

ORDER SHEET  
HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD

**1<sup>st</sup> Appeal No.21 of 2021**

(Muhammad Irfan & another versus Province of Sindh & Ors)

DATE	ORDER WITH SIGNATURE OF JUDGE
Appellants	: Through Mr. Muhammad Arshad S. Pathan, Advocate
Respondent No.4 to 6	: Through Mr. Ahmed Murtaza A. Arab, Advocate
Official respondents	: Through Mr. Rafique Ahmed Dahri, Asst. Advocate General, Sindh.
Date of hearing:	: 17.12.2021
Date of decision:	: 24.12.2021

**JUDGMENT**

\*\*\*

**ADNAN-UL-KARIM MEMON, J.** - This appeal has been directed against the judgment and decree dated 31.03.2021 passed by learned District Judge Mirpurkhas in consolidated Suits bearing Summary Suit No.14 of 2017 [Re: Muhammad Yaseen & another v. Muhammad Irfan & another] and F.C Suit No.1 of 2018 [Re: Muhammad Irfan & others v. Qadeer Muhammad & others], whereby, the learned Judge has decreed Summary Suit filed by respondents 4 to 6 and dismissed F.C Suit filed by the appellants for settlement of accounts, alternatively for recovery of Rs. 94,387,360/-, declaration, mandatory and permanent injunction.

2. Brief facts of Summary Suit filed by respondents 4 & 6 are that they are running their business of fertilizers and seeds through their Pedi Shop. The defendants/appellants are zamindars. The plaintiffs/respondents 4 & 6 used to provide seeds and fertilizers to them and they after harvesting the crops every year made payment. In the year 2016-17 after verification of the register the plaintiffs/respondents 4 & 6 found that an amount of Rs.52,892,384/- plus 17,996,000/- total Rs.70,888,384/- found outstanding against the defendants/appellants. On 22.03.2017, the defendants/appellants issued crossed cheques of Rs. 68,200,000/- to the plaintiffs/respondents 4

& 6, of the joint account, signed by defendant/appellant No.1. Three cheques were issued in the name of plaintiff No.1 and five were issued in the name of plaintiff No.2. The plaintiffs presented the cheques before the bank for encashment but the same were dishonored due to insufficient funds and the account was dormant/inactive/closed. The plaintiffs/respondents 4 & 6 then moved an application to SSP Mirpurkhas but without result. Hence they filed the suit with following prayers:

- a. To pass decree amount of Rs.68,200,000/- in favor of plaintiffs and against the defendants.
- b. To direct the defendants to pay mesne profit @ of 15% per annum to the plaintiffs since the default and since the satisfaction of decretal amount.
- c. Cost of the suit be saddled upon the defendants.
- d. Any other relief(s) which this Honourable Court deems fit and proper may also be awarded to the plaintiffs.

3. Notices of Summary Suit were issued, the appellants/defendants appeared, and leave to defend was granted to them to defend the suit conditionally vide order dated 27-09-2017 and after furnishing surety the defendants filed their written statement denying the allegations leveled against them.

4. The facts of subsequent suit filed by defendants/appellants for settlement of accounts, alternatively for recovery of Rs.94,387,360/-, declaration, mandatory and permanent injunction with following prayers:

- a. Pass preliminary decree U/O 20 Rule 16 CPC on transactions between plaintiffs and defendant No.1 to 3 in order to ascertain the amount of money due to or from any party by taking accounts and/or for such purpose appoint Commissioner to take accounts of parties and after determination of the amount due to or from any party, pass final decree against party liable to pay such amount to the party found entitled to it.

**ALTERNATIVELY**

Pass decree directing the defendants No.1 to 3 to pay to plaintiffs a sum of Rs.94,387,360/- with interest at bank rate w.e.f. date of filing of the suit till final payment.

- b. Grant declaration that the sale deed dated 19-05-2014 in respect of House City Survey No.193=196-6 sq.yards Dholanabad Mirpurkhas registration No.2365 dated 19-05-2014 registered in office of defendant No.4 and microfilmed vide No.U-208/6022 in office Photo Registrar Mirpurkhas does

not represent sale in reality but was executed without possession as co-lateral security and it does not confer title upon the defendant No.1 and entry in City Survey record made on its basis is of no legal effect and is liable to be restored in favour of original owners.

- c. Declaration that the blank cheques No.12475984 to 12475992 (Nine Cheques); given by plaintiff No.1 to defendant No.1 to 3, bonafide in May, 2015 as security with all spaces blank except signature, have been forged and fabricated by defendants No.1 and 3 and claim in summary Suit NO.14 of 2017 pending in Court of learned 1<sup>st</sup> Additional District Judge Mirpurkhas based on said cheques is false and upon settlement of accounts, said defendants have to return the same to plaintiffs and plaintiffs are not liable to pay the amount of said cheques and there was no settlement of accounts as alleged by defendant No.1 and 3.
  - d. Issue Mandatory injunction against defendant no.5 directing him to restore entry in City Survey record in respect of House No.193-196.6 sq. yards Dholanabad Mirpurkhas in names of original owners by deleting entry if existing in favour of defendant No.1.
  - e. Direct defendant No.1 to re-convey title or House No.193 Dholanabad, Mirpurkhas in favour of original vendees by executing necessary documents.
  - f. Permanent injunction be issued against defendants No.1 to 3 restraining them from claiming or enforcing any claim of any amount from plaintiffs till the accounts are settled by Honourable Court and liability is determined by Honourable Curt on settlement of accounts.
  - g. Award costs of the suit to the plaintiffs.
  - h. Grant any other relief to which the plaintiffs are found entitled under facts and circumstances of the case.
5. From the pleadings of the parties the trial Court framed the following consolidated issues:

