Judgment Sheet

IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

R.A No.105 of 2003

Choudhry Ghulam Rasool Vs. Mistri Ghulam Rasool.

Applicant:	Through Mr. Abdul Jabbar Khaskheli advocate.
Respondent.	Through Mr. Arbab Ali Hakro advocate.
	Mr. Ghulam Abbas Sangi Assistant A.G. Sindh.
Date of hearing:	25.09.2017.
Date of decision:	13.10.2017.

JUDGMENT

ARSHAD HUSSAIN KHAN, J: - The applicant through his legal heirs filed instant Revision challenging the Judgment & Decree dated 13.03.2000 and 14.03.2000 respectively passed by the learned Vth Additional District Judge, Hyderabad in Civil Appeal No.10 of 1997, who reversed the findings and set aside the Judgment & Decree dated 28.11.1996 and 23.12.1996 respectively passed by the Senior Civil Judge, Tando Allahyar, whereby suit bearing S.C Suit No.17 / 1989, filed by the respondent was dismissed.

2. Brief facts leading to the filing of the present revision application are that the respondent / plaintiff filed second class suit No.17/1989 for specific performance of contract against the applicant / defendant. It is stated that in the suit that in the year 1968, the respondent / plaintiff purchased an agricultural land measuring S.No.57/1 measuring 04-00 acres situated at Deh Thebki Taluka Tando Allahyar, hereinafter referred to as the 'suit land' from the applicant / defendant for total consideration of Rs.2600.00. (Twenty six hundred) at the rate of Rs.650.00. per acre through an oral agreement in presence of respectable persons; out of the total amount, the respondent / plaintiff paid Rs.2400.00. (Twenty four hundred) to the applicant / defendant while the balance amount of Rs.200.00. was agreed to be paid at the time of execution of sale deed before Sub-Registrar. However, the possession of suit land was handed over to the respondent/plaintiff on the same day. It is further stated that in order to cultivate the suit land, the respondent / plaintiff incurred Rs.50,000.00 on its development. The respondent / plaintiff had been approaching the applicant for part performance of contract but it was being

delayed for want of installments to be paid to the government since 1969 to 1983 as per applicant / defendant. It is averred that on 31.08.1970, the applicant / defendant admitted the transaction with the respondent / plaintiff in presence of respectable persons of the locality. It is further averred that the respondent / plaintiff approached again in the year 1984 and 1985 but the applicant / defendant refused for execution of sale deed.

The applicant/defendant in his written statement denied any transaction with the respondent / plaintiff.

After trial, the learned trial Court dismissed the suit of the respondent / plaintiff, which was decreed in appeal, hence the applicant / defendant approached before this Court against conflicting findings of the Courts below.

3. Learned counsel for the applicant contended that there is no question of performance of the contract when no any agreement was entered into between the parties; that the respondent has failed to prove his suit before the trial Court neither he has produced any material document which may substantiate his version nor any trustworthy testimony is brought on record and that the oral agreement does not carry weight in the eyes of law. He contended that the learned appellate Court has erred in decreeing the suit as the appellate Court failed to consider and appreciate the evidence available on record; more particularly, the context when respondent himself has stated in his plaint that there were outstanding installments over the suit land, hence, the judgment of appellate Court is not sustainable under the law. He further contended that the malafide on the part of the respondent is apparent from the circumstances of the case. In support of his contention, he has relied upon the case of *'Malik TANVEER ALI and another v. Sardar ALI IMAM and 2 others'* reported in 2010 YLR 1799 and prayed for dismissal of the suit.

