denied this claim of a longstanding relationship based on Hari. Furthermore, the plaintiff has failed to present any oral or documentary evidence to substantiate the assertion that defendants No.1 to 4 or their father were ever old Hari of the plaintiff. The lack of corroborative evidence on this point severely weakens the plaintiff's position. In summary, the failure to specify essential details, the absence of written evidence of earnest money, and the lack of a credible explanation or supporting evidence for the purported relationship between the parties all cast significant doubt on the validity of the plaintiff's claim.

11. A perusal of the record reveals that both marginal witnesses submitted nearly identical affidavits-in-evidence in the present case. This uniformity can sometimes call into question the individuality and spontaneity of their testimonies, as overly similar affidavits suggest coordination rather than independent recounting of the events. While consistency is a crucial element in legal testimonies, the absence of distinct details from each witness can significantly impact the perceived authenticity and reliability of their evidence. It is imperative for each witness to provide testimony based on their personal observations and experiences to bolster the overall credibility of the case.

12. Despite the similarities in their affidavits, cross-examination revealed contradictions between the testimonies of the attorney for the plaintiff and both marginal witnesses, as discussed by the trial court. The attorney for the plaintiff deposed that defendants No.1 to 3 arrived on foot and spent about 1 to 2 hours at the plaintiff's *otaq*, where they were served tea. He stated that the Rs.500,000 part of the sale consideration was in Rs.5,000 notes, with the remaining amount in Rs.1,000 notes, wrapped in a piece of cloth (*Roma*). Conversely, the second eyewitness, Nadeem Ahmed Kehar, testified that all three defendants came on three bikes around noon, stayed at the plaintiff's bungalow for about 3 to 4 hours, and were served lunch. He noted that the defendants did not bring any documents of the suit property and that he had not seen the suit land. He also stated that the entire sale consideration was

given in Rs.1,000 notes. In further contrast, the first eyewitness, Muhammad Jurial Dayo, testified that defendants No.1 to 3 arrived at the plaintiff's *Otaq* by bus and stayed there until the evening. He stated that the defendants received the sale consideration, which was placed in a paper envelope and taken away in the same envelope. Additionally, it is pertinent to note that an oral agreement was executed at the plaintiff's *Otaq* has not been mentioned in the plaint. These discrepancies in the details provided during cross-examination highlight significant contradictions in the witnesses' testimonies, undermining the credibility of the plaintiff's claim and raising questions about the reliability of the evidence presented. In the case of *Muhammad Nawaz through L.R.s*<sup>7</sup>, the Supreme Court of Pakistan held that:

*".....however, in a case where party comes forward to seek a decree for specific performance of contract of sale of immovable property on the basis of an oral agreement alone, heavy burden lies on the party to prove that there was consensus ad idem between both the parties for a concluded oral agreement".*

**[Emphasis is supplied]**

13. The learned counsel for the applicant has failed to highlight any illegality or material irregularity in the impugned judgments and decrees passed by the lower courts, nor has he identified any jurisdictional defects. The concurrent findings of fact are adverse to the applicant. As such, there is no basis for this Court to exercise its revisional jurisdiction in the absence of any illegality or jurisdictional error. This position is supported by the precedent set in the case of *Mst. Zaitoon Begum*<sup>8</sup> which reinforces the principle that revisional interference is unwarranted without evident legal errors or jurisdictional faults.

14. In light of the foregoing, the instant Revision Application is **dismissed**, with costs of Rs.500,000/- to be paid by the applicant to the Respondents Nos.1 to 4.

**J U D G E**

*Qazi Tahir PA*/\*

<sup>7</sup>Muhammad Nawaz through L.R.s v. Haji Muhammad Baran Khan through L.R.s and others (2013 SCMR 1300)

<sup>8</sup>Mst. Zaitoon Begum v. Nazar Hussain and another (2014 SCMR 1469)