

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

Civil Revision Application No.316 of 2016
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Applicants: Noor Nabi son of Juma Khan
Chandio through Mr. Pirbhulal-U-
Goklani, advocate.

For the private Respondents: Mr. Abdul Maalik Shaikh, advocate.

For the Official Respondents: Mr. Muhammad Yousuf Rahpoto,
A.A.G.

Date of hearing: 02-09-2025

Date of Judgment: 26-09-2025

JUDGMENT

Jan Ali Junejo, J.--- These two Civil Revision Applications under section 115, Code of Civil Procedure, 1908 (CPC) are directed against the consolidated judgment dated 04.10.2016 and decrees (hereafter referred to as the "*Impugned Judgment & Decrees*") passed by the learned 9th Additional District Judge, Hyderabad (hereinafter referred to as the "*Appellate Court*"), whereby Civil Appeals No.18 of 2016 and 19 of 2016 filed by the applicant were dismissed, and the consolidated judgment dated 22.12.2015 and decrees of the learned 1st Senior Civil Judge, Hyderabad (hereinafter referred as the "*Trial Court*") were upheld. By the trial court's common judgment, the applicant's suit for Specific Performance of Contract and Permanent Injunction (Old F.C. Suit No.57/2009; New F.C. Suit No.76/2009) was dismissed; and the respondents' suit for Possession, Mesne Profits and Permanent Injunction (F.C. Suit No.07/2010) was decreed. Since both revisions arise out of the same consolidated judgments between the same parties and common questions of law and fact are involved, they are heard together and are being decided by this common judgment.

2. The applicant/plaintiff Noor Nabi set up a claim that late Muhammad Arab @ Yaroo S/o. Muhammad Ramzan (predecessor of private respondents) agreed on 12.10.2004 to sell plot No.41, C.S. No.451, admeasuring about 599 sq. ft., with a katcha-pacca room, situated adjacent to applicant's house, for a consideration of Rs.1,20,000/-. It was alleged that Rs.100,000/- were paid as earnest money; that possession was delivered in part performance; that no time was fixed for registration of sale deed; and that after the seller's death on 09.01.2005, the legal heirs allegedly acknowledged and later resiled, prompting suit for specific performance and injunction.

3. The private respondents (widow, sons and daughters of late Muhammad Arab) categorically denied execution of any sale agreement, receipt of consideration or delivery of possession; pleaded that the alleged agreement was forged/manufactured; and asserted that on 05.12.2009/06.12.2009 the applicant trespassed by breaking the intervening wall after the family had gone to attend a marriage, removed valuables and documents, whereupon FIR No.192/2009 at P.S. Sakhi Pir, Hyderabad was lodged. They filed F.C. Suit No.07/2010 seeking possession, mesne profits and injunction.

4. The trial court consolidated both suits, framed comprehensive issues covering maintainability, genuineness and proof of agreement, alleged illegal dispossession, entitlement to possession and mesne profits, and adjudicated upon them. The applicant examined himself and produced the alleged agreement to sell (Exh.42), two attesting witnesses (Zulfiqar Ali and Shoukat Ali), and the Notary/Oath Commissioner (Ghalib Hussain). Respondents examined their attorney Haji Muhammad Ali and two witnesses, produced power of attorney and property register extracts. The trial court dismissed the

suit of specific performance while holding inter alia that the agreement to sell was unregistered and therefore ineffective, and also finding material contradictions rendering the document unproved; it decreed the respondents' suit for possession and mesne profits at Rs.3,000/- per month from 05.12.2009. The first appellate court, while not endorsing the trial Court's view on compulsory registration of an agreement to sell, nonetheless affirmed dismissal of specific performance and decree for possession/mesne profits on a reappraisal of evidence, finding the agreement not proved and the applicant's possession illegal.

5. The learned counsel for the Applicants argues that the courts below mis-appreciated the evidence by discarding the duly executed agreement to sell dated 12.10.2004, which was proved through the testimony of the applicant, both attesting witnesses, and the Oath Commissioner. He contends that payment of Rs.1,00,000/- was duly established and possession of the property was delivered in part performance, hence the applicant was entitled to a decree for specific performance. He further submits that the trial court erred in holding that the agreement required registration, while the appellate court, though conceding no registration was necessary, still dismissed the suit without appreciating the weight of documentary and oral evidence in applicant's favour. He asserts that the attorney of respondents, appointed years later in 2012, had no personal knowledge of events of 2004–2009, rendering his testimony hearsay and inadmissible, while the non-appearance of the respondents themselves created adverse inference against them. He maintains that acquittal of the applicant in criminal proceedings arising from the same dispute lends credence to his lawful possession, and that both the courts below committed

jurisdictional error and acted contrary to law, warranting interference in revision.

