

Judgment Sheet

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Second Appeal No.S-11 of 2025

[Ghulam Ali vs. Tahir Hussain and 06 others]

Appellant by : Mr.Abdul Aziz, Advocate

Respondents No.1 & 3 by : Mr.Asad Jahangeer Arain, Advocate

Respondents No.4 to 7 by : Mr.Allah Bachayo Soomro, Addl. A.G Sindh

Nemo for Respondent No.2

Date of hearing : **05.5.2025 & 19.5.2025**

Date of Decision : **04.8.2025**

JUDGMENT

ARBAB ALI HAKRO, J.- Through this Second Appeal under Section 100 of the Civil Procedure Code 1908 ("**C.P.C**"), the appellant impugns the Judgment and Decree dated 22.01.2025, passed by the learned appellate Court¹, whereby the applicant's appeal was dismissed, thus affirming the Judgment and Decree dated 02.10.2024, passed by the trial Court², which had dismissed the suit.

2. The Plaintiff (hereinafter referred to as the appellant) instituted a suit against the Respondents seeking a Declaration, Cancellation, Specific Performance of Contract, Mandatory and Permanent Injunction. It is pleaded that Respondent No. 1 was the owner of the suit land³. The appellant contends that Respondent No. 1 entered into a sale agreement for the Suit Land for a total consideration of Rs.2,800,000/-. The appellant initially paid Rs.200,000/- as earnest money, upon which Respondent No.1 delivered physical possession of the suit land. It was mutually agreed that the balance amount of Rs.2,600,000/- would be paid when executing the final registered sale deed, conditional upon Respondent No.1 furnishing requisite documents, including a certified copy of Form VII and a sale certificate, by 15.01.2021. The agreement was reduced to writing on non-judicial stamp paper bearing Serial No. 401, dated 14.02.2020. Subsequently, prior to the stipulated date, the appellant, upon Respondent

¹ In Civil Appeal No.215/2024 (Re: Ghulam Ali vs. Tahir Hussain and others), by Additional District Judge-II, (MCAC), Sanghar

² In F.C Suit No.70/2021 (Re: Ghulam Ali vs. Tahir Hussain and others), by Senior Civil Judge-I, Sanghar

³ agricultural land measuring 3.00 acres, bearing Revenue Survey No. 183/02, situated in Deh and Tapo Jhol, Taluka Sinjhor, District Sanghar

No. 1's request and in good faith, paid an additional Rs.7,40,000/- through various online bank transactions, raising the total payment to Rs.9,40,000/-. However, Respondent No. 1 failed to procure the necessary documents and to execute the registered sale deed within the agreed period. Upon the appellant's inquiry, Respondent No. 1 expressed his inability to provide the documents, whereafter the appellant granted a one-month extension at his request. Despite this extension, Respondent No.1 allegedly continued to act in bad faith, ignoring repeated requests to fulfil the contractual obligations. On 02.03.2021, the appellant, through counsel, issued a legal notice to Respondent No. 1 to provide the documents and execute the sale deed. Copies were also sent to Respondents Nos. 4 and 6. Respondent No. 1 responded evasively on 09.03.2021, allegedly threatening to transfer the land to third parties and forcibly dispossess the appellant. Accordingly, the appellant initiated this suit against Respondents Nos. 1, 4, 6, and 7. In his written statement, Respondent No. 1 admitted ownership of the Suit Land but claimed the agreement pertained to only 02-00 acres, not 03-00 acres. During the pendency of the suit, it surfaced that Respondent No. 2, in alleged collusion with Respondent No. 1, fraudulently executed a registered sale deed dated 24.11.2022 in favour of Respondent No. 3 for the full 03-00 acres, along with an additional 00-04 acres of Survey No. 183/02. This transaction, conducted during litigation and in violation of the law, was executed by Respondent No. 5. Respondent No. 2 falsely represented that the land had been allotted to her via private partition among herself, Respondent No. 1, and other co-sharers, notwithstanding Respondent No. 1's admitted ownership. Revenue authorities, including Respondent No. 4, allegedly issued a sale certificate and altered the land records in Respondent No. 2's favour without any formal partition. Thereafter, Respondent No. 3's name was incorporated into the revenue record for 03-04 acres via Entry No. 896, dated 05.01.2023. Upon learning through a property broker that Respondent No. 3 was negotiating the sale of the land to third parties, the appellant amended the plaint to include Respondents Nos. 2, 3, and 5. It is further asserted that the transaction between Respondents Nos. 2 and 3, during the pendency of the suit, offends the doctrine of *lis pendens* under the Transfer of Property Act. The appellant contends that all subsequent sale agreements, deeds, and mutations are illegal, fraudulent, and void, asserting his agreement with

