

IN THE HIGH COURT OF SINDH AT KARACHI
Civil Revision No. 141 of 2005

Applicant : Dr. Noor Alam Khan Warsi
s/o Late Aleemuddin Khan, since
deceased, through his legal heirs, through
Mr. Izhar Alam Farooqui, Advocate.

Respondent : Muhammad Feroz Anwar Khan
No.1. s/o Dr. Noor Alam Khan Warsi, through
Mr. Shaikh Zahid Mehmood, Advocate.

Respondents : Director Katchi Abadies, K.M.C. &
No.2 & 3. Assistant Director (Land) Katchi Abadies,
K.M.C., respectively, through Mr. Junaid
Hussain, Advocate.

Date of hearings : **07.05.2026 & 14.05.2026**
Date of order : **25.05.2026.**

ORDER

ZAFAR AHMED RAJPUT, CJ. - The Applicant/Plaintiff filed a F.C. Suit bearing No.541/1996 for declaration, possession, cancellation of documents, permanent injunction and mesne profit against the Respondents, alleging therein that he had purchased two plots of land, each measuring 120 square yards, bearing No. 831 & 842, situated near Qasim Chowk, Gulshan-e-Bihar, Sector No. 16, Orangi Town, Karachi from one Shahjahan in the sum of Rs.85,000/- under written agreement, dated 27.10.1989; that after raising construction on plot No. 831, a new number i.e. 160 was assigned to it and he established his clinic being a homeopathic doctor; that the Respondent No.1 is his real son, whom he allowed to work with him who, after his marriage, started living separately but continued to work with him in his clinic; that since the Applicant due to his old age and illness could not give full time and attendance to the clinic, the Respondent No.1 in collusion with

Respondents No. 2 & 3 managed to obtain lease of the suit property and, on 09.02.1996, got it registered/leased with the Sub-Registrar in his own name fraudulently. It was the claim of the Applicant that he was the real owner of the suit property; he paid water & sewerage charges, KESC electric bills, property tax and, in the year 1991, he applied to Respondent No. 2 for correction of layout plan of the plot. It was also the claim of the Applicant that, on 10.03.1995, he was ousted from the suit property by the Respondent No. 1, who illegally occupied the same; he submitted an application to Respondent No. 2 for cancellation of the lease but no action was taken. It was further case of the Applicant that the Respondent No.1 has obtained the lease through fraud; hence, cause of action accrued to him to file the suit, seeking following relief:

- i). *Declaring that the plaintiff is the rightful and only the legal owner of the suit premises and the lease deed dated 9.2.1995, registered in the name of the defendant No. 1, being absolutely void, illegal and malafidely.*
- ii). *Ordering that the lease of the suit property bearing No. 160, situated at Gulshan e-Bihar, Sheet No. 1 measuring 120 Sq. Yds., Orangi Township, Karachi, fraudulently obtained by the defendant No. 1, in his own name from the office of the Assistant Director (Land), Katchi Abadies, K.M.C., Orangi Township, Karachi, vide Registration No. 1211, dated 9.2.1995, M.F. Roll No. 2036, Photo Registrar Karachi, dated 26.2.1995, be cancelled and delivered upto the Registrar for recording entry of cancellation in his records.*
- iii). *Judgment and decree against the defendant No. 1 for recovery of possession of suit property, directing him to handover the vacant and peaceful possession of the suit property to the plaintiff*
- iv). *Judgment and decree against the defendant No. 1 for the grant of mense profit at the rate of Rs.20/- per diem from the date of 10.3.1995, the illegal possession of the defendant No. 1, till its realization in satisfaction of the decree.*
- v). *Grant permanent injunction, restraining the defendants and all other persons from transferring the suit property bearing No. 160, situated at Gulshan-e-Bihar, Sheet No. 1, Sector-16, measuring 120 Sq. Yds., Orangi Township, Karachi, to any other person or persons in any manner whatsoever, till disposal of the suit.*
- vi). *Grant any relief or relieves, this Hon'ble Court may deem fit and proper under the circumstances of the case.*

