

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S – 131 of 2023

(Fateh Muhammad Mughal & others v. Ghulam Muhammad Sahito & others)

Civil Revision No. S – 132 of 2023

(Fateh Muhammad Mughal & others v. Ghulam Muhammad Sahito & others)

Date of hearing : **17.02.2025**

Date of decision : **17.02.2025**

Mr. Najeebullah Jalbani, Advocate for applicants.

Mr. J. K. Jarwar, Advocate for respondent No.2 in Civil Revision No. S-131 of 2023.

Mr. Ghulam Abbas Kubar, Assistant Advocate General Sindh.

J U D G M E N T

Zulfiqar Ahmad Khan, J. – Through this consolidated judgment, I intend to decide both the captioned Civil Revisions filed by the applicants (plaintiffs), which challenge the common judgment and decree dated 16.05.2023, passed by the learned District Judge / Civil Model Appellate Court, Naushahro Feroze, in Civil Appeals No.161 and 170 of 2021, filed by respondent No.1 in both civil revisions and respondent No.2 in Civil Revision No. S-131 of 2023, respectively. In that judgment, the decree in favour of the plaintiff, Fateh Muhammad, passed by the learned Senior Civil Judge-II, Naushahro Feroze, in F.C. Suit No.76 of 2018, was set aside, and the suit has been dismissed.

2. The applicants (plaintiffs) have filed the aforementioned suit seeking a declaration, cancellation of registered deed Jaryan No.3481 dated 26.12.2014, Entry No.268 dated 19.02.2015, and a permanent injunction against the respondents (defendants). They state that the suit land, consisting of several survey numbers listed in the plaint, is situated at Deh Chanheen Manomal, Taluka Bhiria, and belongs to the applicants to the extent of 53 acres, while a portion of 7 acres, specifically in Survey Nos.966, 967, 968 and 969, belongs to Shoukat Ali, respondent No.5 in

Civil Revision No. S-131 of 2023. The applicants allege that Ghulam Muhammad Sahito and Sagheer Ahmed Rajput, respondents No.1 and 2 in Civil Revision No. S-131 of 2023, colluded with the official respondents to fraudulently transfer the property into their names through the aforesaid registered sale deed and the entry. The applicants claim that they were unaware of this transaction until respondent No.5 filed a suit against Ghulam Muhammad and others, producing the disputed registered deed that showed the survey numbers belonging to the applicants. Although respondent No.5 filed Constitutional Petition No. D-1673 of 2017, in which the Assistant Commissioner, Bhiria, submitted a report stating that the survey numbers of respondent No.5 were deleted from the entry, the sale deed remained in the field, prompting respondent No.5 to file a suit seeking partial cancellation of the deed. The applicants, while acknowledging that Survey Nos.966, 967, 968 and 969 are not mentioned in the record of rights of their father, state that they did not execute any registered deed in favour of respondents No.1 and 2 in Civil Revision No. S-131 of 2023 and assert that the deed is forged. Furthermore, they maintain that they are still in possession of their land.

3. Learned Counsel for the applicants argued that the learned appellate Court had overturned the learned trial Court's findings without providing any cogent reasons. He emphasized that the registered deed in question was the result of a fraud. He also pointed out that while the learned appellate Court upheld the learned trial Court's judgment regarding respondent No.5's claim in his suit (F.C. Suit No.162 of 2017), it dismissed the applicants' claim, even though the same registered deed was involved in both cases. Additionally, learned Counsel submitted that respondent No.1 in both civil revisions, Ghulam Muhammad, one of the beneficiaries of the deed, did not appear before the learned trial Court as a witness nor file a written statement. Based on this, he requested for granting these civil revisions in favour of the applicants.

4. At the outset, learned Counsel for respondent (defendant) No.2 in Civil Revision No. S-131 of 2023, Sagheer Ahmed, who is also the beneficiary of the registered deed to the extent of 67 paisa, referred to the objections on civil revision, which have been presented in the form of a counter-affidavit, supported by an affidavit of respondent No.2. He stated that his client has no objection for allowing Civil Revision No. S-131 of 2023.

5. After hearing the parties and carefully perusing the available record, it has become evident that the registered deed allegedly executed by the applicants, which also included respondent No.5's properties consisting of 7 acres, is the outcome of fraud by respondents / defendants (Ghulam Muhammad and Sagheer Ahmed). To the extent of share of respondent No.5 (Shoukat Ali), the learned trial Court decreed the suit, and the learned appellate Court upheld this decision, which has not been challenged before this Court. The current dispute, therefore, concerns the remaining share of the applicants viz. 53 acres.

6. Upon reviewing the registered deed, it is clear that it was executed in favour of respondents (defendants) No.1 and 2 in Civil Revision No. S-131 of 2023, with the shares distributed between them as 33 paisa and 67 paisa, respectively. Respondent No.2 has actively contested the matter before both the learned trial Court and the learned appellate Court, where he succeeded in securing his 67 paisa share except survey numbers of respondent No.5. He has since filed his objections to the civil revision in the form of a counter-affidavit, the contents of which are necessary to reproduce here, which are as follows:

02. *That, the contents of memo of civil revision and its supporting affidavit has been read over to me by my counsel, I say that if the judgment and decree of learned trial Court be restored while allowing this revision application I have no objection at all. It is further submitted that after judgment of learned trial Court, the possession of suit property was*

handed over to the applicants, now they are in possession, the matter of fact is that the brother of respondent No.01 / Ghulam Muhammad namely Abdul Waheed was posted as Tapedar over same Tapa, who has managed the registered sale deed. I further say that recently I have performed "Umrah" therefore I do not want to usurp the right of any poor person, as I have fear from Almighty Allah.

7. In light of the foregoing, particularly the statement made by respondent No.2 in his counter-affidavit, wherein he has pointed out that the fraud surrounding the registered sale deed was facilitated by Abdul Waheed, the brother of respondent No.1, who served as Tapedar, and has expressed his reluctance to deprive any poor persons of their rights, invoking his fear of Almighty Allah, Civil Revision No. S-131 of 2023 is **allowed**. Additionally, it is noteworthy that respondent No.1 in both Civil Revisions, whose alleged share amounts to only 33 paisa, has never appeared before this Court. This is particularly because of the prima facie evidence suggesting his involvement in the fraud, which was carried out through his brother, the Tapedar. As a result, Civil Revision No. S-132 of 2023 is also **allowed**. Consequently, the decision of the learned trial Court decreeing the suit of the applicants is upheld.

These are the reasons of the short order dated 17.02.2025. Office is directed to place a signed copy of this judgment in the connected file.

J U D G E

Abdul Basit