

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S – 55 of 2015

(Wazeer Ali Maitlo v. Lal Muhammad Panhwar & others)

Date of hearing : 25.10.2024

Date of decision : 25.10.2024

Mr. Mushtaque Ahmed Shahani, Advocate for applicant.
Mr. Saeed Ahmed Panhwar, Advocate for respondents No.1 & 2.
Mr. Ali Raza Baloch, Assistant Advocate General Sindh.

J U D G M E N T

Zulfiqar Ahmad Khan, J. – This Civil Revision has been filed challenging the judgment and decree dated 07.05.2015, rendered by the learned IIIrd Additional District Judge, Sukkur in Civil Appeal No.26 of 2009. In this appeal, the appellate Court upheld the earlier decision made by the learned IIrd Senior Civil Judge, Sukkur in F.C. Suit No. 114 of 2005, where the applicant / plaintiff's suit was dismissed. The initial judgment and decree in F.C. Suit No.114 of 2005 were passed on 28.03.2009 and 31.03.2009, respectively.

2. The applicant (plaintiff) claims that on 26.04.2005, the respondents (defendants) entered into a sale agreement for their agricultural land bearing Survey No.376 and 584, located in Deh Panhwar, Tapo Bhiro, Taluka Rohri, District Sukkur, for a total of Rs.6,00,000/-. The respondents acknowledged receiving Rs.5,00,000/- as an advance payment, and the applicant was allegedly given possession of the land. The agreement stated that the remaining Rs.1,00,000/- would be paid once the respondents transferred the land to the applicant. On 26.05.2005, the applicant offered the remaining amount and asked the respondents to either execute the sale deed before the Sub-Registrar, Rohri, or take steps to transfer the land by making a statement before the Mukhtiarkar, Taluka Rohri. However, the respondents delayed and gave evasive answers. The applicant later learnt that the respondents were secretly negotiating the sale of the land to others. Determined to resolve the issue, the applicant went to the respondents again on 26.06.2005 with witnesses, and urged them to complete the sale. Despite multiple attempts, the respondents refused to proceed, and

frustrated by the continued delay, the applicant filed the suit for specific performance of the contract and permanent injunction.

3. In response to the applicant's claim, the respondents (defendants) No.1 and 2 filed their written statement before the trial Court, denying the alleged sale. They described the sale agreement as fabricated, false and managed. The respondents clarified that the subject property actually has five shareholders: Sardar Lal Muhammad Khan, Zulfiqar Ali, Mst. Shabeeran, Mst. Sana and Mst. Haseena. However, the applicant allegedly manipulated the agreement to show only two names, Lal Muhammad and Zulfiqar Ali. Additionally, the respondents accused the applicant of being involved in various criminal activities, including multiple land-related disputes, which have led to cases being registered at several police stations, including Police Stations Dubbar, Pir-Jo-Goth, Ahmedpur and 'A' Section Khairpur.

4. After considering the submissions raised by both parties, the learned trial Court framed the following issues for adjudication:

1. *Whether defendant No.1 and 2 sold out agricultural land an area of (2-02) acres out of S.No.376 and area of 2-00 acres of S.No.584 total area (04-02) acres situated in Deh Panhwar Taluka Rohri under agreement of sale dated 26.4.2005 for consideration of Rs.600,000/- and received rupees 500000/- as earnest money and handed over the possession of land to the plaintiff?*
2. *Whether agreement of sale dated 26.4.2005 is false void and manipulated document?*
3. *Whether suit is not maintainable according to law?*
4. *Whether plaintiff is entitled for the relief as prayed for?*
5. *What should the decree be?*

5. Both parties presented evidence to support their respective claims. The applicant (plaintiff) testified on his own behalf and produced the alleged sale agreement. Additionally, the testimonies of his witnesses, Shahzado and Rasool Bux, were recorded. From the respondents'

(defendants') side, Lal Muhammad, one of the respondents and a witness, was examined.