6. The learned counsel for the private Respondents has argued that the alleged agreement of sale is a fabricated and managed document, prepared on stamp paper not in the name of any party but in the name of a third person, and surrounded by material contradictions in witnesses' testimony regarding execution, payment, place, and possession. He contends that the applicant's own evidence contradicted the recitals of the document, while the Oath Commissioner's statement fatally destroyed the applicant's case. He further argues that the respondents, being undisputed legal heirs of deceased Muhammad Arab, were the lawful owners of the property and were illegally dispossessed by the applicant in December 2009, which was corroborated by the contemporaneous FIR and other circumstances. He emphasizes that civil findings are independent from criminal acquittal, as civil matters are determined on preponderance of probabilities, and that both courts below, after due appraisal of evidence, concurrently found in respondents' favour. He prays for dismissal of both revisions as misconceived and without merit.

7. The learned A.A.G. contends that no jurisdictional defect, misreading, or non-reading of evidence has been demonstrated in the judgments of the courts below, both of which are based on proper appreciation of facts and law. He submits that the applicant has failed to show any illegality or perversity in the concurrent findings, which cannot be interfered with in revisional jurisdiction. He therefore supports the impugned judgments and prays for dismissal of both the Civil Revision Applications.

8. I have carefully considered the arguments advanced by the learned counsel for the parties and meticulously examined the material available on record with due care and caution. It is trite that in revision the High Court does not act as a court of further appeal.

Interference is warranted only where the subordinate court has:

- exercised a jurisdiction not vested in it by law; or
- failed to exercise a jurisdiction so vested; or
- acted in the exercise of its jurisdiction illegally or with material irregularity resulting in miscarriage of justice.

9. Concurrent findings of fact are ordinarily not to be disturbed unless shown to be perverse, based on misreading or non-reading of material evidence, or infected with legal misconduct amounting to jurisdictional error. Revisional powers are not meant to reweigh evidence or substitute a plausible alternative view on pure facts.

10. The learned first appellate court formulated points for determination, including (a) whether the criminal court's decision under the Illegal Dispossession Act, 2005 bound the civil court; (b) whether interference with the trial court's decision was warranted; and (c) the relief/decreed. It corrected the trial court's misdirection on compulsory registration; undertook a detailed scrutiny of testimonies of the applicant, marginal witnesses, and Notary vis-à-vis the recitals of Exh.42; assessed the plea of possession/part performance; examined the entitlement to possession and mesne profits; and recorded its findings with reasons.

11. The appellate judgment meets the substantive requirements. The mere brevity of some portions does not vitiate the judgment where issues have been distinctly addressed and reasons articulated. No prejudice is shown. The objection under Order XLI Rule 31 CPC is therefore repelled.

12. The entire edifice of the applicant's suit rested on the alleged agreement to sell (Exh.42). The respondents specifically pleaded forgery/management and denial of consideration/delivery of possession. The burden lay squarely on the applicant to prove execution, payment, and delivery of possession, and his readiness and willingness to perform. The trial court's view that the agreement was ineffective for want of compulsory registration was not correct in law. An agreement to sell, per se, not purporting to create/declare a present right in immovable property, is not compulsorily registrable merely due to consideration exceeding Rs.100. The first appellate court rightly corrected this. However, this correction does not dispense with the applicant's obligation to prove due execution and truth of recitals.

13. Both courts concurrently recorded material discrepancies that go to the root: Applicant and marginal witnesses stated the document was written at the house of late Muhammad Arab by an unnamed neighbor; the Notary/Oath Commissioner (PW-4) deposed that the document was written by marginal witness Zulfiqar in his shade at District Courts, who also identified Muhammad Arab before him. Zulfiqar himself did not own authorship as scribe. Notary stated both witnesses and parties were present at attestation; the witnesses denied being present together at attestation. Applicant spoke of Rs.100,000/- in a brown envelope paid on 12.10.2004; Zulfiqar said no envelope; Notary stated payment occurred in his presence on 13.10.2004. The recital says possession was delivered on 12.10.2004 in presence of witnesses; the applicant's cross-examination shifted delivery to 13.10.2004, and both marginal witnesses denied witnessing delivery. The Stamp Paper Purchased in the name of "Ainuddin", asserted for the first time in evidence to be applicant's driver; such fact was not

pleaded, and given the applicant's modest income, the very arrangement and explanation raised doubts.

