

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

Civil Revision Application No.S-132 of 2023

Applicant : **Pervaiz Ahmed Soomro through his
Attorney Zafar Ali Soomro
Through M/S. Sarfraz Ali Abbasi & Raaz
Muhammad @ Gul Raz Hakro, Advocates.**

Respondent No.1 : **Muhammad Umar @ Ameer Ali Soomro
Through Mr. Waheed Ahmed Shaikh, Advocate**

Govt. of Sindh : **Through Mr. Abdul Waris Bhutto, A.A.G**

Date of hearing : **19-05-2025**

Date of Judgment : **30-05-2025**

JUDGMENT

Jan Ali Junejo, J:- This Civil Revision Application, has been preferred by the Applicant against the impugned Judgment dated 05-06-2023 and Decree dated 06-06-2023 passed by the learned District Judge, Shikarpur in Civil Appeal No. 42 of 2019. Through the said impugned Judgment and Decree, the learned Appellate Court allowed the appeal filed by the present Respondent No. 1, consequently setting aside the Judgment dated 12-03-2019 and Decree dated 21-03-2019 passed by the learned Ist Senior Civil Judge Shikarpur in Civil Suit No. 50 of 2012. The learned Trial Court had initially decreed the suit filed by the present Applicant. This Revision Application seeks the setting aside of the Appellate Court's judgment and the restoration of the Trial Court's decree.

2. The genesis of this litigation lies in Civil Suit No. 50 of 2012, instituted by the present Applicant, Pervaiz Ahmed, against the present Respondent No. 1, Muhammad Umar alias Amir Ali. The Applicant, in the plaint, sought a declaration that the registered Sale Deed dated 19-07-2010, allegedly executed by the Applicant and other co-owners in favour of Respondent No. 1 regarding

the suit property described as a house having one hall, one bathroom and one kitchen and two shops, on the ground floor and one room one bathroom and open space on first floor which is constructed on City Survey Number 17/1 (30-2) and 17/2 (39-8) total area 70-1 square yards situated near Pir Wasul Shah, Hakra Mohalla Shikarpur (hereinafter the “Suit Property”), is fraudulent, forged, void ab-initio, and ineffective upon the rights of the Applicant to the extent of her share, along with cancellation of the said Sale Deed and a Permanent Injunction restraining the Respondent No.1 from interfering with the Applicant’s possession. The Applicant contended that he never sold his share in the suit property, never executed the registered Sale Deed dated 19-07-2010, did not receive any consideration, and that the deed was fraudulent, forged, and liable to be cancelled to the extent of his share. The Respondent No.1 contested the suit by filing a written statement, denying the Applicant’s allegations and asserting the validity of the Sale Deed. The Respondent No.1 maintained that the Sale Deed was validly executed by the Applicant and other co-sharers for consideration, that the Applicant appeared before the Sub-Registrar, that the suit was barred by limitation, bad for non-joinder of necessary parties (other co-owners/executants), and that the Applicant had filed the suit with mala fide intentions. Based on the divergent pleadings of the parties, the learned Trial Court framed the following issues for determination:

- Whether, Plaintiff Pervaiz Ahmed Soomro, had sold his share in the disputed property along with other three shareholders, through registered sale deed dated 19-07-2010?
- Whether, the Plaintiff was paid consideration for his sold share?
- Whether, the sale deed is null and void, so is liable to be cancelled to the extent of share of the plaintiff?
- What should the decree be?

3. In support of his case, the Applicant appointed Zafar Ali as his duly authorized attorney to represent him and give evidence in Court. Zafar Ali was examined at Ex. 65 and produced several documents, including the original Power of Attorney (Ex. 65/A), certified true copy of the sale deed dated 19-07-2010 (Ex. 65/B), certified true copy of the memo of plaint dated 09-05-2005 in F.C. Suit No. 70 of 2005 (New No. 16 of 2006) before the Senior Civil Judge, Shikarpur (Ex. 65/C), and certified true copies of the judgment dated 11-04-2009 and decree dated 28-04-2009 in the same suit (Ex. 65/D). He also submitted a compared copy of a newspaper publication dated 27-04-2005 from Daily Halchal (Ex. 65/E), certified true copy of the memo of plaint dated 05.06.2013 in F.C. Suit No. 120 of 2013 (Ex. 65/F), a compared copy of the Qabooliatnama dated 10-08-2011 (Ex. 65/G), and compared copies of extracts from the Property Register Card pertaining to CS Nos. 51/17/1 and 51/17/2 (Ex. 65/H and 65/I). Further, the Applicant examined two additional witnesses, Abdul Manan (Ex. 66) and Zulfiqar Ali (Ex. 67), and formally closed the side of his evidence via statement at Ex. 68. On the other hand, Respondent No.1, who is also Respondent No.1, namely Muhammad Umar alias Amir Ali, examined himself at Ex. 69 and closed his side of the evidence through a statement at Ex. 70.

