

# IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

*Civil Revision Application No.S-87 of 2010*  
*(Abdul Sattar Vs. Muhammad Ismail & others)*

Applicant : Abdul Sattar Brohi, *through* Mr. Mazhar Ali Mangan, Advocate.

Respondents : Muhammad Ismail and others, *through* Mr. Imdad Ali Mashori, Advocate for Respondents No.01 to 06, and Mr.Abdul Waris Bhutto, Assistant Advocate General, Sindh.

Date of Hearing : 06.11.2025.

Date of Decision : 06.11.2025..

Date of Reasons : 10.11.2025.

## JUDGMENT

*Ali Haider 'Ada'.I* Through the instant Civil Revision Application, the applicant has assailed the judgment dated 28.09.2010, passed by the learned Additional District Judge, Shahdadkot, in Civil Appeal No.15 of 2010, whereby the judgment and decree of the learned trial court in Civil Suit No.21 of 2006, filed by the applicant, were set aside and the suit was dismissed. Being aggrieved by the said appellate judgment, the applicant has invoked the revisional jurisdiction of this Court and called the same in question.

2. Briefly, the applicant filed Civil Suit No.21 of 2006 against the defendants/respondents, asserting lawful ownership of the property in question. The applicant contended that his title had been clouded by the defendants/respondents, who claimed to have purchased the same property through one Muhammad Ameen, alleging that Muhammad Ameen had earlier purchased it from the applicant. Conversely, the respondents instituted Civil Suit No.12 of 2007, asserting their ownership based on an alleged agreement to sell between Muhammad Ameen and themselves. Both suits were consolidated, and the learned trial court framed the following issues for determination:

- i. *Whether, the plaintiff Abdul Sattar is owner of the suit land?*
- ii. *Whether the plaintiff Abdul Sattar is in possession of the suit land?*
- iii. *Whether, the father of defendants No.1-A to 1-J executed an agreement of sale with predecessor in interest of defendants No.9 to 14 (plaintiff in F.C.Suit No.12/2007)?*
- iv. *Whether, the plaintiff is driver by profession and resident of Nochki Balochistan?*
- v. *Whether, the suit filed by the plaintiff is time barred and not maintainable according to law?*
- vi. *Whether, the plaintiff has no cause of action to file the suit?*
- vii. *Whether, the plaintiff is not entitle for the relief sought by him?*
- viii. *What shall the decree be?*

3. After framing the issues, both parties led their respective evidence. Subsequently, the learned trial court decreed the applicant's suit bearing No.21 of 2006 and dismissed the suit filed by the respondents.

4. Being aggrieved, the respondents preferred two separate appeals, challenging the judgment and decree of the trial court. The learned appellate court, after hearing the parties, set aside the judgment and decree of the trial court to the extent that the applicant's suit was held to be not maintainable. However, it was further observed that the respondents had also failed to prove their alleged agreement to sell in accordance with the law; hence, to that extent, the findings of the trial court were maintained.

5. The applicant, being dissatisfied with the appellate court's verdict, has filed the present Civil Revision to challenge the same. It is pertinent to note that the respondents, who claimed ownership of the property in question based on an agreement to sell, did not file any civil revision or avail any other legal remedy to assail the findings of the appellate court. Consequently, the judgment and decree of both the trial and appellate courts, to their extent, have attained finality.

6. In the instant Civil Revision Application, respondents No.1 to 6 appeared through their counsel, whereas respondents No.7 to 16 failed to appear despite service through all permissible modes, including publication. In view of this, the service upon the absent respondents is held to be valid, and the matter proceeded to a hearing.

7. Learned counsel for the applicant submits that there is no hard and fast rule that a person who has not claimed possession can be excluded from approaching the courts. He contends that it was solely on this ground that the appellate court set aside the decree of the trial court, which had been passed in favor of the applicant. The applicant, being the lawful owner, is entitled to enjoy the property, and such ownership was affirmed by the trial court after a full-fledged trial. The learned counsel argued that the appellate court, without properly considering the entire record and evidence, erroneously set aside the impugned decree, and therefore its findings ought to be set aside. He has relied upon *PLD 2022 SC 73* and *2022 YLR 2383* in support of his contentions.

8. Conversely, learned counsel for the respondents contends that the appellate court rightly dismissed the applicant's civil suit to the extent of maintainability, submitting that a suit is not maintainable if possession has not been claimed. He further submits that the property in question is legally under the control of the respondents by virtue of an agreement to sell, which is fully recognized under the law. He has relied upon *PLD 1992 Karachi 71* and *2004 CLC 441* in support of his submissions.

9. Learned Assistant Advocate General, Sindh, supports the findings of the trial court, submitting that the ownership of the property has been fully established. He argued that to reverse the trial court's decree, strong and cogent reasons are required, which, according to him, have not been expressed in the appellate court's judgment.