2. The Respondent/Defendant No. 1 contested the suit by filing his written statement wherein he, besides raising preliminary legal objections regarding the maintainability of the suit and claiming it a counter blast to the suit bearing No. 446/1996, which he had filed against his real brother Irshad Anwar Khan, denied the averments of the plaint and contended that the aforesaid two plots were purchased from the funds provided by him to the Applicant and its entire construction was made from his funds; that he properly applied for the lease and, after making compliance with the codal formalities, the official Respondents executed the lease in his favour; that since they all were living together, the Applicant deposited the bills, which could not constitute any title to the property.

3. The Trial Court proceeded against the official Respondents/Defendants No. 2 & 3 ex-parte and, on the divergent pleadings of the parties, framed/settled the following issues:

1. *Whether suit is not maintainable?*
2. *Whether plaintiff has no cause of action?*
3. *Whether the plaintiff has purchased plot No. 160(old No. 831) Gulshan-e-Bihar Sector 10, measuring 120 Sq. Yds. from Shahjahan in 1989 and raised construction thereon?*
4. *Whether the plaintiff has been depositing utility bills and property tax in his name?*
5. *Whether the plaintiff is entitled to grant declaration, possession and cancellation of documents permanent injunction and mesne profit?*
6. *Whether the defendant illegally and fraudulently transfer the suit property in his name with the help of defendant No. 2 and 3?*
7. *What should the decree be?*

4. At the trial, the Applicant in support of his claim examined himself and produced the sale agreement as Ex.P1/A, photocopy of lease deed as

Ex. P1/ B, Form P.T.1 for the year 1992-93 as Ex. P1/C, bills of water & sewerage charges as Ex. P1/D to Ex. P1-F, payment vouchers of property tax as Ex.P1/G to Ex. P1/I, photocopy of application addressed to Respondent No. 2 as Ex. P1/J, paid bill of KESC as Ex. P1/K and one photograph of the property as Ex. P1/L. He has also examined his son Irshad Anwar Khan at Ex. P/2. The Respondent No. 1 examined the Clerk of KMC, Katchi Abadies, namely, S. M. Javed at Ex. D/1, who produced photocopy of Bank deposit slip of the occupancy bill in respect of the property as Ex. D1/A, photocopy of Press Publication in newspaper of Alaan as Ex. D1/B and photocopy of Surveyor's Site Report as Ex. D1/C. The Respondent No. 1 also examined himself at Ex. D/2, he produced his letter addressed to Excise & Taxation Officer as Ex D2/B, Form PT-1 for the year 1992-93 as Ex. D/3, paid bill of water & sewerage as Ex. D/4, paid demand note of telephone as Ex. D/5 and paid telephone bill.

5. In first round of litigation, the Trial Court decreed the suit except prayer clause iv, vide judgment and decree dated 12.12.2001. Against that, the Respondent No. 1 preferred Civil Appeal No. 11/2002, which was allowed by the learned IV-Additional District Judge, Karachi-West, by setting aside the impugned judgment and decree, vide judgment dated 15.08.2003, thereby remanded the case with the following directions: -

"Several important points has been left to be discussed such as not examining the most and important witness i.e. Shahjahan from whom by way of sale agreement respondent No. 1 purchased the same as well as the witness of an agreement, it is settled law sale agreement does not confer any right and title of ownership on the plots in question till lease hold right acquire by the person who claims to be the owner of the same legally, as far as the point that appellant obtained lease by fraud requires strong evidence while ignoring the evidence of important KMC witness on the said point requires interference in the

matter, I hereby set aside the judgment passed by the trial Court Judge, remand back the matter with direction to discuss the important aspect of the case for arrival at the proper conclusion whether sale agreement confers right, title as owner of the disputed plot and in lieu of that sale agreement, sale deed obtained by the appellant is liable to be cancelled. Parties counsel are directed to appear in the trial Court on 18.08.2003."