4. After hearing the arguments and appraising the evidence, the learned Ist Senior Civil Judge Shikarpur, vide its Judgment dated 12-03-2019 and Decree dated 21-03-2019, decided Issue Nos. 1 and 2 in the negative, and Issue No. 3 in the affirmative and consequently decreed the Applicant's suit, declaring the registered Sale Deed dated 19-07-2010 null and void and ineffective upon the rights of the Applicant to the extent of his share, and ordered its cancellation. Aggrieved by the Trial Court's decision, the Defendant/ Respondent No.1 preferred Civil Appeal No. 42 of 2019 before the learned District Judge, Shikarpur. The learned Appellate Court, after hearing counsel for the parties and

examining the record, allowed the appeal vide its Judgment dated 05.06.2023 and Decree dated 06-06-2023. The Appellate Court set aside the Trial Court's Judgment and Decree, leading to the dismissal of the Applicant's suit. The primary grounds for the Appellate Court's decision appear to be the non-joinder of necessary parties (co-owners/executants), the failure of the Applicant to examine the marginal witnesses of the Sale Deed as required by law, and the perceived hasty decision of the Trial Court in light of the pending Suit No. 51 of 2012. It is this judgment of the Appellate Court that is now challenged before this Court through the present Civil Revision Application.

5. Learned counsel for the Applicant vehemently argued that the impugned judgment of the learned Appellate Court is arbitrary, capricious, based on misreading and non-reading of evidence, and contrary to the law. It was contended that the Trial Court had correctly appreciated the evidence, particularly the testimony of the Applicant (PW-1) denying execution and receipt of consideration, and rightly decreed the suit. Counsel argued that non-joinder of other co-owners was not fatal as the Applicant only sought relief to the extent of her share, and that the examination of marginal witnesses was unnecessary given the plea of fraud and forgery. It was asserted that the Appellate Court erred in law and fact by overturning a well-reasoned judgment. The learned counsel prayed that the impugned Judgment and Decree of the Appellate Court be set aside and the Judgment and Decree of the Trial Court be restored, thereby allowing this Civil Revision Application.

6. Conversely, learned counsel for Respondent No. 1 staunchly defended the impugned judgment of the Appellate Court, arguing it is well-reasoned and legally sound. It was submitted that the Trial Court failed to consider critical legal and factual aspects, particularly the non-joinder of necessary parties who

were co-owners and executants of the Sale Deed, and the non-examination of the marginal witnesses essential for proving the execution of the document under challenge as per Article 79, of the Qanun-e-Shahadat Order, 1984. Counsel further highlighted the pendency of Suit No. 51 of 2012 involving the same parties and property, arguing the Trial Court acted hastily in deciding Suit No. 50 of 2012 without consolidation. Counsel emphasized the Applicant's failure to prove fraud beyond mere assertion and highlighted the Respondent's evidence (DWs and Exhibits) supporting valid execution and consideration. The learned counsel prayed for the dismissal of the Civil Revision Application with costs.

7. The learned Assistant Advocate General, appearing for the official Respondents, adopted the arguments of the learned counsel for Respondent No. 1 and also prayed for the dismissal of the Revision Application, supporting the findings of the learned Appellate Court.

