

Judgment Sheet

IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA

Civil Revision Application No. S-69 of 2012

Applicant : Mevo son of Wazir Khan Brohi
Through Mr.Imdad Ali Mashori, Advocate

Respondents No.1 to 5 : Through Mr.Munawar Ali Abbasi, Asst. A.G.
Nemo for Respondents No.6 to 8

Date of hearing : **20.11.2024**
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 dated 24.10.2012 and Decree dated 30.10.2012, passed by the Court of I-Additional District Judge, Shikarpur ("the **appellate Court**"), whereby Civil Appeal¹ preferred by the applicant, was dismissed. Consequently, the Judgment dated 30.6.2011 and Decree dated 02.7.2011 passed in a Suit² by the I-Senior Civil Judge, Shikarpur ("the **trial Court**"), dismissing the suit was maintained.

2. The applicant/plaintiff filed a suit for Declaration, Specific Performance of Contract based on an oral agreement to sell, and a Mandatory Injunction against the respondents/defendants. F.C. Suit No.61/1998, filed by Respondent/defendant No.8 against the Province of Sindh and others, including Atta Hussain, sought specific performance of a contract and permanent injunction regarding agricultural land³ ("**suit land**"). During the pendency of that suit, the plaintiff moved an application under Order 1 Rule 10 C.P.C to join Jabal Khan and Saleem as defendants, who claimed to have purchased the land from Atta Hussain Shah. The application was allowed, and the plaint was amended. Later, the plaint was rejected under Order 7 Rule 11 C.P.C on 06.6.2000. The plaintiff appealed, but the appeal was withdrawn on 17.02.2001 due to an out-of-court compromise attempt. However,

¹Civil Appeal No.20/2011 (Re-Mevovs Province of Sindh and others)

²F.C Suit No.17/2003(New No.75/2007 (Re-Mevovs. Province of Sindh others)

³Survey Nos. 279 (2-20 acres), 280 (2-03 acres), 282 (0-27 acres), 283 (1-24 acres), 286 (2-02 acres), and 297 (1-27 acres), totalling 10-27 acres (previously shown as 11-35 acres)

Respondents/defendants No.3 to 5 retracted from the compromise after the appeal withdrawal. The plaintiff then filed an application under Section 151 C.P.C before the appellate Court to recall the dismissal order and reinstate the appeal. This application was also withdrawn, leading to a fresh appeal (No.09/2001) on 30.06.2001, dismissed as time-barred. Subsequently, Miandad filed a Civil Revision before this Court, which was also withdrawn. It is further averred that Syed Atta Hussain Shah sold the entire suit land to Respondents/Defendants No.6 and 7. He sold 5-33 acres to Respondent/Defendant No.6 for Rs.175,000 through Sale Deed No.152 on 24.07.1998, and another 5-33 acres to Respondent/Defendant No.7 for Rs.175,000 through Sale Deed No.153 on the same date. On 20.05.2002, Respondents/Defendants Jabal Khan and Saleem (Respondents No.6 and 7) entered into an oral agreement to sell in respect of suit land with the Applicant/Plaintiff for Rs.373,800 at Rs.32,000 per acre, witnessed by Ghulam Qadir S/o Saifal and Allah Bux S/o Wahid Bux. The Applicant/Plaintiff paid Rs.200,000 to Respondents/Defendants No.6 and 7 on 20.05.2002, in the presence of the witnesses, with the remaining Rs.172,880 to be paid upon executing the sale deed before the Sub-Registrar, Lakhi Ghulam Shah, after the decision on Miandad's revision petition filed before this Court. When Respondent/Defendant No.8 withdrew the revision, the Applicant/Plaintiff approached Respondents/Defendants No.6 and 7 to complete the contract and receive the balance payment. However, they refused, leading the Applicant/Plaintiff to file the suit.

3. Respondent No.6 contested the suit by filing a written statement, which was adopted by Respondent No.7. Respondent No.8 also filed his written statement.

4. Respondent No.6 stated in his written statement that Respondent No.8 had filed the present suit through the applicant on false and fabricated grounds, as they neither sold the suit land to the applicant through an oral agreement to sell nor received any part of the consideration. The witnesses mentioned in the plaint are strangers to them.

5. Respondent No.8(v), in his written statement, claimed that his deceased father had purchased the suit land from Atta Hussain Shah through an oral agreement to sell, and possession of the suit land was handed over to his father. Since then, the suit land has been in their possession. He is unaware whether the suit land was re-sold to the applicant/plaintiff.

6. Out of the divergent pleadings of the parties, the trial court framed issues, and the parties presented their respective oral and documentary evidence. After hearing the arguments advanced by both contesting parties, the trial court, vide Judgment dated 30.06.2011 and Decree dated 02.07.2011, dismissed the suit. Feeling aggrieved, the applicant preferred an appeal, and the appellate Court dismissed the appeal vide Judgment dated 24.10.2012 and Decree dated 30.10.2012. Being dissatisfied, the applicant has filed this civil revision, challenging the validity of the impugned judgments and decrees passed by the courts below.

7. I have meticulously considered the arguments presented by the learned counsel for the applicant and the learned Assistant Advocate General. Despite repeated notices and intimation, the private respondents have persistently failed to appear and present their arguments. I have thoroughly examined the record and have minutely gone through the impugned judgments and decrees with judicial rigour.

