JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Civil Revision No.416 of 2019

Muhammad Ilyas Abbasi
Versus
M/s Hakas Pvt. Ltd. and others

Petitioner by:	M/s Zulfiqar Ali Abbasi and Shahid Munir, Advocates.
Respondent No.1 by:	Mr. Muhammad Wajid Hussain Mughal and Mr. Ali Waqas, Advocates.
Respondents No.2 to 12	Ex-parte.
Respondent No.13 by:	Mr. Muhammad Asif Javed, Advocate.
Date of Hearing:	**21.04.2025.**

INAAM AMEEN MINHAS, J:- Through the instant civil revision, the petitioner has assailed the judgment and decree dated 09.10.2019, passed by the learned Additional District Judge, East, Islamabad **("Appellate Court")**, and judgment and decree dated 13.11.2018, passed by the learned Civil Judge, 1st Class, East, Islamabad **("Trial Court")**, whereby suit of respondent No1 for declaration & permanent injunction was decreed concurrently.

2. Brief facts are that on 22.07.2013 respondent No.1 filed a suit for declaration and permanent injunction against the petitioner, predecessor in interest of respondents No.2 to 12 namely Raja Muhammad Zameer and respondent No.13. However, the predecessor in interest of respondents No.2 to 12 had died before filing of the suit despite that respondent No.1 knowingly did not make party in the suit the legal heirs and now in the present proceedings they have been made party as respondents No.2 to 12. Respondent No.1 claimed that the petitioner appointed the predecessor in interest of respondents No.2 to 12 as his

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general attorney through a General Power of Attorney **("GPA")** on 05.11.1997. On 06.11.1997, the predecessor in interest of respondents No.2 to 12 (attorney of the petitioner) entered into an agreement to sell with respondent No.1 regarding the land measuring 25 Kanals, bearing Khewat No.17, Khasra No.230/1, Mouza Shakrial, Tehsil and District Islamabad **("Suit Land")** against the total sale consideration of Rs.300,000/, which was paid by respondent No.1 to the predecessor in interest of respondents No.2 to 12 on the same day. The mutation (entry of ownership) No.196 was also made on 06.11.1997 and on 07.11.1997, predecessor in interest of respondents No.2 to 12 had made statement before the Tehsildar/respondent No.13 for attestation of the mutation in favour of respondent No.1 but the mutation was officially attested later on 28.01.1998. Respondent No.1 further claimed that he had the possession of the Suit Land since 1997 and no one raised objection, including the predecessor in interest of respondents No.2 to 12. Later, the petitioner applied for cancellation of mutation No.196 on the ground that he has revoked the GPA given to the predecessor in interest of respondents No.2 to 12 on 12.11.1997 as the predecessor in interest of respondents No.2 to 12 failed to pay him the sale consideration of the Suit Land. Respondent No.1 claimed that the sale had already been completed as such the petitioner had no right to claim cancellation of the mutation. During pendency of the suit, respondent No.1 also filed an application (U/o VI, Rule 17, CPC) seeking amendment, which the learned Trial Court accepted and paragraph 10-A was added in the plaint "that during pendency of the suit the petitioner has got sanctioned mutation No.591, dated 30.06.2015, which is illegal, unlawful and without jurisdiction".

3. The petitioner appeared before the learned Trial Court and contested the suit by filing his written statement. After recording of evidence and hearing the arguments, the learned Trial Court decreed the suit vide judgment and decree dated 13.11.2018, against which the petitioner filed an appeal before the learned Appellate Court, which was

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dismissed vide judgment and decree dated 09.10.2019, hence, this civil revision.

4. The learned counsel for the petitioner contended that the impugned judgments and decrees passed by the Courts below are against the law and facts of the case, therefore, are not sustainable; that the impugned judgments and decrees are result of misreading and non-reading of evidence; that respondent No.1 claimed that the petitioner had given GPA to the predecessor in interest of respondents No.2 to 12 on 05.11.1997 but the learned Trial Court ignored that this GPA was cancelled on 11.11.1997, before sanction of mutation No.196 on 28.01.1998; that after the cancellation the predecessor in interest of respondents No.2 to 12 was no longer legally authorized to act on behalf of the petitioner; that there is no official record of this mutation and none of the required witnesses or local officials appeared before the revenue officer to support it; that the revenue officer also did not record any statement of the seller or confirm payment or possession, which are essential requirements under section 54 of the Transfer of Property Act, 1882, therefore, this mutation cannot be treated as proof of a valid sale; that if respondent No.1 believed that the mutation was genuine, he had to prove it with evidence but he did not produce any independent witness or call any revenue official to support his claim; that although respondent No.1 requested the Court to cancel mutation No.591, dated 30.06.2015, calling it illegal but he never submitted this document in evidence; that both the Courts below based the impugned judgments only on respondent No.1's oral evidence, without documentary proof of ownership or possession; that both the Courts below while passing the impugned judgments made serious legal and procedural mistakes and used the powers they did not have; that the predecessor in interest of respondents No.2 to 12, who was said to be the attorney, had already died before filing of the suit and even after filing of the suit the legal heirs were not impleaded as party in the suit.