4. On the other hand, learned counsel for the respondent has contended that the respondent had proved his version through the trustworthy testimony of respectable persons of the locality and the appellate Court has rightly decreed the suit of the respondent considering all the aspects of the case including the documents produced by the parties, therefore, the impugned judgment of learned appellate Court does not suffer from any illegality as there are valid and cogent reasons for believing the same and it does not call for any interference of this Court. In support of his contentions, he has relied upon the cases of 'MUHAMMAD ISHAQUE v. AZIZUDDIN and others' [2004 MLD 251], 'ABDULLAH and 11 others v. MUHAMMAD HAROON and 8 others' [2010 CLC 14], 'SIRAJ DIN and others v. Mst. KHURSHID BEGUM and others' [2007 SCMR 1792], 'Mrs. SHERBANO v. KAMIL MUHAMMAD KHAN' [PLD 2012 Sindh 293], 'Mst. KULSOOM and 6 others v. Mrs. MARIUM and 6

others' [1988 CLC 870], 'REHMAT ALI ISMAILIA v. KHALID MEHMOOD' [2004 SCMR 361], 'Hafiz MUHAMMAD RAMZAN and others v. MUHAMMAD KHALIQUE' [1991 CLC 417], 'MUHAMMAD NADIR MEHMUD and others v. Mst. RASHIDAN BIBI' [2000 SCMR 1013], 'NABI BUX and others v. Syed MUMTAZ ALI SHAH and another' [2000 MLD 1318], 'AASA v. IBRAHIM' [2000 CLC 500] and 'MUHAMMAD ASHRAF v. MUNICIPAL CORPORATION, GUJRANWALA through Mayor/Administrator' [2000 MLD 514].

5. I have the heard the arguments of the learned counsel for the parties and with their assistance have perused the material available on record as well as the case law cited at the Bar.

6. It is well settled that revision is a matter between the higher and subordinate Courts, and the right to move an application in this respect by the Applicant, is merely a privilege. The provisions of Section 115, C.P.C., have been divided into two parts; First part enumerates the conditions, under which, the Court can interfere and the second part specify the type of orders which are susceptible to revision. In numerous judgments, the apex Court was pleased to hold that the jurisdictions under section 115, C.P.C., are discretionary in nature, but it does not imply that it is Not a right and only privilege, therefore, the Court may not arbitrarily refuse to exercise its discretionary powers, rather, to act according to law and the principles enunciated by the superior Courts. The legislatures in their wisdom have couched section 115, C.P.C., in the following language:-

> "S.115. Revision:---(1) The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears...
>
> (a) to have exercised a jurisdiction not vested in it by law, or
>
> (b) to have failed to exercise a jurisdiction so vested, or
>
> (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,"
>
> the High Court may make such order in the case as it thinks fit.
>
> [Provided that, where a person makes an application under sub-section he shall, in support of such application, furnish copies of the pleading, documents and order of the subordinate Court, and the High Court shall, except for reasons to be recorded, dispose of such application without calling for the record of the subordinate Court.]

7. From the bare reading of the above section, it is manifest that on entertaining a revision petition, the High Court exercises its supervisory

jurisdiction to satisfy itself as to whether the jurisdiction by the courts below has been exercised properly and whether the proceedings of the subordinate Court do suffer or not from any illegality or irregularity. Reference may be placed in the case of *Muhammad Sadiq v. Mst. Bashiran and 9 others (PLD 2000 SC 820).*

8. Precisely, the case of the applicant/defendant is that the suit land is the property of the applicant and he never agreed to sell his property (suit land) to the respondent/plaintiff nor any sale consideration was received on account of any sale transaction as alleged in the suit. All allegation leveled in the plaint against the applicant/defendant are false and hence denied. It is also the claim of the applicant that since no transaction was entered into, whether oral and or in writing, between the applicant/defendant and respondent/plaintiff in respect of suit land, therefore, the question of possession and alleged investment of the respondent/plaintiff over the suit land does not arise. The applicant also disputed the compromise being false and fabricated as no such agreement was ever entered into between the applicant/defendant and respondent/plaintiff. The suit filed by the respondent/ plaintiff as a counter blast to the earlier suit filed by the applicant/defendant against the respondent/plaintiff and others being suit No.27 of 1985. Further the judgment passed by the learned trial court was based on the evidence available on record and the suit filed by the respondent/plaintiff was rightly dismissed. However, the learned lower appellate court while reversing the finding of the trial court have misread and mis-appreciated the evidence available on record hence has committed material irregularity.

