

**ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI**

**Second Appeal No.203 of 2024**

( *Shahid Iqbal Khan v. Ms. Rashida & Others* )

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**DATE:** **ORDER WITH SIGNATURE(s) OF JUDGE(s)**

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1. For Hearing of CMA No.6036 / 2024 (Stay App.)
2. For Hearing of Main Case

**7-5-2026**

Mr. Khawaja Muhammad Azeem, Advocate for Appellant  
Respondent No.1 (Ms. Rashida) is present in person  
Mr. Muhammad Ahmer, AAG

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**ORDER**

1. **Sana Akram Minhas J:** The Appellant, who is the real brother of the Respondent No.1, has challenged the concurrent findings recorded against him by the two Courts below.
2. The learned Trial Court, through Judgment and Decree dated 19.1.2023<sup>1</sup>, decreed Civil Suit No.629/2017<sup>2</sup> filed by Respondent No.1 ("**Civil Suit**"), inter alia, for "*Declaration and Permanent Injunction*" in respect of residential property bearing No.R-720, Block 16, Federal B Area, Karachi, measuring 120 square yards with a double-storeyed structure constructed thereon ("**Subject House**"). Thereafter, the Appellant preferred Civil Appeal No.35/2023<sup>3</sup>, which came to be dismissed by Judgment and Decree dated 24.4.2024<sup>4</sup>.
3. The institution of the Civil Suit by the Respondent No.1 was precipitated by the Appellant's attempt to sell his 50% share in the Subject House to a third party, for which purpose the Appellant had caused public notice to be published in newspaper.

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<sup>1</sup> At Court File Pg. 41 & 53

<sup>2</sup> At Court File Pg. 57

<sup>3</sup> At Court File Pg. 95

<sup>4</sup> At Court File Pg. 33 & 39

**Central Question for Determination – Whether Appellant Waived His 50% Share (60 Square Yards) In The Subject House**

4. It is an **admitted position** (as set out in paragraph 13 below) that the Appellant and Respondent No.1 are co-owners of the Subject House in equal shares – a fact alleged by the Respondent No.1 in her Plaint and acknowledged by the Appellant in his Written Statement, his Affidavit-in-Evidence and his memo of Appeal of Civil Appeal No.35/2023.
  
5. The controversy between the siblings now stands narrowed to the question whether the Appellant, through his “*Affidavit / Declaration*” dated 4.7.2012<sup>5</sup> (“**Affidavit**”), acknowledged forgoing/waiving of his 50% share (measuring 60 yards out of the 120 square yards) in the Subject House on account of his having unauthorisedly sold a commercial shop situated in Saddar, Karachi (“**Saddar Shop**”), belonging to Respondent No.1 and given to her by their deceased father, without her knowledge or consent, and having appropriated the entire sale consideration therefrom.

**The Affidavit Dated 4-7-2012**

6. The Affidavit was duly executed by the Appellant in the presence of a witness. In the said Affidavit, the Appellant unequivocally admitted and declared as follows:
  - i) That during his lifetime, their deceased father had given/gifted the Saddar Shop to the Respondent No.1, and the document evidencing such gift was signed and witnessed by their mother as well as by the Appellant himself.
  
  - ii) That the Appellant removed and tore the original gift documents relating to the Saddar Shop, thereafter sold the said Shop without the consent of the Respondent No.1, and utilised the entire sale proceeds thereof.
  
  - iii) That the Subject House was purchased by the Respondent No.1 from her own personal funds, though the Appellant’s name was included therein as a co-sharer.
  
  - iv) That since the Appellant had sold the Saddar Shop and utilised the sale proceeds received therefrom, he, upon reflection, decided not to claim any share in the Subject House and expressly declared that he had renounced/retired from his share therein, and that neither he nor

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<sup>5</sup> At Court File Pg. 81

anyone claiming through or under him would henceforth assert any right, title, or interest in the Subject House.

- v) That in consideration of the Appellant foregoing any claim in the Subject House, the Respondent No.1 agreed not to assert any claim in respect of the sold Saddar Shop.
- vi) That the Affidavit was executed by the Appellant voluntarily, of his own free will, without any coercion or pressure, and while in full possession of his senses.

