

Judgment Sheet

HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

2nd Appeal No.S-46 of 2024

[Pehlaj v. Bahadur and 02 others]

Appellant by : Sintosh Kumar J. Kalal, Advocate
Respondent No.1 by : Mr.Ali Hassan Chandio, Advocate
Respondents No.2 & 3 by : Mr.Harish Chander, Assistant A.G Sindh
Date of hearing & decision : 12.05.2026
Date of reasons : 25.05.2026

J U D G M E N T

ARBAB ALI HAKRO, J.-This Second Civil Appeal under Section 100 C.P.C calls in question the concurrent judgments and decrees dated 04.03.2020 and 10.03.2020, passed by the learned Senior Civil Judge, Digri, in F.C. Suit No.213 of 2017 and dated 15.09.2021 and 17.09.2021, passed by the learned District and Sessions Judge, Mirpurkhas, in Civil Appeal No.25 of 2020, whereby the suit of the appellant for declaration, specific performance of contract and permanent injunction was dismissed, and such dismissal was maintained in appeal.

2. The factual matrix, as pleaded by the appellant, is that he instituted suit for declaration, specific performance of contract and permanent injunction against the respondents. It was asserted that he purchased agricultural land bearing S.No.208 1-20 Acres and 00-20 Ghunta Mohaga Land situated at Deh 368, Taluka Jhuddo, District Mirpurkhas (the "suit property") from respondent/defendant No.1 against consideration amount of Rs.880,000/- rupees orally. After securing partial payment of Rs.80,000/- as upfront money, respondent/defendant No.1 handed over possession of the subject land to the appellant/plaintiff. It was further pleaded that the balance sale consideration was to be paid at the time of execution of a registered sale deed. The appellant averred that after delivery of possession, he and his

community members constructed katcha and pacca houses on the suit land and also obtained sanction for a Government Boys Primary School on the land. According to him, upon repeated demands for transfer, respondent No.1 demanded the balance amount for redemption of the mortgage, whereafter on the same day, 12.02.2016, a fresh sale agreement was executed, followed by an oral agreement and respondent/defendant No.1 committed to execute the registered sale deed of the subject as soon as the redemption of the mortgage. It was alleged that during the construction of the school, respondent No.1 obstructed the work and threatened dispossession, compelling the filing of the suit.

3. Respondent No.1 filed written statement and categorically denied the alleged oral sale and the subsequent written agreement. He pleaded that in 2011, during heavy rains and floods, he had only temporarily allowed the appellant to settle on the land as a humanitarian measure; that no sale agreement was ever entered into; that no consideration was received; and that the alleged agreement was false and managed. Respondents No.2 and 3, despite service and repeated opportunities, did not file written statements and were debarred.

4. On the divergent pleadings, the trial Court framed issues, including: whether the suit was maintainable; whether the plaintiff had cause of action; whether the suit was time-barred; whether defendant No.1 had orally sold the suit land and delivered possession; whether on 12.02.2016 the plaintiff purchased the suit land for Rs.880,000/- through a fresh agreement; whether the sale deed could not be executed due to mortgage; whether possession was only temporary during the 2011 floods; and whether defendant No.1 was illegally interfering and harassing the plaintiff.

5. In support of his case, the appellant examined himself and produced, inter alia, the alleged sale agreement dated 12.02.2016, entries of village Form VII and VII-B, and a letter of the Directorate of School Education regarding the sanction of the school. He also examined the stamp vendor,

Shoukat Ali, who produced the relevant Roznamcha entry, and the witnesses, Muhib, Nangar Khan, and Assistant Mukhtiarkar Muhammad Ishaque Talpur. After the closure of the plaintiff's side, respondent No.1 examined himself and one Muhammad Juman and then closed his side of the evidence.

6. Upon appraisal of the evidence, the trial Court dismissed the suit, holding that the appellant had failed to prove the alleged oral sale, the subsequent written agreement or payment of consideration in the manner pleaded; that the pleadings lacked essential particulars of the alleged oral contract and that the documentary and oral evidence did not inspire confidence. The Court also found that the appellant's possession, if any, was not shown to be referable to a validly proved contract of sale.

7. The appellant preferred a Civil Appeal before the Appellate Court. After hearing the parties, the appellate Court concurred with the trial Court, upheld the findings and dismissed the appeal, observing inter alia that there were material discrepancies between the appellant's own testimony and that of the stamp vendor regarding payment of consideration and that the appellant had not pleaded or proved the oral agreement with the clarity and particularity required by law.

8. Aggrieved by the concurrent findings, the appellant has filed the present Second Civil Appeal under section 100, C.P.C.