9. From the perusal of the record learned trial court on the pleading of the parties framed following issues:

1. Whether the plaintiff has purchased the suit land from the defendant through oral agreement on consideration of Rs.2600/- in presence of witnesses in the year 1968?
2. Whether the defendant has handed over the physical possession of suit land to the plaintiff after receiving the amount of Rs.2400/- in the year 1968, in part performance of the contract?
3. Whether the plaintiff has invested Rs.50,000/- over development of suit land and made it fit for cultivation?
4. Whether mutual compromise was executed in between the parties through respectable persons of the locality on 31.8.1970?
5. Whether the defendant has avoided to execute the sale deed from 1969 to 1983 on one pretext to other?
6. Whether the defendant is legally bound to execute the sale deed in respect of the suit land in favour of the plaintiff?

7. Whether the suit is not maintainable under the law?

8. Whether the suit is time barred?

9. Whether the suit is under valued and insufficient court fee stamp has been paid?

10. What should the decree be?

10. From the perusal of the record it reveals that respondent/plaintiff in support of his stance in the case examined himself as [Exh.50], produced documents viz *Faisla*/mutual agreement dated 31.08.1970 [Exh.51], Bill [Exh.52] Zakat receipt [Exh.53] and examined witnesses namely, (i) Syed Mushtaque Mehmood [Exh.54] (zamidar of the neighboring lands, and the attesting witness of *Faisla* Exh. 51), (ii) Tayyab [Exh.55] (zamidar of the neighboring lands and witness of oral agreement), (iii) Amjad Ali [Exh.56] (zamidar of the neighboring lands and attesting witness of *Falsla*) (iii) Beerddin [Exh.61] (shop keeper of the area and attesting witness of *Faisla*) and (iv) Ali Ahmed [Exh.71] (Tapedar of Deh Thebki). Whereas the applicant/defendant in support of his stance in the case examined Abdul Rauf [Exh.99] son of the defendant, produced land revenue receipts [Exh. 100 to Exh.113], true copy of Record of Rights [Exh.114] and also examined witnesses namely (i) Akbar [Exh.115] cultivator and Khair Muhammad [Exh.116] Tapedar Deh Dasoori.

It would be advantageous to reproduce the relevant excerpts of the cross examination of the applicant, respondents and their witnesses as under:

Evidence of Respondent/Plaintiff [Exh.50]:

" The oral agreement was executed in 1968 was witnessed by Tayab Hussain, Noor shah Irshad shah. I had not obtained receipt of earnest money paid by me. Oral agreement took in village Noor Shah."

"It is incorrect to suggest that no such agreement of sale was arrived between me and the defendant. It is also incorrect that I have not paid Rs. 2400/- as earnest money to the defendant after taking the possession of the suit land. I had cultivated the suit land for the first time after five years. I have paid the land revenue in 1974 and thereafter every year till this day."

"it is incorrect to suggest that I am not in possession of the suit land nor I have paid the land revenue to the government. It is incorrect that Ex: 52 and 53 have been managed by me with the connivance of the Tapedar. I developed the land through bulldozer which I got got from the government workshop Tando Jam.I had paid the bulldozer charges to government. Panchayat was called by both of us in respect of dispute regarding the suit land. The defendant has refused to execute the sale deed of the suit land therefore the panchayat was called."

"it is incorrect to say that the panchayat was not called in respect of suit land. It is incorrect that we have forged Ex: 51. It is correct to say that the panchayat was called only one in respect of the dispute over the tube well."

"it is incorrect to suggest that the defendant filed suit against me as I had try to interfere into possession of the suit land. It is incorrect to suggest that suit against me filed by defendant was dismissed in default and not in my favour.

The defendant has got about 76, 77 acres agricultural land of his own. The value of the suit land is about 4000/- to 5000/- per acre at present. It is incorrect to suggest that the defendant is in possession of the suit land.

