

HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

R.A No.331 of 2024
[Yar Muhammad and Ors. versus Noor Ahmed and another]

Applicants:	Yar Muhammad and Ors: Through Mr. Irfan Ahmed Qureshi advocate
Respondents:	Noor Ahmed through LRs & another: Through Mr. Awais Talpur advocate
Date of hearing	04.09.2025
Date of Order	10.10.2025

ORDER

TASNEEM SULTANA, J: Through captioned revision application, the applicants have challenged the concurrent findings of two Courts below in tenancy matter. The respondents filed an application bearing No.01 of 2021 under Section 28 of Sindh Tenancy Act 1950 before learned Civil Judge-III Tando Muhammad Khan (**Trial Court**) that was allowed vide Order dated 04.10.2023, which was challenged by the present applicants before learned Additional District Judge-II Tando Muhammad Khan (**Appellate Court**) through Appeal No.01 of 2023 but same was dismissed vide Order dated 22.11.2024, hence they preferred present revision.

2. Facts of the matter that gave rise to present lis are that respondents claimed to have inherited a land in Survey No.74 & 77 in Deh Jatt Taluka Tando Ghulam Hyder District Tando Muhammad Khan total admeasuring 14-32 acres (**subject land**) which, as claimed, they had given to appellants on harp condition but allegedly the appellants failed to properly maintain the subject land, as such respondents asked the appellants the appellants to vacate the land but they allegedly refused, necessitating filing of tenancy application by the respondents before learned trial Court, that met with the aforementioned fate. The respondents sought following relief through tenancy application:

A. *That this honorable Court/Tribunal to pass/decreree that the respondents are no more hari/tenant in the above Survey Nos. and their claim of harap-ship over the above survey nos may be cancelled by passing order under the tenancy act and restrained them not to interfere in the physical possession of the above survey Nos for cultivation the land of the applicants.*

3. Upon service the present applicants filed their parawise comments wherein they denied the allegations leveled in the application and claimed themselves as old farmers/haries of subject land. Out of divergent pleadings of the

parties the trial Court framed nine Issues, which are reproduced here under:-

1. *Whether the Tenancy Application is maintainable?*
2. *Whether the applicant is owner of revenue survey No.74 area 9-04 acres, 77 area 5-28 acres situated at Deh Jatt Tapo Dando, Taluka Tando Ghulam Haider?*
3. *Whether the above named respondents are still Hari tenant of the above survey Nos?*
4. *Whether the survey No.74 & 77 about 5 years ago were cultivated by the above named respondents on Harap in capacity (Hari) under Sindh Tenancy Act?*
5. *Whether since last 05 years the above named respondents are not prepared to cultivate the land of applicant?*
6. *Whether the above named respondents are creating hindrances and causing damages to the land of applicant?*
7. *Whether there is no Khasfa Girdvari in favor of respondents in the office of Mukhtiarkar, Tando Ghulam Hyder during Jumabindi/Survey record available in revenue?*
8. *Whether the applicant is entitled for any relief as claimed?*
9. *What should the order be?*

On the aforesaid Issues parties led their evidence and the learned trial Court finally after hearing the parties vide Order dated 04.10.2025 allowed the tenancy application and directed the present appellants to handover possession of the subject land to present respondent. The appellants being aggrieved with and dissatisfied by the order of trial Court preferred tenancy appeal before learned appellate Court, but same stood dismissed vide Order dated 22.11.2024, hence this revision application.

4. Learned counsel for the appellant contended that the impugned orders are opposed to law, facts and equity; that respondents are not the owners of more than 2.16 acres in the subject property and they have only $11 \frac{3}{4}$ share each but by misrepresentation facts they have obtained the impugned orders; that applicants are haries of the subject property since forefathers and in this connection applicant Yar Muhammad had also filed an application before Mukhtiarkar and Tribunal Badin that was allowed vide Order dated 06.04.1976 which is sufficient to prove the claim of the applicant; that the report of Mukhtiarkar dated 14.10.2021 shows that there are 10 shareholders in the subject land out of which only two brothers had initiated the proceedings without even getting consent from remaining

