

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
MIRPURKHAS**

C.P No. S-262 of 2025

[Mir Muhammad v. Muhammad Usman & others]

Petitioner:	Mir Muhammad through Mr. Harish Chandar, Advocate.
Respondent No.:	Muhammad Usman through Mr. Muhammad Asif Zai, Advocate.
Respondents No.2to4:	Through Mr. Muhammad Sharif Solangi, Assistant A.G. Sindh.
Date of Hearing:	14.01.2026.
Date of Judgment:	04.02.2026.

JUDGMENT

RIAZAT ALI SAHAR, J: - Through this Constitutional Petition, the petitioner has challenged the legality, propriety, and validity of the impugned order dated 26.05.2022 passed by the learned District Judge, Mirpurkhas in Civil Revision Application No.07/2022, whereby the revision filed by the petitioner was dismissed, as well as the impugned order dated 05.01.2022 passed by the learned 1st Senior Civil Judge, Mirpurkhas in Civil Miscellaneous Application filed under Section 12 (2) CPC in F.C. Suit No.245/2014, through which the learned Trial Court allowed the said application, set aside the judgment dated 19.02.2015 and decree dated 21.02.2015 and restored the suit to its original position. The petitioner contended that both the impugned orders are illegal, without lawful authority, based upon misreading and non-reading of record and have resulted in grave miscarriage of justice; hence, the petitioner seeks following reliefs:-

- a) That this Honourable Court may be pleased to set-aside the order dated 26.05.2022 passed by the Learned District Judge Mirpurkhas in Civil

Revision App No.07/2022 (Re- Mir Muhammad Vs Muhammad Usman & others).

- b) That this Honourable Court may be pleased to set-aside the order dated 05.01.2022 passed by the Learned 1st Senior Civil Judge Mirpurkhas on Civil Misc App in F.C Suit No.245/2014.
- c) Any other relief which this Honourable Court deems fit and proper in the favour of petitioner.

2. The petitioner instituted F.C. Suit No.245/2014 before the Court of learned 1st Senior Civil Judge, Mirpurkhas, seeking specific performance of contract and permanent injunction in respect of agricultural land bearing Survey Nos.125 (0-06 Ghuntas) and 167 (0-02 Ghuntas), total area 0-08 Ghuntas, situated in Deh 110, Tapo Peer Azeem Shah, Taluka Hussain Bux Mari, District Mirpurkhas. The suit land stood in the name and possession of respondent No.1. It was pleaded that respondent No.1 entered into a written agreement to sell dated 31.08.2013 with the petitioner for a total sale consideration of Rs.16,00,000/-, out of which Rs.8,00,000/- was paid at the time of agreement, while the remaining amount was agreed to be paid at the time of execution of the registered sale deed. Possession of the suit land was delivered to the petitioner on the same day. The agreement was duly attested before the witnesses by Notary Public Mirpurkhas. After demarcation and separation of the suit land by the Assistant Commissioner, Hussain Bux Mari, the petitioner repeatedly approached respondent No.1 for execution of the registered sale deed and payment of the remaining amount, but respondent No.1 avoided compliance and ultimately attempted to dispossess the petitioner forcibly, giving rise to the cause of action. It is stated that after institution of the suit, summons were duly served upon the respondents. Despite service, they failed to appear or file written statements. Consequently, after publication

in Daily Kawish dated 06.12.2014, respondent No.1 was proceeded *ex-parte*. The learned Trial Court, after recording *ex-parte* evidence, decreed the suit vide judgment dated 19.02.2015 and decree dated 21.02.2015.

3. In execution of the decree, the Nazir of the Court executed a registered sale deed in favour of the petitioner on 13.04.2015, followed by mutation in the record of rights. After lapse of more than two years, respondent No.1 filed an application under Section 12 (2) CPC on 06.08.2017 alleging fraud and misrepresentation. The learned Trial Court, vide impugned order dated 05.01.2022, allowed the said application and set aside the judgment and decree. The petitioner challenged the same through Civil Revision Application No.07/2022, which was dismissed by the learned District Judge, Mirpurkhas, vide order dated 26.05.2022. Hence, the present constitutional petition.

4. Learned counsel for the petitioner has contended that the impugned orders dated 05.01.2022 and 26.05.2022 are unlawful, arbitrary and passed in disregard of settled principles of law, particularly relating to maintainability and limitation of applications under Section 12 (2) CPC. He contended that a lawful and valid agreement to sell dated 31.08.2013 was executed between the petitioner and respondent No.1 for consideration of Rs.16,00,000/-, out of which Rs.8,00,000/- was paid as earnest money and possession was delivered and on refusal by respondent No.1 to execute the sale deed, the petitioner instituted a suit for specific performance on 10.09.2014. He further contended that respondent No.1 was duly served through ordinary process as well as substituted service by publication, yet deliberately avoided appearance, resulting in an *ex-parte* decree dated 19.02.2015. He has pointed out that thereafter, the remaining consideration of Rs.8,00,000/- was deposited in Court and the registered sale deed was executed through the Nazir on 03.04.2015, followed by