1. Whether the leading suit (Summary Suit No. 14/2018) is not maintainable under the law?
2. Whether the plaintiffs of the subsequent suit (Old FC Suit No.366/17 & 2/17, New Suit No. 01/2018) are not competent to file the same?
3. Whether the subsequent suit (Old FC Suit No. 189/2018, New Suit No. 01/2018) is time-barred?
4. Whether the plaintiffs of the subsequent suit (Old FC Suit No.366/17 & 2/17, New Suit No. 01/2018) have any cause of action?
5. Whether the plaintiffs are not entitled to the relief claimed?
6. Whether the plaint of the subsequent suit (Old FC Suit No. 366/17 & 2/17, New Suit No. 01/2018) is vague, not containing

the correct description of relief so claimed, and is liable to be rejected?

7. Whether the defendants in leading suit (Summary Suit No. 14/2017) issued eight (08) Cheque(s) bearing No. 12475987 dated 30-03-2018 for Rs.85,000,00/-, No. 12475988 dated 14-04-2017 for Rs. 85,000,00/, No. 12475992 dated 28-04-2017 for Rs. 80,000,00/- No. 12475984 dated 15-05-2017 for Rs. 90,000,00/-, No. 12475985 dated 06-06-2017 for Rs.90,000,00/-, No. 12475991 dated 25-06-2017 for Rs.77,000,00/- No.1255990 dated 29-06-2017 for Rs.80,000,00/-, total Rs.68,200,000/- of United Bank Limited Sir Syed Road Branch Mirpurkhas in favor of plaintiffs against the outstanding amount of Rs.68,200,000/- on 22-03-2017 after signing Khata issued cross cheques of various dates on the same date and the said cross cheques were dishonored by the Bank due to reasons of "Funds are not sufficient"/ Account dormant/inactive / Account closed with memos issued by the bank authorities?
8. Whether eight (08) cross cheques of Rs.68,200,000/- were issued in favour of the plaintiff No. 1 & 2 in leading suit (Summary Suit No. 14/2017) by defendant No. 1 on account of joint account of defendant No. 1 & 2 of the leading suit (Summary Suit No. 14/2017) in lieu of liability of Rs.70,888,348/-?
9. Whether the defendant No. 1 in leading suit (Summary Suit No. 14/2017) on account of joint account of defendant No. 1 & 2, issued nine (09) signed, blank cheques in lieu of meager amount of Rs.629,709/- in favor of plaintiffs of the leading suit (Summary Suit No. 14/2017)?
10. Whether Cheque(s) bearing No. 12475984, 12475985, 12475986, 12475987, 12475988, 12475990, 12559991, and 12559992 were dishonored while on presentation before the Bank?
11. Whether blank cheque No. 12475984 to 12475992 (09) cheques given by the plaintiff No. 1 in subsequent suit (Old FC Suit No. 366/17 & 2/17, New Suit No. 01/2018) to defendant No. 1 to 3 bonafide in May 2015 as security with all agrees blank receipt signature and the same have been forged and fabricated by defendant No. 1 to 3 and claim in the leading suit (Summary Suit No. No. 14/2017) and on settlement of accounts, the defendants have to return the same to plaintiffs?
12. Whether the defendant No. 1 & 2 of the leading suit (Summary Suit No. 14/2017) signed Khata / Account Register, admitting liability/outstanding of Rs.70,888,348/- for the year 2016-2017?
13. Whether the cheques in question were issued by the defendants in the leading suit (Summary Suit No. 14/2017) in favour of the plaintiff in blank for security purpose in the month of May, 2015 in business transaction out of faith of parties upon each other and plaintiffs in leading suit (Summary Suit No. 14/2017) were not authorized to present the said cheques for encashing?
14. Whether cheques issued by plaintiffs of subsequent suit (Old FC Suit No. 366/17 & 2/17, New Suit No. 01/2018) in favour of defendant No. 1 & 3 of subsequent suit (Old FC Suit No. 189/2018, New Suit No. 01/2018) bearing endorsement containing security cheque?
15. Whether the defendant in leading suit (Summary Suit No. 14/2017) (Plaintiff in Old FC Suit No. 366/17 & 2/17, New Suit No. 01/2018) transferred House C.S. No. 193 situated in

Dholanabad Mirpurkhas on 19-05-2014 in favour of plaintiff under sale deed and got the same registered before defendant No. 4 (Sub Registrar Mirpurkhas) under Registration No.2365 dated 19-05-2014, Microfilmed No. U-208/6022, said sale was without possession and for collateral security and entry in C.S. Record made on the basis of alleged sale is of no effect?