Respondent No. 1 remains valid and enforceable. Anticipating further unlawful action by Respondent No. 3, allegedly aided by Respondents Nos. 4 to 6, the appellant filed the present suit seeking the following reliefs:

a) *To declare that during existence of written sale agreement dated:14.02.2020 executed by defendant No.01 in favour of plaintiff the sale transaction by way of alleged sale deed No.3035 dated:24.11.2022 in respect of suit land area in between defendant No.02 and 03 which was executed by defendant No.02 before defendant No.05 during pendency of the suit and mutation entry No.896 dated:15.01.2023 to the extent of suit land area in favour of defendant No.03 in the concerned revenue record of rights maintained by defendant No.04 are illegal un-lawful fraudulent malafide collusion in-proper ultra-vires in effective in-operative in-valid null and void and the same have ceased its legal sanctity due to come with-in the ambit of section:42 of transfer of property act which are not binding upon the plaintiff thus the same all are liable to be cancelled and stands cancelled.*

b) *To issue mandatory injunction against the defendant No.04 and 06 thereby the defendant No.06 may be directed to put the cancellation note of register sale deed No.3035 dated.24.11.2022 in the concerned register of his office and defendant No.04 may also be directed to cancel the entry No.896 dated: 15.01.2023 to the extent of area of the suit land kept in the revenue record of rights in favour of defendant No.03 on the basis of alleged registered sale deed No.3035 dated: 24.11.2022.*

To direct the defendant No.01 to execute the final register sale deed in respect of suit land in favour of plaintiff before the defendant No.06 after receipt of remaining balance sale consideration amount of Rupees:18,60,000/- from plaintiff.

IN CASE OF HIS FAILURE

c) *To direct the Nazir of this Court to execute the final register sale deed with regard to suit land in favour of plaintiff before defendant No.06 after receipt/deposit the remaining balance sale consideration amount of Rupees:18,60,000/- from him by completion of all the required legal formalities.*

d) *To issue permanent injunction against the defendants thereby restraining them from creating the interest of any third party in the suit land the defendant Nos.01 to 03 may also be restrained from forcibly occupying the suit land which is in possession of plaintiff directly or in- directly in any manner what-so-ever.*

e) *Costs of the suit be awarded in favour of plaintiffs.*

f) *Any other relief (S) which this Honourable Court deems fit and proper be awarded in favour of plaintiffs under the circumstance of the suit.*

3. Upon service of summons, Respondents Nos. 1 and 3 appeared and contested the suit by filing their respective written statements

following the filing of the amended plaint. In his written statement, Respondent No. 1 contended that the subject matter of the dispute pertains to only 02-00 acres of land from Survey No. 183/2. He admitted having entered into a sale agreement with the appellant, executed on non-judicial stamp paper bearing Serial No. 401 dated 14.02.2020, for the sale of 02-00 acres of land situated in Deh Jhol, Tapo Jhol, Taluka Sinjhor, District Sanghar. The agreed sale consideration was Rs.14,00,000/- per acre, totalling Rs.28,00,000/-. The agreement was witnessed by two marginal witnesses, namely Abdul Razzaque, son of Muhammad Ramzan Bhatti and Noor Samad, son of Muhammad Sharif. Respondent No. 1 further claimed that a copy of the executed agreement was provided to him by the appellant, but he later discovered that the first page had allegedly been tampered with, its original contents erased and replaced with a falsified version reflecting the sale of 03-00 acres rather than the agreed 02-00 acres. Although acknowledging the existence of the agreement, he maintained that it was strictly for 02-00 acres only. He further asserted that the appellant had agreed to pay the remaining balance and execute the final registered sale deed by 15.01.2021. However, the appellant allegedly failed to arrange the requisite amount and sought an extension. Despite this, the appellant, through counsel, issued a legal notice dated 02.03.2021 demanding the execution of the sale deed. Respondent No. 1 claimed that notice was issued with malafide intent, particularly since the appellant did not furnish any bank statement evidencing availability of the remaining funds as of 15.01.2021. Respondent No. 1 alleged that the appellant acted in bad faith by simultaneously requesting an extension and claiming, through legal notice, that the sale agreement was for 3.00 acres. In his reply dated 09.03.2021, Respondent No. 1 reaffirmed his willingness to execute the sale deed, provided the balance amount was paid by 10.04.2021. He further stated that failure to do so would render the agreement void. Consequently, Respondent No. 1 obtained a sale certificate (Book No. 4610, Page No. AB460943, dated 31.03.2021), valid until 30.05.2021. Despite the extended opportunity, the appellant did not fulfill the required obligations. Respondent No. 1, therefore, maintained that the agreement stood cancelled and no longer holds any legal force. He accordingly prayed for dismissal of the suit, citing the appellant's failure to perform the contract within the agreed timeline.