#### **Trial Court's Judgment & Decree**

- 7. In decreeing the Respondent No.1's Civil Suit, the Trial Court primarily relied upon the Appellant's aforesaid Affidavit. The Trial Court, inter alia, took into consideration the following facts and admissions:
  - i) That during his cross-examination, the Appellant admitted that possession of the Subject House was with the Respondent No.1 and not with him.
  - ii) That during his cross-examination, the Appellant further admitted that the original title documents of the Subject House were in the custody and possession of the Respondent No.1 and not with him.
  - iii) That all utility connections are in the name of the Respondent No.1, who has been in continuous possession and enjoyment of the Subject House.
  - iv) That at no stage of the proceedings did the Appellant deny the execution of the Affidavit – neither in his Written Statement, nor in his Affidavit-in-Evidence, nor even during his cross-examination.

#### **First Appellate Court's Judgment & Decree & Memo Of Appeal Filed By Appellant**

- 8. The Appellate Court upheld the Trial Court's Judgment and Decree.
- 9. What is, however, remarkable and striking is that the Trial Court's Judgment is principally founded upon the said Affidavit and reproduces its contents verbatim; **yet, while impugning the said Judgment and Decree, the Appellant did not make even a passing reference challenging the**

**existence, execution, or authenticity of the Affidavit, nor did the Memo of Appeal contain a single ground to that effect.**

### **Respective Submissions**

#### **Appellant's Submissions**

10. In answer to the foregoing aspects, learned Counsel for the Appellant, while relying upon case law<sup>6</sup>, contended that:
- i) The Respondent No.1 produced no evidence of independent funds for purchase of the Subject House;
  - ii) The Respondent No.1 had not produced the sole attesting witness who signed the Affidavit, hence its execution stood unproved in terms of Article 79 of the *Qanun-e-Shahadat Order, 1984* (“**1984 Order**”);
  - iii) Even though the Appellant did not specifically and expressly deny the execution of the Affidavit in his Written Statement, it was, according to him, impliedly denied from the tenor thereof.

#### **Respondent No.1's Submissions**

11. In her stance, the Respondent No.1 supported the Judgments of the two Courts below and prayed for their affirmation.

### **Decision**

12. The matter has been heard and the record perused.

#### **Irrelevance Of Plea Regarding Source Of Funds In Light Of Appellant's Admissions**

13. With respect to the Appellant's submission that the Respondent No.1 did not produce any evidence to establish that she had purchased the Subject House from her own independent resources, the same is wholly misconceived and irrelevant in the facts of the present case. This is so because the Appellant himself has categorically admitted – consistently and unequivocally – in his Written Statement (paragraph 1), his Affidavit-in-Evidence (paragraph 5), his

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<sup>6</sup> 2022 SCMR 933 (*Khudadad v. Ghazanfar Ali Shah*); PLD 2021 SC 538 (*Muhammad Muneer v. Feezan*); PLD 2003 Kar 253 (*Gerry's International v. Qatar Airways*); 2003 SCMR 1864 (*Bashir Ahmed v. Muhammad Aslam*); 2005 MLD 1681 (*Tasnim Uddin v. Prudential Discount*); 2023 SCMR 1118 (*Federation of Pakistan v. Farrukh International*)

cross-examination, and even in his Memo of Civil Appeal (paragraph 5 and second paragraph of Prayer clause), that the Appellant and Respondent No.1 are equal co-owners of the Subject House.

14. In view of these clear and repeated admissions, the plea raised regarding alleged failure on the part of Respondent No.1 to prove her source of funds is rendered redundant and legally inconsequential. Once co-ownership stands admitted by the Appellant himself, the question of independently proving the source of acquisition loses its significance in the present lis.