10. Heard arguments and perused the material available on record.

11. It is pertinent to note that the present litigation has two distinct phases. In the first phase, the applicant has instituted a declaratory suit asserting ownership of the property in question. In the second phase, the respondents have claimed the same property on the basis of an agreement to sell. In analyzing the second phase, it is important to observe that in a suit for specific performance, the grant of a decree is a discretionary relief vested in the court. It is settled law that if the court concludes that, in the interest of equity and fairness, the grant of a decree leans in favor of the plaintiff, the court may exercise its discretion to grant such relief. Conversely, even if the plaintiff proves the existence of a valid agreement to sell, the court is not bound to grant a decree and may refuse the relief if, in the opinion of the court, the circumstances do not justify specific performance. Reliance in this regard may

be placed upon the judgment of the Hon'ble Supreme Court in **Ufaid Gul vs Mst. Farkhanda Ayub Khan and others, 2025 SCMR 64.**

12. As per the record, the agreement to sell produced by the respondents, on which they claimed their entitlement over the property in question, is defective in that all pages were not signed or thumb-impressed by the parties or witnesses. If, the first page of an agreement is excluded from consideration due to the absence of signatures or thumb impressions, the agreement cannot be treated as duly executed, and consequently, a suit for specific performance based on such defective agreement cannot be decreed. Support for this proposition is drawn from the judgment of the Hon'ble Supreme Court in **Akhtar Waheed vs Muhammad Hussain and others, 2025 SCMR 551.**

13. As per the record, the agreement to sell was executed in the year 1979, whereas the civil suit was filed in the year 2007. The Respondent has not put forth any plausible explanation for such an inordinate delay in filing the suit. On the face of it, the suit is barred by time, and there is no valid justification for the delay. Reliance in this regard may be placed on the judgment of the Hon'ble Supreme Court in **Ghulam Qadir vs Ghulam Muhammad Kaleem and others, 2025 SCMR 1425**, wherein it was held that undue delay in filing a civil suit, without sufficient cause, renders the claim time-barred and liable to be dismissed.

14. So far as the arguments that the applicant sought only a declaratory decree without claiming possession are concerned, it is clear that even in his civil suit, the applicant expressly denied the entitlement of the other side to take possession of the property in question. As such, possession was not sought as a relief. The contention that the suit was not maintainable on this ground is, therefore, considered in light of the decision of the Hon'ble Apex Court in the case of **Mst. Arshan Bi through Mst. Fatima Bi and others v. Maula Bakhsh through Mst. Ghulam Safoor and others (2003 SCMR 318)**, wherein it was held that:

*'The respondent was simply knocked out and deprived of his land on technical grounds. If a party seeking declaration has failed to claim consequential relief, he should not have been nonsuited on technical grounds. It has been held time and again by this Court that technicalities shall not create hurdles in the way of substantial justice. Rules and regulations are made to foster the cause of justice and they are not to be interpreted to thwart the same. A heavy duty is cast upon the Courts to do substantial justice and not to deny the same on mere technicalities. Reference in this regard is made to the case of Ch. Akbar Ali v. Secretary,*

*Ministry of Defence, Rawalpindi and another (1991 SCMR 2114), where it was held as under--*

*In the exercise to do justice in accordance with law the Courts and forums of law cannot sit as mere spectators as if at a high pedestal, only to watch who out of two quarreling parties wins. See the judgment of this Court in the case of Muhammad Azam v. Muhammad Iqbal and others (PLD 1984 SC 95 at page 132) and Civil Appeal No.789 of 1990, decided on 26-6-1991 (Syed Phul Shah v. Muhammad Hussain PLD 1991 SC 1051). On the other hand deep understanding and keen observance of proceedings is a sine qua non for doing justice in the Constitutional set up of Pakistan. Those Rules of adversary system based merely on technicalities not reaching the depth of the matter are now a luxury of the past. Neither of the parties can be permitted to trap an improperly defended or an undefended or an unsuspecting adversary by technicalities when the demand of justice is clearly seen even through a perfect trap. It will make no difference if the litigant parties are citizens high or low and /or is Government or a State institution or functionary acting as such. "*

It has further been held in the said judgment that:-

*'The denial of relief to a party simply on the ground that consequential relief was not claimed would, in no circumstances, advance the cause of justice.*

15. So far as the question of relief not specifically sought in the plaint is concerned, it is well settled that a court is not strictly confined to the precise relief claimed by the plaintiff. In appropriate cases, the courts have the power to mould the relief within the scope of the provisions of **Order VII, Rule 7 of the Code of Civil Procedure, 1908 (C.P.C.)**, which empowers the court to grant such relief as may be just and proper in the facts and circumstances of the case. It is a settled principle of law that the court, while adjudicating a suit, may grant relief even if not specifically prayed for, provided such relief arises naturally from the subject-matter of the suit and is necessary to meet the ends of justice. The exercise of such discretion must, however, be judicious and equitable, and the relief granted must align with the cause of action and the pleadings. Reliance in this regard may be placed upon the judgments of the Hon'ble Supreme Court in **Akhtar Sultana v. Muzaffar Khan, PLD 2021 SC 715**, and **Muhammad Farooq and others v. Javed Khan and others, PLD 2022 Supreme Court 73**, **Javaid Iqbal v. Abdul Aziz, PLD 2006 SC 66**; **Mushtaq Ahmad v. Arif Hussain, 1989 MLD 3495**, wherein it was held that the courts are empowered to grant relief even if not specifically prayed for, as long as it is within the ambit of the cause of action and necessary for doing complete justice between the parties.

16. In view of the foregoing discussion, it is evident that the learned appellate court fell in error while setting aside the judgment and decree passed by the learned trial court. The trial court, after a full-fledged trial and proper appreciation of evidence, rightly adjudicated the respective rights of the parties and decreed the suit in favour of the applicant. Accordingly, the instant Civil Revision Application is allowed; the impugned judgment and decree of the appellate court are set aside, while the judgment and decree passed by the learned trial court are hereby maintained. These shall constitute the detailed reasons for the short order announced on 06.11.2025.

***JUDGE***