16. Whether subsequent Suit (Old FC Suit No. 366/17 & 2/17, New Suit No. 01/2018) has been filed being aforethought, in order to avoid the outstanding/liability/payment of eight (08) dishonoured cheque(s) amount to Rs.68,200,000/-? If so, its effect?
17. Whether the transaction amongst the plaintiffs of leading suit (Summary Suit No. 14/2017) and subsequent suits (Old FC Suit No. 366/17 & 2/17, New Suit No. 01/2018) were in million of rupees?
18. Whether the defendants No. 1 & 2 of leading suit (Summary Suit No. 14/2017) are liable to pay the amount of Rs.68,200,000/- of eight (08) dishonored cheques to the plaintiffs of leading suit (Summary Suit No. 14/2018) with mark-up at the present bank interest?
19. Whether amount of Rs.68,200,000/- claimed in leading suit (Summary Suit No. 14/2014) and the amount Rs.94,387,360/- claimed in counter/subsequent suit (Old FC Suit No. 366/17 & 2/17, New Suit No.01/2018) requires settlement of accounts between the parties?
20. Whether plaintiffs of subsequent suit (Old FC Suit No. 366/17 & 2/17, New Suit No. 01/2018) are entitled for amount Rs.94,387,360/-?
21. Whether any Faisla dated 16-12-2018 has been made amongst the plaintiffs and defendants of leading suit (Summary Suit No. 14/2017) and subsequent suit (Old FC Suit No. 366/17 & 2/17, New Suit No. 01/2018)?
22. Whether arbitrators and guarantors were nominated by both the parties and subsequently the plaintiffs of leading suit (Summary Suit No. 14/2017) in order to avoid payment of amount due from them maliciously filed summary suit by committing fraud and forgeries?
23. Whether the plaintiffs of subsequent suit (Old FC Suit No. 189/2018, New Suit No. 01/2018) in order to avoid payment/outstanding amount filed subsequent suit (Old FC Suit No.366/17 & 2/17, New Suit No. 01/2018)?
  - a. What should the decree be?

6. Learned trial Court after hearing the parties decreed the Summary Suit filed by respondents 4 & 6 and dismissed First Class Suit filed by the appellants, hence this 1<sup>st</sup> Appeal. An excerpt of the judgment is reproduced as under:-

“55. For the reasons discussed in detail in above mentioned issues, I am of the opinion that the plaintiffs have successfully proved that the defendants had issued eight cheques favoring the plaintiffs amounting to Rs.68,200,000/- after signing their

khata/accounts maintained by the plaintiffs and the said cheques were bounced on presentation. The defendants have failed to make out a strong case for settlement of the accounts, cancellation of the registered sale deed or their entitlement to the counter claim of Rs.94,387,360/-. Therefore the issue No.5 is answered in negative, issue No.18 in affirmative and the leading Summary Suit No.14/2017 is decreed. The defendants are directed to pay the amount of Rs.68,200,000/- along with the mark-up @ 6% per annum in view of Section 80 of The Negotiable Instrument Act 1881 to the plaintiffs from the date of institution of suit till the amount is actually paid and suit No.02/2017, 189/2018 (old numbers) 01/2018 (new number) is dismissed. Both the parties should bear their own costs.”

7. Mr. Muhammad Arshad S. Pathan, Advocate for the appellant has contended that the plaintiffs/respondents 4 & 6 also deal in the sale and purchase of agricultural produce. The plaintiffs/respondents 4 & 6 were supplying seeds and fertilizers to the defendants/appellants and in lieu thereof they were supplying crops of every season to the plaintiffs/respondents 4 & 6 and the plaintiffs/respondents 4 & 6 used to adjust their account of advance. They have denied that on 22-03-2017 the outstanding amount was Rs.70,888,384/-. They had not signed the accounts book and had not issued the cheques. It is further contended that in the year 2015, on-demand, the defendants/appellants had issued nine blank cheques to plaintiff No.1 and Muhammad Javed as collateral security, and the plaintiffs had no power to present the cheques before the bank and in the year 2015 the account was closed. The plaintiffs misused the cheques by inserting false dates and presented before the bank knowingly that the account was closed and this practice was done only to make a ground for filing the suit. The defendants had not committed fraud but the plaintiffs have committed fraud with defendants and moved false applications to SSP Mirpurkhas and a false application U/S 22-A (6) B Cr.PC before this Court. The defendants had not issued bogus cheques. The defendants and their nephew Abdul Samad executed formal sale deed on 19-05-2014 in respect of their House No.193 situated in Dholanabad Mirpurkhas without delivering its possession and such transaction was not a sale in actuality but was executed as collateral security in favor of plaintiff No.1 on their demand and was without consideration. In the year 2015, the cost of fertilizer, etc and other advances made by plaintiffs to the defendant came to Rs.9,925,000/- and agricultural produce supplied by defendants was worth Rs.9,295,291/- thus an amount of Rs.629,709/- of plaintiffs was due

