

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

***Civil Revision Application No.S-127 of 2024***

Applicants : Ghulam Muhammad Jamali and others, Through Mr. Gulsher Junejo, Advocate.

Respondents No. 1 & 2: Ramesh Lal & Satya Pal, Through Mr. Mansoor Ali Tunio, Advocate.

Respondent No.03: Muhammad Asif.

Respondents 4 to 7 &10: City Survey Officer and others, Through Mr. Abdul Waris Bhutto Assistant Advocate General.

Respondent No. 08: Mondar.

Respondent No. 09: Nadir Ali.

Respondent No.10 to 13: Zulfiqar, Saadullah, Asif Ali (Nemo)

Respondent No.14 : Parkash Lal, Through Mr. Vinod Kumar Jessrani, Advocate.

Date of hearing : 02.02.2026.

Date of Decision : 02.02.2026.

**JUDGMENT**

**ALI HAIDER 'ADA', J.-** Through this Civil Revision Application under Section 115 of the Code of Civil Procedure, 1908 ("the Code"), the applicants have assailed the consolidated judgment and decree dated 16.08.2023 passed by the learned Senior Civil Judge, Shahdadkot (trial Court). The suit filed by the applicants for cancellation of a sale deed allegedly executed in favour of Respondents No.1 and 2 was dismissed up to the appellate stage, whereas the subsequent suit filed by Respondents No.1 and 2 was decreed. Being aggrieved by the concurrent findings of the fora below, the applicants have preferred the instant revision application.

2. The crux of the case revolved around the allegation of fraud, purportedly committed in collusion with Respondent

No.3, who is the son of Applicant No.1. It is alleged that, through such collusion, a sale deed was executed whereby Respondents No.1 and 2 purchased the property in question from the applicants as well as from one Parkash Lal, who has accordingly been impleaded as Respondent No.14 in the present revision application. The primary contention of the applicants is that the said sale deed is liable to be cancelled.

3. Conversely, Respondents No.1 and 2, along with Parkash Lal and Satya Pal, instituted a subsequent suit for possession of the property in question. Both suits were tried concurrently, and ultimately, the learned trial Court passed judgments and decrees, which were later maintained by the appellate Court vide judgment and decree dated 11.10.2024.

4. From the divergent pleadings of the parties, the trial court framed the following issues:-

1. Whether the leading suit of plaintiff is not maintainable under the law?
2. Whether the subsequent suit of plaintiffs is not maintainable under the law?
3. Whether the impugned registered sale deed No.746 dated 12.11.2015, MF Roll No.591/534 dated 12.01.2016 and subsequent entries kept in City Survey record are false, bogus, managed ones and outcome of fraud and are liable to be cancelled?
4. Whether the registered sale deed No. 746 dated 12.11.2015, MF Roll No.591/534 dated 12.01.2016 and subsequent entries kept in City Survey record are correct and genuine ones duly executed in accordance with law?
5. Whether the plaintiff of leading suit and defendant of subsequent suit is holding illegal and unlawful possession of the suit property which is liable to be retrieved to defendants of leading suit and plaintiffs of subsequent suit?
6. Whether the plaintiffs of subsequent suit and defendants of leading suit are entitled for mense profit at the rate of Rs.70,000/- per month and Rs.8,40,000/- per annum since the date of possession viz. 28/29.04.2016 till the date of handing over possession of suit land?

7. Whether plaintiff in leading suit is entitled for the relief as claimed?
8. Whether plaintiffs in subsequent suit are entitled for relief as claimed?
9. What should the decree be?

5. After the settlement of the aforesaid issues, the applicants examined Gul Muhammad, Mondar Khan, Bilawal, and Jagdesh Kumar. In addition, Gulab witness of sale deed) and Muhammad Ilyas appeared and recorded their evidence. The trial Court also examined Zaheer Abbas (a marginal witness of the sale deed), Muhammad Muzammil (an official from the office of the Sub-Registrar), and Parkash Lal (one of the respondents).

6. Upon completion of the evidence, both sides closed their respective cases. Thereafter, after hearing the learned counsel for the parties, the learned trial Court passed the impugned judgment as upheld by Additional District Judge-I Shahdadkot, being the Appellate Court.