mutation in favour of the petitioner, thereby fully satisfying the decree. Learned counsel has contended that respondent No.1 admittedly acquired knowledge of the decree in January 2017, yet filed an application under Section 12 (2) CPC in August 2017 without any plausible explanation for delay, rendering the application hopelessly time-barred. He contended that the only ground raised by respondent No.1 was alleged non-service, which squarely fell within the ambit of Order IX Rule 13 CPC and not Section 12(2) CPC. In this regard, learned counsel has also relied upon the cases reported as PLD 1996 Karachi 423, 2007 CLC Peshawar 326, PLD 2025 Peshawar 97, and 2022 SLJ (Sindh) 541. Learned counsel further contended that although the Trial Court framed a specific issue regarding maintainability of the application under Section 12 (2) CPC, neither the Trial Court nor the Revisional Court recorded any lawful finding on this crucial jurisdictional aspect. The Revisional Court dismissed Civil Revision No.07/2022 in a mechanical manner without addressing the core legal defect, thereby committing material illegality.

5. Learned counsel for the petitioner further contended that once the decree had been fully executed and satisfied through a registered sale deed and mutation, the application under Section 12 (2) CPC was not maintainable in law and respondent No.1, if aggrieved, ought to have filed a separate suit for cancellation of the sale deed, which he never did. With regard to subsequent proceedings, learned counsel contended that after setting aside the *ex-parte* decree, respondent No.1 contested the suit, which was dismissed on 22.05.2025, later remanded in appeal. During pendency of the present constitutional petition, the petitioner repeatedly informed the Trial Court about the pendency of these proceedings and sought adjournments, yet the Trial Court proceeded to decide the matter without awaiting the outcome of the constitutional petition, causing serious prejudice to the

petitioner. Learned counsel has contended that both impugned orders suffer from misreading and non-reading of record, failure to address jurisdictional objections and misapplication of law, resulting in grave miscarriage of justice and, therefore, call for interference by this Court.

6. Conversely, learned counsel for respondent No.1 contended that the petitioner initially instituted F.C. Suit No.245/2014 for specific performance and injunction, wherein he obtained an *ex-parte* judgment and decree dated 19.02.2015 and 21.02.2015 respectively, without lawful service upon respondent No.1. He contended that respondent No.1 had no knowledge of the pendency of the suit and the alleged service through bailiff and substituted mode was fraudulent, as notices were neither properly served nor pasted in accordance with the Court's directions, thereby vitiating the entire proceedings. He further contended that respondent No.1 first acquired knowledge of the *ex-parte* decree through Direct Complaint No.09/2017 filed by the petitioner, where after he promptly approached the Trial Court and filed an application under Section 12 (2) CPC on the grounds of fraud, concealment of facts and non-service. The said application was contested by the petitioner and after framing of issues, recording of evidence and hearing of arguments was rightly allowed vide order dated 05.01.2022, which was subsequently upheld by the learned District Judge, Mirpurkhas on 26.05.2022. Learned counsel further contended that the sale deed and mutation obtained by the petitioner were mere consequences of the *ex-parte* decree and, once the decree was set aside, the Trial Court rightly cancelled the same through orders passed under Section 151 CPC, which were duly implemented by the Mukhtiarkar and Sub-Registrar, restoring the record in the name of respondent No.1; thus, no right or title presently vests in the petitioner. Learned counsel has contended that the petitioner

completely failed to prove the alleged agreement to sell dated 31.08.2013 while respondent No.1 categorically denied execution of the agreement, receipt of any consideration, or affixation of signatures or thumb impressions. Despite such denial, the petitioner neither sought forensic verification nor examined the author, stamp vendor, or marginal witnesses as required under Article 79 of the Qanun-e-Shahadat Order, 1984. Even the Notary Public disowned the alleged payment and admitted close relations with the petitioner, rendering the document highly suspicious. He further contended that there were material contradictions regarding the date of execution and attestation of the agreement, absence of CNIC, photograph, receipt of advance consideration and inconsistency regarding possession, which collectively demolished the petitioner's claim. The official witnesses, including the Assistant Commissioner, admitted that no notice of demarcation was issued to respondent No.1, establishing procedural illegality and *mala fide* conduct.

7. Learned counsel stressed that the petitioner's suit was dismissed thrice by the Trial Court—first for non-prosecution under Order XVII Rule 3 CPC and subsequently twice on merits after full trial—demonstrating that the petitioner has exhausted all remedies and that no cause survives. The present constitutional petition, therefore, is infructuous, misconceived and not maintainable, as no suit or decree presently subsists in favour of the petitioner. Lastly, learned counsel for respondent No.1 contended that the petitioner has failed to establish any legal right, equity, or jurisdictional defect warranting interference by this Honorable Court, and the petition is liable to be dismissed with costs.

