

**HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD**

**Civil Revision Application No.200 of 2024**

*[Mst.Rashida Begum (deceased) through LRs and others vs. Abdul Karim and others]*

Applicants by : Mr.Aqeel Ahmed Siddiqui, Advocate

Respondent No.5 by : Mr.Aayatullah Khuwaja, Advocate

Respondents No.3 & 4 by : Mr.Allah Bachayo Soomro, , Addl. A.G Sindh  
Nemo for Respondents No.1 and 2

Date of hearings : **07.4.2025 & 05.5.2025**

Date of Decision : **26.5.2025**

**J U D G M E N T**

**ARBAB ALI HAKRO, J.-** Through this Civil Revision Application, filed under Section 115 of the Civil Procedure Code, 1908 ("**C.P.C.**"), the Applicants/Plaintiffs challenge the Judgment and Decree dated 31.5.2024, passed by learned I-Additional District Judge, Tando Allahyar ("the **Appellate Court**") in Civil Appeal No. 41 of 2012. The said Judgment and Decree uphold the Judgment dated 27.9.2007 and Decree dated 03.10.2007, passed by learned Senior Civil Judge Tando Allahyar ("the **Trial Court**") in F.C. Suit No. 67 of 2004, whereby the Applicants' suit was dismissed.

2. Brief facts necessary for the adjudication of this lis are that the plaintiffs (herein called as applicants) filed a suit for Declaration, Cancellation, Mandatory Injunction, Possession and recovery of Mesne Profit with the averments that the applicants and defendant No.2 (herein called as Respondent No.2) are the rightful legal heirs of the late Syed Aziz Ahmed Shah and the sole beneficiaries of his estate<sup>1</sup> ("**suit property**"). Following the demise

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<sup>1</sup> (a) House No.1018 (50 paisa share) situated at Ward-B Chori Para Tando Allahyar with the boundaries north side house of Zafar Ali Shah, southern side house of Ashfaque Shah, eastern side house of Mehmood Shah and on western side road.

(b) Shop area (6.6 sq yd) that is (60 sq ft) made out city survey No.355 situated in Ward No. B Shahi Bazar Tando Allahyar constructed having boundaries northern side gowdown, southern side gali, eastern side Fareed General Store and on western side Backi of Manzoor.

of Syed Aziz Ahmed Shah, the suit property were mutated in the City Survey Record on 03.03.2002, without prior notice or knowledge of the applicants. Subsequently, respondent No.1 and respondent No.2 engaged in hostile and adverse activities, resulting in disputes over possession and ownership. Respondent No.2 invested Rs.100,000/- and was accommodated to conduct a cloth business within Shop No. 355 in pursuit of securing his livelihood and supporting the applicants. However, respondent No.1, in collusion with others, engaged in fraudulent acts aimed at dispossessing the applicants and respondent No.2. It has been alleged that respondent No.1 conspired to usurp the property unlawfully and subsequently, through manipulated documents and coercion, transferred ownership of Shop No. 355 in his favour via a sale deed registered as No. 384 dated 08.11.2000, and MF Roll No. 779 dated 21.06.2001. Additionally, respondent No.1 orchestrated the wrongful transfer of 50 paisa share of House No. 1018 to Syed Zafarullah, who initiated ejectment proceedings against the rightful occupants. Said proceedings have been challenged as fraudulent and collusive, with the applicants contending that no legitimate sale of House No. 1018 was ever executed by respondent No.2. Furthermore, respondent No.1, acting with malafide intent, allegedly set Shop No. 355 ablaze, causing substantial financial loss to the applicants and respondent No.2. Despite attempts to report this act, law enforcement failed to register a formal complaint. Upon discovery of the illegal transactions and unlawful entries within the City Survey Record, the applicants contend that the sales and corresponding registrations, Sale Deed No. 342 dated 01.04.2000, Sale Deed No. 384 dated 08.11.2000, and MF Roll No. 647 dated 10.04.2000, are invalid, void, and ineffectual. These transactions were allegedly carried out in furtherance of an orchestrated scheme designed to deprive the rightful heirs of their inheritance. Thus, the applicants seek the following reliefs from the Court: -

- a) *For declaration that the plaintiff and defendant No.2 are still joint owners of the suit properties i.e house No.B-1018 Chori Para Tando Allahyar and shop bearing C.S No.355, measuring 60 sq. ft. situated at Shahi Bazar Tando Allahyar and the defendant No.1 has no right, interest or entitlement above.*
- b) *For declaration that the sale deeds registration No.384 dated 08.11.2000 M.F.R. No.779 dated 21.06.2001. Sale Deed registration No.342 dated 01.04.2000 M.F.R. No.647 dated 10.04.2000 and the entries dated 3.3.2000 made on its basis are fraudulent, invalid, void, forged, manipulated and ineffective.*
- c) *For restoration of possession of shop No.355, measuring 60 sq.ft. situated at*