14. After the alleged agreement of October 2004 and the seller's demise in January 2005, the applicant produced no contemporaneous notices, correspondence or steps to compel performance until late 2009. The alleged acknowledgement by heirs at chehlum is unsupported by cogent proof. The "refusal" date is unspecified and unproved. This conduct militates against the equitable relief of specific performance. The contradictions regarding delivery of possession and the absence of consistent, credible evidence of lawful, unequivocal possession pursuant to the contract preclude reliance on part performance. Moreover, on the respondents' case, the applicant forcibly entered in December 2009; the FIR contemporaneously supports their version.

15. On this record, the concurrent conclusion that the agreement to sell was not proved to be genuine, and that the applicant failed to discharge his burden, is a plausible, well-reasoned view founded on the evidence. No misreading or non-reading of any material piece that would change the result has been demonstrated. The applicant's acquittal in criminal proceedings does not bind the civil court. Standards of proof differ; civil courts determine rights on balance of probabilities. The appellate court correctly applied the settled principle and yet considered the fact matrix independently. No legal error arises.

16. The respondents' status as legal heirs of late Muhammad Arab and their title to the suit property were not in serious dispute; the controversy centered on the alleged contract/possession. In such circumstances, a separate declaratory prayer was not sine qua non

where legal character was not denied. The respondents examined their attorney Haji Muhammad Ali, who deposed to having reached the spot and narrated the incident of 06.12.2009; his account found corroboration from DWs Rizwan Siyal and Ali Dad; the FIR No.192/2009 stands admitted. The trial and appellate courts appreciated that while an attorney cannot depose to matters exclusively within the principal's personal knowledge, he may testify to facts perceived by him; together with corroborative eyewitnesses and surrounding circumstances, the respondents discharged their onus. Non-examination of Mst. Fatli and her sons did not, in the given context, mandate an adverse inference where other reliable evidence existed and the applicant's foundation failed.

17. When a judgment in a previous case is not relevant under Articles 54, 55, and 56 of the Qanun-e-Shahadat Order, 1984, and cannot be shown to be relevant under any other provision of the Order, it is inadmissible as evidence. Article 57 further provides that even if such a judgment relates to a fact in issue in a subsequent case, it remains irrelevant. It must also be borne in mind that the standards of proof in criminal and civil proceedings are fundamentally distinct; in criminal matters guilt must be established beyond reasonable doubt, whereas in civil matters decisions rest on the preponderance of probabilities. Accordingly, the findings of a Criminal Court are not binding upon a Civil Court, nor can they determine civil rights and liabilities. This settled principle has been reaffirmed by the Honourable Supreme Court of Pakistan in case of *Karachi Transport Corporation and another v. Muhammad Hanif and others (2009 SCMR 1005)*, wherein it was held that: "*All that needs to be said in the above context is that standards of appraisal of evidence in criminal and civil cases are*

altogether different and the findings of a Criminal Court would not bind a Civil Court. Moreover, apart from the above even the judgment of the Criminal Court or the deposition of the respondents' witness were not placed on record. In any event it is not the function of this Court to sit in judgment over appraisal of evidence undertaken in the concurrent findings of the Courts below in civil disputes".

18. The courts below evaluated the evidence, appraised witness credibility and weighed the documentary record. Their reasoning is cogent, addresses the core disputes and applies settled legal standards (including the heavy onus on a party seeking to displace a registered instrument, and the need for strict proof of oral agreements). The concurrent findings of fact recorded by the courts below do not suffer from any perversity, misdirection of law, or jurisdictional defect. This Court, therefore, finds no occasion to exercise its revisional jurisdiction under Section 115, C.P.C. It is a well-settled principle that concurrent findings of fact are not to be disturbed except where there is gross misreading or non-reading of material evidence, or a patent illegality in the exercise of jurisdiction. The Honourable Supreme Court of Pakistan, in the case of *Haji Wajdad v. Provincial Government through Secretary, Board of Revenue, Government of Balochistan, Quetta and others (2020 SCMR 2046)*, has reaffirmed this settled position of law. As no such exceptional circumstance, illegality, or jurisdictional error has been demonstrated by the applicants, no ground for interference within the narrow revisional scope of this Court is made out.