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5. Conversely, the learned counsel for the respondents for 1 and 13 supported the impugned judgments and decrees and prayed for dismissal of the instant civil revision.

6. No one appeared on behalf of respondents No.2 to 12 despite their service, therefore, they were proceeded against ex-parte vide order dated 20.02.2025.

7. From the record, it is clear that the petitioner had indeed executed the GPA on 05.11.1997 in favour of the predecessor in interest of respondents No.2 to 12. Using the authority granted under this GPA, the predecessor in interest of respondents No. 2 to 12 proceeded to sell the Suit Land to respondent No. 1, M/s Hakas Pvt. Ltd. This transaction was then reflected in the revenue record through attorney of the petitioner as an incomplete mutation No.196, dated 12.11.1997 Exh. P2. The mutation was subsequently produced before the revenue officer for sanction on 28.01.1998. However, a crucial fact emerges from the record that the GPA granted to the predecessor in interest of respondents No. 2 to 12 had already been revoked by the petitioner through a registered cancellation deed (Registered at Sr. No.1769) on 12.11.1997, whereas the mutation was finalized on 28.01.1998, the authority conferred under the GPA no longer existed.

8. Furthermore, u/s 42 of the Land Revenue Act, 1967, it is the revenue officer, who is competent authority for verification of the land owners, purchasers coupled with witnesses of sale mutation and sanctioning the mutation, prior to entries made in the revenue record by the Patwari regarding sales of any transaction is mere an entry in the Revenue Record and a subject to verification of vendor, vendee and witnesses but in the present case neither the attorney holder appeared, nor original owner, nor purchaser, nor witness of the subject mutation appeared, therefore, no valid sale transaction had taken place and as such no right was existing at the time of filing of the suit, therefore, the suit for declaration in respect of non-existing right was not valid under the law.

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9. The record further reveals that the petitioner had submitted an application (Exh-D/4) seeking the cancellation of mutation No. 196, which was sanctioned on 28.01.1998. The main reason for this request was that the mutation was approved based on the GPA that had already been revoked on 12.11.1997, well before the revenue officer finalized the mutation. In response to the application for cancellation of mutation, the revenue officer carried out a thorough inquiry. This inquiry confirmed that mutation No. 196 had indeed been entered relying on the revoked GPA. It was also discovered that the mutation fee had been deposited earlier, through Challan No. 95, dated 07.11.1997, even before the mutation was officially recorded in the revenue record. During the inquiry, the revenue officer summoned the official record about mutation No. 196. However, it revealed that the only available documentation was the "Part Patwar" (local field copy), whereas the "Part Sarkar" (the official government office record) was missing from the Saddar Qanoon-Go's office. This lack of complete and verifiable records raised serious doubts regarding the authenticity and legal soundness of the subject mutation and it was finally recommended that the said mutation be cancelled, which was subsequently cancelled by the revenue authorities on 14.04.2015 and new mutation of No.591, dated 30.06.2015 was registered, thereafter respondent No.1 filed an application for amendment in the plaint, which was allowed by the learned Trial Court as such paragraph 10-A was added and the prayer clause of the suit was amended regarding mutation No.591, dated 30.06.2015. Respondent No.1 filed a review petition against the order dated 14.04.2015 before the Commissioner/Member Board of Revenue as Exh-D5 and finally on 20.09.2016, the Member Board of Revenue dismissed the review petition of respondent No.1 and upheld the order dated 14.04.2015 passed by the District collector, wherein the subject mutation No.196, dated 12.11.1997 was cancelled. Consequently, in the absence of a valid underlying authority and complete official documentation, the legal validity and enforceability of mutation No. 196 remains unproven.