*Shahi Bazar Tando Allahyar to the plaintiffs and defendant No.2.*

- d) For Mesne profit at Rs.26,000/- since November, 2000 from defendant No.1 to for the plaintiffs and defendant No.2.*
- e) For permanent injunction restraining the defendants directly or indirectly, collectively or individually, from transferring the alleged entitlement and possession of the suit property to any other person in any manner excepting the plaintiffs and defendant No.2.*
- f) For mandatory injunction directing the defendants to cancel the sale deeds and City survey entries in respect of the said property mentioned above.*
- g) For the cost of suit.*
- h) For any other equitable relief.*

3. Respondents No.1 to 5 had not filed their written statements; therefore, they were proceeded exparte by the trial Court vide Orders dated 19.01.2005 and 19.5.2005. Defendant No.6/Respondent No.5 contested the suit by filing a written statement wherein he denied the applicants' claims and asserted that Respondent No.1 lawfully acquired the suit shop through a registered sale deed. He further contends that House No. B/1018, Chori Para, Tando Allahyar is irrelevant to the present suit. According to his statement, the applicants initially transferred ownership of the suit shop to respondent/defendant No.2 vide registered sale deed (Serial No. 365 dated 01.04.2000, MF Roll No. 347, Documentary Registration No. 342, Book No.1 dated 21.04.2000) in the presence of witnesses. Respondent No.2 subsequently sold the shop to respondent No.1 through another registered sale deed (Serial No. 1132 dated 08.11.2000, MF Roll No. 779 dated 21.06.2001) with the due presence of witnesses. Thereafter, respondent/defendant No.1 sold the suit shop to respondent No.5 vide registered sale deed (Serial No. 47 dated 09.01.2003, MF Roll No. 1001 dated 31.03.2003) for Rs. 120,000/-, and the corresponding mutation in the City Survey record was duly recorded. Respondent No.5 asserts that the applicants were fully aware of the transactions. He explicitly denies any allegations of forcible or unlawful possession of the suit shop in November 2000, contending that respondent No.1 voluntarily sold the shop to him on 09.01.2003, ensuring peaceful possession. Thus, he alleged that the claim of forcible possession in November 2000 was baseless, as he was not the owner at that time. Furthermore, he questions the applicants' assertion regarding the irreparable loss sustained by respondent No.2, highlighting that respondent No.2 has neither initiated a separate suit nor joined the present suit as a

plaintiff. He maintains that the sale deeds concerning the suit shop and suit house were executed lawfully, validly, and in accordance with legal procedures.

4. Upon consideration of the divergent pleadings of the parties, the learned trial court framed the relevant issues for adjudication. The parties adduced their respective evidence, and upon completion of the proceedings, learned trial court, vide Judgment dated 27.09.2007 and Decree dated 03.10.2007, dismissed the applicants' suit. Aggrieved by the decision, the applicants preferred an appeal, wherein the learned appellate Court, vide Judgment and Decree dated 04.03.2016, allowed the appeal and decreed the suit in favour of the applicants. Dissatisfied with the appellate decision, Respondent No.5 instituted Second Appeal No.11/2016 before this Court, which was allowed vide Judgment dated 23.05.2022. Consequently, the Judgment and Decree dated 04.03.2016 were set aside, and the matter was remanded to the appellate Court for re-hearing and the rendition of a reasoned (speaking) order. Upon remand, the learned appellate Court, after affording an opportunity of hearing to the parties, dismissed the appeal vide impugned Judgment and Decree, thereby affirming the findings of the learned trial court. Being aggrieved by the concurrent decisions of the courts below, the applicants have now invoked the revisional jurisdiction of this Court through the instant Revision Application, thereby challenging the legality, validity, and propriety of the judgments and decrees passed by the learned courts below.

5. At the very outset, learned counsel for the applicants submits that the suit property was lawfully possessed by applicants one prior to the execution of the alleged sale deeds and the other acquired through due process of law, thereby refuting any claims of forcible or unlawful occupation. He further argues that the alleged sale deeds, being devoid of consideration, are void under Section 25 of the Contract Act, thus rendering them legally ineffective. Emphasizing the chain of documents, he particularly refers to the initial transaction executed between Syed Afzal Ali Shah and Mst.Rashida remains in possession of the applicants and was duly produced before the trial court. Despite these critical assertions, Respondents No.1 and 2 deliberately abstained from appearing throughout the trial, including the proceedings after remand, thereby failing to discharge their burden of proof as legal beneficiaries of the impugned documents. Learned counsel further submits that this absence, coupled with non-compliance with Article 79 of Qanun-e-Shahadat, raises serious doubts over the authenticity of the sale deeds. He contends that

