

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

C.P No. S-427 of 2025

[Zafarullah Talpur through his legal heirs v. Raja Ghazanfar Ali Talpur and others]

Petitioner : Zafarullah Talpur through his legal heirs through Mr. Abdul Razzaque Dars, Advocate.

Respondent No.1 : None present.

Respondents No.2&3 : Tehmina Talpur and Mst. Bina Talpur both appeared before this Court on 14.01.2025.

Respondents No.4to6 : Sub-Registrar Taluka Hyderabad & others through Mr. Muhammad Ismail Bhutto, Additional A.G. Sindh.

Respondents No.7&8 : Riaz Hussain and Azhar Hussain through Mr. Ali Sher Samejo, Advocate.

Date of Hearing : **25.02.2026**

Date of Judgment : **25.02.2026**

JUDGMENT

RIAZAT ALI SAHAR. J. - This Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 has been filed by the petitioner calling in question the judgment dated 31.10.2024 passed by the learned Civil Appellate Court-II/6th Additional District Judge, Hyderabad in Civil Revision Application No.37 of 2024, whereby the revision filed by respondents No.7 and 8 was allowed and the order dated 05.01.2024 passed by learned VII-Senior Civil Judge, Hyderabad in F.C. Suit No.787 of 2022 on an application under Section 12(2) CPC was set aside. Hence, the petitioner has invoked the constitutional jurisdiction of this Court with the following prayers:-

- a)** *To set aside the impugned order 31.10.2024 passed by the learned appellate court of 6th Additional District Judge Hyderabad and maintain the order dated 05.01.2024 whereby allowed the U/S 12 (2) C.P.C filed by the petitioner.*

- b) Interim orders solicited whereby suspending the operation and implementation of the impugned order till final decision of the petition.*
- c) Costs of the petition may be saddled upon the respondents.*
- d) Any other relief(s) which this Honourable Court deems fit, just and proper in favour of the petitioner.*

2. The background of the case is that the petitioner along with respondents No.1 to 3 and other co-sharers is owner of agricultural land and other properties situated in Deh Chukhi, Taluka and District Hyderabad. Earlier, the petitioner had filed F.C. Suits No.681 and 702 of 2016 which were decreed on 26.02.2020, followed by execution proceedings for partition. Being a co-sharer, the petitioner claims right of pre-emption under Shariat-e-Muhammadi as Shafi Khillat and Shafi-e-Jar. It is the case of the petitioner that respondents No.1 to 3, in collusion with respondents No.7 and 8, secretly sold the suit property without offering it to the petitioner despite repeated talabs (Talab-e-Muwasibat, Talab-e-Ishhad and Talab-e-Khusumat). Subsequently, respondents No.7 and 8 instituted F.C. Suit No.787 of 2022 for specific performance, which was decreed on 11.08.2022 allegedly in haste and without impleading the petitioner. The petitioner, claiming to be an aggrieved person, filed an application under Section 12 (2) CPC on the ground of fraud and misrepresentation, which was allowed by the trial court on 05.01.2024. However, the said order was reversed by the appellate court through impugned judgment dated 31.10.2024, leading to filing of the present petition.

3. Pursuant to Court notices, respondents No.2 and 3 appeared before this Court on 14.01.2025 and supported the case of the petitioner by acknowledging the existence of prior disputes and the petitioner's claim as co-sharer, thereby lending partial support to the petitioner's stance.

4. Learned counsel for the petitioner contended that the impugned judgment of the appellate court is perverse and contrary to law as it failed to appreciate that the decree dated 11.08.2022 was obtained through fraud, concealment and collusion between private respondents. He contended that the petitioner, being a co-

sharer and pre-emptor, was a necessary party and was deliberately excluded from proceedings. He further contended that the trial court, after proper appreciation of facts, rightly exercised jurisdiction under Section 12 (2) CPC to recall a fraudulent decree. Learned counsel contended that the appellate court exceeded its jurisdiction by re-appraising facts without addressing material irregularities and ignored settled principles governing fraud. Lastly, he contended that the impugned order has caused miscarriage of justice and warrants interference under constitutional jurisdiction.

5. Learned Additional Advocate General Sindh supported the impugned judgment and submitted that no illegality or jurisdictional defect has been pointed out warranting interference by this Court. He contended that the constitutional jurisdiction cannot be invoked as a substitute for appeal. He also further contended that findings recorded by the appellate court are based on proper appreciation of record and do not suffer from any legal infirmity.

6. Learned counsel for respondents No.7 and 8 contended that the petitioner has no *locus standi* as the property was validly transferred through due process of law pursuant to a decree for specific performance. He contended that no fraud or misrepresentation was proved and the application under Section 12 (2) CPC was allowed by the trial court without framing proper issues or recording evidence. He further contended that the petitioner had already filed a separate pre-emption suit, hence, parallel proceedings were not maintainable. Learned counsel contended that the appellate court rightly set-aside the trial court's order as the same was based on conjectures and assumptions.

7. Heard and perused the record.

8. At the outset, it is to be observed that the constitutional jurisdiction of this Court under Article 199 of the Constitution is discretionary and is primarily meant to correct jurisdictional defects, patent illegalities, or violations of fundamental rights. It is not intended to function as an appellate forum for re-appraisal of evidence or substitution of findings recorded by competent courts. The scope of interference is limited to cases where orders are shown to be *coram non iudice*, suffering from *mala fide*, or based on no

evidence. In the present case, the learned appellate court, while exercising revisional jurisdiction, has elaborately examined the record and recorded a finding that the trial court allowed the application under Section 12 (2) CPC in a mechanical manner without properly addressing the essential ingredients of fraud and misrepresentation. It is evident that mere allegation of fraud is not sufficient; the same must be specifically pleaded and strictly proved through cogent evidence. The trial court, instead of framing proper issues and allowing parties to lead evidence, proceeded to set-aside its own judgment primarily on presumptions of collusion and haste, which approach is not sustainable in law. Furthermore, the petitioner has already availed alternate remedies by filing a separate pre-emption suit, which is pending adjudication. The questions regarding his alleged right of pre-emption and entitlement to purchase the suit property can effectively be determined in those proceedings. Entertaining the present petition would amount to parallel adjudication of the same issues, which is neither desirable nor permissible.

9. It is also significant that the appellate court has not finally decided the rights of the parties but has merely restored the position by setting aside the order passed under Section 12 (2) CPC, thereby allowing the original decree to operate. No jurisdictional defect, illegality or perversity has been pointed out in the impugned judgment which would justify interference by this Court. This Court is mindful of the settled principle that findings of fact recorded by courts below cannot be disturbed in constitutional jurisdiction unless the same are shown to be arbitrary, capricious or based on no evidence. In the instant matter, the petitioner has failed to demonstrate any such infirmity.

10. It is also well settled that this Court, while exercising constitutional jurisdiction, does not sit as a Court of appeal over the decisions of subordinate courts. Re-appraisal of evidence and substitution of findings is beyond the domain of this Court. The petitioner has essentially sought re-evaluation of factual controversies, which is impermissible under Article 199 of the Constitution. Moreover, the plea of fraud raised by the petitioner requires thorough examination of evidence, which cannot be undertaken in summary constitutional proceedings. Such issues are

best left to be adjudicated by the trial court in properly instituted proceedings where parties have full opportunity to lead evidence.

11. For what has been discussed above, I find that the impugned judgment dated 31.10.2024 does not suffer from any illegality or material irregularity warranting interference. The petition is accordingly **dismissed**. Consequently, all listed applications, including any pending miscellaneous or interim applications, stand dismissed as well. No order as to costs.

JUDGE

Abdullah Channa/PS