"it is incorrect that have not spend money over development of land through bulldozer. It is incorrect that present suit is the counter blast of the earlier suit which was filed by defendant."

Evidence of Syed Mushtaque Mehmood [Exh.54]

"When this faisla came to me I came to know about the dispute of the parties for the first time. I do not know as to in respect of which survey number of present suit but I know the area. I have been civil lawyer practicing at Hyderabad. I acted in the faisla as a Neak Mard with the consent of both the parties. About 4, 5 years back I visited disputed land. It is correct to say that I have not written the survey number in respect of which Ex:51 was written. No transaction took place in my presence."

"it is incorrect that I am giving the evidence falsely to please the plaintiff."

"It is incorrect to say that defendant and not the plaintiff is in possession of the suit land."

Witness of the Plaintiff namely Tayyab [Exh.55]

"The transaction of the sale took place in village syed Irshad Hussain Shah at a distance of two blocks from my village. At that time Dhani Bux, Irshad Hussain Shah and Noor Hussain Shah were also present. The transaction was orally. The receipt of payment was not demanded by the plaintiff. The defendant agreed with the plaintiff that he will execute the sale deed after months. The oral agreement was in respect of S. No. 57/1. The plaintiff also owns 8 acres adjacent to S.No.57/1"

"it is a fact that criminal police case filed by the defendant is pending before this court against my above name nephews. Even after the said criminal litigation I am on good terms with defendant."

"it is incorrect to suggest that suit land is in possession of the defendant and has never in possession of the plaintiff. It is incorrect to suggest that I am deposing falsely due to the enmity with the defendant. It is correct that no agreement of took place between the parties or that no amount of Rs. 2400/- was paid by the plaintiff to the defendant earnest money."

Witness of the Plaintiff namely Amjad Ali [Exh.56]

" I do not know as to in respect of which S.No. the parties are litigating."

" I do not know as in respect of which S. No. of the land the faisla was made by Mushtaque Shah. It is incorrect to suggest that no faisla in respect of suit land made by Mushtaque Shah."

"it is incorrect to say that there is dispute between me and the defendant over water course. About 2 years back, I have lastly seen the disputed land. It is correct that no money transaction took place during the faisla between the parties to the suit."

"It is incorrect to suggest that due to my strained relations with the defendant I am deposing falsely."

Witness of the Plaintiff namely Beerddin [Exh.61]

"I am shopkeeper at Tando Allayar Town. I know the parties since last about 10, 15 and 20 years."

"the Ex: 51 was written in respect of agricultural land bearing block No. 53/1 of deh Thebki. The faisla was written to the effect that suit land was sold by the defendant to the plaintiff for Rs.2600/- out of which 2400/- rupees were paid in the faisla and 200 rupees were to be paid by the plaintiff to the defendant at the time of registration of sale deed.

"it is incorrect that no such faisla took place at the otaq of syed Mushtaque Shah."

"I do not know about any faisla except the present faisla nor I attended any other faisla made by syed Mushtaque Shah. It is incorrect that the suit land is in physical possession with the defendant. It is incorrect that plaintiff has no concern with the suit land."

Ali Ahmed Tapedar of Taluka Tapo Dasori [Exh: 71]

"Since six years I am posted at Tapadar Dasoori since then I have been seeing plaintiff in possession"

"it is incorrect to suggest that defendant is in possession. It is also incorrect that I am deposing falsely."