8. Learned A.A.G., Sindh supported the impugned orders and submitted that the application under section 12(2) CPC was rightly allowed after due consideration of record and evidence. He

contended that no illegality, jurisdictional defect, or mala fide could be pointed out in the orders passed by the Trial Court or the Revisional Court. Learned A.A.G. further contended that the controversy involved disputed questions of fact, which were thoroughly adjudicated by the competent courts. He contended that the constitutional jurisdiction cannot be invoked to reappraise evidence or disturb concurrent findings. The petition, therefore, deserves dismissal.

9. I have the learned counsel for the parties and perused the material on record. It is manifest that the application under section 12 (2) of the Code of Civil Procedure was not only maintainable but was rightly allowed by the learned Trial Court and lawfully upheld by the learned Revisional Court. The subsequent final dismissal of the suit on merits through reasoned judgments conclusively affirms the correctness of the orders passed at every stage and leaves no room for interference. Section 12 (2) CPC provides a distinct and independent remedy where a judgment, decree, or order is challenged on the grounds of fraud, misrepresentation, or want of jurisdiction. The record clearly demonstrates that the impugned *ex-parte* judgment and decree dated 19.02.2015 and 21.02.2015 were vitiated by multiple and serious legal infirmities, squarely attracting the application of section 12 (2) CPC. The most fundamental defect was non-service of summons upon the defendant (Muhammad Usman). Admittedly, no personal service was effected. The alleged service upon one “Kamran,” claimed to be the brother of the defendant, remained wholly unsubstantiated. The applicant/defendant categorically denied having any brother by that name and significantly, the plaintiff failed to produce any documentary or official proof—such as a NADRA family tree—to establish such relationship. This defect was not a mere procedural irregularity but went to the root of jurisdiction, as service of summons is the

very foundation upon which a court's authority to proceed *ex-parte* rests.

10. Furthermore, the Trial Court correctly observed that publication in a newspaper could not cure the defect of foundational service, especially when the plaintiff failed to plead or prove effective service in his plaint, objections, or affidavit in *ex-parte* proof. *Prima facie*, the absence of specific pleadings regarding service through publication further weakened the plaintiff's stance. *Prima facie*, the defendant had purchased the suit land from the plaintiff through a registered sale deed No.768 dated 03.05.2000, followed by mutation entry No.189 dated 05.08.2000. These facts appear to have been withheld in the plaint and in the affidavit filed in *ex-parte* proof. Such concealment directly falls within the statutory definition of "fraud" under section 17 of the Contract Act, 1872, as it constitutes active concealment of material facts with intent to deceive the Court. The Trial Court, after framing proper issues, recording evidence of both sides and appreciating the same judiciously, reached the conclusion that the impugned judgment and decree were the result of misrepresentation and fraud. The application under section 12 (2) CPC was thus rightly allowed, restoring the suit to its original stage. The order was neither arbitrary nor mechanical; rather, it was based on cogent reasoning, supported by evidence and consistent with settled legal principles that fraud vitiates all judicial acts.

11. The learned District Judge, Mirpurkhas, while exercising revisional jurisdiction, independently examined the entire record and correctly declined to interfere with the order dated 05.01.2022. The Revisional Court reaffirmed that no illegality, irregularity, or jurisdictional defect was pointed out by the applicant (plaintiff). The Revisional Court correctly rejected the contention that the defendant ought to have filed an

application under Order IX Rule 13 CPC instead of section 12 (2) CPC. It is well settled that where allegations of fraud and misrepresentation are raised, section 12 (2) CPC is the appropriate remedy, even against an *ex-parte* decree. The Revisional Court further noted that the plea regarding “Kamran” being commonly known as Abdul Ghani was an afterthought, not raised before the Trial Court and unsupported by any evidence. The Revisional Court also concurred with the Trial Court’s finding that the plaintiff had concealed prior sale transactions and possession and that such concealment had materially affected the outcome of the earlier *ex-parte* proceedings. By upholding the order, the Revisional Court reinforced the principle that courts must not allow their process to be abused through fraud and that substantial justice must prevail over technicalities. Thus, the impugned order dated 26.05.2022 stands as a well-reasoned and lawful affirmation of the Trial Court’s decision, closing the door on any challenge to the restoration of the suit.

12. Accordingly, it is respectfully concluded that the application under section 12(2) CPC was rightly allowed, its affirmation by the Revisional Court was proper. More so, as a consequence of the remand of case by the learned Revisional Court, the learned trial Court also recorded the evidence of both sides the plaintiff and defendant and after hearing the parties’ counsel, dismissed the suit of petitioner/plaintiff vide judgment and decree dated 27.11.2025 and 03.12.2025 respectively. Consequently, instant petition stands **dismissed** with no order as to costs.

13. It is made clear that if the judgment and decree dated 27.11.2025 and 03.12.2025 respectively passed by the learned trial Court is challenged then in such eventuality, the findings made hereinabove will not influence the Appellate Court in any manner.

14. Let the R&Ps of the Courts below be returned forthwith.

JUDGE

Abdullah Channa/PS