8. I have considered the arguments advanced by the learned counsel for the parties, as well as the learned Additional Advocate General, and have meticulously perused the record and proceedings, including the judgments of both the Courts below and the evidence adduced. After careful consideration, I find myself in agreement with the conclusions reached by the learned Appellate Court. The impugned Judgment dated 05-06-2023 passed in Civil Appeal No. 42 of 2019 appears to be well-founded, based on a proper appreciation of the law and facts, and rectifies significant errors committed by the learned Trial Court. The learned Appellate Court correctly identified several fundamental flaws in the proceedings before the Trial Court and its subsequent judgment. Firstly, the issue of non-joinder of necessary parties is paramount. The suit property, as per the record, appears to be jointly owned, and the Sale Deed under challenge was purportedly executed not only by the Applicant but also by other co-owners

namely Allah Wasayo, Fayyaz Ahmed, Mst. Yasmeen Khatoon and Mst. Parveen alias Zahida Parveen. Furthermore, the executants of the Sale Deed, whose actions were being questioned, were indispensable parties to the suit for its effective and conclusive determination. The Applicant chose to challenge the Sale Deed solitarily without impleading the other co-owners/executants. While the Trial Court possesses the power under Order I Rule 10 of the Civil Procedure Code, 1908 (C.P.C.) to add necessary parties suo motu or upon application, it failed to exercise this power, proceeding to decide the suit in the absence of parties whose rights were directly affected. The absence of these necessary parties rendered the suit defective, and the Appellate Court rightly recognized this infirmity. It is a well-established principle of law that under Order I, Rule 10 of the Code of Civil Procedure, the Court may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined be struck out and add the party who ought to have been joined or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved. The object of the Rule is to bring on record all the persons who are parties to the dispute relating to the subject matter so that the dispute may be determined in their presence at the same time without any protraction, inconvenience and to avoid multiplicity of proceedings. Reliance is placed on the authoritative judgment of the Honourable Supreme Court of Pakistan in *Province of the Punjab through Deputy Commissioner/District Collector, Rawalpindi and another v. Muhammad Akram and others (2023 SCMR 755)*.

9. Secondly, the challenge revolved around the validity and execution of the Sale Deed. The Applicant sought its cancellation, alleging fraud or lack of

consent. In such circumstances, proving the execution (or lack thereof) of the document according to the established legal procedure is crucial. Article 79, of the Qanun-e-Shahadat Order, 1984, provides specific guidance on this, stating: *“If a document is required by law to be attested, it shall not be used as evidence until two attesting witnesses at least have been called for the purpose of proving its execution, if there be two attesting witnesses alive, and subject to the process of the Court and capable of giving evidence: Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Registration Act, 1908 (XVI of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied”*.

In the present case, the Applicant specifically denied executing the registered Sale Deed. Therefore, the proviso does not exempt the requirement of calling attesting witnesses. The record indicates that the marginal witnesses to the Sale Deed, namely Mr. Nasir Ali Bhutto and Mr. Naseem Ahmed Shaikh, were alive and available but were not examined by the Applicant. Their evidence was essential to adjudicate upon the validity of the execution of the Sale Deed. The Trial Court appears to have overlooked this significant lapse. Furthermore, the phrase *“subject to the process of the Court”* implies that even if parties fail to produce such witnesses, the Court, if it deems their examination necessary for a just decision, has a duty to summon them through process of the Court. Order XVI Rule 14 of the Code of Civil Procedure, 1908 empowers the Court, at any stage of a suit, to summon and examine any person, not being a party to the suit and not called as a witness by either party, if the Court deems such examination or production of documents necessary for a just and proper decision of the case. This authority is discretionary and can be exercised *suo motu* (on its own motion), ensuring that the Court is not entirely dependent on the parties for the production of material evidence. However, the exercise of this power is subject to

procedural rules regarding witness attendance and appearance, as well as any other applicable laws. The provision underscores the Court's role as an active seeker of truth and justice, enabling it to summon and examine crucial witnesses or documents that may otherwise be overlooked or withheld by the parties. The Trial Court failed in this duty as well. The Appellate Court correctly highlighted the failure to examine these essential witnesses as a critical weakness undermining the Trial Court's finding on the validity of the Sale Deed.

