

THE HIGH COURT OF SINDH KARACHI

C.P. No. S-847 of 2025

[Muhammad Hanif Ansari vs. Muhammad Haseeb Ansari & others]

Petitioner : Muhammad Hanif Ansari
through Mr. Hafiz Muhammad Ansari,
Advocate.

Respondent No.1 : Muhammad Haseeb Ansari
through Mr. Roomi Iqbal, Advocate.

Respondent No.2 : Muhammad Abid present in person.

Respondent No.3/
The Director Land
Revenue : Mr. Muhammad Hisham Mahar,
Assistant Advocate General, Sindh.

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Date of hearing : 29.10.2026

Date of decision : 29.10.2026

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ORDER

Zulfiqar Ali Sangi J.- Through the instant constitutional petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner has called into question the order dated 29.11.2023 passed by the learned IX Additional District Judge, Karachi West, in Civil Revision No.12 of 2023, whereby the revision preferred by the petitioner against the order dated 14.01.2023 passed by the learned XIII Senior Civil Judge, Karachi West, in Civil Suit No.1881 of 2022 was dismissed and the rejection of the plaint under Order VII, Rule 11, C.P.C. was maintained. The petitioner has also challenged the order dated 22.01.2022 passed by the learned Vth Additional District Judge, Karachi West, in Civil Revision No.46 of 2020, whereby the order dated 20.08.2020 passed by the learned IInd Senior Civil Judge, Karachi West, in Civil Execution Application No.32 of 2015 arising out of Civil Suit No.763 of 2008, dismissing the petitioner's application under Order XXI, Rule 101, read with Sections 12(2) and 151, C.P.C., was maintained.

2. The controversy, in substance, arises out of competing claims to a plot bearing No.15, measuring 200 square yards, situated in Sector 12-D, Orangi Town, Karachi (**hereinafter referred to as the “suit property”**), and the consequences of an earlier round of litigation

concerning the same property. The record, as reflected in the impugned orders, reveals that respondent No.1 instituted Civil Suit No.763 of 2008 seeking declaration, cancellation of documents, possession and permanent injunction in respect of the suit property against the petitioner and another defendant. The suit was initially dismissed by the learned trial Court through judgment dated 31.05.2013. However, in Civil Appeal No.162 of 2013, the learned appellate Court, through judgment dated 26.08.2015 and decree dated 31.08.2015, set aside the judgment of the trial Court and decreed the suit in favour of respondent No.1. The petitioner asserts that he purchased the suit property from respondent No.2 through a registered sale deed dated 24.11.2008, on the basis of a registered General Power of Attorney dated 22.04.2004, and that the transaction was followed by mutation in the relevant record of rights. According to the petitioner, he was a bona fide purchaser for consideration and his registered title documents were never lawfully cancelled. He further maintains that the subsequent proceedings culminated in the delivery of possession to respondent No.1 in disregard of his independent rights in the suit property.

3. The decree passed in Civil Appeal No.162 of 2013 was challenged before this Court through Second Appeal No. S-66 of 2015. The said appeal was disposed of by order dated 08.11.2019. Thereafter, while disposing of the review application on 03.12.2019, this Court observed, inter alia, that the execution application pending before the trial Court would be deemed to have been disposed of, while permitting a person claiming illegal dispossession to pursue an independent application under Order XXI, C.P.C., in accordance with law. The petitioner subsequently moved an application under Order XXI, Rule 101, read with Sections 12(2) and 151, C.P.C., seeking restoration of possession of the suit property. The learned executing Court dismissed the application through order dated 20.08.2020, holding that the petitioner had acquired his alleged title during the pendency of the earlier suit and was, therefore, bound by the decree passed therein. The said order was maintained by the learned revisional Court through order dated 22.01.2022 in Civil Revision No.46 of 2020. Subsequently, the petitioner instituted Civil Suit No.1881 of 2022 seeking declaration, possession, cancellation of documents, mesne profits and permanent injunction on the basis of the same registered sale deed and the documents relied upon in the earlier proceedings. The learned trial Court, through order dated

14.01.2023, rejected the plaint under Order VII, Rule 11, C.P.C., holding, inter alia, that the suit was barred by Section 11, C.P.C., the relevant provisions of the Specific Relief Act, 1877, and limitation. The learned revisional Court, through the impugned order dated 29.11.2023, declined to interfere with those findings, resulting in the present constitutional petition.

