

JUDGMENT SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT
HYDERABAD

Civil Revision Application No.S-104 of 2023

Applicants : Madad Ali son of Jodo Khan [since deceased] through his legal representatives and another by Mr. Parkash Kumar Advocate

Private Respondents : Ali Akbar and others through Mr. Muhammad Iqbal Qassar, Advocate

Official Respondents : Through Muhammad Yousuf Rahpoto, Assistant Advocate General, Sindh

Date of Hearing : 09.09.2025

Date of Judgment : 07.10.2025

J U D G M E N T

Jan Ali Junejo, J.- Through this Civil Revision Application under Section 115 of the Code of Civil Procedure, 1908 (CPC), the applicants have invoked the supervisory jurisdiction of this Court to assail the order dated 22.03.2023 (hereinafter referred to as the ***“Impugned Order”***) passed by the learned District Judge, Badin (the Appellate Court), whereby, the application filed by the applicants under Order XLI Rule 27 CPC, seeking permission to adduce additional evidence in Civil Appeal No. 66 of 2021, was dismissed.

2. The genesis of this revision lies in a Civil Suit, being Suit No.55 of 2011, filed by the private respondents (plaintiffs) against the applicants (defendants) and the official respondents. The suit was for declaration, cancellation of a sale deed, possession, mesne profits, and permanent injunction concerning an agricultural land parcel, originally granted to one Muhammad Yousif, the father of the private respondents. The core contention of the plaintiffs/respondents was that their father, Muhammad Yousif, died in the year 1986. They alleged that after his death, a fraudulent sale deed was fabricated in 1988, purportedly showing that the deceased Muhammad Yousif sold the land to the applicants. The suit was decreed by the learned trial Court in favour of the plaintiffs.

3. The applicants, being aggrieved, preferred Civil Appeal No. 66 of 2021 before the learned District Judge, Badin. During the pendency of the appeal, they filed the subject application under Order XLI Rule 27 CPC, seeking to produce certain additional documents. These documents, primarily revenue records from 1987 and a verification certificate from Liaquat University of Medical & Health Sciences (LUMHS), Hyderabad, were claimed to prove that Muhammad Yousif was alive and transacting with the revenue authorities after 1986, thereby demolishing the respondents' foundational claim of his death in 1986. The learned appellate Court, vide the impugned order, dismissed the application. Hence, this revision.

4. Mr. Parkash Kumar, learned counsel, vehemently argued that the appellate Court failed to exercise the jurisdiction vested in it by law. He contended that the documents are crucial for the just adjudication of the real controversy—the date of death of Muhammad Yousif. He asserted that these documents were discovered subsequently through diligent enquiry and were not within the applicants' knowledge during the trial. He criticized the impugned order as non-speaking, arbitrary, and a result of misreading the record. He placed reliance on certain case laws to argue that additional evidence should be allowed when it is essential for pronouncing a just judgment.

5. Mr. Muhammad Iqbal Qassar, learned counsel, supported the impugned order. He argued that the applicants had a full and fair opportunity to produce evidence before the trial Court but failed to do so. He characterized the attempt to adduce additional evidence at the appellate stage as a dilatory tactic to reopen and prolong the concluded trial. He maintained that the conditions of Order XLI Rule 27 CPC were not met. Lastly, the learned counsel has prayed for dismissal of the Civil Revision Application.

6. Mr. Muhammad Yousif Rahpoto, learned A.A.G., adopted the arguments of the respondents' counsel and prayed for the dismissal of the revision.

7. I have carefully considered the submissions advanced by the learned counsel for the Applicants, the learned counsel representing the private Respondents, as well as the learned A.A.G., Sindh. I have also meticulously examined the material available on record. The law regarding the production of additional evidence at the appellate stage is well-settled: it is an exception rather than the norm. Such jurisdiction is circumscribed, to be exercised sparingly and with due caution, lest it becomes a tool to

reopen concluded controversies or to fill lacunae left in the case of a negligent litigant. Order XLI, Rule 27, C.P.C. lays down the circumstances under which additional evidence may be permitted, which are limited to the following_

(a) where the Trial Court refused to admit evidence which ought to have been admitted; or

(b) where the party seeking to produce such evidence demonstrates that, despite due diligence, the same was not within its knowledge or could not have been produced at the time of trial; or

(c) where the Appellate Court itself requires such evidence to enable it to pronounce judgment, or where its production is justified by any other substantial cause.

These conditions, being exhaustive in nature, leave no room for the Appellate Court to exercise unfettered discretion. The power under Rule 27 is, therefore, not intended to compensate for omissions, indolence, or afterthoughts on the part of litigants, but rather to prevent miscarriage of justice in exceptional situations.