against the defendants. The plaintiffs and Muhammad Javed then asked the defendants and required them to give blank cheques for security and the defendants issued nine signed blank cheques to the plaintiffs. On 22-03-2017 the defendants approached the plaintiffs and Muhammad Javed for settling the accounts. Plaintiff No.1 asked the defendants to put signatures on their account book and then they would make calculations. The defendants had blind faith in the plaintiffs hence they put their signatures on the account book. Plaintiff No.2 then moved an application before SSP Mirpurkhas. The police were harassing the defendants hence the defendants moved an application before this Court and the same was disposed of vide order dated 04-07-2017. After filing summary suit the defendants approached Pir Aftab Shah Jilani, a notable person of the division, who on 24-07-2017 formed a committee for resolving the dispute between the parties after taking accounts. Both the parties were asked to nominate two persons as their Ameen and one guarantor for ensuring payment of outstanding amount against either party. Both the parties nominated their Ameen and guarantors, such faisla was reduced into writing on 24-07-2017 wherein it was mentioned that the house and cheques would be returned by plaintiffs to defendants hence it is clear that blank cheques were given to plaintiffs against as security. The first hearing of the committee was fixed at Al-Shahbaz Cotton Factory on 25-07-2017. Both the parties appeared along with their respective supporters and on-demand, the defendants handed over their account books to Haji Muhammad Ali and the plaintiffs expressed that they have no record of the first four years. When inquired about the supply of wheat and other agricultural produce by defendants, plaintiff No.1 took oath on Holy Quran and his seven children and stated that not a single grain of wheat was supplied by defendants whereupon defendant No.2 sought time to produce evidence. On the next day, the plaintiff appeared and after expressing regrets stated that the defendant supplied them 11500 mounds of wheat. After 5/6 sittings Haji Muhammad Ali Samoo, the nominee of the plaintiffs made the calculation and concluded that the balance of Rs.94,387,360/- was payable by plaintiffs to defendants. A faisla was also made before MQM Zonal Office but did not materialize hence the defendants filed F.C. Suit No.166/2017 for Settlement of Accounts alternatively for recovery of Rs.94,387,360/-, Declaration, Mandatory injunction before the Court

of learned 3<sup>rd</sup> Senior Civil Judge, Mirpurkhas. The sugar cane was supplied in accounts of plaintiff No.1 and Muhammad Javed as per their instructions in Tharparkar, Mirpurkhas, Al-Abbas, and Tando Allahyar Sugar Mills and also supplied wheat on their directions. The cheques were without consideration and plaintiffs were not authorized to fill the same and present for encashment. The plaintiffs filled up the blank spaces of eight cheques on their own and the ninth cheque has been retained by the defendants. The plaintiffs/respondents 4 & 6 have committed forgery and fraud and to avoid payment of amount they have filed the Summary Suit which was not maintainable, hence the impugned judgment passed by learned trial Court is not under the law and same is hereby set-aside.

8. Mr. Ahmed Murtaza A. Arab, Advocate for respondents 4 to 6 has supported the impugned judgment passed by learned trial court and contended that no any cogent ground is taken as to what illegality or irregularity has been committed by the trial court; learned trial court has rightly decreed the suit on the basis of cogent and convincing evidence; that the appellants in lieu of an amount of Rs. 70,888,384/- after signing khata register admitted such liability and issued eight cheques amounting to Rs. 6,82,00,000/- which on presentation before the concerned bank were dishonoured meaning thereby he deceived and cheated the respondents in order to escape from such liability; appellants filed frivolous suit and got the same amalgamated in order to linger on the matter and he became successful in lingering on the matter for about 04 years and after leaving evidence the suit was decreed and further in order to acquire time he has filed the instant appeal, hence the same is liable to be dismissed.

9. Heard learned counsel for the parties and perused the material available on record as well as the law cited by both the parties.

10. It is a settled principle of law that the right to file first appeal against the decree under Section 96 of the Code of Civil Procedure is a valuable legal right of the litigant. In principle, an appellate court is the final Court of fact ordinarily. However, the first appeal under Section 96 of the CPC is entirely different from the second appeal under Section 100 CPC. Section 100 expressly bars the second

appeal unless a question of law is involved in a case and the question of law so involved is substantial.

11. Order XLI Rule 31 of the CPC provides the guidelines for the appellate court to decide the matter. For ready reference Order XLI Rule 31 of the CPC is as under:-

“31. Contents, date, and signature of judgment.- The judgment of the Appellate Court shall be in writing and shall state—

(a) the points for determination;

(b) the decision thereon;

(c) the reasons for the decision; and

(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled; and shall at the time it is pronounced be signed and dated by the Judge or by the Judges concurring therein.”

12. It is clear from the above provisions that the judgment of the first Appellate Court has to set out points for determination, record the decision thereon and give its reasons.

13. The prime question involved in the present proceedings is whether Suits bearing Summary Suit No.14 of 2017 filed by respondents and F.C Suit No.1 of 2018 filed by the appellants for settlement of accounts, alternatively for recovery of Rs.94, 387,360/-, declaration, mandatory and the permanent injunction could be consolidated and decided together by the District Judge based on pecuniary as well as territorial jurisdiction; Secondly, whether the learned District Judge has decided the matter between the parties on merits.

14. Primarily first proposition has already been set at naught by the Honorable Supreme Court in Civil Petition No.700-K of 2018 vide order dated 06.09.2018 thus there is further deliberation on my part that is insignificant.

15. Keeping in mind the second proposition, let us examine the present case, here in the first round of litigation, the consolidation order of both suits was challenged before this Court and finally this Court set aside that order of consolidation vide judgment dated 08.05.2018; however, appellants impugned the said judgment before the Hon'ble Supreme Court in Civil Petition No.700-K of 2018 and the

Hon'ble Supreme Court vide order dated 06.09.2018 set aside the above judgment of this Court and maintained the order of consolidation of both Suits passed by learned District Judge, with the observations that both the Suits be heard and decided by the learned District Judge cease of the Summary Suit not later than three months. Accordingly, both Suits were heard together and vide judgment dated 31.03.2021, the learned District Judge decreed Summary Suit while dismissed the aforesaid F.C Suit, hence appellants preferred this appeal only.

