

# IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

## Civil Revision No. S – 230 of 2010

*(Wahid Bux Buriro through his legal heirs v. Manzoor Hussain Abro & another)*

Date of hearing : **16.12.2024**

Date of decision : **16.12.2024**

Mr. Tariq G. Hanif Mangi, Advocate for applicants.  
Mr. Abdul Rasheed Kalwar, Advocate for respondents.

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

**Zulfiqar Ahmad Khan, J.** – This Civil Revision has been filed to challenge the judgment and decree dated 24.09.2010 and 28.09.2010, respectively, passed by learned IInd Additional District Judge, Ghotki, in Civil Appeal No.34 of 2004. In this appeal, the appellate Court upheld the judgment and decree dated 08.04.2004, passed by learned Senior Civil Judge, Mirpur Mathelo, in F.C. Suit Old No.37 of 1996 (New No.22 of 2003), wherein the suit of the petitioner (plaintiff) was dismissed.

2. The applicant filed a suit seeking specific performance of a contract, permanent injunction, declaration and cancellation. He claimed the he had entered into a sale agreement with respondent (defendant) No.1 on 05.01.1995 to purchase 8 acres and 27 ghuntas of land from various survey numbers in Deh Mathelo, Taluka Ghotki, for a total consideration of Rs.6,94,000/-. The applicant paid an advance of Rs.2,94,000/- and agreed to pay the remaining amount in two installments: Rs.2,00,000/- by 15.05.1995 and the balance of Rs.2,00,000/- upon the mutation of the land in his name. Despite handing over a Demand Draft dated 08.05.1995 of Rs.2,00,000/- on 10.05.1995, respondent No.1 refused to accept it, and the applicant was unable to complete the payment as agreed. The applicant further claimed to have been in continuous cultivating possession of the land for over thirty years, paying land revenue, and

facing attempts by respondent No.1 and his accomplices to dispossess him from the subject land. Additionally, the applicant contested an Entry No.191 of 29.05.1991 in the land records regarding the sale of part of the land to respondent (defendant) No.2, alleging it was forged and manipulated after the suit was filed.

3. In response to the applicant's claim, respondents No.1 and 2 filed a joint written statement denying the applicant's allegations. They asserted that respondent No.1 remained the owner of the property, except for a total of 4 acres and 5 ghuntas (Survey Nos.526 & 612 and Block No.155/1), which was sold to respondent No.2 for Rs.2,00,000/- via a statement before Mukhtiarkar, Ghotki, recorded in the land records on 29.05.1991. The respondents further stated that the entire land is in the possession of respondent No.2, the son-in-law of the applicant's daughter, who has been cultivating the land with his family for a long time. Respondent No.1 denied executing any sale agreement with the applicant, asserting that the applicant was only aware of his bank account details due to their familial relationship. He denied receiving any advance payment and claimed that the sale agreement presented by the applicant was fraudulent.

4. The trial Court framed the relevant issues, recorded the evidence of the parties, and, after hearing both sides, dismissed the applicant's suit by impugned judgment and decree dated 08.04.2004. The applicant appealed the decision before the appellate Court, but his appeal was also dismissed through impugned judgment and decree dated 24.09.2010 and 28.09.2010, respectively. Consequently, the applicant has now filed the present revision application.

5. During the proceedings before this Court, the applicant expired, and an application was filed for bringing on record his legal heirs, which was allowed vide order dated 19.09.2022. Subsequently, amended title arraying them was filed on 22.09.2022.

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

7. The primary issue in this case is the authenticity of the sale agreement dated 05.01.1995, which the applicant claims the basis of his suit. Upon scrutiny of the alleged agreement (قبولیت نامو), it is evident that two witnesses, Muhammad Hashim and Abdul Haleem, attested the agreement. Muhammad Hashim, despite being the applicant's caste-fellow, did not provide consistent support for the applicant's version of events during cross-examination. While Hashim claimed to have been present at the execution of the sale agreement, he admitted that he was unaware of the negotiations between the applicant and respondent No.1 prior to the agreement. He further testified that, when the agreement was written, he was present with the applicant, respondent No.1, Abdul Haleem and an unnamed person who allegedly scribed the agreement. Hashim also deposed that Abdul Haleem was brought by respondent No.1. According to Hashim, the applicant invited him to accompany him to witness the agreement, and they traveled from their village to Ghotki for that purpose. Hashim also testified that he did not count the earnest money paid to respondent No.1, although the applicant counted it himself. Moreover, Hashim admitted that his wife's mother had remarried the applicant, which could present a potential conflict of interest.

8. In contrast, the applicant contradicted Hashim's version during his own cross-examination. He claimed that the bargain had taken place through the intervention of Muhammad Hashim and others. The applicant further stated that he, respondent No.1 and two other persons came with him, while Muhammad Hashim and Abdul Haleem were already present at the site where the agreement was reduced into writing. However, he was unable to identify the person who wrote the agreement. The applicant also contradicted Hashim's testimony regarding the number of individuals

present during the execution of the agreement, stating that there were two people accompanying respondent No.1 and that a second person was also present. Moreover, the applicant's account differed from Hashim when he stated that they, including the second person, initially went to the Mukhtiarkar's Office on 05.01.1995 but, due to the Mukhtiarkar's absence, they returned and went back again on 09.01.1995. This reveals inconsistencies in the applicant's account regarding the presence of other individuals at key moments. Additionally, the applicant admitted that no separate receipt was given to him, aside from the agreement itself. Importantly, the applicant failed to produce any evidence regarding the stamp vendor, which would have been necessary to authenticate the agreement. The contradictions between the applicant's and Hashim's testimonies, including discrepancies over the number of individuals present and other key details, highlight significant inconsistencies in their accounts of the events surrounding the sale agreement.