shareholders, therefore, the tenancy application was not maintainable; that prior to this sister-in-law of the respondents also filed I.D Complaint in respect of the subject that was dismissed by the 1st Additional Sessions Judge Tando Muhammad Khan; that sister-in-law of the respondents Mst. Mariat had also lodged FIR against the applicant from which they were acquitted, but the Courts below have failed to consider all these aspects of the case; that both Courts below have also failed to appreciate the provisions of Section 14(1) of the Sindh Tenancy Act 1950, which requires that a permanent tenant be give one year's notice in writing specifically stating reasons of termination of tenancy agreement, but in present case no such procedure was adopted by the landlord; that the trial Court had no jurisdiction to entertain the tenancy application; that the applicants are permanent haries of the respondents as defined in the Act ibid, therefore, not liable to be ejected from the subject land. In support of his contentions he placed reliance on the case of Province of Sindh through Chief Secretary and another vs. Rasheed A. Rizvi and others [PLD 2012 SC 649] and Sh. Riaz-ul-Haq and another vs. Federation of Pakistan through Ministry of Law and others [PLD 2013 SC 501].

5. Contrary learned counsel for the respondents supported the impugned orders and argued that it is admitted fact that respondents are the real owners of subject land; that very important condition for taking a land on harap condition is that said land is cultivated, but the applicants left the subject land abandoned for years hence violated the terms of harapship and not entitled for any relief; that trial Court appointed the Commissioner, who visited the subject land and submitted his report, which proves that the subject land is lying abandoned and falsify the entire claim of the applicants; that jurisdiction was conferred on the civil Court by a Divisional Bench of this Court in the case of Ghulam Ali vs. Province of Sindh through Senior Member Board of Revenue Sindh and 12 others reported in **PLD 2020 Sindh 284**; that concurrent findings are available on record which do not require any interference by this Court in exercise of revisional jurisdictional having limited scope. He prayed for dismissal of instant revision application. Besides aforesaid reported case he has also placed reliance on the case of Pir Bux vs. Government of Sindh and 2 others (PLD 1977 Karachi 158).

6. Arguments heard and record perused.

7. Before dilating upon the merits of the case, it may be observed that the Sindh Tenancy (Amendment) Ordinance, 2002 (Sindh Ordinance No. XXXII of 2002) replaced Mukhtiarkars and Mahalkaris with District Officers (Revenue) and Deputy District Officers (Revenue), emphasizing that tenancy recognition must derive from official entries, not mere possession. The legislative purpose was to restrict frivolous tenancy claims unsupported by record. Sections 4 and 5 of the Sindh Tenancy Act, 1950 provides that only a person who personally cultivates

the same parcel of land continuously for the qualifying period with acknowledgment of the landlord attains the status of a permanent tenant and the Section 13 protects such tenants against arbitrary eviction, but only if tenancy is lawfully recognized; whereas Section 28 empowers the competent authority to adjudicate such disputes.

8. As far as jurisdiction is concerned the learned Divisional Bench in the case of *Ghulam Ali*¹ while dilating upon the issue like in hand conferred the jurisdiction of the matter, arising out of the Sindh Tenancy Act 1950 (amended) [Act 1950], upon Civil Court, therefore, it can be safely held that Courts below have rightly exercised their jurisdiction in the matter. Relevant observations/directions drawn on in the referred case are reproduced herein below:

“44. In view of above discussions and directions the petition stands disposed of. We, however, for easy compliance of all directives, reiterate the same, in brief, as:--

- (1) After the separation of the judiciary from the executive, the Assistant Commissioner, the Additional Commissioner and the Commissioner/Collector, do not have jurisdiction to make judicial determination under sections 27, 29 and 30 of the Sindh Tenancy Act, 1950, and to that extent the said provisions are ultra vires Articles 175, 202 and 203 of the Constitution of Pakistan, 1973;*
- (2) Till such time necessary amendments are made to the Sindh Tenancy Act 1950, the proceedings pending under sections 27, 29 and 30 of the Sindh Tenancy Act, 1950 shall be transferred to the District Court concerned where the District Judge shall assign tenancy applications under section 27 to the Civil Court exercising territorial jurisdiction, and the appeals and revisions pending under sections 29 and 30 shall be decided by the concerned District Judge or Additional District Judge;*
- (3) The amendment of section 27 of the Act shall, however be made within a period of one month by legislature by any mode within their wisdom subject to satisfaction of true spirit of Article 175 of the Constitution. The jurisdiction, exercised by Civil Judge and JM, till such amendment shall also be kept in view by Legislature so as to keep rights and interests of parties protected.....”*