Evidence of Applicant/defendant [Exh.99]

"We are two brothers. It is correct that I was punished for imprisonment for 05 years by this Court and I am on bail to this case. One Ghulam Nabi was complainant in that case. It is correct that said complainant Ghulam Nabi is brother of plaintiff. It is incorrect that the fight took place in between complainant and as for taking over the possession of the suit property. The plaintiff is known to me. He is residing about one and half mile away from our village. It is correct that S.No.57 situated in deh Thebki is on the khata of my father. Deceased Choudhry Mushtaque Ahmed advocate was known to me. I do not know that deceased Mushtaque Ahmed was an advocate. I do not know one Pir Din Arain. Amjad Ali Qaimkhani is our neighboring zamindar. It is incorrect that my father deceased Choudhry Ghulam Rasool had sold out the S.No.57 situated in deh Thebki to plaintiff in the year 1968 through oral agreement in the consideration amount of Rs.2600/- at the rate of Rs.650/- per acre. It is incorrect that my father deceased Ghulam Rasool had received an amount of Rs.2400/- at the time of oral agreement. It is incorrect that the possession of land viz. S.No.57 was handed over to plaintiff by my father at the time of oral agreement. It is incorrect that I was aged about 05 years at the time of oral agreement. It is incorrect that plaintiff had made the suit property fit for cultivating purpose as it was un-cultivated. It is incorrect that plaintiff had invested an amount of Rs.40,000/- to make the suit property fit for cultivation purpose. It is incorrect that it was decided that the remaining amount of Rs.200/- was to be paid at the time of registration of suit property. It is incorrect that Ex.51 was reduced in writing in between plaintiff and my father deceased Choudhry Ghulam Rasool. My father deceased Choudhry Ghulam Rasool used to sign in English so also in Urdu. I see Ex.51 and say that it does not bear the signature of my deceased father Choudhry Ghulam Rasool. I do not know that Syed Mushtaque Ahmed was scribe of Ex.51. It is incorrect that after taking over the possession for the suit property plaintiff had cultivated the crops up to 1985 and paid the land revenue and Zakat to the government. It is incorrect that plaintiff had appeared to my father so many times for registration of the suit property but my father asked him that the suit property at under the loan of the bank and after clearance of the same he would get the register it to plaintiff. It is correct that we had taken the loan on entire land in the khata of my deceased father. It is incorrect that after refusal by my father for registration of the suit property, plaintiff had filed this suit. I do not know Mardan Ali Siddiqui and Muhammad Afzal. It is incorrect that said persons are known to me.

Witness of the applicant/defendant namely Akbar [Ex.115]

"I do not know anything about this case."

Khair Muhammad Tapedar Deh Dasoori [Exh. 116]

"I have brought the record from the year 1972. I have not brought the record of receipts of land revenue for the year 1984-85. It is correct that any person can pay the land revenue in the name of khatedar but it cannot be proved from the land revenue receipts that who is in possession of the suit property."

[Emphasis supplied]

11. Learned trial court on the basis of the above evidence decided the issues No. 1 to 7 in favour of the applicant/defendant and dismissed the suit of the respondent/plaintiff. Relevant portion of the said judgment, for the sake of ready reference is reproduced as under:

"From the of Ex.51 it appears that there are no such condition of terms written in the said agreement as deposed by said Mushtaque Ali Shah. From the evidence produced by the plaintiff I am of humble view that plaintiff has miserably failed to prove these issues. On the contrary the defendant has deposed that his father never entered into any transaction with the plaintiff he further deposed that he is in possession of the suit land. He also deposed that no any compromise was held in between plaintiff and my father Chaudry Ghulam Rasool for the suit property. He has produced land revenue receipts and zakat and Usher receipts at Ex.100 to 113. The defendant has also examined tapedar khair Muhammad who has deposed that according to their record Ghulam Rasool s/o Nawabuddin (defendant) is in cultivating possession of the suit land. He has confirmed that Ex. 100 to 113 have been issued from their office. The witnesses produced by the plaintiff have not fully supported the version of the plaintiff. Since the burden to prove these issues was upon the plaintiff but the plaintiff has failed to discharge them satisfactorily."