16. The learned counsel for the appellant extensively read the evidence and maintained that the appellant had not signed the accounts book and had not issued the purported cheques in connection with the alleged business as portrayed by the respondents. Besides that, the respondents misused the cheques by inserting false dates and presented before the concerned bank knowingly that the account had already been closed and this practice was done only to make a ground for filing the suit; that the appellant had not committed fraud.

17. Primarily, the appellant, has remained unsuccessful before the trial Court, has come up here aggrieved by the judgment and decree of the suit filed by the respondents and dismissal of his suit which was one for Settlement of Accounts alternatively for recovery of Rs.94,387,360/-, Declaration, Mandatory injunction. Reasoning accorded by the learned trial Court while decreeing the suit of private respondents is based on sound footings and evidence of the parties.

18. At the first instance learned trial court held that summary suit filed by the respondents, based on eight cheques were/are negotiable instruments within the definition of Section 13 of Negotiable Instrument Act 1881. Thus suit is maintainable. Primarily this is the correct approach of learned trial court. So far as the subsequent suit filed by the appellants for settlement of accounts or in the alternative for recovery of Rs. 94,387,366/- the learned trial court held that suit is time-barred being filed beyond the period of three years as provided under Article 91 of the Limitation Act. The evidence of plaintiff Qadeer prima-facie shows that he and his father are running a shop at Jhlori. They used to sell and purchase crops, fertilizers, seeds, and pesticides having business dealing with the defendants for

last 7/8 years. As a matter of routine, they used to settle the accounts every year. On 22-03-2017 both the defendants arrived at their shop and after calculation and settlement of accounts issued eight cheques totaling Rs.68,200,000/- in his and his father's name. The actual outstanding amount was Rs. 70,888,384/- therefore, both the defendants promised to make payment of remaining amount from the proceeds of the crop. These cheques were deposited on due dates in the bank which were returned with the endorsement of insufficient amount and bank-issued memos containing reasons for non-payment of cheques. They used to maintain the whole record of sale and purchase in relevant registers where they used to obtain the signatures of defendants. The cheques have been produced from Ex.31-A to Ex.31-H, the memos have been produced from Ex.31-I to Ex.31-X. The Khata Registers Ex.31-Z, Z-1 & Z-2 show that these are undeniably bearing signatures of defendants and showing Rs.52,892,394/- and Rs.17,996,000/- totaling to Rs.70,888,384/- to be due against the defendants. While defendant Irfan in his evidence has deposed that they had business relations with the plaintiffs from 2010 to 2017. In 2015 Qadeer informed him that an amount of Rs.629,709/- was outstanding against them and asked for issuance of a cheque in his name. He then issued to him nine blank cheques of UBL Sir Syed Branch. Neither the date nor the name of the beneficiary was entered therein. These cheques were handed over as a matter of trust and were not meant for encashment. The cheques issued for security purposes are to be returned at the end of the year after settlement. As per their record an amount of Rs.94,300,000/- was outstanding against the plaintiffs. To prove the version of defendant's side they have neither examined any witness before whom the said cheques were delivered under the condition that these were meant for collateral security and not for encashment nor they have produced any document from which it could be ascertained with certainty that these cheques were issued as security and were not liable to be encashed. The eight cheques have been produced from Ex.31-A to Ex.31-H, cheque return memos have been produced from Ex.31-I to Ex.31-X. As per reasons endorsed on these cheque return memos these cheques were dishonored on presentation. The learned trial court held that there is no endorsement that the cheques had been issued as security. No evidence in respect of such endorsement has been led by the defendant's side. Plaintiff Abdul Qadeer in his

evidence has deposed that he purchased H.No.189 situated in Dholanabad Mirpurkhas from defendant Irfan in the year 2014 and he had also taken possession of the house then he sold the said house and handed over the possession to the purchaser. The learned trial court held that the registered sale deed has not been produced by the parties. Only a Photostat copy is annexed with the plaint of the subsequent suit. The perusal of which shows that Muhammad Afzal, Irfan, Abdul Samad are shown as vendors, and Qadeer Muhammad is mentioned as a vendee. Through this registered sale deed, a house bearing C.S. No.193 was transferred in favor of Qadeer Muhammad on 19-05-2014. The witnesses of registered sale deed are mentioned as Muhammad Aslam and Zulfiqar Ali Soomro. The defendant side has not examined the witnesses of registered sale deed or Sub Registrar before whom such document was executed to establish their plea that the sale of house was ostensible sale without consideration, possession, and for collateral security. Otherwise, it is mentioned in the document that Rs.1,350,000/- was paid to the vendors by the vendee as consideration amount and possession of the house has already been handed over to the vendee; and held further that the subsequent suit has been filed as an afterthought to avoid outstanding liability of Rs.68,200,000/-

19. On the other issues learned trial court has elaborately dealt with the issues and held as under:-

**“ISSUE NO.17.**

30. Neither in the pleadings nor in the evidence this issue is at dispute between the parties. Therefore this issue is answered in the affirmative.

