

Judgment Sheet  
**IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD**

IInd Appeal No. 32 of 2015  
[ Muhammad Ishaque v. Province of Sindh & others ]

IInd Appeal No. 34 of 2015  
[ Muhammad Ishaque v. Province of Sindh & others ]

IInd Appeal No. 23 of 2022  
[Muhammad Ishaque v. Muhammad Qasim]

Appellant : Through Mr. Shaukat Ali Birhamani, Advocate  
Respondent : Muhammad Punhal for self and as attorney of his  
father Respondent-Muhammad Qasim, in person  
Date of Hearing: 05.05.2025  
Date of Announcement: 26.05.2025

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

**ARSHAD HUSSAIN KHAN, J.-** This consolidated judgment shall dispose of the aforementioned Second Appeals, as the dispute pertains to the same subject matter and involves the same parties.

1. Appellant has filed the captioned IInd Appeal Nos. 32 & 34 of 2015, being aggrieved by the common judgment and decree dated 18.9.2015, passed by learned Additional District Judge, Sehwan, whereby the Civil Appeal Nos. 14 & 15 of 2014 filed by him against the common judgments dated 10.9.2014, passed by Senior Civil Judge, Sehwan, were dismissed while maintaining the judgment (dismissal of suits) of Senior Civil Judge Sehwan, passed in F.C. Suit Nos. 26 of 2011 and 03 No. 2012 filed by the appellant against the respondent-Muhammad Qasim. The appellant has also preferred IInd Appeal No.23 of 2022, against the Judgment dated 3.11.2021 whereby learned Additional District Judge-VI, Dadu, dismissed Civil Appeal No. 103 of 2021 while maintaining the judgment and decree dated 18.6.2021 (decreeing the suit of the respondent-Muhammad Qasim) passed by learned Senior Civil Judge, Dadu-II, Mehar @ Dadu, in F.C Suit No. 201 of 2019 against the appellant.

2. Succinctly, the relevant facts of the case are that appellant Muhammad Ishaque allegedly entered into sale agreement with respondent

Muhammad Punhal in respect of agricultural land admeasuring 35-38 acres situated in Deh karyani Tapo Dal Taluka Sehwan and in respect of Plot admeasuring 4800 sq.ft situated in Bhan Town, Taluka Sehwan District Jamshoro. The total sale consideration was fixed at Rs.6,00,000/- (i.e. Rs.3,00,000/- for **agricultural land** and Rs. 3,00,000/- for Plot); out of which Rs.5,00,000/- was paid as earnest money (i.e. Rs.2,50,000/- for agricultural land and Rs.2,50,000/- for **plot**). The subject matter of both the suits herein after referred to as the '**suit land**'. The remaining amount of Rs.1,00,000/- was to be paid at the time of Sale Deed. Since respondent-Muhammad Punhal failed to execute the Sale Deeds, he filed F.C. Suit No. 26 of 2011 for specific performance of contract in respect of **agricultural land** and F.C. Suit No. 03 of 2012 for specific performance of contract in respect of **Plot**. Both the suits were dismissed, vide common judgment dated 10.09.2014 by holding that the sale agreement(s) is / are false, bogus and void agreement(s) having no sanctity in the eye of law. The Appeals preferred against the said judgments were also dismissed, vide common judgments dated 18.09.2015; hence listed **IInd Appeal Nos. 32 & 34 of 2015** have been preferred.

Subsequently, in the year 2019 respondent-Muhammad Qasim filed **F.C. Suit No. 26 of 2019** (New No. 201 of 2019) for defamation, damages, compensation & Mesne Profit of Rs. 1,20,07,500/- against the appellant-Muhammad Ishaque. The said suit was decreed to the extent of Rs.60,00,000/- vide judgment dated 18.06.2021. The Civil Appeal No. 103 of 2021 preferred against the said judgment was also dismissed vide judgment dated 3.11.2021, hence the instant **IInd Appeal No. 23 of 2022**.

In the plaint of above F.C. Suit No. 26 of 2011 and F.C. Suit No. 03 of 2012 the appellant-Muhammad Ishaque claimed to have entered into sale agreement, paid earnest money and taken possession of agricultural land and plot in question before the witnesses including Habibullah and Muhammad Haroon; the respondent Muhammad Qasim in his written statement denied such sale agreement, earnest money and for possession he prayed that appellant Muhammad Ishaque has illegally encroached upon his land.

3. Learned counsel for the appellant in IInd Appeal No. 32 & 34 of 2015 argued that the impugned judgments and decree are against the law

and have been passed without considering the material evidence produced by the parties; that learned Additional District Judge Sehwan while deciding the Appeal failed to determine some material issues of law involved in the matter; that both the courts below have unnecessarily relied upon the evidence of respondent No.6 which itself is inconsistent. The learned Appellate Court ought not to have passed the impugned judgment, as transfer applications had been filed by the appellant against the Presiding Officer; that the evidence available on the record was neither considered nor properly discussed by the courts below hence the impugned judgments are liable to be set-aside.