12. The learned lower appellate court however, on the same set of evidence reversed the finding of the learned trial court. Relevant portion of the judgment for the sake of ready reference is reproduced as under:

"19. After going through the evidence of the parties, I have reached to the conclusion that as per Ex.51 respondent/defdt. Chaudry Ghulam Rasool had sold S.No.57/1 of Deh Thebki area about 04 acres to the appellant/plaintiff vide oral agreement executed in the year 1968

and possession of which was handed over to the appellant/plaintiff Ex.51 is written by syed Mushtaq Mehmood Shah and he had corroborated and supported the execution of Ex.51. His evidence is further supported Beerdin and Amjad Ali Qaimkhani and all are attesting witness of Ex.51 which proves the oral agreement of the suit land between the parties. Apart from it, judicial Notice of the signature of Chaudry Ghulam Rassol on Ex.51 is taken. Signature of Ch. Ghulam Rasool on Ex.51 is compared with his signature on his written statement Ex.17 and Vakalatname Ex.1 and all the three signatures tallies with each other, which also proves the execution of Ex.51 by respondent/defendant Chaudry Ghulam Rasool.

20. Upshot of the above discussion is that from the evidence, produced by the parties before the trial court stands proved that there was an oral agreement of sale of land, consisting of S.No.57/1 of Deh Thebki by respondent/defendant Chaudry Ghulam Rasool, in favour of the appellant/plaintiff Mistri Ghulam Rasool in the year 68 and the same was confirmed by Ex. 51 written in the year 1970, as such the appleant/plaintiff has succeeded in providing his claim by filing suit for Specific performance of Contract. I, therefore, setaside the Judgment dated 28.11.1996 and decree dated 23.12.1996 and decree the suit of the appellant/plaintiff with direction to the respondent/defendant to execute the sale deed in favour of appellant/plaintiff within 90(Ninety) days of passing the judgment and in case of failure Nazir of the court of Senior Civil Judge, Tando Allahyar would get the sale deed registered in favour of the appellant/plaintiff. However no order as to costs."

[Emphasis supplied]

13. Before going into further discussion it would be appropriate to reproduce the English translation of Ex:51 as under:

Exh.51

TRUE TRANSLATION FROM URDU TO ENGLISH.

The dispute resolved between Choudhry Ghulam Rasool Zamindar Deh Dasori (Party No.1) and Mistri Ghulam Rasool r/o Village Guloo Machhi (Party No.2) on the installation of tube-well and its completion on the land of Choudhry Ghulam Rasool, the Panchayat comprising of the Zamindars and Nekmrds of the locality/Brothery was held today and after hearing the both parties at length, it is mutually decided as under:-

1. That Mistry Ghulam Rasool will not complete the tube-well and in lieu of that, he will return back the Agricultural Land of 5.1/2 Acres to Choudhry Ghulam Rasool (which was given to him by Choudhry Ghulam Rasool).

2. That as the boring and founding engine of the tube-well is complete and the well at the level of about 2.1/2 feet beneath is complete, the compensation of all that is decided as Rs.4030/- which is to be paid by Party No.1 to Party No.2 and as Mistry Ghulam Rasool has already been paid Rs.1530/- so after deducting this amount, the remaining amount of Rs.2500/- is to be paid by Choudhry Gulam Rasool to Mistri Ghulam RAsool by 1st February 1971 and Choudhry Ghulam Rasool will get the receipt of the same. Since today, Mistry Ghulam Rasool has no concern with tube-well and Choudhry Ghulam Rasool will be sole owner of the tube-well.

3. That Mistry Ghulam Rasool has filed case against Choudhry Ghulam Rasool, will gave in writing for withdrawal of that case, no one claim for the expenses already born by the parties on that case, however, the further expenses on the withdrawal of the case will be borne by Mistry Ghulam Rasool.

4. That the land of 4 acres of Deh Thebki which was old out by Choudhry Ghulam Rasool 2 years ago to Mistry Ghulam Rasool, he (Choudhry Ghulam Rasool) is bound to stand on that Agreement of Sale, that land alongwith water will be possessed by Mistry Ghulam Rasool and he will pay the remaining amount of the sale to Choudhry Ghulam Rasool at the completion of mutation / transfer.