9. Learned counsel for the appellant argued that the plaint, read as a whole, clearly disclosed an initial oral sale followed by a written agreement dated 12.02.2016; that both Courts below misconstrued the written agreement as the first and only agreement and thereby misread the pleadings; that if any ambiguity existed, the Courts below ought to have called for better particulars under Order VI or Order XI C.P.C, instead of deciding against the appellant; that issues and points of determination were framed beyond the pleadings, particularly issue No.5 and point No.2; that the evidence of the appellant and his witnesses, including the stamp vendor and the revenue official, unequivocally established the transaction and

possession; that the long, undisputed possession of the appellant and his community, coupled with construction of houses and a Government Boys Primary School, corroborated the oral sale and that respondent No.1's failure to sue for recovery of possession for over a decade further strengthened the appellant's version. He submitted that the Courts below laid undue emphasis on the absence of date, time and place of the oral agreement in the plaint, whereas such particulars are not a condition precedent to a valid contract and that the concurrent findings are thus vitiated by misreading and non-reading, warranting interference in the second appeal.

10. Learned counsel for respondent No.1, on the other hand, supported the impugned judgments and submitted that the suit was founded essentially on an alleged oral agreement of sale of immovable property, which, under the settled law, must be pleaded and proved with the clearest and most satisfactory evidence, including precise particulars of date, time, place and witnesses. He contended that the plaint is conspicuously deficient in these particulars; that the appellant's own evidence departs from his pleadings; that the alleged written agreement of 12.02.2016 is a managed document, unsupported by independent and consistent testimony as to payment of consideration and that the stamp vendor's evidence contradicts the appellant on the very question of payment. He further argued that both Courts below have concurrently appraised the evidence, recorded cogent reasons and returned findings of fact against the appellant, which cannot be reopened in a second appeal in the absence of any jurisdictional defect, perversity, or misreading of such magnitude as to amount to an error of law.

11. Learned Assistant Advocate General Sindh, appearing for the official respondents, adopted the arguments of learned counsel for respondent No.1 and added that the concurrent findings are in consonance with the settled principles governing specific performance of alleged oral agreements and the limited scope of interference in the second appeal.

12. Heard arguments and perused the record.

13. At the very outset, it is necessary to recall the well-settled parameters of jurisdiction under Section 100 C.P.C. A second appeal lies only on a substantial question of law; concurrent findings of fact recorded by the Courts below are ordinarily binding and cannot be disturbed unless it is shown that such findings are the result of misreading or non-reading of material evidence, are based on no evidence, or are so perverse that no reasonable person properly instructed in law could have arrived at them. Mere reappraisal of evidence or substitution of this Court's view for that of the Courts below is impermissible.

14. The suit of the appellant is for specific performance of an alleged oral agreement of sale of agricultural land, later said to have been reduced into a written agreement dated 12.02.2016. The Supreme Court has consistently held that while an oral agreement to sell immovable property is not per se invalid, it must be pleaded and proved with the clearest and most satisfactory evidence. In Maqsood Ahmad¹It was held that the party relying on an oral agreement must prove it strictly in accordance with section 2(h) of the Contract Act, 1872. In Muhammad Riaz²The Supreme Court emphasised that a party claiming an oral agreement must clearly specify the date, time, place, and names of witnesses in the pleadings, and that these elements are sine qua non in cases involving the sale of immovable property. In Moiz Abbas³It was reiterated that improvements or additions to the details of an oral agreement at the evidence stage that were not part of the initial pleadings are impermissible, as they invite abuse and fraudulent claims.

15. The same line of authority also underscores that no amount of evidence can cure a defect in pleadings; facts not pleaded cannot be proved, and evidence beyond pleadings is to be ignored. The Supreme Court, in the Government of West Pakistan⁴ and Abrar Ahmad⁵ has held that a party

¹ Maqsood Ahmad and others v. Salman Ali (PLD 2003 SC 31)

² Muhammad Riaz and others v. Mst.Badshah Begum and others (2021 SCMR 605)

³ Moiz Abbas v. Mrs. Latifa and others (2019 SCMR 74)

⁴ Government of West Pakistan v. Haji Muhammad (PLD 1976 SC 469)

⁵ Abrar Ahmad v. Irshad Ahmed (PLD 2014 SC 331)

cannot be allowed to set up a new case in evidence which is not founded in the pleadings. These principles are directly engaged in the present matter.

16. Examining the plaint, the appellant has indeed asserted that he purchased the land orally for Rs.880,000/-, paid Rs.80,000/- as earnest money and was put in possession and that later on 12.02.2016, a fresh written agreement was executed. However, the plaint does not clearly and specifically plead the date, time and place of the initial oral agreement, nor does it set out with precision the names of all witnesses in whose presence the oral bargain was struck and consideration paid. The appellant's own grounds in this appeal acknowledge that the Courts below criticized the absence of such particulars, yet he maintains that these are not essential. That stance is squarely at odds with the binding pronouncements of the Supreme Court cited above, which treat such particulars as indispensable in suits for specific performance founded on oral agreements for the sale of immovable property.