10. Thirdly, the learned Appellate Court acted well within its powers as conferred by Section 107(2) of the C.P.C., which grants the Appellate Court the same powers and duties as are conferred on courts of original jurisdiction in respect of suits instituted therein. This includes the power to reassess evidence, correct errors of law and fact, and even address issues like non-joinder of parties. In the case of ***Khudadad v. Syed Ghazanfar Ali Shah alias S. Inaam Hussain and others (2022 SCMR 933)***, the Honourable Supreme Court of Pakistan observed that: “Section 107, C.P.C. provides the power of Appellate Court which includes the power to determine a case finally; to remand the case; to frame issues and refer them for trial; to take additional evidence or to require such evidence to be taken and under subsection (2), subject as aforesaid, the Appellate Court has same powers to perform as nearly the same duties as are conferred and imposed by C.P.C. on courts of original jurisdiction in respect of suits instituted therein. An Appeal is continuation of proceedings wherein entire proceedings are again left open for consideration by the Appellate Court and these powers are co-extensive with the powers and obligations conferred upon the original jurisdiction in respect of suits”. The intervention by the Appellate Court was justified given the apparent legal and procedural errors in the Trial Court's judgment.

11. Fourthly, the point regarding the pending Suit No. 51 of 2012, reportedly involving the same parties and subject matter, raises concerns about the Trial Court's approach. Prudence and judicial propriety often warrant the consolidation of suits involving overlapping issues, in order to prevent conflicting judgments and to facilitate a comprehensive and efficient adjudication. The contention that the Trial Court proceeded hastily with Suit No. 50 of 2012, without considering the possibility of consolidation, reinforces the Appellate Court's observation that the Trial Court's decision-making process may have been flawed. In the case of ***Zahid Zaman Khan and others v. Khan Afsar and others (PLD 2016 Supreme Court 409)***, the Honourable Supreme Court of Pakistan held that: *"It is settled law that it is the inherent power of the court to consolidate suits and the purpose behind it is to avoid multiplicity of litigation and to prevent abuse of the process of law and court and to avoid conflicting judgments. No hard and fast rule forming the basis of consolidation can be definitive and it depends upon the facts and the points of law involved in each and every case, obviously where the court is persuaded that the interests of justice so demand, consolidation can be ordered, provided no prejudice is caused to any litigant and there is no bar in the way of the courts to consolidate the suits. Reverting to the proposition, there is no provision in the C.P.C. where the court is obliged to prepare a separate decree in the consolidated suits"*.

12. Considering these factors – the non-joinder of necessary parties, the failure to examine essential marginal witnesses as per the Qanun-e-Shahadat Order, the proper exercise of appellate powers under the C.P.C., and the potential procedural impropriety related to the pending parallel suit – the conclusion reached by the learned Appellate Court that the Trial Court's Judgment and Decree were not sustainable in law and were rightly set aside appears sound and justified.

13. The arguments advanced by the learned counsel for the Applicant in this Revision Application fail to undermine the well-reasoned findings of the Appellate Court. It is well-established that the scope of revisional jurisdiction is limited and is not intended for reappraisal of evidence as in an appeal. Its purpose is confined to correcting jurisdictional errors or material irregularities. No such error or irregularity has been convincingly demonstrated in the judgment of the Appellate Court.

14. Under Section 115 of the Code of Civil Procedure, the revisional jurisdiction of the High Court is limited to instances where a subordinate court has either exercised jurisdiction not vested in it, failed to exercise jurisdiction that is vested, or acted illegally or with material irregularity. It is a well-settled principle that the High Court does not interfere with concurrent findings of fact unless there is a gross misreading or non-reading of material evidence, or a clear illegality in the exercise of jurisdiction. This narrow scope of intervention was reaffirmed by the Hon'ble Supreme Court of Pakistan in ***Haji Wajdad v. Provincial Government through Secretary, Board of Revenue, Government of Balochistan, Quetta and others (2020 SCMR 2046)***. In the present case, the Applicant has failed to demonstrate any such jurisdictional defect, illegality, or exceptional circumstance that would warrant interference under the limited revisional powers of the Court.

15. For the reasons outlined above, I find no substance in Civil Revision Application No. 132 of 2023. Accordingly, the Impugned Judgment dated 05.06.2023 and Decree dated 06-06-2023 passed by the learned District Judge, Shikarpur in Civil Appeal No. 42 of 2019 are upheld. Consequently, the Civil Revision Application stands dismissed. The learned Trial Court is hereby directed to strictly comply with the directives issued by the Appellate Court.

This includes securing the requisite court fee stamps from the applicant, impleading necessary parties, summoning relevant witnesses, consolidating both suits, framing consolidated issues, and delivering a fresh, consolidated judgment along with the appropriate decree(s), in accordance with law. Each party shall bear its own costs incurred in these proceedings.

JUDGE