5. That both parties have agreed to live in peace and harmony and if any dispute arises between them, they will approach the Nekmards of the locality rather to police.

This compromise has been reduced in writing for Sanad today i.e. 31st August, 1970.

Sd/-
Choudhry Ghuam Rasool

Sd/- Mistri Ghulam Rasool

Witnesses:

Sd/-
Muhammad Afzal

Sd/-
Amjad Ali

Sd/-
Mardan Ali

Sd/- Ahmed

Sd/- Peeruddin

Sd/-
Syed Mushtaq Mehmood"

[Emphasis supplied]

14. The crucial point involved in the present case is that to determine whether the *Faisla* /mutual agreement dated 31.08.1970 [Exh.51] is a genuine document and whether any oral contract/agreement was entered into between applicant and respondent/defendant in respect of sale of suit land in the year 1968. The record reveals that the plaintiff in para No.4 of the plaint of the suit has stated that on 31.08.1970, the applicant/defendant admitted the

agreement of sale in a mutual compromise executed between the parties, through respectable persons of the locality and *brothery*. Record also reveals that the respondent/plaintiff alongwith the suit also annexed the copy of the *Faisla* /mutual agreement dated 31.08.1970. The applicant/defendant in his written statement, which was filed in the suit during his lifetime, has stated that at no point in time he ever admitted the oral agreement in respect of suit land with the respondent/plaintiff and compromise, if any, is forged document and he never executed such a compromise. However he did not specifically deny that his signature on the *Faisla* /mutual agreement dated 31.08.1970 [Ex.51]. Since the execution of the document Exh.51, was disputed, therefore unless provisions of Article 79 of Qanun-e Shahadat Order 1984 is complied with, the said document was inadmissible in the evidence. At this juncture it would be appropriate, for the sake of convenience, to reproduce Article 79 of Qanun-e-Shahadat Order 1984, as under:

> **"79. Proof of execution of document required by law to be attested.** If a document is required by law to be attested, it shall not be used as evidence until two attesting witnesses at least have been called for the purpose of proving its execution, if there be two attesting witnesses alive, and subject to the process of the Court and capable of given evidence:
>
> [Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Registration Act, 1908 (XVI of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.]"

15. From the perusal of the record it appears that the respondent/plaintiff in order to prove the execution of Exh.51, produced/examined three out six attesting witnesses of the said document; consequently, the compliance/formalities having been done/completed within the meaning of Article 79 of the Quanun-e-Shahadat Order 1984. The court had to appraise the evidence on record to determine the question whether Exh. 51 is a genuine document and has really been executed at the given point of time. This question has further gained immense significance in view of fact that the executant of the document namely Ch. Ghulam Rassol is died. The said legal as well as factual aspect of the case has been over looked by the trial court, which resulted in dismissal of the suit, however, in the appeal, the learned lower appellate court has taken into consideration such aspects which resulted in reversal the finding of the trial court.

16. Main argument of the learned counsel for the applicant/defendant is that the oral agreement as well as execution of *Faisla*/mutual agreement [Exh.51] could not be proved. The perusal of the oral as well as documentary evidence shows that the respondent/plaintiff while appearing in evidence

