

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S – 216 of 2019

Civil Revision No. S – 217 of 2019

*(Nazeer Muhammad through his legal heirs
v. Muhammad Zafar Siddiqui and others)*

Date of hearing : 10.03.2025

Date of decision : 10.03.2025

Mian Mumtaz Rabbani, Advocate for applicants.
Mr. Kamran Mobeen Khan, Advocate for respondent No.1.
Mr. Ahmed Ali Shahani, Assistant Advocate General Sindh.

J U D G M E N T

Zulfiqar Ahmad Khan, J. – By this common judgment, I intend to decide the captioned matters together. Both Civil Revisions have been preferred against the judgment and decree dated 07.10.2019, passed by learned Model Civil Appellate Court / 2nd Additional District Judge, Sukkur in two consolidated Civil Appeals No.72 and 90 of 2012 dismissing both the appeals, where the applicants challenged the judgment and decree dated 17.04.2012, passed by learned IInd Senior Civil Judge, Sukkur in two amalgamated F.C. Suits No.17 and 56 of 2003, whereby F.C. Suit No.17 of 2003 filed by applicants (hereinafter will be referred to as the ‘**applicants’ suit**’) was dismissed and F.C. Suit No.56 of 2003 filed by respondent No.1 (hereinafter will be referred to as the ‘**respondent’s suit**’) was decreed.

2. The applicants’ suit was filed for specific performance of contract, return of money and permanent injunction, wherein the applicant / plaintiff (Nazeer Ahmed) claimed that he was running a Plastic and Trunk Store at Shop / Property No.B-336, Shahi Bazar, Rohri since 1991, under an oral rental agreement with the previous owner. Respondent / defendant No.1, who was the applicant’s working partner and servant, used to manage the business and maintain the accounts. Later, the shop / property in question

was purchased by respondent No.1 in his name, although the funds for the purchase were allegedly used from the applicant's business. When the applicant enquired that why he did not transfer the shop in his name, respondent No.1 assured him that he would transfer the shop to his name whenever he would desire, and to that effect, respondent No.1 executed an agreement (اقرارنامه) in applicant's favour on 05.04.2002. An amount of Rs.3,00,000/- of the applicant was due against respondent No.1, out of which, Rs.1,65,000/- was spent on purchasing the subject property. In the month of November 2002, when the applicant requested respondent No.1 to transfer the property in his favour, he refused to do so and also denied returning the remaining amount of Rs.1,35,000/-, even threatened him. It is alleged that respondent No.1 was intending to sell the property to someone else by dispossessing the applicant. The applicant had been in continuous possession of the property since 1991 and had been paying its utilities and taxes. The applicants' suit was dismissed, and the appeal too filed by them; hence, they filed Civil Revision No.S-216 of 2019 challenging the said decisions.

3. On the other hand, respondent's suit was filed for possession, cancellation of sale agreement and mesne profits, wherein he alleged that he is the owner of subject shop under the Registered Sale Deed dated 29.03.1994. He admitted running business of Crockery and Trunk Store in his shop by the applicants before and after the purchase of shop by him. Respondent No.1 claimed that after the purchase of shop by him, the applicants agreed to pay rent of Rs.2,000/- per month to him, but no rent agreement was executed between them as per their reliance on each other. He claimed the agreement dated 05.04.2002 as false and fraudulent, and added that it does not bear his signature. He denied himself to be the applicants' servant and receiving any sale consideration. He claimed the applicants in an unauthorized possession and liable to be dispossessed. He stated that the applicants have failed to pay the rent to

him since July 2000; hence, they are liable to pay mesne profits till possession is to be handed over to him. The suit was decreed, and the trial Court's judgment and decree were maintained in the appeal filed by the applicants; therefore, Civil Revision No.S-217 of 2019 has been preferred against the same.

4. Learned Counsel for the applicants argued that the issues were not properly framed / decided. Though the applicant was running business / shop in partnership with respondent No.1, but the trial Court wrongly held in issue No.1 that there was some rent agreement between them. The disputed agreement (اقرارنامہ) was not a sale agreement, but the trial Court in the judgment quoted it wrongly as a sale agreement. He claimed that respondent No.1 was 1/4th partner in the business / shop. Applicants' Counsel submitted that the applicant did not challenge the sale deed because the applicant has admitted that it was executed in the name of respondent No.1, but he used the applicant's funds while executing the same, therefore, the agreement (اقرارنامہ) in question was made. He argued that if respondent No.1 is claiming the applicant as the tenant, then he should have filed a rent application instead of the suit for mesne profits.