4. In his written statement, Respondent No. 3 asserted that he had lawfully and validly purchased the share of Respondent No. 2 through a registered sale deed, and that possession of the purchased land was duly handed over to him. He further contended that he is in physical possession of the land and has been cultivating it. Respondent No. 3 also argued that the suit is not maintainable in law, as the appellant deliberately failed to implead all co-sharers as parties to the proceedings. Additionally, he alleged that the appellant has relied upon a false and fabricated sale agreement in his name. He emphasised that, as per settled legal principles, the seller ordinarily purchases the non-judicial stamp paper for executing a sale transaction; however, in the present case, the stamp paper was purchased by the purchaser himself, casting doubt on the authenticity of the agreement.

5. Arising from the divergent pleadings of the parties, the trial Court settled issues and recorded evidence from both sides. Upon conclusion of the trial, the trial Court, vide impugned Judgment and Decree dated 02.10.2024, dismissed the suit filed by the appellant. Aggrieved thereby, the appellant preferred an appeal, which too was dismissed by the appellate Court through Judgment and Decree dated 22.01.2025. Accordingly, the appellant has filed the present second appeal.

6. At the outset, the learned counsel representing the appellant contended that the impugned Judgment and Decree are arbitrary, ignoring crucial evidence. Respondent No. 1 admitted in his Written Statement and Legal Notice dated 09.03.2021 to executing the sale agreement and receiving Rs. 2,00,000/- as earnest money. This is corroborated by witness P.W. Noor Samad, who confirmed the sale of 3.00 acres for Rs. 28,00,000/-, with additional payments of Rs.7,40,000/- verified by deposit slips and bank records. Despite this, the trial Court misread evidence, disregarding crucial admissions. Counsel argues that the findings are flawed due to non-reading and misreading of facts and that respondent No. 1 withdrew a subsequent suit against the appellant, further proving the legitimacy of the sale agreement. He has further argued that under Article 79 of Qanoon-e-Shahadat Ordinance, 1984, admitted facts require no independent proof, yet the Court wrongly shifted the burden entirely onto the appellant. He has also contended that the Respondent No. 2, in collusion with Respondent No. 1, illegally transferred the land to Respondent No. 3 during lis pendens, violating Section 52 of the Transfer

of Property Act, and the appellant remained in possession, making the subsequent transaction void. He has contended that the trial Court framed seven issues but erroneously placed the burden of proof solely on the appellant, despite Respondent No. 1's clear admissions. Lastly, he contended that the impugned Judgments and Decrees suffer from material irregularities and require intervention by this Court. In bolstering his argument, he relied upon legal precedents cited in **2024 SCMR 1496, 2021 SCMR 1270, 2006 SCMR 688, 2022 CLC 585 and 2015 YLR 1213.**

7. Conversely, learned counsel representing respondents No.1 and 3 contended that the Respondents are in physical possession of the suit land. He further argued that the impugned judgments and decree of both the lower courts are in accordance with the law, and the instant appeal is liable to be dismissed.

8. Learned Additional Advocate General representing respondents No.4 to 7 argued that the appellant has failed to prove his case; therefore, he supports both the judgments and decrees of the lower Courts and that the scope of the second appeal under Section 100 CPC is limited.

9. The arguments have been heard at length, and the available record has been carefully evaluated with the able assistance of the learned counsel for the parties.

10. The substratum of the appellant's claim is that he entered into an agreement to purchase agricultural land measuring 03-00 acres situated in Survey No. 183/2, Deh and Tapo Jhol, Taluka Sinjhoru, District Sanghar, from Respondent No. 1 for a total sale consideration of Rs. 2,800,000/-, of which Rs. 200,000/- was allegedly paid as earnest money at the time of execution of the agreement dated 14.02.2020. The remaining Rs.2,600,000/- was agreed to be paid at the time of execution of the final registered sale deed on or before 15.01.2021. It is further averred that an additional Rs.740,000/- was paid before the stipulated date at the behest of the vendor, allegedly evidencing part performance of the contract. The Respondent No. 1, however, while not disputing execution of the agreement per se, categorically denied the extent of the land agreed to be sold, asserting that the agreement pertained solely to 02-00 acres, valuing Rs.1,400,000/- per acre, and that the agreement was fraudulently tampered with by the appellant to reflect 03-00 acres in place of the originally agreed 02-00 acres.