**ISSUE NO.19.**

31. Regarding this issue defendant Irfan has deposed that no register has been produced (by plaintiff side) for the record of 2010 to 2014. The accounts of 2015, 2016 & 2017 are incomplete and total agricultural produce is not mentioned in the account. They requested the plaintiffs for settlement of the accounts through all modes but they did not agree for the settlement of the accounts. If the accounts would have been settled the plaintiffs were under obligation to pay the amount. The plaintiff side has denied these assertions of defendant side.

32. The defendants have not proved their claim that an amount of rupees more than nine crores was due against the plaintiffs. They have produced registers at Ex94-A which mentions the amount given to Qadeer in 2010 produce (Padaish) 42735875/-, 2011 produce (Padaish) 14490740/-, 2012 produce (Padaish) 32187119, 2013 produce (Padaish) 33787424/- total 123201158/-. Sugarcane

deposited totaling Rs.16,587,700/- and sum total of both the amounts Rs.139,788,858/-. Neither the dates of entries are mentioned nor their breakup in detail is given. These are not bearing the signatures of plaintiff or defendant side. It has also not been brought on record that by whom these entries have been affected. It is also strange to note that except entries at few pages most of Ex.94-A is lying blank. Similar is the position of Ex.94-B. In addition to previous observations it is noted that all the entries in Ex.94-B are in the hand of one person apparently entered in one go with same pen. The entries have been cut at some places. Except three pages the entire register Ex.94-B is lying blank.

33. It is also important to mention that Batai Books are normally maintained by every zamindar. The defendants have not produced any Batai Book. The receipts/invoices through which the wheat weighing 13000 mounds was delivered are also not produced in evidence. In both the registers the sum total of amounts are mentioned in few lines. Otherwise the entire registers are lying blank which clearly show that these registers are prepared afterwards.

34. The learned counsel for the defendants has contended that appointment of commissioner and settlement of accounts is necessary in view of the evidence adduced by the parties. He has relied upon 2001 MLD 330, 2003 CLC 71, 1991 SCMR 2324. I have carefully perused the judgments cited by the learned counsel for the defendants and have come to the conclusion that none of the cited judgment involves the facts identical to the present case. Therefore this issue is answered in negative.

#### **ISSUE NO.20.**

35. Defendant Irfan has deposed that they had supplied produce of different crops amounting to Rs.42,700,000/- in 2010, Rs.21,200,000/- in 2011, Rs.33,600,000/- in 2012, Rs.42,100,000/- in 2013, Rs.25,700,000/- in 2014, 17,100,000/- in 2015, Rs.51,300,000/- in 2016 totaling to Rs.234,000,000/-. The plaintiff have produced the record of the year 2015 to 2017 and have not produced the record of 2010 to 2014 and the total transaction of such period from 2010 to 2014 was Rs.165,500,000/- and nothing is mentioned in the register. The accounts of 2015 to 2017 are incomplete. The total produce is not mentioned. In order to substantiate such claim the defendant side has examined Khalil Ahmed at Ex.73, he produced growers ledger inquiry and growers cane receipts inquiry of Haji Muhammad Afzal as Ex.73-A & 73-B. Perusal of these documents show that name of Haji Muhammad Afzal is mentioned therein but all the values are mentioned as zero.

36. D.W Khaliqdino Ex.74 has deposed that he issued five indents in the name of Haji Afzal and his nephew for account of Abdul Qadeer during the period 2016-17. During cross examination he admits that he has no field card of Al-Abbas Sugar Mills. He has admitted that the record has not been produced for the year 2016-17. It is important to mention that this witness pertains to Al-Abbas Sugar Mills and Ex.73-A & 73-B of same mill are showing zero values with regard to growers ledger inquiry and growers cane receipt inquiry pertaining to account of Haji Muhammad Afzal Mehar.

37. D.W. Muhammad Ibrahim had produced a statement pertaining to Mirpurkhas Sugar Mills in which the Sugarcane supplied and gross amount along with other details pertaining to the season 2016-17 are mentioned. It pertains to Qadeer son of Muhammad Yaseen. Neither the witness nor the document show that

the sugarcane was supplied to Sugar Mill by the defendants in the name of the plaintiff.

38. Mehmood Arain has produced sugarcane supply position of Haji Muhammad Afzal Mehar for the season 2015-16 & 2016-17. This shows that 352 vehicles were supplied in the relevant season amount totaling to Rs.44,605,125. The grower's name is mentioned as Muhammad Javed son of Muhammad Yaseen. He has not deposed that to whom the payment of price of the sugarcane was made.

39. The defendants have not produced convincing documentary and oral evidence to show that from 2010 to 2016 they supplied agricultural produce worth Rs.234,029,158/- and they obtained an amount of Rs.139,641,798/- in lieu of fertilizer and cash advances and the balance due against the defendants was Rs.94,387,360/-. Hence this issue is decided in negative.

**ISSUE NO.21 & 22.**

40. The parties have not pleaded pro and contra of holding of any faisla on 16-12-2018. Thus the date mentioned in the issue No.21 appears to be inadvertently mentioned. However it is the pleading of the defendant side that a faisla was held between the parties on 24-07-2017 which is denied by the plaintiff side.

