

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

Civil Revision Application No. S-307 of 2011

Applicant: Zeeshan Ahmed son of late Asghar Ali
Through Mr. Ali Akbar Lakho, Advocate.

Respondent(s): Mst. Naseem Akhtar Wd/o (late) Asghar Ali
through her L.Rs respondents No.2 to 6.
Mr. Aqeel Ahmed Siddiqui, Advocate.

For Official Respondents: Mr. Muhammad Yousif Rahpoto, A.A.G.

Date of hearing: 19-08-2025

Date of Judgment: 16-09-2025

JUDGMENT

Jan Ali Junejo, J. --- This Civil Revision Petition, filed under Section 115 of the Code of Civil Procedure, 1908, assails the concurrent findings of the two courts below. The Applicant is aggrieved by and challenges:

- i.** The judgment dated 30.07.2011 followed by Decree (hereinafter referred to as the “Impugned Judgment and Decree”) passed by the learned VIIth Additional District Judge, Hyderabad (hereinafter referred to as the “Appellate Court”), in Civil Appeal No. 132 of 2009, which affirmed the judgment and decree of the trial court and dismissed the appeal; and
- ii.** The judgment dated 20.07.2009 and the consequent decree dated 21.07.2009, passed by the learned Vth Senior Civil Judge, Hyderabad (hereinafter referred to as the “Trial Court”), in F.C. Suit No. 44 of 2005, whereby the plaintiff's suit for specific performance of a contract was dismissed with no order as to costs.

The Applicant, having failed to secure relief from both the first appellate court and the court of first instance, now invokes the supervisory jurisdiction of this Court through the instant revision petition.

2. The succinct facts, necessary for the adjudication of this revision, are that the Applicant/Plaintiff instituted a suit for specific performance of a contract, declaration, possession, and permanent injunction. His case was that

on 16.09.2003, he entered into a sale agreement with Respondents/Defendants No. 1 to 17 through their co-owner, Asif Ali (since deceased), for the purchase of property bearing C.S. No. G/2169/1, Goods Naka, Hyderabad, for a consideration of Rs. 34,00,000/-. An advance token amount of Rs. 6,85,000/- was allegedly paid to Asif Ali. The agreement was contingent upon Asif Ali obtaining a registered General Power of Attorney from the other co-owner respondents. The Applicant contended that despite his efforts and the publication of a notice in the newspaper, the respondents avoided their obligations, especially after the murder of Asif Ali. The suit was filed after a legal notice exchange failed to yield results. The respondents (except 3, 4, 5 & 17) contested the suit, denying the authority of Asif Ali to act on their behalf, denying the receipt of payment, and pleading that the agreement stood lapsed due to the Applicant's failure to pay the second installment, resulting in the forfeiture of the advance amount. The learned Trial Judge framed 8 issues. The core findings were:

- **Issues 1 & 2:** Held that the Applicant failed to prove that Asif Ali was competent or authorized to enter into the sale transaction on behalf of all co-owners. No power of attorney or authority was proven.
- **Issue 4:** Held that the execution of the sale agreement and receipts by Asif Ali was not proved as per Article 79 of the Qanun-e-Shahadat Order, 1984, as the attesting witnesses were not examined. The signatures on the documents were also found to be discrepant.
- **Issue 3:** Held that the Applicant himself admitted to not paying the second installment of Rs. 10,15,000/-.
- Consequently, the suit was dismissed.

The learned Appellate Judge affirmed the Trial Court's findings. The court held that in the absence of any proof of authority granted to Asif Ali by the other co-owners, he could not bind them to the agreement. The appellate court also agreed with the trial court's finding on the inadmissibility of the agreement due to the non-examination of attesting witnesses. It was concluded

that no illegality or perversity was committed by the trial court, and the appeal was dismissed.