5. Learned Counsel for respondent No.1 argued that the respondent purchased suit property from one Muhammad Shafi in the year 1994. Applicant was employee of said Muhammad Shafi, and after the purchase of subject shop by the respondent, he asked the respondent to rent out the same to him. Initially, he paid the rent of Rs.2,000/- per month, but subsequently defaulted. Learned Counsel further argued that the applicant had earlier filed a suit for permanent injunction, wherein he did not mention anything about the present agreement (اقرارنامہ). Said suit was dismissed by the trial Court; against which decision, an appeal was preferred, which was later on withdrawn. He contended that though the

agreement (اقرارنامہ) has been quoted as the sale agreement by the trial Court, but its date is same.

6. Learned AAG Sindh argued that this is a matter between private parties; however, he added that specific performance of sale agreement or cancellation of sale deed is not there in both the suits.

7. I have given due consideration to the submissions advanced by learned Counsel for the parties and examined the record in its entirety.

8. Perusal of the record reflects that after filing of the instant Civil Revisions, while this Court was hearing the matter on 09.12.2019, Mr. A. M. Mobeen Khan, Advocate filed *vakalatnama* on behalf of respondent No.1 and submitted a statement that writ of possession issued by the Executing Court was executed on that day. This Court was apprised that the Executing Court's Bailiff by breaking the lock of the suit property handed over its possession to respondent No.1. Subsequently, on 29.08.2022, when an application for antedating the matter was taken up, learned Counsel for the applicants confirmed handing over the subject property's possession and showed willingness of the applicants to deposit the mesne profits amounting to Rs.1,00,000/- before the Additional Registrar of this Court. He further requested for suspension of the impugned judgments and decrees of the Courts below, which request was allowed subject to depositing of the alleged mesne profits / decretal amount within four days. The compliance was made by the applicants accordingly.

9. The present Civil Revisions arise out of concurrent findings by the Courts below, whereby the applicants' suit for specific performance of an agreement (اقرارنامہ), return of amount and permanent injunction was dismissed, and the respondent's suit for possession, cancellation of agreement and mesne profits was decreed.

10. The foundation of the applicants' claim is their uninterrupted possession over the suit property since 1991, under an oral tenancy arrangement with the previous owner of the property. This fact is clearly pleaded in paragraph No.8 of the plaint and is of pivotal importance. The applicants asserted that they had been running their Plastic and Trunk Store in the subject shop since 1991, bearing the burden of all relevant taxes, utility bills etc.

11. Importantly, this assertion regarding possession and payment of utilities and taxes was not denied in the written statement filed by respondent No.1. Instead, he admitted that the applicants were indeed in occupation of the property and were conducting business therein, both before and after the purchase of the property by him through the registered sale deed dated 29.03.1994. When respondent No.1 has not denied the applicants' long-standing possession, the trial Court was required to accept the fact of possession as proved.

12. Despite respondent No.1's assertion that the applicants were his tenants, he failed to substantiate this claim with any evidence such as a rent agreement, rent receipts, or correspondence indicating a landlord-tenant relationship. The only claim made was that a monthly rent of Rs.2,000/- was agreed upon orally. Even during cross-examination, no evidence was presented to show that rent had been paid or demanded in any structured or regular manner. Respondent No.1 admitted that there was no written tenancy agreement and that the arrangement was verbal, with no documentation to support the payment of rent. This significant omission casts doubt on the respondent's claim of a landlord-tenant relationship, particularly over such a prolonged period.

13. The applicants have produced a key document dated 05.04.2002, an agreement (اقرارنامه), executed by respondent No.1, wherein he admitted that the funds used for purchase of the subject property were

obtained from the applicants' business, and further agreed to transfer the property in the name of applicant, Nazeer Ahmed, whenever he so desired. The document, though contested by the respondent, bears his signature, which the applicants contend is genuine.

14. Respondent No.1 has taken a categorical stance that the agreement (اقرارنامہ) in question is false and fabricated and does not bear his signature. However, a comparison of his signature on the registered sale deed, which he himself relies upon, and on the disputed agreement, reveals that both sets of signatures are substantially similar and appear to be made by the same hand. This Court cannot ignore this significant similarity, especially when the respondent has offered no expert opinion or forensic evidence to rebut the genuineness of the document.

