

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Rev. Appln No. S-161/2020

&

Civil Rev. Appln. No. S-163/2020

Applicant(s) : Haji Mehar Din s/o Chand Khan, Malik (deceased)
Through his legal heirs
Represented by Mr. Sarfaraz Ahmed Akhund,
Advocate

V E R S U S

Respondents : 1) Riaz Ahmed son of Rehmat Ali
2) Muhammad Yousif son of Rehmat Ali
Both by caste Jatt Ghuman
Represented by Mr. Shakeel Ahmed Kamboh,
Advocate

Date of hearing : 10.11.2025

Date of Judgment : 15.01.2026

JUDGMENT

KHALID HUSSAIN SHAHAI, J. — These two Civil Revision Applications, bearing Nos.161 and 163 of 2020, arise from a common consolidated judgment and decree dated 23.09.2020 passed by the learned Additional District Judge, Daharki in consolidated Civil Appeal Nos.26/2016 & 27/2016, involve identical parties, raise identical questions of law and fact, and are founded upon the very same set of circumstances. For the sake of convenience, to avoid multiplicity of proceedings, and in the interest of justice, they are being disposed of by this single judgment.

2. The foundational facts of this protracted litigation are, in essence, straightforward. Haji Mehar Din, now deceased and represented through his legal heirs, instituted Civil Suit No.06/2011 (arising from Old No.86/2010) before the learned trial Court, seeking a declaration of title, cancellation of an impugned sale agreement (*Wiqronama*) dated 15.09.2006, and a permanent injunction against Riaz Ahmed and others. He asserted himself to be the lawful owner of a commercial plot admeasuring 9907.25 square feet, forming part of Survey No.78. The gravamen of his complaint was that Riaz Ahmed and his brother had fabricated a forged sale

agreement, falsely purporting to evidence a purchase of the said plot from him, and that he had never executed such a document, the signatures thereon being spurious and the agreement therefore liable to cancellation under law.

3. In response, Riaz Ahmed instituted Civil Suit No.07/2011 (Old No.106/2010) for specific performance of the very same agreement and for a permanent injunction. He pleaded that he had lawfully purchased the suit plot from Mehar Din for a total consideration of Rs.990,725/-, pursuant to the sale agreement dated 15.09.2006. According to him, the agreement was duly executed by Mehar Din, attested by two marginal witnesses, scribed by a competent deed writer, with the full sale consideration paid and possession of the plot delivered to him. He further averred that Mehar Din had thereafter unlawfully dispossessed him, compelling him to seek judicial enforcement of his vested rights.

4. The learned trial Court, recognizing the interlinked nature of the disputes, consolidated both suits, framed consolidated issues on 18.12.2011, and listed the matter for evidence of Mehar Din, who was the plaintiff in the leading suit and the defendant in the subsequent suit. The record, however, reveals a lamentable pattern of dilatoriness on the part of Mehar Din. Despite repeated adjournments extending over a period of four years and seven months, he persistently failed to appear as a witness or to produce any evidence in support of his pleadings. Ultimately, vide order dated 11.09.2015, the learned trial Court, in exercise of its powers under Orders XVII and XVIII of the Code of Civil Procedure, 1908, closed the evidence of Mehar Din, having afforded him ample opportunity to lead his case.

5. Thereafter, Riaz Ahmed proceeded to lead his evidence. He examined himself upon oath and produced two marginal witnesses, namely

Dadan @ Allah Dad and Asghar Ali, along with the scribe of the agreement, Jhaman Das. Each of these witnesses, in clear and unambiguous terms, affirmed the due execution of the sale agreement, the payment of the full sale consideration, and the delivery of possession. Mehar Din's counsel, significantly, did not cross-examine any of these witnesses; his non-appearance rendered the cross-examination nil. The evidence of Riaz Ahmed was closed on 29.03.2016. Upon hearing arguments, the learned trial Court dismissed the suit filed by Mehar Din and decreed the suit of Riaz Ahmed for specific performance, vide consolidated judgment dated 13.05.2016 and decree dated 16.05.2016.

6. Aggrieved thereby, Mehar Din filed Civil Appeals Nos.26 and 27 of 2016 before the learned District Judge, Ghotki, which were later transferred to the Court of the learned Additional District Judge, Daharki. Both appeals were dismissed vide judgment and decree dated 23.09.2020, thereby affirming the findings of the trial Court. Execution proceedings were subsequently initiated, in which the executing Court allowed the application and directed that the sale deed be executed through the Nazir of the Court in favour of Riaz Ahmed and his brother, with possession of the suit plot to be handed over accordingly. Mehar Din also filed an application under Section 12(2) of the Code of Civil Procedure, which was dismissed vide order dated 11.06.2021; the civil appeal filed against that order was likewise dismissed on 13.08.2021. These dispositions have attained finality.

7. Before this Court, learned counsel for the applicants assailed the impugned judgments and decrees on several grounds. He contended that the sale agreement dated 15.09.2006 is forged and fabricated, and that Mehar Din never executed it. He urged that, at the time of the alleged agreement, the suit plot was mortgaged with a bank, a fact not disclosed in the agreement, rendering the transaction unlawful and unenforceable. He

further argued that the agreement was insufficiently stamped, thereby attracting the bar under Section 12 of the Stamp Act, 1899. He impugned the courts below for failing to appreciate the law relating to the proof of documents under Articles 70 and 79 of the *Qanun-e-Shahadat* Order, 1984. He submitted that the courts below acted with material irregularity by decreeing the suit solely on the basis of unchallenged evidence, and that the impugned judgments suffer from jurisdictional errors, warranting interference of this court under revisional jurisdiction.