Respondent No.5, Abdul Aziz, executed subsequent documents during the pendency of litigation, which is expressly barred under Section 42 of the Transfer of Property Act, rendering such transactions legally impermissible. Moreover, learned counsel asserts that certain documents annexed with statements were neither produced before the trial court nor formed part of the pleadings, thus rendering them inadmissible. He further submits that the appellate Court's failure to comply with this Court's remand order constitutes a violation of judicial directives, as no reasoned findings were recorded. The applicants categorically deny the validity of the alleged sale deed, maintaining that Respondents No.1 and 2 were legally obligated to prove its authenticity in accordance with Article 82 of Qanun-e-Shahadat, which they failed to do. In support of his contentions, learned counsel relies on the case law reported as **2024 SCMR 916, 2022 SCMR 842, 2008 SCMR 1384, 2024 SCMR 1271, 2007 SCMR 1808, 2004 SCMR 1259, and 2011 CLC Karachi 349.**

6. Conversely, learned counsel for Respondent No.5 contends that the sale transaction in question was duly executed through registered sale deeds, and the applicants' allegations regarding its invalidity lack legal substance. He argues that Mst. Rashida (Respondent No.1) has explicitly admitted the execution of the registered sale deed, thereby affirming its authenticity and legality. He further submits that Article 79 of the Qanun-e-Shahadat Order, 1984, does not apply in the present case, as there is no denial of the execution of the sale deeds. He asserts that the executants themselves failed to appear in the witness box to deny execution, thereby reinforcing the presumption of validity attached to the sale transactions. Additionally, learned counsel argues that the applicants have failed to prove any allegations of fraud with substantial evidence. He contends that to establish a claim of fraud, specific material facts and evidence must be presented, which the applicants have not provided. He argued that the chain of transactions leading to the registered sale deeds was conducted lawfully, with due consideration, and duly recorded in the city survey office. Lastly, he submits that the revisional jurisdiction of this Court is limited, and interference with concurrent findings of fact is warranted only in cases of gross misapprehension of evidence or jurisdictional infirmity. He maintains that the judgments and decrees of the courts below are legally sound and do not suffer from patent illegality or material irregularity warranting interference.

7. Learned Additional Advocate General, while refuting the applicants' assertions, contends that the instant revision petition is legally untenable. He

argues that the case squarely falls within the scope of concurrent findings of fact recorded by the courts below, which, under settled principles of law, cannot be disturbed by the revisional Court. He further maintains that the jurisdiction under revision is inherently circumscribed and does not extend to re-evaluating evidence or reassessing factual determinations made by the subordinate courts. Consequently, he submits that the present revision application is devoid of merit and warrants outright dismissal.

8. Having heard the learned counsel representing both parties and meticulously examined the impugned judgments and decrees, as well as the record and case law relied upon, with their able assistance.

9. A meticulous examination of the record and depositions reveals glaring inconsistencies in the applicants' case. The testimony of Mst. Noshina (Applicant/Plaintiff No.4) explicitly affirms that she and other plaintiffs signed the sale deeds in the office of the Sub-Registrar, affixed their thumb impressions, and acknowledged that their photographs were affixed on the documents. This direct admission undermines the fraud allegations. Admission of Execution, under Article 81 of Qanun-e-Shahadat Order, 1984, provides that "Admission of execution by a party to an attested document shall be sufficient proof of its execution as against him." Given the explicit admission by the applicants, the sale deeds stand conclusively proven under this provision.

10. A registered document carries a presumption of correctness unless strong and cogent evidence is presented to rebut its authenticity. The applicants have failed to discharge this burden, which negates their claim entirely.

11. It is a well-settled principle of law that a party cannot introduce facts through evidence not pleaded in the plaint. The "*secundum allegata et probata*" doctrine dictates that a litigant is bound by its pleadings and cannot subsequently alter or expand its case through evidence. The rationale behind this principle is to prevent surprises, ensure consistency in claims, and safeguard procedural fairness. The Supreme Court of Pakistan, in multiple authoritative judgments<sup>2</sup>, has reiterated this principle. Upon analyzing the plaint, it is evident that the applicants /plaintiffs did not initially plead fraud in their original claim. The plaint does not mention that the sale deeds were signed under misrepresentation of a power of attorney or that the properties were fraudulently transferred. Rather, this stance has been raised later, particularly

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<sup>2</sup> Hafiz Qari Abdul Fateh vs. Ms. Urooj Fatima (2024 SCMR 1709); Government of West Pakistan v. Haji Muhammad (PLD 1976 SC 469) and Abrar Ahmad vs. Irshad Ahmed (PLD 2014 SC 331)

during the evidence stage. Upon scrutiny of the record, the Learned appellate Court observed that the applicants /plaintiffs failed to state in their plaint that they were made to believe they were signing a power of attorney to secure a loan. The allegations of fraud were only raised during evidence, which is procedurally impermissible under established legal doctrine. Applicant/ /Plaintiff No.4, Mst. Noshina admitted that she and her co-plaintiffs had signed the sale deed before the Sub-Registrar, affixed their thumb impressions, and acknowledged that their photographs were affixed on the document. This admission contradicts their allegation that they were deceived into signing a power of attorney instead of a sale deed.