The seminal principle enunciated by the Honourable Supreme Court of Pakistan, and reaffirmed in ***Muhammad Mumtaz Shah (deceased) through LRs. and others v. Ghulam Hussain Shah (deceased) through LRs. and others (2023 SCMR 1155)***, is that under Order XLI, Rule 27, the general rule is that no additional evidence is admissible at the appellate stage. However, the rule recognizes two exceptions: (a) where the trial court wrongly refused to admit evidence which ought to have been admitted; or (b) where the appellate court itself requires any document or evidence to enable it to pronounce judgment.

8. Having scrutinized the record, the impugned order, and the arguments advanced, this Court finds no illegality or material irregularity in the order of the learned appellate Court. The findings are as follows_

a) Failure to Exercise Due Diligence: The applicants were defendants in the suit. The respondents' claim that Muhammad Yousif died in 1986 was explicitly pleaded in the plaint (Annex-B). The burden to disprove this was squarely on the applicants. The revenue records they now seek to produce (payment receipts, T.O. Forms) are public documents that could have been procured and produced during the trial with due diligence. Their plea of "subsequent discovery" is not convincing, as they have failed to demonstrate what specific steps were taken during the trial to obtain these documents and why those efforts failed. The mere assertion of a subsequent enquiry is insufficient to satisfy the rigorous condition of clause (b) of Rule 27.

b) The Documents Do Not Fall Under the Ambit of "Substantial Cause": This Court concurs with the appellate Court's assessment of the documents' probative value. The documents are photocopies and do not

bear the admitted signatures of Muhammad Yousif. Their authenticity and evidentiary value are highly doubtful. Furthermore, the verification certificate from LUMHS states that Muhammad Yousif “had not attended the Hospital since 13-04-1986”. Far from proving that he was alive after 1986, this certificate is neutral and does not conclusively prove either the fact of his death or his life beyond that date. Therefore, the appellate Court correctly held that these documents would be of no material assistance to the applicants and their production is not necessary for pronouncing a just judgment under clause (c) of Rule 27.

c) Attempt to Re-litigate the Case: The learned Trial Court had already framed issues and recorded evidence from both sides. Entertaining the present application would, in effect, amount to re-opening the evidence and re-litigating the very issues conclusively determined at the trial stage. This is precisely the mischief that the restrictive scope of Order XLI, Rule 27, C.P.C. seeks to prevent. The provision is not meant to fill lacunae, cure deficiencies, or provide a party with an opportunity to introduce a new plea at the appellate stage. Its exercise is to be cautious and sparing, never to reward indolence or negligence. Before invoking this jurisdiction, the Court must also satisfy itself that the document sought to be introduced is genuine in nature and not susceptible to fabrication, tampering, or manufacturing. Reliance is placed on the dictum of the Honourable Supreme Court of Pakistan in **Shamshad Bibi and others v. Riasat Ali and others (PLD 2023 SC 643)**, wherein it was held that: *“The power under Order XLI, Rule 27 of the C.P.C. is not intended to be exercised to fill up lacunas, or to make up any deficiency in the case, nor to provide an opportunity to the party to raise a new plea. The power essentially has to be exercised cautiously and sparingly and not to facilitate an indolent litigant. The court, before exercising its jurisdiction of allowing the recording of additional evidence, must be satisfied that the document sought to be adduced in evidence is not of the nature that could be easily fabricated, tampered or manufactured”*.

9. For the foregoing reasons, this Court holds that the learned appellate Court correctly applied the principles of Order XLI Rule 27 CPC. The impugned order is a reasoned order, reflects a judicious application of mind, and does not suffer from any jurisdictional error, illegality, or material irregularity warranting interference by this Court in its revisional jurisdiction under Section 115 CPC. It is also a settled principle of law that findings, whether on questions of fact or law, however erroneous they may appear, if recorded by a Court of competent jurisdiction, cannot be interfered with by the High Court in exercise of its revisional jurisdiction under Section 115, C.P.C., unless such findings are tainted with jurisdictional defects, illegality, or material irregularity. Reliance is placed on the case of **Muhammad Idrees and others v. Muhammad Pervaiz and others (2010 SCMR 05)**, wherein the Honourable Supreme Court of Pakistan held that: *“It is also settled law that findings on question of fact or law, erroneous the same may be, recorded by the Court of competent jurisdiction, cannot be interfered with by the High Court in exercise of its revisional jurisdiction under section 115, C.P.C. unless such findings suffer from controversial defects, illegality or material irregularity as law laid*

down by the Privy Council in Hindu Religious Endowments Board, Madras' case PLD 1949 PC 26".

10. Accordingly, this Civil Revision Application, being devoid of substantive merit, stands dismissed. The impugned order dated 22.03.2023, passed by the learned District Judge, Badin, is hereby upheld. The parties shall bear their own costs of these proceedings. Office is directed to transmit a copy of this order to the learned Appellate Court for information and compliance.

JUDGE