

**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**

**Civil Revision No. S – 181 of 2010**

*Viram and others v. Qadir Bakhsh and others*

Date of hearing: **16-05-2022**

Date of decision: **16-05-2022**

Mr. Ali Gul Abbasi along with Mr. Muhammad Zohaib Azam Rajput,  
Advocates for the Applicants.

Mr. Tariq G. Hanif Mangi, Advocate for private Respondents.

Mr. Noor Hassan Malik, Assistant Advocate General Sindh.

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

**Muhammad Junaid Ghaffar, J.** – Through this Revision Application, the Applicants have impugned judgment dated 16-06-2010 passed by Vth Additional District Judge, Sukkur in Civil Appeal No.29 of 2009, whereby while dismissing the Appeal, the consolidated judgment dated 28-03-2009 passed by IInd Senior Civil Judge, Sukkur in F.C. Suits No.134 of 2003 and 47 of 2004 has been maintained, through which the Suit of the Applicants was dismissed and that of the private Respondents was decreed.

2. Heard learned Counsel for the parties and perused the record.

3. It appears that the Applicants had filed a Suit seeking specific performance of some agreement / *qabooliyatnama*; whereas, the private Respondents had filed a Suit for possession and *mesne* profits in respect of the said property. The case of the Applicants is that agreement was entered for sale of the property and possession was handed over; whereas, the case of the private Respondents is that possession was taken over forcibly. The Suit of private Respondents was decreed; whereas, that of the Applicants was dismissed. Record reflects that apparently one Appeal was filed and it appears to be in respect of the Suit of the Applicants which was

dismissed as is reflected from the point for determination made by the Appellate Court, which reads as under:

*“Whether the respondent Nos.1 to 3 had sold their lands to appellants on 28.9.2001 in presence of witnesses?”*

4. I have gone through the record and the findings of the two Courts below and it appears that in their Suit for specific performance firstly the Applicants failed to examine the two attesting witnesses as required under Article 79 of the Qanun-e-Shahadat Order, 1984; secondly, the alleged payment of Rs.1.4 Million was never proved through any proper receipt; and lastly, the oral and written stance of the Applicants was found to be contradictory. While confronted, learned Counsel could not satisfy as to these findings; however, made an attempt to refer to the evidence of the Respondents and issues framed by the trial Court, and also contended that the Respondents never sought cancellation of the agreement in question; hence, the relief granted to them is not proper and legal. To that it may be observed that firstly, it is only one Revision before the Court in respect of the Appeal regarding the Suit of the Applicants, and in that case, the other issue of Respondents Suit cannot be considered and decided. The Appellate Court has only determined one point of determination as above; hence, this argument is rejected. Secondly, even otherwise, per settled law, a Plaintiff cannot get a decree in his favor by placing reliance on some defective evidence of the Defendant. He has to establish his case on the basis of his evidence. And thirdly, the evidence of the Plaintiff (which has though not been placed on record) as discussed in the impugned orders of the Court below is neither confidence inspiring nor believable as it is contradictory and short of the requirements for proving an agreement. As to cancellation of the agreement, it may be observed that this would only apply if the agreement had been accepted and non-performance was based on

default. Here, the agreement by itself has been denied; hence, the question of its cancellation does not arise. Lastly, it is also a case of concurrent findings of the two Courts below against the Applicants, whereas, the subject matter of the case is specific performance of an agreement, wherein the grant of relief is otherwise discretionary.

5. In view of hereinabove facts and circumstances of this case, no case for indulgence is made out, as apparently, the two Courts below have arrived at a just and fair just conclusion after going through the evidence; hence, this Revision Application is hereby **dismissed**.

Abdul Basit

J U D G E