9. As far as the second attesting witness, Abdul Haleem, is concerned, despite being named in the agreement, he was not examined during the proceedings. Several adjournments were requested to examine Abdul Haleem, but he was not made available. The trial Court dismissed an application to examine him on 15.06.2002, which led to filing a Civil Revision No.14 of 2002 before learned District Judge, Sukkur. The revision was allowed on 19.01.2004 upon no objection of Counsel for the respondents, and the trial Court was directed to examine Abdul Haleem within 10 days. However, despite this order, the applicant's Counsel failed to present Abdul Haleem for examination, and as a result, the applicant's side was closed on 16.02.2004 for failing to produce the witness.

10. The applicant's own testimony raised several doubts regarding the agreement and his possession of the land. Despite claiming to have been in possession of the land since the execution of the sale agreement, the

applicant admitted in the opening of his examination-in-chief that he did not remember the specific survey numbers of the disputed land, which is highly implausible for someone who claims to have been cultivating the land for over thirty years.

11. The applicant's own admission that he was a Chowkidar with a modest salary of Rs.3,000/- per month further undermines his claim of being able to pay Rs.2,94,000/- as an advance for the land. Moreover, the applicant did not produce any evidence showing the financial transactions related to the alleged payment, such as a bank statement or a receipt.

12. Moreover, the applicant failed to establish his claim regarding the payment of the remaining amount, despite his assertion in the plaint that he handed over a Demand Draft of Rs.2,00,000/- to respondent No.1 but later on contradicted that Azizullah, the applicant's son, was alleged to have gone with the Demand Draft and informed the applicant about the refusal by respondent No.1. Even otherwise, said Azizullah was never examined as a witness. The only evidence presented in this regard was a photocopy of the Demand Draft, but neither the person from the bank nor any other witness was examined to substantiate this claim, which further weakens his case.

13. The applicant's possession of the land also appears to be questionable. In his testimony, the applicant acknowledged that he had been a *hari* (tenant farmer) on the land since the time of his forefathers and took responsibility of the land in 1995, following his father's death. This timeline suggests that the applicant, being *hari*, was already in possession of the land prior to the alleged sale agreement. Prima facie, it appears that the applicant may have sought to usurp the property of respondent No.1 shortly after assuming responsibility of the *hari* tenancy. This raises doubts about the applicant's claim that possession was transferred to him under the terms of the sale agreement, as he failed to

provide clear evidence of any actual change in possession following the alleged transaction.

14. The discrepancies in the testimonies of the witnesses, the lack of production of key witnesses such as Abdul Haleem and the stamp vendor, the contradictions in the applicant's own statements and the absence of independent corroborating evidence contribute significantly to the credibility of the sale agreement and the applicant's claims. The applicant's inconsistent narrative regarding the number of individuals present during the execution of the agreement, along with his failure to identify the person who drafted it, raises further questions about the credibility of his account. Additionally, the applicant's admission that he did not remember the specific survey numbers of the disputed land, despite claiming to have been in possession for over thirty years, further undermines his case. His inability to produce any evidence regarding the payment of earnest money, the lack of a separate receipt, and the absence of the stamp vendor, which would have been necessary for the agreement's authentication, weakens his position. The failure to produce Abdul Haleem, despite his name being on the agreement and the Court's directive to examine him, further diminishes the reliability of the applicant's evidence. Moreover, the contradictions surrounding the payment of the remaining amount, particularly with regard to the Demand Draft, and the applicant's failure to present any supporting witnesses or documents, create significant uncertainty about the transaction. The applicant's claim that possession was transferred to him under the sale agreement is also called into question by his prior possession of the land as a *hari* and the lack of clear evidence of a transfer of ownership. These factors, compounded by procedural irregularities and the applicant's failure to present crucial evidence in a timely manner, collectively challenge the authenticity of the sale agreement and the applicant's version of events.

15. The Hon'ble Supreme Court in the case of *Khudadad Khan v. Syed Ghazanfar Ali Shah alias S. Inaam Hussain and others* (2022 SCMR 933) held that the fundamental and elemental condition for the valid attestation of a document is that two or more witnesses sign the instrument, and each witness must sign in the presence of the executants. This stringent condition, as mentioned in Article 79 of the Qanun-e-Shahadat, 1984, is uncompromising. As long as the attesting witnesses are alive, capable of giving evidence, no document can be used in evidence without the evidence of such attesting witnesses. The provisions of Article 79 are mandatory, and non-compliance with them will render the document inadmissible in evidence. If the execution of a document is specifically denied, the best course of action is to call the attesting witnesses to prove the execution. Furthermore, when the evidence brought forward by a party to prove the execution of a document is contradictory or paradoxical to the claim lodged in the suit, or is inadmissible, such evidence will have no legal sanctity or weightage.

16. In light of these observations, the applicant has failed to present any valid grounds for interfering with the concurrent findings of the Courts below. Under Section 115, CPC, revision can only be granted if the order or judgment of a subordinate Court is perverse, suffers from a jurisdictional error, or is based on misreading or non-reading of evidence, leading to a conclusion contrary to law. In this case, no such error has been established. Therefore, the judgments and decrees of the trial Court and the appellate Court are upheld, and the revision application is **dismissed**.

Above are the reasons of my short order dated 16.12.2024.

J U D G E