6. In second round of litigation, the learned 1st Senior Civil Judge, Karachi-West after hearing the learned counsel for the parties and on the assessment of evidence on record dismissed the suit of the Applicant, vide judgment and decree dated 25.11.2003 by answering Issues No. 1 and 2 in affirmative and Issues No. 3, 5 and 6 in negative. Against that, the Applicant preferred Civil Appeal No.58/2004, which was heard and dismissed by the learned District Judge, Karachi-West, vide judgment and decree dated 22.03.2005 and 31.03.2005, respectively. It is against that concurrent findings of the Courts below, that the Applicant has preferred this Civil Revision Application.

7. Learned counsel for the Applicant has contended that the impugned decisions of the Courts below being contrary to law and facts are liable to be set aside; that the Courts below failed to consider the contradictory defence of the Respondent No.1, who in his written statement had stated that the suit property was purchased by his father (*Applicant*) from the funds provided by him while in his evidence, he deposed that the Applicant had gifted him the suit property; that the Courts below erred in holding that the Applicant failed to prove that he had purchased the suit property from Shahjahan and raised construction thereon; that once the Respondent No.1 in his written statement asserted that the suit property was purchased and constructed by the Applicant from the funds provided by him, the burden

of proof shifted on the Respondent No.1 to prove it; that in the light of alleged assertion, there was no need of proving the alleged sale and purchase between the Applicant and Shahjahan; that it was incumbent upon the Courts below to record their findings as per the claim and counter claim of the parties and decide the *lis* on merit; that the learned Courts below failed to exercise their jurisdiction in accordance with law hence, the impugned judgments & decrees are not sustainable in law.

8. Conversely, learned counsel for Respondent No.1 has fully supported the concurrent findings of the Courts below by maintaining that the Applicant failed to prove his claim of purchasing suit property by producing important witness i.e. Shahjahan from whom by way of sale agreement he claimed to have purchased the same as well as the witnesses to sale agreement; that a sale agreement does not confer any right and title of ownership in respect of any immovable property; that the Applicant failed to prove by producing cogent evidence that the Respondent No.1 had obtained lease-hold rights by fraud.

9. Learned counsel for Respondents No. 2 & 3 has adopted the arguments made by the learned counsel for Respondent No. 1.

10. I have heard learned counsel for the parties and perused the material available on record.

11. It is now well settled principle of law that the powers of High Court in revisional jurisdiction under section 115, CPC are very limited. On reappraisal of the evidence, even if a different view is possible, the High Court cannot substitute its own view and upset the findings of fact

concurrently arrived at by the Courts below. Such findings can only be interfered with if the Courts below have misread and misconstrued the evidence on record or have committed any jurisdictional error or any material irregularity and illegality in arriving at such findings.

12. In the instant case, the learned counsel for the Applicant has failed to point out any misreading and non-reading of evidence or any misconceiving of fact or commission of any jurisdictional error by the learned Courts below.

13. It is an admitted position that the Applicant maintained his suit on the basis of a sale agreement, dated 27.10.1989, and sought, *inter alia*, declaration to the effect that he was the rightful owner of the suit property and the lease deed dated 09.02.1995, registered in the name of the Respondent No. 1, being absolutely void, illegal and mala fide. Katchi Abadi land is "State land". It cannot be sold or transferred privately until the State regularizes the settlement and issues an official proprietary lease/allotment to the occupant under the Act. It is a matter of record that the suit property was initially under "unauthorized possession" in a *Katchi Abadi*; subsequently, it became available for grant on "lease" to its possession holder by way of regularization of its unauthorized possession, through alleged registered lease deed, executed in favour of the Respondent No.1 by the office of the official Respondents. The claim of the Applicant is that he was in possession of the suit property on the basis of the alleged sale agreement. The Courts below dismissed the Applicant's claim/suit concurrently, vide impugned judgments and decrees. The