41. In respect of these issues defendant Irfan has deposed that plaintiffs did not settle the accounts and were lingering on the matter thus he approached Pir Aftab Shah Jillani for resolution of the dispute who formed a committee under Yar Muhammad Baloch. The said committee comprised upon two Ameens appointed by the plaintiffs and two Ameens appointed by the defendants. On behalf of plaintiff Qadeer the mediators were Muhammad Ali Samoon and Ghulam Ahmed Gorchani and Nazeer Tahkur was their guarantor. Said guarantor had stated before various persons that if the amount was found due against Qadeer he will pay the same. From defendant side Haji Imam Bux Mehar and Muhammad Moosa Mehar were mediators and Muhammad Moosa was also guarantor on their behalf. Some of the members of the committee went to the house of Yaseen and Qadeer where a decision was reduced in writing in presence of his brother Muhammad Afzal. The decision was written on a stamp paper. The stamp paper has been produced at Ex.83-A.

42. DW Allah Rakhio has deposed that on 24-07-2017 from Jhlori he, Haji Muhammad Mehar, Abdul Sattar Meo Rajput, Ghulam Hyder Gorchani, Imam Din Mehar and others came at the otaq of Yaseen where they gathered to settle the dispute of the parties, where Abdul Qadeer and Haji Afzal shown their willingness to accept the decision. On next date 25-07-2017 both the parties appeared before Yar Muhammad Baloch where accounts of both parties were checked, a stamp paper was written in presence of witnesses. Both the parties put their thumb impression on the stamp paper.

43. DW Mir Hazar @ Mir Muhammad Mari has deposed that on 23-07-2017 they asked Qadeer and Afzal to settle their dispute. On 24-07-2017 Muhammad Moosa Mehar, Imam Bux Mehar, Haji Yousuf, Haji Qadir Mehar and others were invited by Qadeer at his home for meal. At his Otaq they asked both the parties to settle their dispute. Such stamp was executed. There were cheques of Afzal with Qadeer and the house of Afzal mortgaged with Qadeer. Thereafter before Pir Aftab it was decided to settle the dispute amicably. On 25-07-2017 all these persons and both the parties gathered at the Otaq of Yar Muhammad Baloch, where it was decided that two Ameens

will be chosen by each party. Haji Muhammad Ali Samoon and Ghulam Hyder Gorchani were Ameens of Qadeer and Haji Afzal chosen Muhammad Moosa Mehar and Imam Bux Mehar as their Ameens.

44. D.W. Muhammad Moosa deposed that both the parties had become disputed over settlement of accounts. On the advice of Pir Aftab both the parties went to village of Yar Muhammad where Nazeer Thakur, Haji Imam Bux, Haji Muhammad Ali Samoon and he himself were present. Both the parties were advised by Yar Muhammad and Nazeer Thakur to appoint their Ameens. He and Haji Imam Bux were appointed as Ameens on behalf of Irfan and Haji Afzal and Haji Muhammad Ali Samoon was appointed as Ameen for Qadeer. On following day the settlement of account was fixed at Al-Shahbaz Cotton Factory. Haji Afzal and Irfan brought their accounts. Yaseen told that he has not received the wheat. No further proceedings were held and both the parties went to their villages. On following day Haji Muhammad Ali Samoon informed him on phone that he has obtained 13000 mounds of wheat. On following day Yaseen did not come on the pretext that he will approach the Court. According to their observation 9.00 to 9.5 crores of Haji Afzal and Haji Irfan were outstanding towards Yaseen.

45. D.W. Imam Din deposed that they constituted a committee of 10/12 persons for resolution of the dispute. He was included in that committee. They went to the house of Yaseen and Qadeer where both the parties discussed their issues. Stamp paper was written in his presence. Haji Afzal, Qadeer and Yaseen were also present. Yaseen and Qadeer admitted that eight cheques and one house of Haji Afzal and Irfan were Amanat with them and the account from 2010 to 2017 will be settled at the house of Yar Muhammad Baloch on 25-07-2017. Qadeer and Yaseen told that after settlement of account they will return the cheques and house to Haji Afzal. This fact was also mentioned in the stamp paper. The stamp paper is bearing his signature and signatures of the parties. He was not present before Yar Muhammad Baloch where rest of the proceedings were held.

46. D.W. Yar Muhammad Baloch deposed that Qadeer, Irfan and Afzal asked him to settle their dispute. The parties sent their men. Thereafter decision was fixed in his village. In the decision Qadeer appointed Nazeer Thakur as Ameen while Irfan and Afzal appointed their Ameen Moosa Mehar then he asked both the parties and Nazeer Thakur that if the amount is proved against Qadeer then he will obtain that amount from him. Moosa Mehar on behalf of Afzal and Irfan and Nazeer Thakur on behalf of Qadeer undertaken to pay the amount if it is proved due against them. Afzal and Irfan on his inquiry told him that 1300 mounds of wheat has been taken by Qadeer. Afzal brought his all documents but Qadeer did not. Qadeer took oath that he has not taken a single bag of wheat then he asked both the parties that the matter cannot be decided because he was not ready for taking oath. Then he asked both the parties to get settled their dispute before Pir because he was unable to decide. But Qadeer was not ready to settle the dispute before Pir. Thereafter he called Imam Bux Baloch who picked the wheat and he said that he is ready to take oath that he has picked the wheat of Irfan and Afzal and has given to Qadeer. Thereafter a decision was held by constituting a committee comprising upon Haji Muhammad Moosa Mehar, Haji Imam Bux Mehar were on behalf of Irfan and Afzal while on behalf of Qadeer Ghulam Hyder Gorchani and Muhammad Ali Samoon, thereafter these four persons disclosed to him that the parties are not ready to settle their dispute because Qadeer was not coming on any decision hence the matter is not decided till date.