4. Learned counsel for the petitioner contends that the impugned orders have been passed in disregard of the petitioner's registered title documents, the authority conferred by the registered General Power of Attorney and the mutation recorded in his favour. He submits that the petitioner was a bona fide purchaser for valuable consideration and that his claim could not lawfully be defeated without recording evidence and determining the validity and legal effect of the documents relied upon by him. He further contends that the application filed by respondent No.1 under Order II, Rule 2, read with Section 11, C.P.C., was not maintainable in the form in which it was presented, and that the learned trial Court, despite disposing of the said application, proceeded to reject the plaint under Order VII, Rule 11, C.P.C. He maintains that the issues raised in the suit required proper adjudication on the basis of pleadings, evidence and applicable law, and that the learned Courts below failed to appreciate the effect of the earlier judgment dated 31.05.2013, the registered documents and the observations made by this Court in the proceedings arising out of Second Appeal No. S-66 of 2015. He accordingly seeks setting aside of the impugned orders and remand of the matter for adjudication on merits. Learned counsel for the Petitioner has relied upon the cases reported as PLD 2005 SC 511 (Muhammad Saleem ullah v. ADJ Gujranwala, PLD 2008 SC 571 (Mazloom Hussain v. Abid Hussain), 2024 YLR 1 (Muhammad Humair Pasha v. District Collector Jhelum).

5. Conversely, learned counsel for respondent No.1 supports the impugned orders and contends that the controversy relating to the suit property has already been adjudicated by competent Courts in the earlier litigation, which culminated in a decree in favour of respondent No.1. He submits that the petitioner was a party to the earlier proceedings and acquired the alleged interest in the suit property during their pendency. Consequently, the petitioner cannot claim an independent or superior right in disregard of the decree binding upon him. It is further contended that the application seeking restoration of possession was rightly dismissed in view of Order XXI, Rule 102,

C.P.C., and that the subsequent civil suit was not maintainable in view of the principles of *res judicata* and *lis pendens*. Learned counsel maintains that the revisional Courts have examined the relevant record and that no jurisdictional defect or material irregularity has been demonstrated to warrant interference by this Court in its constitutional jurisdiction. He, therefore, prays for dismissal of the petition.

6. I have heard the learned counsel for the parties and examined the material available on record, including the impugned orders with their able assistance.

7. At the outset, it may be observed that the jurisdiction conferred upon this Court under Article 199 of the Constitution is not intended to provide an unrestricted additional forum for reappraisal of every factual or legal conclusion reached by a competent civil Court. Interference is warranted where the impugned action or order suffers from a demonstrable jurisdictional defect, patent illegality, material irregularity or violation of law calling for constitutional correction. Mere disagreement with the conclusion reached by the Courts below, in the absence of such a defect, does not by itself justify interference.

8. The first controversy concerns the petitioner's claim for restoration of possession. The record shows that the petitioner was arrayed as a defendant in Civil Suit No.763 of 2008 and contested the proceedings along with the other defendant. The suit was ultimately decreed in favour of respondent No.1 by the learned appellate Court through judgment dated 26.08.2015 and decree dated 31.08.2015. The petitioner thereafter pursued proceedings before this Court in Second Appeal No. S-66 of 2015, which were disposed of by order dated 08.11.2019, followed by the order dated 03.12.2019 on the review application. The petitioner also approached Honourable Supreme Court of Pakistan wherefrom he withdrew his leave to appeal.

9. It is significant that the petitioner's claim to the suit property rests upon a registered sale deed dated 24.11.2008, whereas the earlier suit had already been instituted in respect of the same property. The sale deed relied upon by the petitioner was thus executed during the pendency of the earlier litigation. The fact that the transaction was evidenced by registered documents or that the petitioner claims to have paid valuable consideration does not, by

itself, remove the transaction from the operation of the doctrine of lis pendens. The principle embodied in Section 52 of the Transfer of Property Act, 1882, is founded upon the necessity of protecting the authority of the Court and preventing a party to litigation from defeating the eventual decree by transferring the disputed property during the pendency of the proceedings. A transferee pendente lite takes the property subject to the rights ultimately determined in the litigation. Such transferee cannot claim immunity from the decree merely on the ground that the transfer was for consideration or that he was unaware of the consequences of the pending proceedings. In this regard, the principle enunciated by the Honourable Supreme Court of Pakistan in ***Muhammad Ashraf Butt and others v. Muhammad Asif Bhatti and others, reported as PLD 2011 SC 905***, is relevant. The rule of lis pendens binds a transferee of the disputed property to the outcome of the pending litigation, notwithstanding a claim of bona fide purchase for value without notice. The object is to ensure that the subject matter of litigation remains subject to the adjudication of the Court and that subsequent transfers do not frustrate the decree.