reiterated his stance raised in the plaint and also produced original *Faisla*/mutual agreement [Ex.51]. The attesting witnesses of namely, (i) Syed Mushtaque Mehmood [Exh.54], (ii) Amjad Ali [Exh.56] (iii) Beerddin [Exh.61] AND witness of oral agreement namely Tayyab [Exh.55], also appeared and supported the stance of the respondent/plaintiff to the effect that *Faisla*/mutual agreement Exh.51 was executed in their presence wherein the defendant-Ch. Ghulam Rasool admitted that he had entered into the sale transaction with the plaintiff in respect of suit land. On the other hand, although the applicant/respondent denied his signatures on the document [Exh.51] but surprisingly no application was moved before the learned trial Court for referring the matter to the Hand Writing Expert. Learned trial court though did not exercise power under Article 84 of Qanun-e-Shahadat Order however, the learned lower appellate court while exercising powers under Article 84 of the Qanun-e-Shahadat Order, 1984 itself compared the signature of the applicant/defendant-Ch Ghulam Rasool on Exh.51 with the signature on admitted documents viz. vakalatnma [Exh. 14] and written statement [Exh. 17], filed by the defendant-Ch. Ghulam Rasool, during his life time, in the suit and found that his signature is same as on the admitted documents. The arguments of the learned counsel for the applicant/defendant that the learned lower appellate Court had no jurisdiction to compare the signatures itself and this should have been referred to the Hand Writing Expert, is contrary to the provisions of Article 84 of the Qanun-e-Shahadat Order, 1984, according to which in certain eventuality the Court enjoys preliminary powers to compare the signatures itself along with the other relevant material to resolve the controversy. I have noted that the learned lower appellate court carefully went through this process and compared the signature on the document, i.e. Exh.51 to the documents admittedly executed by the Ch. Ghulam Rasool and found it to be in complete similarity and tallied with each other. The matter was not referred to the Hand Writing Expert does not render the impugned judgment with the legally infirmity as to warrant interference by this Court especially where the applicant/defendant has not moved any application for referring the matter to the Hand Writing Expert. In this regard reliance is placed on the cases reported as *Messrs Waqas Enterprises and others v. Allied Bank of Pakistan and 2 others* **(1999 SCMR 85)** *Ghulam Rasool and others v. Sardar ul Hassan and another* **(1997 SCMR 976).**

17. The provisions of section 115, C.P.C. envisage interference by the High Court only on account of jurisdiction alone, i.e. if a Court subordinate to the High Court has exercised a jurisdiction not vested in it, or has irregularly exercised a jurisdiction vested in it or has not exercised such jurisdiction so vested in it. It is settled law that when a Court has jurisdiction to decide a

question it has jurisdiction to decide it rightly or wrongly both in fact and law. The mere fact that its decision is erroneous in law does not amount to illegal or irregular exercise of jurisdiction. For an applicant to succeed under section 115, C.P.C., he has to show that there is some material defect or procedure or disregard of some rule of law in the manner of reaching that wrong decision. In other words, there must be some distinction between jurisdiction to try and determine a matter and erroneous action of Court in exercise of such jurisdiction. It is a settled principle of law that erroneous conclusions of law or fact can be corrected in appeals and not by way of a revision which primarily deals with the question of jurisdiction of a Court i.e. whether a Court has exercised a jurisdiction not vested in it or has not exercised a jurisdiction vested in it or has exercised a jurisdiction vested in it illegally or with material irregularity.

18. No such infirmity has been shown by counsel for the applicants to call for interference in the impugned judgment by this Court. The case-law relied upon has not been discussed as it was not relevant for the purposes of deciding this revision.

19. Moreover, in the case of *Mir Muhammad alias Miral v. Ghulam Muhammad* **(PLD 1996 Kar. 202)**, it was held that, "It is settled proposition of law that in the event of conflict of judgment, view expressed by the appellate Court should ordinarily be preferred unless the same is contrary to evidence on record or in violation of the settled principles for administration of justice." In the present case, learned counsel for the applicants has failed to show that the findings of fact arrived by the learned appellate Court are contrary to the evidence on record or in violation of settled principles of law.

20. In the case of *AASA v. Ibrahim (***2000 CLC 500**), learned single Judge of the Quetta High Court held that, "If no error of law or defect in procedure had been committed in coming to a finding of fact, the High Court cannot substitute such finding merely because a different finding could be given.

21. The upshot of the above discussion is that no illegality, irregularity or jurisdictional error, in the findings of the learned lower appellate courts, which resulted into the impugned judgment and decree, could either been pointed out or observed. Resultantly, the revision petition in hand being devoid of any force and merit is dismissed.

Sd/- ARSHAD HUSSAIN KHAN,
JUDGE. 13.10.2017.