8. Learned counsel for the respondents, on the other hand, urged that the applicant was afforded ample opportunity to produce evidence but deliberately failed to do so. He emphasized that the execution of the sale agreement was duly proved through primary evidence, marginal witnesses, and the scribe. He contended that the non-appearance of Mehar Din for cross-examination amounts to an admission of the facts deposed to by the respondents' witnesses, in accordance with settled law. He submitted that the mortgage of the property does not divest the mortgagor of ownership, and that a mortgagor remains competent to enter into an agreement to sell his equity of redemption. He further argued that the concurrent findings of fact recorded by two courts below cannot be disturbed in revision, and that no illegality, material irregularity, or jurisdictional defect has been demonstrated to justify interference under revisional jurisdiction of this court.

9. Having heard learned counsel at length and having perused the record with care, the Court is of the considered view that the impugned judgments and decrees are not liable to be set aside in revision.

10. At the very outset, it is pertinent to note that the leading suit was filed by Mehar Din for cancellation of the sale agreement, which the subsequent suit by Riaz Ahmed affirmatively established as genuine. The

suits were consolidated, issues were framed on 18.12.2011, and the matter was fixed for evidence of Mehar Din. Despite repeated adjournments spanning over four years and seven months, Mehar Din failed to appear as a witness or to produce any evidence in support of his case. The learned trial Court, in exercise of its discretion under Orders XVII and XVIII CPC, was fully justified in closing his evidence on 11.09.2015. It is a well-settled principle that a litigant who is afforded repeated opportunities to lead evidence but persistently fails to avail them cannot later be heard to complain of denial of a fair trial. The law aids the vigilant, not those who sleep over their rights, and courts are not bound to grant endless adjournments to a party who shows no bona fide intention to proceed with the case.

11. The evidence led by Riaz Ahmed, in contrast, was clear, cogent, and unimpeached. He examined himself and produced two marginal witnesses and the scribe, all of whom unequivocally affirmed the execution of the agreement, the payment of consideration, and the delivery of possession. The non-appearance of Mehar Din for cross-examination must be treated as an admission of the facts deposed to by these witnesses. In civil proceedings, where a party fails to cross-examine the opponent's witnesses, the evidence so given, if otherwise credible, is entitled to be accepted as true, and the Court is justified in acting upon it. The courts below, having found the respondents' evidence unrebutted, unchallenged, and unimpeached, rightly relied upon it in decreeing the suit for specific performance.

12. The contention that the suit plot was mortgaged with a bank at the material time does not avail the applicants. It is an admitted fact that the plot stood mortgaged, but mortgage does not amount to a transfer of ownership. The mortgagor retains title to the property, subject only to the

incumbrance created by the mortgage, and remains competent to enter into an agreement to sell his equity of redemption. The mere fact that the mortgage was not disclosed in the agreement does not render the agreement void or unenforceable, particularly where the agreement itself is otherwise valid and has been duly proved. The courts below correctly held that the mortgage, while a relevant circumstance, does not vitiate the agreement or bar its specific performance.

13. The argument that the agreement was insufficiently stamped under the Stamp Act, 1899, is also without substance. An objection as to insufficient stamping is a procedural bar which must be taken at the appropriate stage; it cannot be allowed to nullify a decree once the document has been admitted in evidence and the suit has been decided on its merits. The courts below, having admitted the agreement in evidence and having found it duly proved, were fully justified in proceeding to decide the suit on the merits, and no jurisdictional error is discernible on this ground.

14. The applicants' reliance on Articles 70 and 79 of the *Qanun-e-Shahadat* Order, 1984, is misplaced. Article 70 deals with the proof of signature and handwriting, while Article 79 lays down the modes of proof for documents, particularly where execution is denied. In the present case, the execution of the agreement was proved through the oral testimony of the party himself and the marginal witnesses, and the document was exhibited in evidence. The courts below, having found this evidence credible and unchallenged, were entitled to hold that the agreement was duly proved in accordance with law. The mere fact that Mehar Din denied execution does not, in the absence of any evidence to rebut the respondents' case, render the agreement inadmissible or unenforceable.

15. Finally, the contention that the impugned judgments suffer from jurisdictional error or material irregularity, warranting interference under Section 115 CPC, is not sustainable. Section 115 is not a substitute for an appeal; it is an extraordinary jurisdiction exercisable only where the subordinate court has acted without jurisdiction, in excess of jurisdiction, or with such material irregularity as to cause a failure of justice. In the present case, the trial Court and the appellate Court have both recorded concurrent findings of fact, based on a proper appreciation of the evidence and the law. No perversity, no illegality, and no jurisdictional defect has been demonstrated. The findings of the courts below are not arbitrary or capricious, and they do not call for interference in revision.

16. In view of the foregoing discussion, both Civil Revision Applications Nos.161 and 163 of 2020 are found to be devoid of merit and are hereby dismissed. The impugned judgments and decrees passed by the learned trial Court and upheld by the learned appellate Court are maintained in all respects. Pending applications, if any, stand disposed of accordingly.

J U D G E