

ORDER SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Civil Revision No.42577 of 2023
Muhammad Nadir Khan (deceased) through L.Rs.
Versus
Muhammad Usama and others

Sr. No. of order/ proceedings	Date of order/ Proceedings	Order with signatures of Judge, and that of parties of counsel, where necessary
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22.06.2023 Mian Muhammad Habib, Advocate for the
petitioners

Precisely, the petitioners instituted a suit for specific performance on the basis of purported agreements to sell dated 28.10.2010 and 10.01.2011 against the respondents No.1 to 3/defendants with regards to the suit property. On the other hand, the respondents No.1 and 2 instituted suit for possession with permanent injunction and recovery of rent against the present petitioners and respondent No.4. Both the parties contested the suit filed against them by submitting written statements. The learned trial Court consolidated both the suits and out of the divergent pleadings of the parties the consolidated issues were framed. Both the parties adduced their oral as well as documentary evidence. On conclusion of trial, the learned trial Court dismissed suit for specific performance of the petitioners and decreed suit for possession of the respondents No.1 and 2 vide impugned consolidated judgment and decree dated 18.06.2022. The petitioners being aggrieved preferred two separate appeals. The learned appellate Court

vide impugned consolidated judgment and decree dated 24.05.2023 dismissed both the appeals; hence, the instant revision petition.

2. Heard.

3. There is no denial to the fact that disputed property is owned by the respondents No.1 and 2 who at the relevant time of purported agreements to sell were minors and respondent No.4 though was father but was not appointed as guardian of the said minors and no permission was accorded to him to sell out the property of the minors or enter into any kind of agreement on behalf of the minors by the Court of competent jurisdiction; therefore, he was not competent to enter into alleged agreements to sell on behalf of the minors. Section 11 of the Contract Act, 1872 enunciates that who may enter into contract, which reads:-

‘Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject.’

Meaning thereby, the minor disqualifies from entering into any contract, for disposal of his property, without appointment of a guardian by a Court of competent jurisdiction and if any such contract is entered the said transaction is void ab initio and does not have any binding force. In this regard reliance has rightly been placed on Abdul Ghani and others v. Mst. Yasmeen Khan

and others (2011 SCMR 837), wherein the Apex Court of country invariably held that:-

‘It is well settled by now that “any contract or transaction entered into with minor was void ab initio for minor could not give consent to create any binding contract. Principle of estoppel was also inapplicable in minor’s case. Transaction reflected in specified mutation sanctioned during minority of minor female was void ab initio for being unauthorized, therefore, on basis thereof vendees named in such mutation did not acquire any right or title in land in question.’

In the said judgment it has further been held:-

‘The provisions as enumerated in section 11 of the Contract Act, 1872 would make minor incompetent to enter into any contract, therefore, contract by minor was void ab initio and not merely voidable. Such contract would have no existence in the eye of law and was incapable of satisfaction or confirmation. Law forbids enforcement of such transaction even if minor were to ratify the same after attaining majority.’

The said ratio has been reiterated by the Hon’ble Supreme Court in judgment reported as Yar Muhammad Khan and others v. Sajjad Abbas and others (2021 SCMR 1401) and it has further been held that:-

‘To protect minors and their interests a minor cannot enter into an agreement nor grant a power of attorney to do so. Section 11 of the Contract Act, 1872 explicitly stipulates that only those who

are 'of the age of majority according to the law to which he is subject' are 'competent to contract'; the law is the Majority Act, 1875 section 3 whereof stipulates eighteen years as the age of majority.'

In this view of the matter, when the alleged agreements were entered into the respondents No.1 and 2 were minors and the respondent No.4 was not competent to enter into any such agreement on their behalf; therefore, the said agreements are void ab initio and on the basis of the same, no suit can be instituted as no right or title has been created in favour of the petitioners.

4. In addition to the above, the petitioners instituted the suit against the minors/respondents No.1 and 2 by mentioning the name of Muhammad Bashir being guardian but the said Muhammad Bashir was not arrayed as party despite the fact that purportedly he entered into agreements to sell in question with the petitioners on behalf of the minors and even the said person was not produced as witness by the petitioners so as to establish the factum of entering into alleged agreements to sell. Therefore, the learned appellate Court has rightly recorded findings that law debars filing of suits against the minors without next friend or guardian appointed by the Court and in the situation even suit of the plaintiffs/petitioners is not maintainable.

5. Apart from the above, the witnesses produced by the petitioners have not disclosed and deposed that time, day

and mode of payment alongwith description of the amount as mentioned in the disputed agreements to sell (Ex.P1) and (Ex.P3).

6. Pursuant to above discussion, learned Courts below have rightly adjudicated upon the matter in hand and have not committed any illegality or irregularity warranting interference by this Court in exercise of revisional jurisdiction under section 115, Code of Civil Procedure, 1908. In judgments reported as Muhammad Sarwar and others v. Hashmal Khan and others (PLD 2022 Supreme Court 13) and Mst. Zarsheda v. Nobat Khan (PLD 2022 Supreme Court 21), the Apex Court of the country has candidly held:-

‘There is a difference between the misreading, non-reading and misappreciation of the evidence therefore, the scope of the appellate and revisional jurisdiction must not be confused and care must be taken for interference in revisional jurisdiction only in the cases in which the order passed or a judgment rendered by a subordinate Court is found perverse or suffering from a jurisdictional error or the defect of misreading or non-reading of evidence and the conclusion drawn is contrary to law.’

However, in the present case, as observed above, the learned Courts below has appreciated and construed law on the subject in a judicious manner and have not committed any error, rather the order and judgment are upto the dexterity; thus, the same are upheld.

Further in judgment reported as Salamat Ali and others v. Muhammad Din and others (PLJ 2023 SC 8), it has invariably been held that:-

‘Needless to mention that a revisional Court cannot upset a finding of fact of the Court(s) below unless that finding is the result of misreading, non-reading, or perverse or absurd appraisal of some material evidence. The revisional Court cannot substitute the finding of the Court(s) below with its own merely for the reason that it finds its own finding more plausible than that of the Court(s) below.’

7. As a sequel of above discussion and while placing reliance on the judgments *supra*, the instant civil revision being devoid of any force and substance stand dismissed *in limine*.

(Shahid Bilal Hassan)
Judge

Approved for reporting.

Judge