7. At the very outset, learned counsel for the applicants contended that the civil suit filed by the applicants was based on allegations of fraud; however, both the trial Court and the appellate Court failed to properly consider this vital aspect and erroneously dismissed the suit, while decreeing the subsequent suit filed by Respondents No.1 and 2. He further submitted that the once it is evident from the record that the sale deed is liable to be cancelled, the same ought to have been set aside. He, therefore, prayed for allowing of the instant civil revision application.

8. Conversely, learned counsel for Respondents No.1 and 2, as well as Respondent No.14, contended that the learned trial Court had rightly passed a well-reasoned and speaking judgment, which was subsequently upheld by the appellate Court. He argued that the burden of proof squarely rested upon the applicants, which they failed to discharge. It was

further contended that no fraud, as alleged, had been committed, as the sale deed was duly executed and registered, and the applicants, along with Parkash Lal, had themselves sold the property through a registered instrument. He emphasized that the witnesses examined in the case supported the execution and contents of the sale deed rather than the applicants' version. Therefore, the concurrent findings of the courts below, being well-reasoned, do not call for any interference.

9. Learned Assistant Advocate General also supported the impugned judgments and decrees passed by the courts below and relied upon the report of the City Surveyor dated 18.08.2016, wherein the revenue authorities affirmed the registered sale deed. He further pointed out that despite execution of the sale deed, Applicant No.1, Gul Muhammad, had allegedly encroached upon the property in question, which does not support the applicants' case. He concluded that no material irregularity or jurisdictional defect is apparent in the concurrent findings of the courts below.

10. Arguments of the learned counsel for the parties were heard at considerable length, and the available record was carefully perused with their able assistance, including the case law relied upon by them.

11. The property in question comprises a shopping center constructed upon shops bearing City Survey Nos. 933 (measuring 24-05 sq. yards), 934 (measuring 33-02 sq. yards), and 935 (measuring 73-03 sq. yards). It is an admitted position on record that Applicant Gul Muhammad, along with other co-owner, namely Parkash Lal sold the said property in favour of Ramesh Lal and Satya Pal (Respondent No.01 and 02) through a registered sale deed executed in the year 2015, bearing Registration No. 746 dated 12.11.2015, appearing at page 319 of the court file.

12. The record further reflects that the sale deed was duly executed and attested by marginal witnesses, namely Gulab and Zaheer Abbas. Both of these witnesses appeared before the learned trial Court as witnesses and categorically supported the contents of the sale deed, while also admitting its execution. In such circumstances, the burden of proof, in terms of Article 117 of the Qanoon-e-Shahadat Order, 1984, squarely rests upon the applicants, and not upon the opposite side. For ready reference, Article 117 of the Qanoon-e-Shahadat Order, 1984 is reproduced hereunder:–

**“117. Burden of proof.– (1) Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.**

**(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person”.**

13. Furthermore, the inquiry report submitted by the revenue authorities reveals that, subsequent to the execution of the sale deed, the applicants themselves admitted to having encroached upon the suit property. Additionally, the police report available at page 433 of the record also reflects that after execution of the sale deed, Applicant No.1, Gul Muhammad, remained in illegal possession of the property in question.

14. It is well settled that the burden of proof lies upon the party asserting a claim, particularly when the claim is not supported by reliable and cogent evidence. In this regard, reliance is placed upon the case of **MUHAMMAD AYUB, Shop Manager, Bata Pakistan Ltd. and another versus MUHAMMAD RAHMAN and others (2026 SCMR 31)**.

15. The learned trial Court, after thoroughly examining the available material, passed a detailed judgment. It is also evident from the deposition of Gul Muhammad (Applicant No.1) that his evidence is inconsistent with the pleadings,

thereby rendering his stance doubtful. Consequently, the plea for cancellation of the sale deed has not been prima facie established.

16. It is imperative to underscore that while exercising powers under Section 115, C.P.C., this Court is primarily concerned with jurisdictional defects, namely: where a Court has exercised jurisdiction not vested in it by law, failed to exercise jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity, including procedural errors affecting the ultimate decision of the case. In this regard, reliance is placed upon the case **of Ijaz Ahmed versus Noor-ul-Ameen (2022 SCMR 1522)**.

17. For the foregoing reasons, I do not find any infirmity, illegality, misreading or non-reading of evidence in the impugned judgment and decree, warranting interference by this Court. Accordingly, vide order dated 02.02.2026, the instant revision application was dismissed, and the impugned judgments and decrees passed by the fora below were maintained. These are the reasons of short order dated 02.02.2026.

**J U D G E**