47. Pir Aftab, Nazeer Thakur and Ghulam Ahmed Gorchani have not been examined before this Court whose names transpire, from the evidence of the above defence witnesses, as important characters of faisla between the parties. There are many contradictions in the evidence of these witnesses. According to Haji Muhammad Ali he was appointed as Ameen by Yar Muhammad Baloch and Nazeer Thakur. In his cross examination he has stated that he was appointed as Ameen by Abdul Qadeer and Yaseen. He has not mentioned the specific date on which he was appointed as Ameen at the Bethak of Yar Muhammad Baloch. According to him 6/7 meetings were held but he has not mentioned the dates thereof. He further averred that he checked the accounts of both the parties and put his signatures. No record of the accounts bearing his signature has been produced by either of the party. Thus his stance that after checking of the record he put his signature has not been proved through documentary evidence. He has also stated that Haji Afzal shown him a Khata of wheat 13000 mounds. No such khata showing delivery of 13000 mounds of wheat has been produced. He further averred that according to his findings the amount was due against Abdul Qadeer but he has not specifically mentioned the total due amount.

48. The evidence of D.W. Allah Rakhio is contradictory to the stance of Haji Muhammad Ali that accounts were checked in 6/7 meetings held at factory of Haji Muhammad Ali, as Allah Rakhio has deposed that on 25-07-2017 both the parties appeared before Yar Muhammad Baloch where accounts of both parties were checked and a stamp was written. No other witness has deposed that the accounts were checked before Yar Muhammad Baloch on 25-07-2017 or the stamp paper was executed there. The stamp paper Ex.83-A shows the date of execution as 24-07-2017 and not 25-07-2017. Though this witness mentions regarding a gathering at the otaq of Yaseen on 24-07-2017 but does not mention execution of the document on 24-07-2017. This witness has also admitted in his cross examination that signatures of Haji Muhammad Yousuf, Bux Ali Shar, Hameed Balouch, Nabi Bux Lashari are not available in the document at Ex.83-A, however their names are mentioned therein.

49. According to D.W Mir Hazar on 23-07-2017 they asked Qadeer and Afzal that they should settle the dispute amicably. None of the other witness has deposed regarding this fact. According to him Muhammad Moosa Mehar and other persons were invited by Qadeer at his home. This fact is also not mentioned by any other witnesses. He has not mentioned that on 25-07-2017 the accounts were checked at the otaq of Yar Muhammad Baloch as claimed by Allah Rakhio.

50. Yar Muhammad Baloch in his cross examination has deposed that faisla was fixed at his Bethak on 27-07-2017. He has not mentioned regarding appearance of witnesses and other persons at his otaq on 25-07-2017. He claimed that he had seen the accounts and register of parties. None of the account or register bears his signature.

51. According to Muhammad Moosa, Pir Aftab advised both the parties to go to Yar Muhammad for faisla. He has not mentioned that on what date Pir Aftab so advised to both the parties. He has not mentioned the date on which he was appointed as Ameen on behalf of Haji Muhammad Irfan and Haji Afzal. In his cross examination he has admitted that he doesn't remember the exact date when the parties had gathered at the otaq of Yar Muhammad.

52. D.W. Imam Din has claimed the execution of stamp paper in his presence but he has not mentioned the date of such execution.

53. Apart from these contradictions in the evidence of the defendant side another important fact is that, it is claimed by the defendant side that Ex.83-A bear signatures and thumb impression of plaintiff No.1 and plaintiff No.2. When their signatures are compared by this Court with their signatures available on the written statement filed in F.C. Suit No.01/2018 (new number) and affidavits filed by the plaintiff side it appears that there is marked difference between the admitted and the disputed signatures on Ex.83-A. Under Article 84 of Qanoon-e-Shahadat Order this Court is competent to compare the admitted and disputed signatures by itself. Hence issue No.21 & 22 are answered in negative.

**ISSUE NO.5, 18, 24.**

54. These issues pertain to the entitlement of plaintiffs to the relief claimed, liability of the defendants to pay the amount of dishonored cheques with mark-up and the outcome of the suits.”

20. In view of such facts and circumstances, I would not proceed to reappraise the entire material including the evidence on the assumption that such reappraisal could lead to a different view than the one taken by the competent court of law. This Court's interference in the findings would be justifiable only when some illegality apparent on the record having nexus with the relevant material is established. Learned District Judge has discussed the entire evidence adduced by the parties, and there appears no illegality in his findings recorded on the facts and law; besides the appellant could not prove his stance in the summary suit. Thus, I am not persuaded to disturb the finding of learned District Judge on these questions; besides, I do not see any illegality, infirmity, or material irregularity in the impugned judgment passed by learned District Judge in Summary Suit.

21. In the light of above facts and circumstances of the case, judgment dated 31.03.2021 passed by learned District Judge Mirpurkhas in consolidated Suits bearing Summary Suit No.14 of 2017 [Re: Muhammad Yaseen & another v. Muhammad Irfan & another] and F.C Suit No.1 of 2018 [Re: Muhammad Irfan & others v. Qadeer Muhammad & others], is upheld and consequently the instant Appeal is dismissed along with pending application(s) with cost.

**JUDGE**