9. Coming to the merits of the case, admittedly the subject land was handed over to the applicants since their elders for cultivation purpose and the ownership of respondents either joint or individual over the subject land is not disputed. The very definition for qualifying as tenant/Hari, as provided in the Act 1950, is that a person/individual cultivates the land of landlord, mere possession of the land and/or claim that the land is being cultivated does not make a person competent to qualify as a tenant/Hari. However, in the present case, it appears that the Tapedar

¹ PLD 2020 Sindh 284

of the Beat reported (Ex.P-2) that on site inspection he found the total area of subject land uncultivated, except some bushes and forest plants. Record further reflects after such report of the Tapedar Commissioner was appointed with the consent of the parties, who also visited the subject land on 22.05.2022 in presence of parties and submitted his site inspection report dated 28.05.2020 (Ex.P-4), which reflects that an area of 5-28 acres in Survey No.77 while an area of 4-00 acres in Survey No.74 is uncultivated.

10. The continuous cultivation or long possession by forefathers even does not, by itself, confer tenancy rights. The relationship of landlord and tenant must be established through statutory evidence. However, the applicants failed to produce any lawful acknowledgment of tenancy, rent receipts or any entry reflecting payment of batai or rent to the respondents or their predecessors as required under the Act 1950. Their claim rested solely on oral assertions of ancestral occupation, unsupported by the record. The above conduct of non-cultivation of subject land on part of the applicants gave rise to cause t respondents/landlord for termination of tenancy in terms of Section 13 of the Act 1950, which they have exercised by moving application before the competent forum according to law.

11. In the present case, the concurrent findings of both Courts below are based upon proper appreciation of oral and documentary evidence and are fully in accord with the law laid down in the above precedents. No illegality, material irregularity, or jurisdictional defect is apparent warranting interference by this Court under Section 115 CPC having limited scope. I am fortified in this regard by the case of *Muhammad Sarwar*², wherein the Supreme Court has held as under:

6. It is well settled exposition of law, deducible from plethora of dictums laid down by superior courts that section 115, C.P.C. empowers and mete out the High Court to satisfy and reassure itself that the order of the subordinate court is within its jurisdiction; the case is one in which the court ought to exercise jurisdiction and in exercising jurisdiction, the court has not acted illegally or in breach of some provision of law or with material irregularity or by committing some error of procedure in the course of the trial which affected the ultimate decision. If the High Court is satisfied that aforesaid principles have not been unheeded or disregarded by the courts below, it has no power to interfere in the conclusion of the subordinate court upon questions of fact or law. In the case of Atiq-ur-Rehman v. Muhammad Amin (PLD 2006 SC 309), this Court held that the scope of revisional jurisdiction is confined to the extent of misreading or non-reading of evidence, jurisdictional error or an illegality of the nature in the judgment which may have material effect on the result of the case or the conclusion drawn therein is perverse or

² PLD 2022 SC 13

contrary to the law but the interference for the mere fact that the appraisal of evidence may suggest another view of the matter is not possible in revisional jurisdiction. So far as challenge to the concurrent findings of the courts below in the revisional jurisdiction of the High Court, this Court has held in the case of Ahmad Nawaz Khan v. Muhammad Jaffar Khan and others (2010 SCMR 984), that High Court has very limited jurisdiction to interfere in the concurrent conclusions arrived at by the courts below while exercising power under section 115, C.P.C. Similar view was taken in the case of Sultan Muhammad and another v. Muhammad Qasim and others (2010 SCMR 1630) that the concurrent findings of three courts below are not opened to question at the revisional stage.

12. In view of the above discussion, instant revision application is devoid of merits and the same is dismissed accordingly. Resultantly the impugned orders passed by Courts below are maintained.

JUDGE

Sajjad Ali Jessar