4. Learned counsel for the Applicant vehemently argued that the concurrent judgments suffer from a fundamental legal infirmity. He contended that the respondents, in their written statement, admitted the core transaction by pleading that the agreement “stood lapsed/cancelled” and the deposit “stood forfeited”, which constitutes a clear judicial admission of the receipt of earnest money, shifting the burden of proof into them to justify the forfeiture—a burden they wholly failed to discharge. He further argued that the courts below erred in law by misapplying Article 79 of the Qanun-e-Shahadat Order, 1984, to a simple contract of sale, which does not require attestation by law, and thus the non-examination of attesting witnesses was fatal. He asserted that the courts failed to frame a specific issue on this critical plea of forfeiture, leading to a material irregularity in the proceedings. Counsel prayed that, at the very least, in view of the respondents' own admission and the principles of equity against unjust enrichment, the Applicant is entitled to a decree of the Suit.

5. Learned counsel for the private respondents stoutly defended the impugned judgments, arguing that the Applicant’s entire case was built on the purported authority of Asif Ali, a fact negated by both courts after a thorough appreciation of evidence. He emphasized that a finding on a pure question of fact—that no agency was proven—is impervious to challenge in a revision under Section 115, C.P.C. He countered the Applicant’s claim of admission, stating that a plea of forfeiture in the alternative does not constitute an unequivocal admission of a valid, binding agreement but is merely a defensive plea against the Applicant's own claim. He argued that the Applicant, having

miserably failed to prove the foundational elements of his case, a valid agreement executed by a competent person, cannot now seek to invoke equity for a refund, a prayer not seriously pressed or proved in the courts below. He prayed for the dismissal of the revision, affirming the well-reasoned decisions that found the agreement to be unenforceable.

6. The Learned Additional Advocate General, appearing for the official respondents, adopted a neutral stance aligned with the record. He submitted that the role of the official respondents (the Mukhtiarkar, Sub-Registrar, and the Province of Sindh) is merely ministerial, and no specific relief was ever sought or proven against them. He argued that the fate of the revision petition hinges entirely on the adjudication of the private rights between the Applicant and the private respondents. He submitted that since the core dispute pertains to the title and authority to sell a private property, the impugned judgments have correctly exonerated the official respondents from any liability. He, therefore, prayed that the civil revision application, insofar as it concerns the official respondents, is devoid of any merit and should be dismissed, leaving the parties to bear their own costs.

7. I have carefully considered the arguments advanced by the learned counsel for both parties and meticulously examined the evidence available on record in light of Section 115 of the Code of Civil Procedure, 1908. A perusal of the record reveals that the cornerstone of the Applicant's case is the assertion that Asif Ali acted as an authorized agent on behalf of all co-owners. The legal position on this point is well-settled. An agent can only bind his principal if he acts within the scope of his authority. An alleged agent's authority to execute a contract for the sale of immovable property on behalf of a co-owner must be expressly proved. The Applicant failed to produce any

document, a power of attorney or written authority, demonstrating that Asif Ali was vested with such authority. The mere assertion, unsupported by evidence, cannot sustain the claim. The respondents' categorical denial of such authority remained unchallenged. It is a settled principle that a co-sharer cannot bind other co-sharers in respect of joint property; any agreement or transaction concerning the entire land, executed without the consent and authorization of all co-sharers, is void to the extent of their respective shares. The concurrent finding on this issue is based on a proper appreciation of evidence and reveals no element of perversity. A finding of fact, even if erroneous, is not open to interference in revision unless it is perverse or entirely unsupported by evidence. This is not the case here. The agreement and receipts (Exh. 125-127) bore the signatures of two attesting witnesses. The Applicant's failure to examine either of them, coupled with the visual discrepancy in the alleged signatures of Asif Ali noted by the trial court, provided a valid legal basis for the courts to hold that the execution of these documents was not proved. This court finds no legal error in this approach. In Case of *Khudadad v. Syed Ghazanfar Ali Shah alias S. Inaam Hussain and others (2022 SCMR 933)*, it was held by the Honourable Supreme Court of Pakistan that: *"Nothing produced on record to show that the respondent No.1 was authorized to sign any agreement without the consent or authority of other co-owners for selling the entire land or even his own share in the un-partitioned land which is in joint ownership of respondents Nos. 1 to 6, hence the alleged agreement was prima facie beyond the mandate and spirit of section 44 of the Transfer of Property Act 1882. A co-sharer cannot bind other co-sharers of the property and if a co-sharer enters into any deal or agreement for the entire land without the consent and authority of other co-sharers, then any such agreement would be illegal to the extent of the shares of the rest of the co-sharers"*.