12. It is a fundamental principle of law that the burden of proving fraud lies squarely upon the party alleging it, and such allegations must be substantiated through clear, unimpeachable, impartial, and confidence-inspiring evidence. Mere assertions in the pleadings do not constitute legal proof and cannot be treated as a substitute for the stringent evidentiary requirements imposed by law. Fraud is a grave accusation, and judicial precedent has consistently held that it must be established beyond doubt through conclusive evidence rather than conjecture or presumption. The fraud vitiates even the most solemn transactions, yet it cannot be presumed; it must be proven through cogent and convincing material evidence. In the case of **Ahsan Ali**<sup>3</sup>, the Supreme Court categorically held that *“The burden of proving fraud, it must be remembered, is on the party alleging it, and that too by clear and convincing evidence, particularly where a long period has expired and valuable rights have accrued to the other side.”* Similarly, in the case of **Shamir**<sup>4</sup> The Supreme Court emphasized, *“Needless to mention that fraud must be proved through strong and independent evidence, and in the case in hand, no evidence at all was produced in support of the allegation of fraud.”* Further strengthening this principle, in the case of **Nasira Khatoon**<sup>5</sup>, the Supreme Court held that: *“The concealment of material facts by a person having knowledge or belief of such facts may constitute fraud, but the same must be proved through clear and convincing evidence. The burden of proving fraud lies on the party which alleges it, except in a case where the fraud is floating on the face of the record.”*

13. Additionally, it is well-settled that courts scrutinize fraud claims with extreme caution, given the grave consequences that such allegations entail.

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<sup>3</sup> Ahsan Ali vs. District Judge (PLD 1969 SC 167)

<sup>4</sup> Shamir vs. Faiz Elahi (1993 SCMR 145)

<sup>5</sup> Nasira Khatoon vs. Mst. Aisha Bai (2003 SCMR 1050)

Fraud, if proven, nullifies contracts, renders transactions void, and impacts legal rights, but if unproven, it exposes the complainant to adverse judicial consequences, including dismissal of claims and penal costs for frivolous litigation. Therefore, the onus rests heavily upon the party alleging fraud, who must furnish unequivocal, impartial, and independently verifiable evidence. Judicial precedents overwhelmingly reinforce that mere assertions in pleadings do not partake of the proof required under the law; instead, fraud must be proven through undeniable factual circumstances, failing which the claim is rejected outright. Thus, in light of established legal principles, the burden of proving fraud is stringent and cannot be discharged through speculative claims. The Supreme Court of Pakistan has consistently held that fraud must be proven with absolute clarity, backed by documentary evidence, credible witness statements, and impartial forensic verification, ensuring that justice is dispensed in accordance with the rule of law. Mere allegations, without substantive proof, are legally untenable and inadmissible in judicial proceedings. The precedents cited unequivocally uphold the doctrine that fraud is never presumed but must be established by unimpeachable evidence to warrant judicial redress.

14. The foregoing discussion categorically establishes that the sale deeds were voluntarily executed, free from fraud, coercion, or misrepresentation. The applicants/plaintiffs have failed to discharge their legal burden, rendering their claim legally infirm.

15. Learned Courts below have thoroughly examined the pleadings, oral testimonies, and documentary evidence presented by both parties. They have comprehensively addressed the factual and legal disputes and reached a well-founded conclusion. Consequently, their findings are upheld. Furthermore, regarding interference in concurrent findings, the Supreme Court of Pakistan, in the case of **Administrator Thal Development through EACO Bhakkar**<sup>6</sup> held that when both the trial and appellate courts have properly appreciated the evidence in favour of the applicants, their findings should not be disturbed by the revisional Court under Section 115 of the Civil Procedure Code (C.P.C.), which is primarily intended to correct jurisdictional errors and significant legal irregularities that result in a miscarriage of justice.

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<sup>6</sup> Administrator, Thal Development through EACO Bhakkar and others v. Ali Muhammad (2012 SCMR 730)



16. Since no misreading or non-reading of evidence, nor any legal or factual infirmity, has been identified in the judgments and decrees of the learned courts below, the revision petition stands **dismissed**.

**JUDGE**

AHSAN K. ABRO