

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Syed Hasan Azhar Rizvi  
Mr. Justice Aqeel Ahmed Abbasi

**Civil Petition No.174-K of 2022**

[Against the judgment dated 29.11.2021 passed by the High Court of Sindh in  
Civil Revision No.S-107 of 2006]

***Hafiz Qari Abdul Fateh through L.Rs***

*...Petitioner(s)*

***Versus***

***Ms. Urooj Fatima and others***

*...Respondent(s)*

For the Petitioner(s) : Mr. Sadaruddin Burriro, ASC

For Respondent(s) : N.R

Date of Hearing : 24.07.2024.

**JUDGMENT**

**Syed Hasan Azhar Rizvi, J.-** Through this petition, the predecessor in interest of the petitioners has called in question the judgment dated 29.11.2021 passed by the High Court of Sindh in Civil Revision No.S-107 of 2006 whereby revision petition filed by them was dismissed.

2. Facts in brief are that petitioner instituted a suit (*F.C. No. 27 of 1999*) for specific performance of an oral agreement along with declaration and injunction against respondents in respect of agricultural land admeasuring 37 Ghunta situated in Survey No.42 in Deh Qadirpur Taluka and District Ghotki (**“disputed land”**). In the trial court, respondent No.1 failed to appear therefore she was proceeded *ex-parte*. The said suit was decreed in favour of the petitioner *vide* judgment dated 20.05.2005. Respondents No.2-6 filed an appeal (*Civil Appeal No.48 of 2005*) against the said decision

before the court of District Judge, Ghotki which was allowed *vide* judgment dated 18.08.2006 and the decision of trial court was set aside. Being aggrieved, the petitioner filed a civil revision in the High court which also upheld the decision of the Appellate court. Hence, this petition.

3. Learned Counsel for the petitioner submits that impugned judgment suffers from misreading and non-reading of the evidence; that decision of trial court was correct in law; that factum of oral agreement had been proved by the petitioner by adducing sufficient evidence in the trial court and that the impugned judgment may be set aside.

4. We have considered the contentions advanced by the learned counsel for the petitioner and gone through the material available on the record.

5. The assertion of the petitioner is that respondent No.1 was the owner of the agricultural land bearing S.No.42 admeasuring 3-34 acres situated in Deh Qadirpur Taluka and District Ghotki. It is claimed that Respondent No. 1, through her father, Syed Iftikhar Hussain Gillani, sold her land to the Haries(farmers), including the petitioner, by means of oral agreements at a rate of Rs. 30,000/- per acre. Respondent No. 1 purportedly received advance payments and issued a joint receipt to the Haries(farmers). The petitioner alleges that possession of 1 acre from S.No.42 was transferred to him on or about 19.06.1993. Upon measurement of the land on 26.06.1993, it was discovered that the petitioner possessed an additional 37 Ghuntas within S.No.42, (**"Disputed land"**) beyond the purchased 1 acre by him. Consequently, the petitioner paid Rs. 27,750/- as consideration for the disputed land on the same date.

6. According to the petitioner, the disputed land was not mutated in favour of the petitioner because it was found that respondents No.2-6 in collusion with each other unlawfully got mutation of said disputed land in their favour by virtue of mutation entry No.153 dated 27.06.1993. Petitioner further claims that when he acquired knowledge about said unlawful mutation, he approached Commissioner Sukkur for correction thereof who summoned respondents No.2 to 6 whereby they agreed to appoint an arbitrator namely Dadan Khan for deciding the said controversy. The decision of Arbitrator was rendered on 22.09.1995 whereby respondents No.2-6 agreed to correct the mutation entries in favour of petitioner. The petition before commissioner was disposed of in terms of decision dated 22.09.1995 by the Arbitrator. Even after the decision the correction in entry was not made therefore petitioner approached Deputy Commissioner by filing an application which was dismissed vide order dated 30.03.1998; against said order petitioner moved appeal to the Commissioner which was also dismissed vide order dated 05.05.1999. Thereafter, petitioner instituted civil suit which was decreed in his favour, however, was overturned in the appeal and decision of appellate court was upheld by High Court.

7. The issue in the present case is whether the petitioner proved the existence of oral agreement of sale in accordance with the law.

8. It is a settled principle of law that a contract is an agreement having a lawful object, entered into voluntarily by two or more parties each of whom intends to create one or more legal obligations between them. The basic requirements of a valid and enforceable contract are offer, acceptance, exchange of

consideration and mutuality of obligations. Further, a fundamentally important ingredient of a valid contract is that it should be between the parties who are competent to contract. An oral agreement by which the parties intended to be bound is valid and enforceable; however, it requires to be proved through clearest and most satisfactory evidence.