learned Appellate Court while passing impugned judgment observed as under: -

“I have looked at the evidence led by both the parties in case. The appellant and respondent No.1 are real father and son respectively, they migrated to Pakistan from Bangladesh. According to the appellant, he came to Pakistan in 1980. He admitted in his cross-examination that he does not have any document i.e. NIC or domicile. He claimed that he had purchased the said two plots from one Shahjahan under sale agreement and paid Rs.85,000/-, but neither the said Shahjahan, nor any witness has been produced. The appellant has examined his son Irshad Anwar Khan. A clerk of respondent No.2 has also been examined, he has stated that the KMC had leased the plots in question in the name of respondent No.1 after verifying the possession as per Surveyor’s report, which he produced on record and stated that the Shahjahan had never been owner of the said plot, nor he was in possession according to their report.

Learned Senior Civil Judge has held the issue No.1 and 2 in affirmative, it is true that these issues have been settled on the pleadings of the respondent No.1 and the burden to prove lies upon him that the suit is not maintainable. It is an admitted position that a lease has been executed in favour of respondent No.1. The record of KMC has been produced through their clerk, according to which the lease has been granted after due survey in respect of said plots, the report of Surveyor has been produced on record. On the other hand, the appellant has relied on an un-registered sale agreement, the executant of that sale agreement has not been produced, nor any witness of that agreement nor the name of that Shahjahan is available in the record of rights. Therefore, the learned Senior Civil Judge has rightly held that the suit is not maintainable under section 42 of Specific Relief Act.

As regards the issue No.3, the learned Senior Civil Judge has rightly decided that the appellant has failed to prove that he had purchased the property in question from Shahjahan or raised construction thereon. Mere issuance of utility bills in his name, it cannot be said that he had purchased the property and he is owner of property, whereas similar type of utility bills of different periods issued and has been paid by respondent No.1.”

14. The learned counsel for the Applicant has failed to rebut the aforementioned observations of the learned Appellate Court. The findings of the Courts below with regard to the “possession” of the suit property

are based on the evidence of D/1, S. M. Javed, Clerk of KMC, Katchi Abadies/ Respondent No.2, which demonstrates that the KMC had leased out the suit property in the name of Respondent No.1 after verifying the possession through its surveyor, whose report is on record as Ex. D1/C. The said witness also deposed that Shahjahan had never been the owner of the said plot, nor he was in possession of it according to their report. Even it is not mentioned in the alleged sale agreement that Shahjahan was in possession of the suit property and he handed over the possession to the Applicant. Hence, the initial burden was on the Applicant to prove that he was in unauthorized possession of suit property initially when it was a "State land" before granting of lease-hold rights on the basis of possession. In such like case, it is not the purchasing of plot/*Malba*, but "unauthorized possession" that is required to be proved for regularization under the Sindh Katchi Abadies Act, 1987. In the instant case, the suit property was part of the Katchi Abadi; the rights pertaining thereto were regulated under the provisions of the Act (*ibid*) and the scheme framed thereunder. In such circumstances, the legal position is clear that a declaration of ownership in respect of the suit property could not be granted in favour of the Applicant unless he was able to establish existence of a legally enforceable right or an existing legal character therein within the meaning of section 42 of the Specific relief Act, 1877.

15. Even otherwise, the Applicant has failed to prove the execution of the alleged sale agreement in his favour. Moreover, it is now well-settled that a sale agreement does not confer legal ownership or title to a property. Under section 54 of the Transfer of Property Act, 1882, ownership of immovable property is only transferable vide a registered conveyance

deed. A sale agreement serves only as an executory contract, granting the buyer the right to file a suit for “specific performance” not for ownership right. Under section 49 of the Registration Act, 1908, unregistered documents do not create, declare, or assign any right, title, or interest in immovable property.

16. For the foregoing facts, discussions and reasons, the judgments passed by the Courts below appear to be well reasoned and in accordance with the pleadings and evidence on record, which do not suffer from any illegality or irregularity requiring any interference by this Court in its revisional jurisdiction. Accordingly, the instant Civil Revision Application is dismissed being devoid of any merit.

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