*Failure To Produce Attesting Witness Not Fatal Where Execution of Document Is Unchallenged*

15. As regards the Appellant's submission that the Respondent No.1 failed to produce the sole attesting witness to the Affidavit, and therefore its execution stood unproved under Article 79 of the 1984 Order, the said contention is wholly devoid of merit. The entire premise of this objection is misconceived, as the execution of the Affidavit has not once been denied by the Appellant at any stage of the proceedings.
16. It is pertinent to note that, **far from disputing the Affidavit or its contents, the Appellant has conspicuously neither referred to nor even uttered the word "Affidavit" at any point in his Written Statement, Affidavit-in-Evidence, cross-examination, and even in his Memo of Appeal.** What renders this omission more pronounced is that the Trial Court, in its impugned Judgment, has reproduced the contents of the Affidavit word for word; yet the Appellant has remained completely silent on this crucial aspect in his Memo of Appeal before the first Appellate Court as well.
17. Such consistent silence and complete failure to challenge either the execution or the authenticity of the Affidavit can lead to only one irresistible inference, namely, that the Appellant has tacitly accepted its execution and contents, and is now precluded from disputing the same.
18. Moreover, Article 79 of the 1984 Order is attracted only where the execution of a document is specifically denied. In the present case, no such denial exists on record. Accordingly, the requirement of producing an attesting witness was never triggered in the first place. Therefore, the Appellant's reliance on Article 79 is misplaced, and the objection raised in this regard is liable to be rejected as legally untenable.

*Failure To Expressly Deny Execution Of Affidavit In Written Statement – Plea Of Implied Denial*

19. To address the Appellant's contention that the Affidavit, though not expressly denied, was nevertheless denied by necessary implication in the Written Statement, it is pertinent to note that a denial by necessary implication arises where a defendant pleads facts or an alternative version of events so directly and irreconcilably inconsistent with the plaintiff's allegation that, if accepted as true, the plaintiff's case regarding the existence, execution, or validity of the document cannot possibly stand. Although express words of denial are not essential, the denial must arise clearly, inevitably, and unambiguously from the substance of the pleadings themselves.
20. For instance, to cite but a few examples, where a plaintiff pleads ownership of a property and the defendant pleads prior purchase of the same property from the same vendor; or where a plaintiff pleads induction of the defendant as a tenant under a rent agreement and the defendant pleads ownership of the property by virtue of sale documents executed in his favour; or where execution of an agreement is alleged and the defendant pleads that he was not even present in the country on the alleged date of execution, such pleadings constitute denial by necessary implication because, if accepted, the plaintiff's allegations cannot possibly stand. Conversely, a denial by necessary implication cannot arise from vague, evasive, or general denials, nor from a mere statement that the plaintiff is put to strict proof.
21. No such pleading exists in the present case. The Affidavit was specifically pleaded and referred to by the Respondent No.1 in her Complaint (paragraphs 8 and 9), and a copy thereof was also annexed with the Complaint. Despite this, the Written Statement is conspicuously silent regarding the said Affidavit. The Appellant merely adopted a vague and omnibus denial of the contents of the Complaint in a single paragraph of the Written Statement, without specifically traversing the Affidavit, its execution, or its contents.
22. Even if the Written Statement, and the Appellant's failure to expressly deny the Affidavit therein, are altogether ignored for a moment, **the Appellant still had multiple subsequent opportunities to specifically dispute the Affidavit – namely, in his Affidavit-in-Evidence, during his cross-examination, and in his Memo of Appeal before the Appellate Court – yet, quite pointedly, he chose not to avail himself of any of them.**
23. What further strengthens this conclusion (as noted in paragraphs 9 and 16 above) is that the Trial Court's Judgment predominantly revolves around the said Affidavit and reproduces its contents in its entirety; yet, significantly, even

while impugning the Trial Court's Judgment and Decree, the Appellant did not whisper a single word challenging its existence, execution, or authenticity, nor did he raise any ground in the Memo of Appeal assailing the Affidavit. Such persistent, unexplained and deliberate silence is wholly inconsistent with the conduct of a party claiming to contest a document, namely the Affidavit.

24. This unmistakably establishes that the execution and contents of the Affidavit were never genuinely in dispute, and that the plea of "*implied denial*" is merely an afterthought devised to overcome the fatal admissions already existing on record. In the circumstances, the authorities cited by Counsel for the Appellant are distinguishable on facts and do not apply to the present case.

### **Conclusion**

25. For the foregoing reasons, no interference is warranted with the Judgments and Decrees under challenge. The Appellant's own conduct, admissions, and persistent failure to specifically deny the execution or contents of the Affidavit before both forums fully justify the concurrent findings returned by the learned Courts below. Consequently, this Second Appeal is ***dismissed***, along with all pending applications, with no order as to costs.

**JUDGE**

FAIZAN\*