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10. As far as arguments of the learned counsel for the respondent No.1 that respondent No.1 purchased the land in good faith, for valuable consideration and he was unaware that GPA had been revoked before the completion of the transaction. However, under the law, the burden of proof lies squarely on respondent No. 1 to establish that it was indeed a *bona fide* purchaser. This means that respondent No. 1 must provide clear and convincing evidence showing not only that the purchase was made in good faith and for fair value, but also that it was done without any knowledge, actual or constructive, of the revocation of the authority under which the sale was conducted. Mere assertion of good faith and *bona fide* purchaser is insufficient but it failed and without such proof on record, the claim of respondent No. 1 being of a *bona fide* purchaser is not tenable. The main ingredients of the *bona fide* purchaser as held in the case of ***Hafiz Tassaduq Hussain vs. Lal Khatoon,*** **(PLD 2011 SC 296)** are reproduced hereunder:-

> "5. Be that as it may, the subsequent vendee thus has to discharge the initial onus as follows:--
>
> (1) that he acquired the property for due consideration and thus is a transferee for value, meaning thereby that his purchase is for the price paid to the vendor and not otherwise.
>
> (2) there was no dishonesty of purpose or tainted intention to enter into the transaction which shall settle that he acted in good faith or with bona fide.
>
> (3) he had no knowledge or the notice of the original sale agreement between the plaintiff and the vendor at the time of his transaction with the later."

From the above it is depicted that the section merely enacts the English equitable rule, which allows later legal title to prevail over an equitable interest in case of *bona fide* purchaser for value without notice (emphasis supplied) and this principle has to be kept in view by the Courts while analyzing and appreciating the evidence on the record for the discharge of the requisite burden.

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11. In the afore-noted context, it is thus required that a subsequent vendee should adduce in evidence his sale instrument or the mutation of his transaction, if not otherwise on the record having been brought by the plaintiff himself, or any other proof in this connection such as the receipt of payment made to the vendor or the bank record etc. or should lead credible oral evidence in this behalf, these are some conceivable modes of proving the transfer for value and shall be a sufficient discharge of onus in this respect in ordinary cases. If however, a specific attack has been made in the plaint or the replication by the plaintiff that the subsequent transaction is without consideration, or the value given is colourable, understated, underpaid and illusionary, it becomes the bounden duty of the subsequent transferee to establish through positive evidence that adequate price was paid, because this factum shall also have a close nexus to the good faith and *bona fide* of the said transferee as well; when it is so done, the onus shall switch over to the plaintiff to prove otherwise.

12. The second ingredient "good faith" is the term, which reflects the state of mind and according to section 3(20) of the General Clauses Act, 1897 "a thing shall be deemed to be done in 'good faith' where it is in fact done honestly, whether it is done negligently or not". While interpreting this, it was held in ***Nannu Mal vs. Rani Chander***, **[AIR 1931 All 277(FB)]** that good faith as defined above is equivalent to honesty of dealing and does not entail upon the purchaser the necessity of searching the registry, even assuming that there were facts indicative of negligence in investigating title, that by itself was not predicative of a lack of *bona fides*. Therefore, the second condition shall stand settled if the subsequent vendee has acted as a man of ordinary prudence in making inquiries expected from a purchaser, who wants to acquire a good title for the price/value he is paying. This may include the checking of the revenue record or obtain the copies thereof to verify about the title of vendor or any third party in right, interest or charge over the property or any endorsement in such record about any pending litigation or an injunctive order etc.; this may be a good and adequate

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exercise of investigative process, in case of rural/agricultural property. And for the same purpose, regarding urban property, the Excise and Taxation record may be examined coupled with the verification and obtaining the original subsequent vendee is not obliged to run from the pillar to post in conducting rowing and fishing inquiries, to ascertain if a third party has any interest etc. in the property which otherwise is visibly lacking. But if there exist some overt, prominent and conspicuous indicators about the third party interest, which are so patently noticeable and manifest that those could not and should not be missed and ignored by a purchaser, such as the possession not with the vendor but someone else, who if approached or its nature investigated would lead to discover such interest, the purchaser is obliged to probe about it, otherwise he may not be able to take resort of the noted equitable rule.

13. If therefore a subsequent vendee has taken due care in the above manner and there are no indicators to put him to a notice of third party interest, he shall be said to have acted in good faith, thus satisfying the second condition of the rule.

14. Respondent No. 1 failed to present any evidence to establish that the consideration amount for the subject land, allegedly Rs. 3,000,000/-, was paid to the petitioner or his attorney. While the predecessor in interest of respondent No. 2 to 12 did produce certain bank challan receipts indicating payment of official mutation fees, these documents did not contain any proof of payment of the purchase price or consideration amount. Furthermore, respondent No.1 claimed that the sale and the subsequent entry of mutation No. 196 (Exh-P/2) in the revenue record were based on an oral agreement. However, it failed to produce witnesses to support or confirm such an oral agreement. The only witness produced by respondent No. 1 was PW-1, who admitted during cross-examination that one of the marginal witnesses to the alleged agreement, Ch. Faqeer was not produced before the Court. He also conceded during cross examination that he could not present any witness confirming that the purchase price had been paid to respondent