10. In the present case, the petitioner was not a stranger to the earlier proceedings. He was impleaded as a defendant and participated in the litigation concerning the suit property. The subsequent transfer in his favour could not, therefore, be treated as creating a right independent of the decree ultimately passed in those proceedings. The petitioner's contention that the decree should not affect him merely because the relief of possession was specifically sought against the other defendant does not, in the circumstances of the case, furnish a sufficient ground to disregard the legal consequences of the transfer pendente lite. The provisions of Order XXI, Rules 99 to 102, C.P.C., must also be read together. The remedies provided for persons resisting execution or complaining of dispossession are subject to the statutory restriction contained in Rule 102, which excludes the benefit of Rules 99 and 101 in favour of a person to whom the judgment-debtor has transferred the property after institution of the suit in which the decree was passed. The learned executing Court found that the petitioner had acquired the alleged interest during the pendency of the earlier suit and was himself a party to that litigation. On that basis, it concluded that the petitioner was bound by the decree and was not entitled to restoration of possession under the provisions invoked by him.

11. The learned revisional Court, while examining the order dated 20.08.2020, considered the petitioner's status as a party to the earlier suit, the timing of the alleged transfer and the applicability of Order XXI, Rule 102, C.P.C. It found no illegality in the conclusion reached by the executing Court. Having examined the reasoning reflected in both orders, this Court finds no sufficient ground to hold that the Courts below acted without jurisdiction or applied the relevant provisions in a manner warranting constitutional interference. The observations made by this Court in the order dated 03.12.2019 do not lead to a different conclusion. The liberty to pursue an independent application under Order XXI, C.P.C., was expressly subject to the requirements of law. Such liberty cannot be construed as a declaration of title, a determination that the petitioner was entitled to restoration of possession, or an exemption from the operation of the provisions governing transfers made during pending litigation. The petitioner's application was required to be decided in accordance with the applicable law, which the Courts below proceeded to do.

12. The second controversy concerns the rejection of Civil Suit No.1881 of 2022. The plaint, as described in the impugned orders, seeks substantially to establish the petitioner's claim to the same property on the basis of the same sale deed and related documents that formed part of the earlier dispute. The earlier suit culminated in a decree in favour of respondent No.1, which was challenged before this Court and thereafter treated by the Courts below as having attained finality and having been executed. However, the leave to appeal filed before the Honourable Supreme Court was subsequently withdrawn by the petitioner. Section 11, C.P.C., embodies the principle of res judicata and precludes a Court from trying an issue which has been directly and substantially in issue in a former suit between the same parties, or parties claiming under them, litigating under the same title, where the matter has been heard and finally decided by a competent Court. The object of this rule is to bring litigation to finality, prevent repeated adjudication of the same controversy and protect parties from being vexed more than once over the same matter. The petitioner's contention that his registered sale deed and mutation remain intact cannot be considered in isolation from the decree passed in the earlier proceedings. Registration of a document or entry in the record of rights does not, by itself, confer immunity from the binding effect of a decree or conclusively establish a title contrary to the adjudication of a competent Court. The legal effect of the petitioner's documents must

be assessed in the context of the earlier litigation and the doctrine of *lis pendens*, rather than by reference to their registration alone.

13. The learned trial Court observed that the petitioner had relied upon the same documents which were the subject matter of the previous litigation, and that the parties had already contested the dispute through the competent civil Courts and before this Court. It accordingly concluded that the subsequent suit was barred by Section 11, C.P.C. The learned revisional Court examined the said conclusion and held that the petitioner had failed to establish any basis for interference in revisional jurisdiction. The petitioner's assertion that the earlier judgment dated 31.05.2013 was in his favour does not, by itself, displace the subsequent judgment and decree passed by the appellate Court on 26.08.2015 and 31.08.2015. The judgment of the trial Court was set aside in appeal, and the resulting decree was thereafter challenged before this Court. For purposes of determining the effect of the earlier litigation, the subsequent appellate decree and the finality attributed to it by the Courts below cannot be ignored.

14. The contention that the subsequent suit required a full trial and recording of evidence also does not, in the circumstances, warrant acceptance. Order VII, Rule 11, C.P.C., provides for rejection of a plaint, *inter alia*, where it does not disclose a cause of action or where the suit appears from the statements in the plaint to be barred by law. In determining the applicability of the provision, the Court must examine the plaint and the material legally relevant to the objection, without conducting a premature trial on disputed questions of fact. It is equally settled that a plaint cannot be rejected merely because the defendant disputes the plaintiff's case or considers it weak. However, where the legal bar is apparent from the plaint and the material forming its basis, the Court is competent to act under Order VII, Rule 11, C.P.C., without requiring the parties to undergo a full trial on a claim which is legally incapable of proceeding. In the instant matter, the rejection of the plaint was not founded solely upon a denial of the petitioner's claim by respondent No.1. The learned trial Court considered the earlier proceedings, the decree passed in Civil Appeal No.162 of 2013, the petitioner's reliance upon the subsequent sale deed and the legal consequences of the transfer made during the pendency of the earlier litigation. It concluded that the subsequent suit was barred by *res judicata* and that the petitioner's claim was also

affected by the relevant provisions of the Specific Relief Act, 1877, and limitation.

