

IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA

Civil Revision Application No.S-124 of 2022

For Appellant: Mr. Waqar Ahmed Chandio, Advocate
For Respondents: Mr. Peerano Khan Jatoi, Advocate
For Government of Sindh: Mr. Abdul Waris Bhutto, Assistant A.G.Sindh.
Date of hearing: 16-04-2025
Date of Judgment: 30-04-2025

JUDGMENT

Jan Ali Junejo, J.— This Civil Revision Application under Section 115, CPC, is directed against the judgment and decree dated 15.08.2022 passed by the learned VI-Additional District Judge, Larkana in Civil Appeal No. 103 of 2021, whereby the appeal of the applicant was dismissed and the order dated 24.08.2021 of the learned III-Senior Civil Judge, Larkana passed in F.C. Suit No. 23 of 2021 was upheld. Through the impugned order, the learned trial Court rejected the plaint under Order VII Rule 11 CPC holding that the agreement of sale dated 10.07.1985 was unenforceable due to the alleged imperfect and defective title of the executant, who was only a co-sharer.

2. The brief facts giving rise to the present application are that the applicant filed F.C. Suit No. 23 of 2021 seeking specific performance of a sale agreement dated 10.07.1985, along with permanent and mandatory injunctions. It was asserted that the respondent No.1 had agreed to sell 1-32 acres out of Survey No.89/2 situated in Deh Mehrabpur, Taluka Bakrani, District Larkana for Rs. 100,000/-, of which Rs. 95,000/- was paid. Possession was handed over, and the balance Rs. 5,000/- was agreed to be

paid at the time of execution of the sale deed. Despite repeated demands, neither the respondent No.1 nor his legal heirs after his death executed the sale deed. Upon receiving threats of dispossession about five months before the institution of the suit, the applicant filed the said suit. The defendants contested the suit primarily on grounds of limitation and lack of title of the executant.

3. Learned counsel for the applicant contended that the impugned orders suffer from material irregularities and jurisdictional errors. He submitted that the learned trial Court acted mechanically without framing issues and without affording the applicant an opportunity to lead evidence. It was argued that the question of limitation is a mixed question of law and fact requiring trial, particularly as the cause of action accrued upon refusal to execute the sale deed, not on the date of agreement. It was further argued that even if the executant was a co-owner, he could validly sell his share and the agreement could be declared void only to the extent of excess share, after proper adjudication. The rejection of plaint on the premise of defective title without trial is contrary to settled principles of law and has deprived the applicant of his right to prove his case. Lastly, the learned counsel for the Applicant prayed for allowing the Civil Revision Application and remanding the Suit back to the trial Court for proper adjudication after framing of issues and recording evidence of the parties.

4. On the other hand, the learned AAG and the counsel for the private respondents supported the impugned orders, arguing that the suit was hopelessly time-barred being filed after 35 years of the agreement. They contended that the agreement lacked legal sanctity, was not signed by other

co-owners, and the executant was not competent to sell the entire property. They further submitted that the plaint did not disclose a cause of action and the sale agreement was vague and unenforceable. The orders of the trial and appellate Courts were therefore well reasoned and required no interference. Lastly, the learned AAG and the learned counsel for the private Respondents prayed for dismissal of the Civil Revision Application.

5. I have carefully considered the submissions advanced by the learned counsel for the parties and meticulously examined the record with their valuable assistance. A review of the record reveals that the learned trial Court rejected the plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908, primarily on the ground that the sale agreement in question was unenforceable, as the executant was merely a co-owner who lacked the authority to unilaterally sell the entire jointly owned property. However, the plaint itself disclosed a cause of action; the applicant alleged execution of a sale agreement, payment of consideration, delivery of possession, and subsequent refusal to execute the sale deed. These facts required adjudication after framing of issues and recording of evidence. Further, the trial Court did not consider or discuss the applicability of Article 113 of the Limitation Act, 1908, which prescribes that the limitation for specific performance commences from the date of refusal. The plaint discloses that the refusal and threats of dispossession occurred around five months prior to the filing of the suit. Furthermore, in a subsequent proceeding—F.C. Suit No. 04 of 2022—the learned trial Court, through its judgment dated 21.10.2023, in the findings and reasons recorded under Issue No.2, categorically held that respondent No.2 (the executant of the sale agreement) was the lawful owner to the extent of his share in the property. This finding directly contradicts