17. The appellant's further grievance that the Courts below ought to have called for better statement under Order IX C.P.C, is misconceived. The obligation to plead material facts with requisite particularity lies on the plaintiff. The failure to do so cannot be cured by shifting the burden onto the Court to solicit improved pleadings. The Supreme Court has repeatedly held that the Court is not required to reconstruct a party's case or to fill in material omissions in the pleadings; rather, the party must stand or fall on its own case as pleaded.

18. Coming to the evidence, the appellate Court has noted a glaring discrepancy between the evidence of PW Shoukat Ali and the plaintiff, as the plaintiff stated on 12.02.2016 that he paid the amount of Rs. 800,000/- cash in the presence of Inayat Ali and Ali Khan. While PW Shoukat Ali says that the consideration amount was not paid at his office. The appellant, in his grounds, contends that he never pleaded or deposed that payment was made in the presence of those particular witnesses and that the appellate Court misread his evidence. However, even if one were to assume some

imprecision in the appellate Court's reproduction of names, the core finding remains that the appellant's version of payment of consideration is not corroborated by the stamp vendor, who categorically stated that no consideration was paid at his office. This contradiction goes to the root of the alleged written agreement and the manner of its execution.

19. Moreover, the appellant's case oscillates between an initial oral sale and a subsequent written agreement. Yet, he has not produced any independent, disinterested witness who could convincingly testify to the original oral bargain, the payment of earnest money and the subsequent payment of the balance. The witnesses examined are either interested or their testimony contains material inconsistencies. The revenue entries and the letter regarding sanction of the school may show that the appellant and his community are in possession and that a school was sanctioned, but they do not, by themselves, establish a concluded contract of sale between the parties on the terms alleged.

20. The argument that long possession and construction of houses and a school necessarily imply a valid sale is also untenable. Possession may arise from various juridical relationships, license, permissive occupation, encroachment or otherwise. Respondent No.1's plea that he allowed temporary occupation during floods is not inherently implausible. In any event, in a suit for specific performance, the plaintiff must first prove the contract in accordance with law; possession, even if established, cannot substitute for proof of a valid and enforceable agreement.

21. The appellant has also urged that the Courts below framed issue No.5 and point of determination No.2 beyond the pleadings and that the entire judgments are vitiated on that score. I have examined the issues and points. Issue No.5, whether on 12.02.2016 the plaintiff purchased the suit land from defendant No.1 for Rs.880,000/- under a fresh agreement, flows directly from the appellant's own pleadings regarding the written agreement dated 12.02.2016. Likewise, the appellate Court's point No. 2 addresses the same

controversy. It is therefore incorrect to suggest that these were beyond the pleadings; rather, they were necessary to resolve the very case set up by the appellant.

22. The contention that the Courts below travelled beyond the pleadings appears, in substance, to be an attempt to reargue the facts and to invite this Court to reappraise the entire evidence. That is impermissible in the second appeal. The findings that the appellant failed to prove the oral agreement and the written agreement, that his pleadings lacked essential particulars and that his evidence was inconsistent and uncorroborated, are all findings of fact based on an appreciation of the record. No material piece of evidence has been shown to have been completely ignored, nor has any document or testimony been demonstrated to have been so grossly misread as to amount to an error of law.

23. The reliance placed by the appellant on the proposition that possession follows title is also misplaced. That maxim presupposes that the title has been established; it cannot be inverted to say that possession alone creates or proves title. In suits for specific performance, the Supreme Court has consistently held that the plaintiff must stand on his own case, not on the defendant's weakness. The mere fact that respondent No.1 has not filed a separate suit for possession does not relieve the appellant of his burden to prove the contract.

24. In light of the above and particularly in view of the Supreme Court's authoritative judicial exposition requiring strict pleading and proof of oral agreements for the sale of immovable property, the approach adopted by the Courts below cannot be faulted. Their insistence on particulars of date, time, place, and witnesses, and their scrutiny of contradictions between the appellant's version and that of the stamp vendor, are entirely in line with the law as articulated in Maqbool Ahmad, Muhammad Riaz, and Moiz Abbas (supra).

25. The appellant has not been able to point out any substantial question of law arising from the concurrent judgments. The alleged misreading and non-reading, when examined closely, amount to no more than disagreement with the factual conclusions drawn by the Courts below. This Court, in exercise of jurisdiction under section 100 C.P.C, cannot convert itself into a third Court of facts.

26. Consequently, I hold that the appellant has failed to establish that the impugned judgments and decrees suffer from any legal infirmity warranting interference. The findings of the trial Court and the appellate Court are based on a correct appreciation of the pleadings, the evidence on record, and the governing legal principles relating to the specific performance of alleged oral agreements, and on the limited scope of the second appeal.

27. The reasons for my short order dated 12.05.2026 are set out above. Accordingly, this Second Civil Appeal was dismissed, and the concurrent judgments and decrees of the Courts below were upheld.

JUDGE

Adnan Ashraf Nizamani