15. This situation creates an evidentiary inconsistency in the respondent's claim. If the signature on the agreement (اقرارنامہ) matches that on the sale deed and no plausible explanation is offered for the similarity, then the denial of execution loses its weight. This inconsistency ought to have been explored and adjudicated upon properly by the trial Court, which unfortunately was ignored altogether.

16. A grave error is committed by the trial Court in characterizing the subject agreement (اقرارنامہ) as a "sale agreement" and treating the suit as one for specific performance of the same. Nowhere in the plaint did the applicants challenge the ownership of respondent No.1 or seek cancellation of the registered sale deed dated 29.03.1994. Instead, their case was based on a relationship of trust from their oral business partnership, and the respondent later admitted that the shop was bought using business money of the applicant and he would hold it for himself.

17. The trial Court erroneously framed issues treating the subject agreement (اقرارنامہ) a conventional sale agreement and wrongly

proceeded to apply limitation laws applicable to such suits. This reflects a complete misreading and non-application of mind to the pleadings and prayer clauses. The suit was only for enforcement of a promise to transfer the property back to the applicant based on their mutual understanding. The applicants claimed that Rs.1,65,000/- were used from their business and that the respondent merely held the title, as evidenced by the subsequent execution of the agreement (اقرارنامہ).

18. Once it is shown that the funds originated from the applicants' business and that the respondent was merely a working partner or employee, the ownership claim of respondent No.1 becomes a legal fiction. The Courts below were required to examine the real nature of the transaction. The applicants' claim is not a direct challenge to the title deed but a claim for recognition of their ownership and enforcement of an agreement (اقرارنامہ), which the lower Courts completely failed to appreciate.

19. Another significant factor that deserves attention is the execution of the decree during the pendency of these Civil Revisions. Respondent No.1, after obtaining the decree from the appellate Court, got the writ of possession executed on 09.12.2019 through the Court's Bailiff by breaking the lock of the subject shop and taking over possession. However, this was a provisional possession, subject to the final decision of this Court in the Civil Revisions. Later proceedings reveal that the respondent has moved to Karachi after giving the property on rent to a third party.

20. During hearing, this Court enquired about the current status of the shop and was informed that respondent No.1, after giving the property on rent to a third party, has now based in Karachi and is not conducting any business therein. This conduct casts doubt on the bona fide intention of the respondent. Had he been the true owner with a genuine requirement, he would have used the shop himself. His act of renting out the premises

shows that he was more interested in asserting technical possession and earning income from it, rather than asserting real ownership.

21. The decree in the respondent's suit was granted primarily on the assumption that the applicants were unauthorized occupants and liable to pay mesne profits. A suit for mesne profits presupposes wrongful possession without legal right; yet, the applicants had been in continuous and admitted possession since 1991 and were claiming equitable right under an agreement.

22. The proper recourse for the respondent, if he truly believed there was a landlord-tenant relationship, was to approach the Rent Controller under the Sindh Rented Premises Ordinance. His act of filing a suit for mesne profits and possession, without first determining the tenancy status under the special law, was misconceived and indicates misuse of the forum.

23. The applicants, despite being forcibly dispossessed, complied with this Court's interim direction and deposited the sum of Rs.1,00,000/- as alleged mesne profits. This gesture of compliance and good faith reinforces the credibility of their claim. They have not sought eviction of the respondent for personal gain, but rather to reclaim the possession of a property they have been associated with for decades, invested in and operated from.

24. In view of the foregoing discussion, it is evident that the applicants have established a stronger equitable and possessory claim over the suit property, supported by long-standing occupation, financial investment and the agreement (اقرارنامہ) executed by respondent No.1. Accordingly, the judgments and decrees passed by the Courts below are set aside. The applicants' suit is decreed, and the respondent's suit is dismissed. Respondent No.1 is directed to act in accordance with his undertakings

contained in the said agreement (اقرارنامه). Consequently, the possession of the suit property, which was obtained by respondent No.1 during the pendency of these Civil Revisions, shall be restored to the applicants forthwith under supervision of the learned trial Court. As to the mesne profits, since the applicants have already deposited the amount of Rs.1,00,000/- before this Court in compliance with the interim order dated 29.08.2022, no further direction is required in that regard. The deposited amount and any profit accrued thereon shall be refunded to the applicants through the Additional Registrar of this Court.

Both Civil Revisions are accordingly **allowed** in the above terms. These are the reasons for the short order dated 10.03.2025. Office is directed to place a signed copy of this judgment in the connected captioned matter.

J U D G E

Abdul Basit