11. The core dispute between the parties' centers around the extent of land agreed to be sold under the contract. The existence of the sale agreement is admitted. However, mere admission of execution does not dispense with the obligation to establish the actual contents thereof, particularly when the same are under challenge. As judicially ordained, "*Documents purporting to create or transfer a right in immovable property must stand the rigours of evidentiary scrutiny as envisaged under Article 72 of the Qanun-e-Shahadat Order, 1984.*" Despite alleging that the original agreement is in possession of Respondent No. 1, the appellant neither pleaded this fact in his plaint nor moved the Court under Order XI Rule 12 CPC, which squarely provides the mechanism to obtain discovery of such documents from an adversarial party. The absence of this procedural diligence discredits the appellant's assertion. It invokes the maxim "*Vigilantibus non dormientibus jura subveniunt*", the law assists those who are vigilant, not those who slumber upon their rights.

12. The Appellant's evidence comprises oral depositions, including those of PW Abdul Razak and PW Dileep Kumar (Stamp Vendor), who notably did not corroborate the Appellant's version. The testimony of Dileep Kumar proved materially adverse: he testified that the original draft agreement stored in his computer unequivocally pertained to 02-00 acres. He further produced a hard copy, and under cross-examination, declared that the version appended with the plaint was not printed from his system and appeared to be interpolated. The appellant declared these witnesses hostile, yet no effective contradiction was elicited in cross-examination to discredit their material assertions. Such admissions and adverse inferences become determinative. In this respect, it is instructive to revisit the principle laid down in the case of **Faqir Syed Anwar ud Din⁴**, wherein the Supreme Court unequivocally held that "*reappraisal of evidence is impermissible under Section 100, C.P.C., and concurrent findings of fact cannot be disturbed unless they suffer from perverse appreciation or flagrant misapplication of law.*"

13. It is an admitted position on record that the appellant had moved an application under Article 74 of the Qanun-e-Shahadat Order, 1984, claiming that the original agreement was in the possession of Respondent No. 1. However, it is equally a matter of record that no notice under Article 77 was served upon Respondent No. 1 calling upon him to produce the

⁴ PLD 2025 SC 31 (Faqir Syed Anwar ud Din vs. Syed Raza Haider)

original document. The trial Court, therefore, dismissed the application observing non-compliance with the statutory requirement of Article 77, and this finding was endorsed by the learned II-Additional District Judge/MCAC, Sanghar, in R.A. No. 14/2022.

14. For clarity, Article 76(a) stipulates that secondary evidence may be adduced when the original is shown to be in the possession of the person against whom it is sought to be proved and "when, after the notice mentioned in Article 77 such person does not produce it." Therefore, Article 77 operates not as a mere procedural formality but as a mandatory precondition to the admissibility of secondary evidence. The proviso to Article 77 provides certain exceptions in which notice may be dispensed with. However, none of those exceptions were invoked or proved by the appellant. There is no plea or proof of fraud, admitted loss of the document, or that the document was of such nature as would otherwise render issuance of notice redundant. Moreover, while the appellant claims that the agreement's original remained with Respondent No. 1, such an averment is conspicuously absent from the plaint, depriving it of evidentiary sanctity. More significantly, the appellant never sought discovery of the document by moving an application under Order XI Rule 12, CPC, which further weakens the foundation of his claim. It is well-settled that secondary evidence cannot be invoked as a matter of right.

15. In the present case, neither the procedural mandate of notice to produce nor the statutory exceptions have been satisfied. The two Courts below correctly exercised their discretion in disallowing secondary evidence on a defective foundation. It is not the function of this Court, sitting in second appellate jurisdiction, to re-engineer a case when the appellant himself failed to comply with express legal requirements.

16. Herein, both Courts below, having appraised the oral and documentary evidence, returned concurrent findings that the appellant failed to discharge the burden placed upon him to prove that the agreement related to 03-00 acres. In matters of specific performance, relief is discretionary and grounded in equity. The appellant's inability to produce convincing evidence that satisfied the Court's conscience disentitles him to such equitable relief.

17. Moreover, the Courts below rightly held that the appellant's claim was vitiated by his failure to establish the prescriptive contents of the agreement. It is settled law that "an admitted signature on a document

does not automatically extend to an admission of its contents. The burden lay squarely upon the appellant to prove the area, consideration, and terms thereof by unimpeachable evidence. In the totality of circumstances, the judgments rendered by the learned Courts below are well-reasoned, legally fortified, and supported by the evidence on record. There is no indication of misreading, non-reading, or misapplication of law. The allegations of judicial caprice or miscarriage of justice remain wholly unsubstantiated.

18. For the foregoing reasons, I am constrained to hold that this second appeal is bereft of merit and does not fall within the exceptional parameters warranting interference in concurrent findings. The appellant has not pointed out any glaring illegality, irregularity, or substantial error of law committed by the Courts below. Consequently, this appeal merits no indulgence. Accordingly, the Second Appeal is **dismissed** with no order as to costs.

J U D G E

AHSAN K. ABRO