19. So far as the relief of mesne profits is concerned, Section 2(12) of the Code of Civil Procedure, 1908 defines "mesne profits" as those profits which a person in wrongful possession of property actually

received, or might with ordinary diligence have received, together with interest thereon, but excluding any profits attributable to improvements made by such person. It stands proved on record that the possession of the Applicant over the suit property was wrongful. However, as regards determination of the rate of mesne profits, the law contemplates an inquiry in terms of Order XX Rule 12, C.P.C., which provides as under:

“12. Decree for possession and mesne profits. (1) Where a suit is for the recovery of possession of immovable property and for rent or mesne profits, the Court may pass a decree

a) For the possession of the property;

b) For the rent or mesne profits which have accrued on the property during a period prior to the institution of the suit or directing an inquiry as to such rent or mesne profits;

c) Directing an inquiry as to rent or mesne profits from the institution of the suit until the delivery of possession to the decree holder;

ii. the relinquishment of possession by the judgment debtor with notice to the decree holder through the Court; or

iii. the expiration of three years from the date of the decree, whichever event first occurs.

(2) Where an inquiry is directed under clause(b) or clause (c), a final decree in respect of the rent or mesne profits shall be passed in accordance with the result of such inquiry”.

Since the trial Court awarded an amount of Rs.3,000/- (Rupees Three Thousand) per month with effect from 05-12-2009 in respect of a 599 square feet premises at Tando Wali Muhammad, Hyderabad till delivery of possession but the rate of rent varies from time to time as per economic conditions of the country. In such circumstances, an inquiry was required for determination of rate of mesne profits with effect from the date of institution of the Suit through the Commissioner/*Nazir*. Since the trial Court had not conducted the inquiry as to determination of rate of mesne profits in accordance with

Order XX Rule 12, C.P.C.; therefore, to that extent, the Judgment of the trial Court is liable to be modified. Reliance is placed on the case of *Gul Bano v. Shahnaz Bano and others (2023 CLC 861)*, wherein this Court observed that: *“It is an established position that mesne profit is damage or compensation recoverable from a person, who has been in wrongful possession of an immovable property. It is a settled principle of law that wrongful possession is the very essence of claim for mesne profit and for seeking mesne profit, a person must be owner of the captioned property or having right to its possession. Clause (12) of Section 2, C.P.C. gives meaning to the term “mesne profit” to include those profits, which the person in wrongful possession of such property actually received (or might with the ordinary diligence) have received therefrom. According to the said clause, a person becomes entitled to mesne profit only when he has right to obtain possession from another person whose possession is unauthorized and who keeps the former deprived of such a possession. The first and foremost condition for awarding mesne profit is the unlawful possession of the occupant of the property. The said clause defines “mesne profit” to mean:- Those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession”.*

20. Consequently, both Civil Revision Applications stand dismissed. The impugned consolidated judgment and decrees dated 04.10.2016 passed by the learned 9th Additional District Judge, Hyderabad, upholding the consolidated judgment and decrees dated 22.12.2015 of the learned 1st Senior Civil Judge, Hyderabad, are hereby maintained, subject to modification in respect of mesne profits. To that extent, the decree passed by the learned trial Court shall be treated as *preliminary*, fixing mesne profits at the rate of Rs.3,000/- (Rupees Three Thousand only) per month with effect from the date of

institution of F.C. Suit No.07 of 2010 titled *Mst. Fatli @ Fatan @ Fateh Khatoon v. Noor Nabi*. The actual rate of mesne profits, however, shall be determined by the learned trial Court through an inquiry under Order XX Rule 12, C.P.C., as to the fair rent/mesne profits payable from the date of institution of the said suit until the earliest of the following events: (i) delivery of possession to the decree-holder; or (ii) relinquishment of possession by the judgment-debtor with notice to the decree-holder through Court. Upon conclusion of such inquiry, the learned trial Court shall pass a *final decree* in accordance with the result thereof. The entire exercise shall be completed by the trial Court within three months, with compliance report to be submitted to Additional Registrar of this Court. There shall be no order as to costs. All pending applications, if any, stand disposed of.

JUDGE

Ahmed/Pa,