the earlier reasoning adopted by the trial Court while rejecting the plaint on the ground of defective title. Such inconsistencies and procedural irregularities clearly warrant interference by this Court in the interest of justice. It is settled law that a plaint should not be rejected where complex questions of fact or law are involved, and especially when serious consequences follow such rejection. The entire controversy in the present case centers upon material propositions involving questions of law, fact, and mixed questions of law and fact, including but not limited to the issues of limitation, the validity of the sale agreement, the title of the executant, and the extent of enforceability of the agreement. These crucial matters necessitate framing of proper issues and recording of evidence for their just and lawful determination. Consequently, the rejection of the plaint and the dismissal of the appeal are vitiated by patent illegality and material irregularity. In a similar context, the Honourable Supreme Court in the case of *Mst. Rehmat Begum v. Mehfooz Ahmed and others (PLD 2024 Supreme Court 1108)* has authoritatively held that: *“On the alleged consensus ad idem, the contract was signed, and on the alleged breach, respondent No.1 filed the suit. Each case has to be decided on its own facts, the Court cannot force someone to file a suit for dissolution of partnership or rendition of accounts, but it has to see whether specific performance of contract is possible or not, and in this case, unless the parties are provided equal opportunity to lead the evidence, it is not possible to decide the matter summarily on the basis of an application under Order VII, Rule 11, C.P.C. At this stage, the Trial Court cannot not presume or anticipate the outcome that if the case is made out on merits and the Court grants a decree of specific performance, what the plaintiff will do with the partnership business, and whether he will induct any other partner, continue as proprietor, or convert it into a corporate*

entity of business. That is not the issue before the Court right now. At present, the issue only relates to the alleged sale agreement of 50% share of another partner against some valuable consideration. This is the core issue and dispute between the parties which needs to be adjudicated by the Trial Court”.

6. It is also a matter of record that the parties involved in F.C. Suit No.04/2022 and F.C. Suit No. 23/2021 are the same, and the issues arising from the pleadings in both suits are identical. Therefore, to avoid multiplicity of proceedings, the trial court is obligated to consolidate both suits, frame consolidated issues, and adjudicate them through a single, consolidated judgment. This approach is in accordance with the principle laid down by the Hon’ble Supreme Court of Pakistan in ***Zahid Zaman Khan and others v. Khan Afsar and others (PLD 2016 Supreme Court 409)***, wherein it was observed 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*”.

7. It is a well-established principle of law that the revisional jurisdiction of the High Court is intended to rectify, obviate, and prevent the commission of jurisdictional errors, illegalities, and material irregularities committed by subordinate Courts, as enunciated by the Honourable Supreme Court of Pakistan in the case of ***Saif-ur-Rehman v. Ijaz and others (2023 SCMR***

2133). It is equally settled that where an appellate Court decides a matter in disregard or violation of the principles laid down by the Honourable Supreme Court, such decision amounts to a material irregularity or illegality within the purview of Section 115 of the Code of Civil Procedure, 1908. In this regard, reliance is also placed on the authoritative judgment of the Apex Court in *Noor Hussain and others v. Mst. Hussain Bibi and others (2007 SCMR 378)*.

8. In view of the foregoing, the Civil Revision Application is allowed. The impugned judgment dated 15.08.2022 passed by the learned VI-Additional District Judge, Larkana and the order dated 24.08.2021 passed by the learned 3rd Senior Civil Judge, Larkana in F.C. Suit No. 23 of 2021 are hereby set aside. The Suit is remanded to the learned Trial Court for *de novo* adjudication, strictly in accordance with law, after properly framing and determining all relevant factual and legal issues. In particular, the learned Trial Court shall address and record findings on the following aspects:

- The date of dispossession or discontinuation of possession of Respondents Nos.1 to 3;
- Whether possession of the suit land was delivered to the Applicant as part performance of the sale agreement dated 10.07.1985, or whether the Applicant forcibly or illegally assumed possession, and if so, the manner and circumstances thereof;
- Whether the sale agreement dated 10.07.1985 is legally enforceable to the extent of the 33 paise share of Ali Khan (Respondent No.2), and void and unenforceable with respect to the shares of the remaining co-owners who were neither signatories to nor had authorized the sale of their shares;
- The applicability of relevant provisions of Schedule-I to the Limitation Act, 1908, particularly in light of Order VII Rule 6 of the Code of Civil Procedure, 1908, regarding the accrual of cause of action and limitation.

9. The learned Trial Court shall accordingly frame consolidated issues, including, but not limited to, questions relating to limitation and the enforceability or unenforceability of the sale agreement dated 10.07.1985. The Court shall permit the parties to adduce additional evidence, if necessary, for the proper adjudication of the matters in dispute. In view of the observations made in Paragraph No. 6 supra, the Trial Court shall consolidate both suits and render a consolidated judgment. Both suits shall be decided on their merits and in accordance with law within a period of three (03) months from the date of receipt of this judgment.

JUDGE