15. The petitioner has also questioned the manner in which the application under Order II, Rule 2, read with Section 11 and Section 151, C.P.C., was disposed of. The record, however, indicates that the learned trial Court expressly considered the objection under Order II, Rule 2, C.P.C., and observed that the provision did not independently attract in the absence of a prior suit instituted by the present plaintiff in respect of the same cause of action in which an available relief had been omitted. The plaint was nevertheless rejected on the separate grounds of res judicata, the statutory bar under the Specific Relief Act, 1877, and limitation. Consequently, the mere fact that the application under Order II, Rule 2, C.P.C., was disposed of does not establish that the subsequent rejection of the plaint was without jurisdiction. The legality of the order must be assessed by examining the grounds actually relied upon by the trial Court and the conclusion reached by the revisional Court. The petitioner has not demonstrated that the learned revisional Court committed a patent error of law or material irregularity in maintaining the rejection of the plaint.

16. As regards limitation, the petitioner has questioned the conclusion that the suit was time-barred. The learned trial Court referred to the earlier proceedings, the date on which the petitioner claimed to have acquired the suit property, and the circumstances in which respondent No.1 had disputed the petitioner's claim. It concluded that the subsequent suit had been instituted after an inordinate delay. In the present proceedings, however, the question is not whether this Court would independently arrive at the same conclusion in an ordinary appeal, but whether the impugned order discloses a jurisdictional defect or patent illegality justifying interference under Article 199 of the Constitution. The petitioner's submissions regarding the non-filing of a written statement by the official respondents, the absence of a verification report from the concerned land authority and the alleged failure to appreciate the evidentiary value of his documents do not, individually or collectively, displace the legal effect attributed by the Courts below to the earlier decree and the transfer pendente lite. The absence of a written statement from an official respondent does not automatically entitle a plaintiff to a decree or preclude the Court from examining whether the suit is barred by law. Similarly, the petitioner's assertion that his

registered sale deed has not separately been cancelled does not, in itself, establish a right to institute successive proceedings for reliefs which are inconsistent with or affected by the decree passed in the earlier litigation. The issue must be considered in the context of the legal consequences of the earlier decree, the doctrine of lis pendens and the requirements of Section 11, C.P.C.

17. The petitioner's reliance upon the fact that the matter did not reach the stage of evidence in Civil Suit No.1881 of 2022 is also misplaced. Where a statutory ground for rejection of the plaint is established in accordance with Order VII, Rule 11, C.P.C., the absence of a trial or recording of evidence does not, by itself, render the order unlawful. The decisive consideration is whether the plaint could legally proceed in view of the bar found applicable by the Courts below. This Court is conscious that rejection of a plaint at the threshold is a serious step and that, ordinarily, civil disputes should be adjudicated on their merits. Nevertheless, the principle favouring adjudication on merits cannot override an express statutory prohibition or permit a litigant to reopen a controversy which has already attained finality. The right of access to justice does not include an unrestricted right to relitigate the same subject matter through successive proceedings.

18. In the present case, the petitioner has failed to demonstrate that the learned trial Court or either of the revisional Courts exercised jurisdiction not vested in it, failed to exercise jurisdiction vested by law, or acted in a manner resulting in a patent illegality requiring correction under Article 199 of the Constitution. The impugned orders disclose consideration of the earlier litigation, the relevant documents, the timing of the transfer and the legal provisions relied upon by the parties. The petitioner's disagreement with the conclusions reached by the Courts below does not furnish sufficient justification for this Court to reopen the matter in its constitutional jurisdiction. For the foregoing reasons, this Court finds that the petitioner has failed to make out a case for interference with the order dated 20.08.2020, as maintained by the learned Vth Additional District Judge, Karachi West, through order dated 22.01.2022, or with the order dated 14.01.2023, as maintained by the learned IXth Additional District Judge, Karachi West, through order dated 29.11.2023. No sufficient jurisdictional defect, patent illegality or material irregularity has been established to warrant setting aside the impugned orders.

19. Accordingly, the instant constitutional petition, being devoid of merit, is *dismissed*. The impugned orders dated 20.08.2020, 22.01.2022, 14.01.2023 and 29.11.2023 are maintained. There shall be no order as to costs.

JUDGE