9. It is a well-established legal principle that when a party seeks a decree of specific performance for the sale of immovable property based solely on an oral agreement, the onus is on that party to demonstrate that there was a mutual agreement and consensus between both parties regarding the terms of the oral contract. Reference may be made to the case reported as Maqbool Ahmad v. Suleman Ali (**PLD 2003 SC 31**), wherein it was ruled that a person entering into an oral agreement has to prove the oral agreement according to the definition of agreement in Section 2(h) of the Contract Act, 1872.

10. A party claiming the existence of an oral agreement must clearly specify the date, time, place, and names of witnesses in their pleadings, such as the plaint or written statement. These requirements are *sine qua non* to prove an oral agreement to sell which have been settled by this Court in various decisions. Reference may also be made to the case of Muhammad Riaz and others v. Mst. Badshah Begum and others (**2021 SCMR 605**). This is because suits involving sales based on oral agreements are more prone to dishonest improvements made by parties in the evidence and pleadings in order to succeed. This has been so held in the case of Moiz Abbas v. Mrs. Latifa and others, (**2019 SCMR 74**) as reproduced below:-

“8. We find that no date, time, place or names of witnesses of the alleged oral agreement have been mentioned in the reply to the legal notice, the written statement, or the suit filed by the respondent. The learned counsel attempted to argue that the said gaps had been filled by the witnesses of the Respondents in their affidavits in evidence. We are not impressed by this argument. These improvements are clearly beyond the pleadings and constitute an attempt to improve the case of the Respondents as an afterthought. Such course of action is not permitted by law. These requirements are sine qua non to prove an oral agreement to sell which have been settled by this Court in numerous judgments time and again. These are clearly missing in this case. Suits involving sales based on oral agreements are more susceptible to improvements made by parties in the evidence and pleadings in order to succeed. It is imperative that all of these requirements spelt out by Courts with a view that only bona fide oral agreements lead to grant of decrees, need to be strictly enforced and Courts must insist that these be fulfilled at the earliest so as to ensure that an oral agreement is fully proved and the device of oral agreement is not abused by unscrupulous and devious litigants to get decrees by fraud, deceit, skillfully made improvements at different stages the trial.”

Thus, the law relating to oral agreement is quite clear, the terms and conditions which were orally agreed have to be stated in detail in the pleadings and have to be established through independent evidence which is neither the case of the petitioner nor was it so set up before the lower *fora*.

11. In the present case, the petitioner did not set out particulars of such oral agreement in terms of Order VI Rule 2 of the Civil Procedure Code, 1908. Perusal of the plaint of the petitioner reveals that he failed to mention the date, time, place, names of witnesses and specific conditions of the oral agreement. The petitioner claimed that oral agreement was entered into by the father of respondent No.1 on her behalf with all the haries(farmers) of their lands. However, the petitioner failed to justify that under what authority the father of respondent No.1 was entitled to enter into oral agreement on her behalf? Thus, no authority letter or power of attorney was adduced in evidence to substantiate the claim of the petitioner.

12. In order to discharge the onus of proof, the petitioner examined three witnesses including himself and he also produced a receipt for payment. The learned appellate court observed that said receipt on the face of it was bogus and doubtful because the signatures had been overwritten and neither respondent No.1 nor her father or the munshi through which the payment had been made were ever examined to ascertain the truth. The testimonies of PW-1 (Petitioner), PW-2 (Ghous Bux), and PW-3 (Hafiz Nawab) reveal that the alleged oral agreement had been made with 30-40 haries (farmers) however no other farmer except PW-3 was produced as the witness. Moreover, the testimony of PW-2 reveals that petitioner was sold 1-37 acres at once which is contradictory to the statement of the petitioner and PW-3. As far as testimony of the petitioner is concerned, although he improved his case and stated the date, time, place, and names of witnesses of the alleged oral agreement however the same cannot be relied upon because the said case was not set up in the plaint as required by law.

13. It is well established principle of law that no amount of evidence can be considered on a plea of fact which was not raised in the pleadings i.e. plaint or written statement, by the parties. Reference may be made to Government of West Pakistan v. Haji Muhammad (PLD 1976 SC 469) and Abrar Ahmad v. Irshad Ahmed (PLD 2014 SC 331). Even if testimony of the petitioner is considered it contradicts his own case set up in the plaint as well as goes against the statements of PW-2 and PW-3. Thus, petitioner has failed to establish the oral agreement.

14. While exercising jurisdiction under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, this Court does not normally go beyond the findings of the High Court unless

it can be shown that such finding is on the face of it against evidence or perverse.

15. We have carefully examined the impugned judgment as well as the judgment passed by the learned Appellate Court and find that reasonings advanced by the Appellate Court and High Court are justified and plausible. Learned counsel for the petitioner has failed to point out any illegality or infirmity so also non-reading or misreading of evidence, hence, no case for interference has been made out.

16. Consequently, this petition, being devoid of merits, is dismissed and leave refused.

17. Above are the reasons for our short order pronounced on even date.

**Judge**

**Judge**

Karachi,

24<sup>th</sup> July, 2024

**APPROVED FOR REPORTING**

*Paras Zafar, LC\**