6. Heard learned Counsel for the parties and perused material available on record with their assistance.

7. In the cross-examination of the applicant Wazir Ali, he was confronted with the alleged sale agreement. When questioned, he admitted that there had been overwriting in the agreement as to the survey number and area mentioned in the document. He also acknowledged that the alterations made in the document were not signed by the parties involved, which seriously undermines the credibility and authenticity of the agreement. The applicant's admission of these discrepancies cast doubt on the entire validity of the document, raising questions about the true intentions behind the agreement.

8. Additionally, during his testimony, Wazir Ali acknowledged the ladies as co-sharers in the subject property. Despite this, he stated that defendants No.1 and 2 had sold their own shares in the property to him. However, when pressed further, he made an important admission: *"It is a fact that in Ex.32-A, it is not mentioned that defendants No.1 and 2 sold me their own shares."* This admission directly contradicts the claims made by the applicant in the agreement. It also implies that the sale agreement, which was central to the applicant's case, does not accurately reflect the true nature of the transaction.

9. In addition to Wazir Ali's testimony, the cross-examination of witness Rasool Bux revealed further inconsistencies in the evidence. Rasool Bux was unable to recall the exact date when the bargain between the parties was allegedly settled, which raises serious concerns about the reliability of his evidence. Furthermore, Rasool Bux stated that the amount in the transaction was Rs.5,00,000/- but could not recall the number of notes used in the payment. This vagueness regarding such a significant detail further weakens the case presented by the applicant, as it casts doubt on the veracity of the transaction.

10. The evidence presented by witness Shahzado also shown conflicts. He mentioned the survey number but failed to specify the areas corresponding to the numbers. This lack of particulars is critical in a property dispute where exact measurements and details are paramount. On the other hand, Rasool Bux, who also testified, referred to the area but could not provide the survey numbers associated with the sale. The absence of these critical details makes it difficult to establish the exact nature of the property in question, further undermining the applicant's claims.

11. In response to these allegations, respondent / defendant Lal Muhammad presented his own evidence, which contradicted the applicant's claims. Lal Muhammad referred to a separate sale deed, executed on the same date, for about 7 *Jirebs* in favour of the applicant / plaintiff. This was in direct opposition to the alleged sale and sale agreement presented by the applicant. Moreover, Lal Muhammad completely denied the existence of the sale, the sale agreement and any receipt of money in connection with the alleged transaction. This testimony directly weakens the credibility of the applicant's case and further supports the defendants' position.

12. Turning to the agreement dated 26.04.2005, the applicant's case faced further challenges. The applicant's side failed to examine the author, attesting witness and stamp vendor associated with the agreement. These individuals could have provided crucial testimony regarding the authenticity and validity of the sale agreement. However, the applicant failed to summon them to testify, which left critical gaps in the evidence. Furthermore, the applicant produced only the sale agreement, but did not submit any title documents proving that defendants No.1 and 2 had ownership of the property in question. The absence of such title documents is a significant flaw, as they would have been necessary to substantiate the claim of ownership. This failure to provide supporting evidence, such as ownership documents, further weakens the applicant's case.

13. The trial Court carefully examined all the evidence and concluded that the parties involved seemed to be in collusion, attempting to deprive

the female co-sharers of their rightful share in the property. The trial Court observed that there was a clear lack of documentary proof of possession, which is crucial in any property dispute. Possession documents would have been essential to demonstrate that the applicant had legal rights over the property. Without this documentary evidence, the trial Court found it difficult to believe the applicant's claims and noted that the evidence was insufficient to support the assertions of the applicant.

14. The appellate Court, in its judgment, rightly identified several lacunas in the applicant's case. It specifically pointed out the failure to examine Nazir Ahmed Soomro, the Notary Public who attested the sale agreement. This oversight was significant, as the notary's testimony would have been vital in confirming the legality of the agreement. The appellate Court also highlighted the absence of CNICs of the respondents / defendants with the sale agreement. The CNICs are crucial for verifying the identities of the parties involved in the transaction, and their absence raised further doubts about the authenticity of the sale.

15. Upon a detailed review of the proceedings, it is apparent that the findings and judgments rendered by the Courts below are well-founded, and there is no cause for interference. Therefore, this Civil Revision is **dismissed**.

Above are the reasons of my short order dated 25.10.2024.

J U D G E

Abdul Basit