4. Learned counsel for the appellant in IInd Appeal No. 23 of 2022 argued that learned appellate court violated Order 41 Rule 31 CPC; that learned trial court while awarding mesne profit to respondent, did not consider Section 2(12) CPC, Section 9, 10, 11 & 12 of Court Fees Act, hence the finding on Issue No.1 is liable to be reversed; that learned trial court neither framed the issue of mesne profit nor considered the provision of law laid down under Order XX Rule 5 CPC and wrongly decided Issue Nos. 2 and 3 jointly and the finding on these issues is liable to be reversed; that learned trial court erred in granting mesne profit from 2015, 2016 and 2017 and did not consider the date of filing viz. 2.10.2019, hence granting of mesne profit is a clear violation of Limitation Act; that earlier respondent filed F.C Suit No. 71 of 2014 claiming damages at Rs.27,00,000/- and Rs.30,00,000/- as mesne profit, the plaint in the said suit was rejected against which respondent filed C.A. No. 17 of 2016 which was withdrawn by the respondent, hence second suit on the same cause of action is barred under Section 11 CPC; that limitation for general damages is one year whereas respondent received possession of agricultural land in June 2017 as such the relief of damages has been awarded after expiry of one year; therefore, such findings are contrary to the provisions of law; that respondent filed Criminal Cases against the appellant in spite of civil dispute between the parties and dismissal of criminal cases comes within the purview of malicious prosecution; learned counsel lastly prayed for allowing the instant IInd Appeals.

5. Respondent-Muhammad Punhal appearing in person in IInd Appeal No. 32 & 34 of 2015 whereas in IInd No. 23 of 2022 he is appearing as attorney of his father-Muhammad Qasim, supported the impugned

judgments and in rebuttal he has contended that the facts of the appeals have been discussed and evaluated by the trial court as well as first appellate court. Further both the courts below, while framing the issues, dilated upon each issue on the basis of documentary and other evidences available on record, had passed the judgments impugned herein, as such, the same are not liable to be interfered with by this court in the present proceedings. Lastly, contended that present appeals, being frivolous and misconceived are liable to be dismissed with cost.

6. Heard learned counsel for the parties and perused the material available on the record.

7. From the perusal of the record, it appears that appellant / plaintiff filed three (3) F.C. suits; two suits bearing (i) Suit No. 26 of 2011 in respect of agricultural land ad-measuring 35-38 acres in Deh Karani, Tapo Dal, Taluka Sehwan, District Jamshoro and (ii) Suit No.03 of 2012 in respect of Plot admeasuring 4800 Sq. Ft, situated in Bhan Town, Taluka Sehwan, District Jamshoro, for specific performance of the contract and permanent injunction, both the suits hereinafter referred to as '**Specific Performance suits**', against respondent No.6 (Muhammad Punhal) in IInd Appeals 32 and 34 of 2015, whereas (iii) Suit bearing No. 52 of 2011, against respondent No.1 (Muhammad Qasim) in IInd Appeal No. 23 of 2022 for declaration, specific performance, and permanent injunction in respect of agricultural land admeasuring 14-28 Acres, situated in Deh Bhand, Tapo Khudad Taluka Dadu, (herein after referred to as the '**declaration suit**').

8. The declaration suit after a full-fledged trial was dismissed, against which civil appeal was filed that too was dismissed and against the said dismissal the appellant preferred civil revision before this court that was also dismissed. Thereafter the appellant challenged the order passed in the civil revision before the Supreme Court of Pakistan, which was also dismissed, vide order 21.06.2017. In the said proceedings it came on record that the present appellant was in illegal possession of the subject matter of declaration suit. Consequently, the supreme court of Pakistan in the above order directed the revenue authorities to ensure the demarcation and possession of the land of the present respondent. However, when the revenue authorities failed to comply with the said direction, present respondent filed contempt of court application before the supreme Court,

upon which the possession was handed over to the respondent in the year 2017 as reflected from the order dated 13.12.2017 passed by the Supreme Court of Pakistan in Cr. Original petition No. 13-K of 2017 in Civil Petition No. 804-K of 2016. Subsequently, the present respondent-Muhammad Qasim filed **F.C. Suit No. 26 of 2019** (New No. 201 of 2019) for defamation, damages for malicious prosecution, compensation & Mesne Profit of Rs. 1,20,07,500/- against appellant Muhammad Ishaque. The said suit was decreed to the extent of Rs.60,00,000/- vide judgment dated 18.06.2021. The Civil Appeal No. 103 of 2021 preferred against the said judgment was also dismissed vide judgment dated 3.11.2021, hence the instant **IInd Appeal No. 23 of 2022**. Relevant portion of the judgment of the first appellate court is reproduced as under:

“Respondent/plaintiff had established that he was owner of the suit property. Possession of appellant upon the suit land could not be lawful. Respondent had been denied to enjoy ownership right in the land in question. Possession of the suit property should be delivered immediately to the plaintiff/respondent after the decision of the suit for specific performance and retaining the possession under the garb of right to appeal, etc. was dishonest and malafide to drag the respondent/plaintiff in fruitless litigation and achieving wrongful gain. Appellant/ defendant was in illegal possession of the suit property on the basis of forged, fabricated and manipulated documents of sale. Appellant/ defendant had caused huge financial losses to the respondent/plaintiff on account of illegal possession of the suit property. Respondent/plaintiff was entitled to be granted mesne profit and damages to be recovered from the appellant/ defendant. Responsibility of the learned trial court was to assess the mense profits and damages after evaluating whole case from all four angles. When damages claimed were general nature then exercise of jurisdiction in determining and justifying the quantum in awarding the compensation would vest in the Trial Court. Quantum of damages to be awarded by the court was to be determined by reasonable assessment and guess work of man of ordinary prudence subject to keeping in view the evidence produced by the parties and surrounding circumstances thereof while deciding the question thereby assessing mense profit the person claiming was entitled only to the extent whatever the person in wrongful possession had collected from the property or the amount which without willful default he had received. In my humble estimation, learned trial court had rightly come to the conclusion that the respondent/plaintiff was deprived use of his property and suffered monetary loss. The point No.1 is answered accordingly.”

Insofar as the specific performance suits are concerned, both the suits after full-fledged trial were dismissed vide common judgment dated 10.09.2014 by holding that the sale agreement(s) is / are false, bogus and void agreement(s) having no sanctity in the eye of law. The Appeals preferred against the said judgments were also dismissed vide common judgments dated 18.09.2015; hence listed **IInd Appeal Nos. 32 & 34 of 2015** have been preferred.

9. Record further transpires that more or less all the objections/ contentions regarding maintainability, entitlement to claim of mesne profits and damages raised by learned counsel for the appellants in instant 2<sup>nd</sup> appeals have already been asserted before the trial court and the trial court while dealing with each and every objection / contention raised by the appellant/defendant has given its findings based on sound reasoning and supported by references to the relevant laws. Subsequently, the said findings of the trial court were upheld by the first appellate court as well. Hence, in my view, there arises no question that the impugned judgments are erroneous, contrary to law and without application of judicial mind as both the courts below while thoroughly examining the evidence and properly evaluating the facts reached a concurrent conclusion.

10. It is also well settled law that concurrent findings of the facts by the courts below cannot be disturbed by the High Court in the second appeal, unless the courts below while recording the findings of fact have either misread the evidence or have ignored the material piece of evidence<sup>1</sup>. Moreover, the concurrent findings of fact recorded by the two courts below are entitled to deference and cannot be interfered with in absence of any legal infirmity, jurisdictional error, or misreading of evidence, which in the present case is missing. Learned counsel for the appellants has also failed to point out any such material irregularity.

11. Besides, this is a second appeal, which has been filed under Section 100 C.P.C. 1908, under which a second appeal to the High Court lies only on any of the following grounds: (a) the decision being contrary to law or usage having the force of law; (b) the decision having failed to determine some material issue of law or usage having the force of law; and (c) a substantial error or defect in the procedure provided by CPC or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon merits. However, in the instant matter, none of the aforesaid grounds in favour of appellant is available. The learned counsel has also not been able to show any substantial error or defect in the Impugned Judgments.

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<sup>1</sup> *Keramat Ali and another v. Muhammad Yunus Haji and another* (PLD 1963 SC 191), *Phatana v. Mst. Wasai and another* (PLD 1965 SC 134) and *Haji Muhammad Din v. Malik Muhammad Abdullah* (PLD 1994 SC 291).

12. The Supreme Court of Pakistan in the case of *Zafar Iqbal and others v. Naseer Ahmed and others* [2022 SCMR 2006] while interpreting the scope and ambit of section 100 of the CPC has observed as follows :

“The scope of second appeal is thus restricted and limited to these grounds, as section 101 expressly mandates that no second appeal shall lie except on the grounds mentioned in section 100. But we have noticed that notwithstanding such clear provisions on the scope of second appeal, sometimes the High Courts deal with and decide second appeals as if those were first appeals; they thus assume and exercise a jurisdiction which the High Courts do not possess, and thereby also contribute for unjustified prolongation of litigation process which is already choked with high pendency of cases”.

In another case viz. *Muzafar Iqbal vs. Mst. Riffat Parveen and others*, [2023 SCMR 1652] the Supreme Court of Pakistan while dilating upon the scope of second appeal, inter alia, has held as under :

“There is a marked distinction between two appellate jurisdictions; one is conferred by section 96, C.P.C. in which the Appellate Court may embark upon the questions of fact, while in the second appeal provided under section 100, C.P.C., the High Court cannot interfere with the findings of fact recorded by the first Appellate Court, rather the jurisdiction is somewhat confined to the questions of law which is sine qua non for the exercise of the jurisdiction under section 100, C.P.C. The High Court cannot surrogate or substitute its own standpoint for that of the first Appellate Court, unless the conclusion drawn by lower fora is erroneous or defective or may lead to a miscarriage of justice, but the High Court cannot set into motion a roving enquiry into the facts by examining the evidence afresh in order to upset the findings of fact recorded by the first Appellate Court”.

13. Consequent upon what has been discussed above, the captioned second appeals merits no consideration, accordingly the same are dismissed with no order as to cost.

JUDGE