8. In the adjudication of the suit for specific performance filed by the applicant, it is pivotal to underscore the inviolable tenet of civil jurisprudence that mandates a party to distinctly delineate its case within the confines of its pleadings, particularly with respect to factual assertions. The legal doctrine of "*secundum allegata et probata*" rigorously precludes any element of ambush by disallowing the introduction of evidence on matters that have not been explicitly pleaded. Jurisprudential precedents, such as the cases of the *Government of West Pakistan*⁴, *Binyameen and 3 others*⁵ and *Major (Retd.) Barkat Ali and others*⁶, unequivocally elucidate that no litigant may proffer evidence on an unpleaded fact, nor may any extraneous evidence be admissible if it transcends the ambit of the pleadings. It is imperative to comprehend that the averments articulated in the pleadings do not constitute admissible evidence; rather, the evidentiary material presented must consistently align with these assertions. Any evidence that strays beyond the delineated scope of the pleadings is inadmissible and cannot be considered by the Court.

9. The applicant initiated the suit predicated on an oral agreement to sell, conspicuously omitting the particulars regarding the time, place, and period

⁴Government of West Pakistan (Now Punjab) through Collector, Bahawalpur v. Hail Muhammad (PLD 1976 SC 469)

⁵Binyameen and 3 others v. Choudhary Hakim and another (1996 SCMR 336)

⁶Major (Retd.) Barkat Ali and others v. Qaim Din and others (2006 SCMR 562)

for completion of the said agreement, so also failed to provide a cogent and satisfactory explanation for why the terms and conditions of the sale were not reduced to writing. In his testimony as PW-1, the plaintiff's attorney, Muhammad Nawaz, failed to delineate the specifics of the time, day, month, year, and place where the alleged transaction purportedly transpired during his examination-in-chief. Under cross-examination, he admitted his presence at the time of the sale agreement but conceded that no receipt of payment was obtained and could not recall the time when the agreement was concluded. Furthermore, both marginal witnesses have failed to specify the date and time of executing an oral agreement to sell. Material contradictions emerged in the testimonies of the plaintiff's attorney and his witnesses regarding the amount of sale consideration, the mode of payment, and the denominations of the sale consideration. The applicant did not produce any receipt for the payment of earnest money, thus failing to prove that the earnest amount had been paid. No explanation was provided for the absence of such a receipt. It is a well-established principle that in cases alleging an agreement to sell, the claimant/plaintiff must comprehensively articulate all relevant factors underpinning the execution of the agreement in the plaint and subsequently substantiate the same with credible and compelling evidence. The respondents neither pleaded nor testified to the necessary facts to establish the oral agreement to sell and the payment of earnest consideration. This requirement is *sine qua non* for proving the validity of an oral agreement to sell. Consequently, the plaintiff's failure to adhere to these requisites renders the claim unsubstantiated and untenable. In the case of *Nazir Ahmad and another*⁷, wherein it was held "*.....There is no documentary evidence about the sale, which obviously could not be legally concluded except in accordance with section 54 of the Transfer of Property Act, 1882 and 17 of the Registration Act, 1908. Moreover, even no oral independent evidence has been led by the respondent to establish the exact day, date, month, year, the venue as to when the sale transaction was allegedly negotiated and finalized between the parties and in whose presence*".

10. It is an established axiom of jurisprudence that validating an unwritten agreement necessitates evidence of the highest probity and unimpeachable character. The initial onus probandi indubitably rests with the plaintiff(s), who must substantiate their claims through cogent, legal, and pertinent evidence that is definitive and unassailable. Nevertheless, the depositions of the prosecution witnesses are fraught with contradictions and fail to corroborate

⁷Nazir Ahmad and another vs Yousaf (PLD 2011 SC 161)

the applicant's claims. This doctrinal principle is vividly delineated in the case of *Muhammad Nawaz through L.R.s*⁸ .

11. Notwithstanding, the execution of the purported oral agreement to sell remains unsubstantiated by credible evidence. Furthermore, the precedent articulated in the case of *Hafiz Muhammad Iqbal*⁹, elucidates that the Court possesses extensive discretion to deny relief to a purchaser of immovable property, contingent upon the particular circumstances of each case. A purchaser is not entitled to claim the specific performance of a contract as an absolute right, even when such a claim is legally permissible.

12. Therefore, the courts below have meticulously scrutinized the pleadings and the entire corpus of evidence presented by the parties. Consequently, they have adjudicated the matter, culminating in dismissing the applicant's suit for the specific performance of an oral agreement to sell. Their concurrent findings are devoid of any illegality, material irregularity, misreading, or non-reading of evidence that would warrant interference by this Court in its revisional jurisdiction under Section 115 C.P.C., which is inherently very narrow and limited in scope.

13. For the foregoing reasons, this Civil Revision Application, being bereft of any merits, stands **dismissed** with costs throughout.

J U D G E

*Qazi Tahir PA/**

⁸Muhammad Nawaz through L.R.s v. Haji Muhammad Baran Khan through L.R.s and others" (2013 SCMR 1300)

⁹Hafiz Muhammad Iqbal v. Gul-e-Nasreen and others (2019 SCMR 1880)