8. The Applicant contends that specific issues ought to have been framed on the respondents' plea of forfeiture and lapse, as the burden to prove these defensive pleas lay on them. Order XIV Rule 1 of the C.P.C. mandates the court to frame issues from material propositions of fact and law affirmed by one party and denied by the other. The core issues framed by the trial court ("Whether the defendants have entered in sale transaction... through Asif Ali?" and "Whether Asif Ali was competent and authorized...?") were the fundamental and seminal issues that went to the root of the matter. If the Applicant failed to prove these threshold issues, the suit was bound to fail regardless of other ancillary matters like forfeiture. The plea of forfeiture becomes relevant only if a valid and binding agreement is first established. Since the Applicant failed at the first hurdle, the non-framing of a specific issue on forfeiture, even if assumed to be an irregularity, did not occasion a failure of justice or prejudice the Applicant's case. It is a curable irregularity that does not vitiate the trial in the facts of this case. Moreover, although the parties were fully aware of the controversy in dispute, the Applicant did not file any application for framing specific issues. However, the absence of such formal issues does not necessarily vitiate the proceedings where the parties have already led evidence on all relevant aspects of the case. It is a settled proposition of law that the primary object of framing issues is to identify the points in controversy so that the parties may produce evidence accordingly. When such evidence has already been brought on record, and both sides had full opportunity to present their respective stances, the Court may render a decision on the basis of the evidence available, even without formally framed issues, provided no prejudice is caused to either party. In *Abdul Karim v. Haji Noor Badshah (2012 SCMR 212)*, the Honourable Supreme Court of Pakistan held that: "In the absence of miscarriage of justice due to non-framing of issue on a

particular controversy in the matter, like where Court did not allow the parties to lead their evidence in support of their contentions for want of issue, if on a question of fact a specific issue required to be framed in the light of the pleadings of the parties is not framed but parties have led evidence in support of their respective stances, the decision on such question can be rendered in the light of evidence available on record without framing the issue”.

9. The jurisdiction of this Court under Section 115 of the Code of Civil Procedure, 1908, is supervisory in nature and strictly limited. It does not extend to re-appreciating or re-evaluating evidence as in an appellate forum. Interference is permissible only where the subordinate court:

1. has exercised jurisdiction not vested in it by law; or
2. has failed to exercise jurisdiction so vested; or
3. has acted in the exercise of its jurisdiction illegally or with material irregularity.

In the present case, the Applicant has failed to establish that the matter falls within any of these categories. The courts below exercised their jurisdiction properly, appreciated the evidence in accordance with law, correctly applied the principles relating to an agent’s authority and proof of documents, and arrived at a plausible conclusion based on the material available on record. The mere possibility of a different view on the same evidence does not justify interference in revision. It is a well-settled principle that concurrent findings of fact are not to be disturbed unless there is gross misreading or non-reading of material evidence, or a patent illegality in the exercise of jurisdiction. This limited scope of revisional intervention has been reaffirmed by the Honourable Supreme Court of Pakistan in *Haji Wajdad v. Provincial Government through Secretary, Board of Revenue, Government of Balochistan, Quetta and others (2020 SCMR 2046)*. As no jurisdictional defect,

illegality, or exceptional circumstance has been demonstrated by the Applicant, no ground for interference under the narrow revisional powers of this Court is made out.

10. For the reasons discussed hereinabove, this Court is of the considered view that the Applicant has failed to establish any ground warranting interference within the narrow and limited scope of Civil Revision under Section 115 of the Code of Civil Procedure, 1908. The concurrent findings of fact recorded by the Courts below are duly supported by evidence and do not suffer from any jurisdictional defect, perversity, or material illegality.

12. Consequently, this Civil Revision Petition stands dismissed. The impugned judgment and decree dated 20.07.2009 and 21.07.2009 passed by the learned Vth Senior Civil Judge, Hyderabad, as well as the judgment dated 30.07.2011 rendered by the learned VIIth Additional District Judge, Hyderabad, are hereby upheld. The parties shall bear their own costs.

JUDGE