

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.

R.A.No.S-136 of 2020

Applicant: Ali Asghar son of Ghulam Hussain through Mr. Aqeel Ahmed Siddiqui, Advocate.

Respondents: Ali Akibar & others through Mr. Shoukat Ali Birahmani, Advocate.

Date of Hearing: 20.04.2026.

Date of Order 23.04.2026

J U D G M E N T

Syed Fiaz ul Hassan Shah, J:- The Applicant has challenged the Judgment dated 09.03.2020 and Decree dated 12.03.2020 (*impugned Judgment*), passed by the learned District Judge, Dadu (*Lower Appellate Court*) in Civil Appeal No. 148 of 2019, which affirmed the judgment and decree dated 22.11.2019, passed by the learned Senior Civil Judge, Dadu (*Trial Court*) in F.C. Suit No. 03 of 2006.

2. Briefly, applicant filed a suit for Specific Performance of Contract against Respondents No. 1 and 2 as well as sought cancellation of a registered Sale Deed dated 17.11.2011 purportedly executed by Respondent No. 1 through brother attorney Respondent No. 2 in favor of Respondent No. 3, in respect of a plot bearing City Survey No. 805/6-13, measuring 2,995 sq. ft., Ward-A, Jagatabad Mohallah, Dadu (*Suit property*) and said suit so also appeal were dismissed and present Revision Application is filed against concurrent Judgments.
3. Conversely, the learned counsel for the respondents argued that the General Power of Attorney was executed and registered on 27.04.2005. Therefore, the execution of the Sale Agreement on 27.12.2004 by Respondent No. 2 was illegal and without lawful authority, as the original owner (Respondent No. 1) had not authorized Respondent No. 2 at that time. He further argued that the applicant's signature is missing from the Sale Agreement; thus,

both courts passed judgments in accordance with the law, warranting no interference.

4. I have heard the learned counsel for the parties and perused the record with their assistance.
5. The Respondents contended that Respondent No. 2 lacked authority at the time of execution, as no Power of Attorney from Respondent No. 1 was in place. Technically, such plea is correct to the extent of date of execution, however, this plea is devoid of merit on careful examination of cumulative conduct of parties and its effect. The Power of Attorney was presented before the Sub-Registrar, Dadu, on 27.04.2005, impounded under Section 33 of the Stamp Act, 1889 and subsequently registered under RD No. 23 dated 27.04.2005 and MF Roll 4-241/10415 dated 25.07.2005. By executing this instrument, Respondent No. 1 ratified the authority of Respondent No. 2. Had Respondent No. 1 intended to repudiate the Sale Agreement, he would not have subsequently conferred authority upon the same individual and for the same property who had already acted on his behalf and received consideration. The subsequent conferment of authority amounts to implied ratification, which under Article 114 of the Qanun-e-Shahadat constitutes relevant conduct evidencing permission and acknowledgment of the transaction.
6. This proposition is further fortified by the fact that Respondent No. 3 later purchased the property through a Sale Deed dated 17.11.2011 (Ex. 47/A), executed by the same attorney, Respondent No. 2, acting on behalf of Respondent No. 1. The continuity of authority demonstrates that Respondent No. 1 not only ratified but also allowed subsequent transactions to be carried out by the same attorney. Moreover, Respondent No. 1's failure to step into the witness box invites an adverse inference under Article 129(g) of the Qanun-e-Shahadat, that had he appeared, his testimony would have gone against his pleaded position. The burden of proof under Article 118 of the Qanun-e-Shahadat lies upon the party asserting lack of authority, yet Respondents No. 1 and 2 failed to discharge this burden.

7. It is an admitted position that the Sale Agreement (Ex. 40/C) was executed on 27.12.2004, with payments of sale consideration (Ex. 40/A) forming part of the record coupled with the facts that two marginal witnesses examined by the plaintiff. The Respondent No.1 did not examine himself and did not step-in into witness box.
8. Conversely, Respondent No. 2 denied execution and alleged forgery of his signature, but the courts below regrettably recorded no findings on this issue nor discussed evidence of marginal witnesses and effect of Ex.40/A & 40/D and the fact that Respondents No. 1 and 2 did not file independent pleadings but merely adopted the written statement of Respondent No. 3, who pleaded ignorance of the Sale Agreement. Such adoption, without specific denial, may further weakens their challenge. However, all this would require for a judicious assessment test for the preponderance of probabilities.
9. In these circumstances, the contention that the Sale Agreement was executed by an unauthorized person is rejected so also the objection of the deficiency in court fee or non-deposit of balance consideration. The record demonstrates implied permission, ratification, and continuity of authority and affirm the enforceability of the contract subject to the prove of its execution. However, both courts below disregarded material evidence and failed to exercise the jurisdiction vested in them. This omission constitutes a jurisdictional error, thereby giving rise to a case of Revision envisage under section 115 CPC.
10. Accordingly, the Revision Application is allowed. The impugned judgments and decrees are set aside, and the matter is remanded to the Lower Appellate court to decide afresh in the light of the above observations. Pending remand, the parties are directed to maintain status quo with respect to the property, ensuring that no alienation, transfer, or encumbrance would be affected until the lower appellate court delivers its fresh findings. The trial court shall conclude the proceedings within Four months.
11. The Revision Application stands disposed of in the above terms.

J u d g e

Ahmed/Pa,