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No. 1. Additionally, he acknowledged that he had never personally seen the subject land and was unaware of its precise boundaries or location. Most significantly, to establish possession of the land, respondent No.1 did not produce any documentary evidence such as the Khasra Girdawari, the official land record indicating cultivation and possession. Without credible evidence regarding payment, agreement and possession, respondent No.1 has failed to substantiate the transaction or the mutation with the required legal and factual certainty. The Halqa Patwari as well as the revenue officer was amongst the most important witnesses to support the version of respondent No.1. and none of them was produced as a witness by respondent No.1 as such under Article 129-g of Qanoon-e-Shahadat Order, 1984, the adverse inference is drawn against the respondent No.1 that he withheld the best evidence. The relevant portion of the cross-examination is as under:-

"یہ درست ہے کہ معاہدے کا حاشیہ گواہ چوہدری فقیر عدالت میں پیش نہ کیا ہے۔

یہ درست ہےکہ میں مدعاعلیہ 2 کا مدعا علیہ 1 کو رقم جائے متدعویہ دینے کا گواہ نہ پیش کرسکتا ہوں۔

میں نے جائیداد متدعویہ ابھی تک نہ دیکھی ھے۔ اسی لیے میں حدود اربعہ نہ بتا سکتا ہوں۔"

15. Therefore, it is evident that the essential elements required to constitute a valid sale are missing in this case. Respondent No. 1 has not been able to establish that a genuine transaction of sale took place, as there is no credible evidence of payment of the consideration amount, no proof of possession, and no confirmation of a valid agreement, written or oral, between the parties. Moreover, the claim that respondent No. 1 is a *bona fide* purchaser for valuable consideration without notice of the cancellation of the General Power of Attorney has also not been substantiated. To succeed in such a plea, it is legally necessary for the purchaser to prove that the transaction was entered into in good faith, that the consideration was paid, and that they

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had no knowledge, actual or constructive, of the revocation of the authority under which the sale was allegedly executed. However, respondent No. 1 failed to produce any cogent evidence on these issues. Therefore, both the validity of the sale and the claim of *bona fide* purchaser remain unproven.

16. Although respondent No. 2 challenged the order dated 14.04.2015 by the Collector Islamabad Ex-D4, wherein Mutation No. 196, dated 28.01.1998, was cancelled on the ground that the official revenue record (Pert Sarkar) was missing and that the mutation had been sanctioned based on the GPA, which itself had already been cancelled on 12.11.1997. However, respondent No. 1 failed to produce any credible or admissible evidence to rebut the order dated 14.04.2015. While certain documents were exhibited and marked by the petitioner's counsel, they were not formally proved by the legal requirements. The superior courts have consistently held, most notably in ***Chaudhry Wajid Ayub vs. Malik Rizwan Ahmed***, **(PLD 2020 Islamabad 250)**, that documents which are merely exhibited or marked without being properly proved carry no evidentiary value. In light of this legal principle, the failure of respondent No. 1 to lead proper evidence means that it could not discharge the burden of proof necessary to establish its claim of being a *bona fide* purchaser acting in good faith. Consequently, the challenge to the inquiry report stands unsupported by law or fact.

17. This Court is mindful of the facts of the case, it must be emphasized that the scope of revisional jurisdiction under section 115, CPC is limited and narrowly defined. Ordinarily, while exercising revisional powers, High Court refrains from interfering with the concurrent findings of the Courts below. This principle is grounded in judicial discipline and respect for the factual determinations made by subordinate Courts. However, this rule is not absolute and does not entirely bar High Court from exercising its revisional jurisdiction in appropriate cases. The powers under section 115 CPC is specifically intended to prevent gross miscarriage of justice and to correct decisions

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that are patently illegal or perverse. Therefore, when a decision of the Courts below is found to be not only erroneous in law but also based on a misreading of evidence or misinterpretation of legal provisions, resulting in substantial injustice, the revisional jurisdiction may rightfully be invoked. In the present case, it is evident that the learned Trial Court as well as the learned Appellate Court have misapplied the relevant legal provisions and incorrectly evaluated the evidence on record, thereby rendering a decision that is not only legally flawed but has also caused serious prejudice to the rights of the affected party. Under such circumstances, the interference of this Court under Section 115 CPC is not only justified but necessary to uphold the principles of justice and legality.

18. In view of the above discussion, the instant civil revision is **allowed**. The impugned judgments and decrees of the Courts below are **set aside** and suit of respondent No.1 is **dismissed**.

(INAAM AMEEN MINHAS)
JUDGE

Announced in open Court on 18.06.2025

JUDGE

APPROVED FOR REPORTING

R.Anjam

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