

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Civil Revision Application No.339 of 2023

[Ali Muhammad (deceased) through LRs vs. Government of Sindh and others]

Applicants by : Mr.Abdul Hameed Bajwa, Advocate

Respondents No.4 by : Mr.Muhammad Suleman Dahri, Advocate

Respondents No.1 to 3 by : Mr.Allah Bachayo Soomro, Addl. A.G Sindh
a/w Deedar Ali Nohri, Mukhtiarkar (Rev.)
Shaheed Fazil Rahu and Saleem Memon,
Incharge Assistant office of Mukhtiarkar (Estate)
Badin.

Date of hearing : **07.4.2025 & 14.4.2025**

Date of Decision : **05.5.2025**

J U D G M E N T

ARBAB ALI HAKRO, J.- Through this Civil Revision Application, filed under Section 115 of the Civil Procedure Code, 1908 ("**C.P.C.**"), the Applicants/Plaintiffs challenge the Judgment dated 19.08.2023 and Decree dated 25.08.2023, rendered by learned District Judge (MCAC), Badin ("the **Appellate Court**") in Civil Appeal No. 02 of 2023. The said Judgment and Decree uphold the Judgment and Decree dated 10.12.2022, passed by learned Senior Civil Judge, Golarchi ("the **Trial Court**") in F.C. Suit No. 79 of 2015 (Old No. 67/2012), whereby the Applicants' suit was dismissed.

2. The salient facts of the case reveal that the predecessor-in-interest of the Applicants/Plaintiffs, namely Ali Muhammad, instituted a suit seeking a declaratory decree, along with Permanent and Mandatory Injunctions, against the Respondents/Defendants. It is asserted that the suit land¹ was granted to the predecessor of the Applicants by the Barrage Authorities in the year 1974-75. Pursuant thereto, an allotment order was duly issued in his favour, where he remained in uninterrupted possession of the suit land and continued to cultivate the same. It is further averred that the predecessor of the Applicants regularly discharged his financial obligations by remitting the requisite instalments with respect to the suit land. However, the Revenue Officer, Kotri Barrage Hyderabad, arbitrarily and capriciously rescinded the allotment, expunging the predecessor's name from the official record. Aggrieved thereby, he preferred an appeal before the Commissioner, Hyderabad, which was adjudicated in his favour, thereby restoring the suit land in his name. Subsequent to the full and

¹ Agricultural land bearing Survey No. 154, admeasuring 04-20 acres, situated in Deh and Tapo Tarai, Taluka Shaheed Fazil Rahu

final payment of instalments by the predecessor of the Applicants, the suit land was completely paid off. Notwithstanding such compliance, the T.O. Form was unjustifiably withheld and was not issued in his name; despite repeated approaches before the concerned authorities, the predecessor of the Applicants was constrained to invoke the jurisdiction of the competent Court by filing the present suit, seeking the following reliefs: -

- a) Declaration that the plaintiff has fully paid up the land and the act of the defendants not issuing T.O Form in respect of the suit land in favour of the plaintiff is illegal, malafide and against the natural justice.*
- b) To direct the defendants by way of mandatory injunction to issue T.O Form in favour of the plaintiff in respect of the suit land.*
- c) To grant permanent injunction against the defendants restraining them from changing the status of the suit land and further be restrained not to cancel the same from the name of the plaintiff, directly or indirectly.*
- d) The costs of the suit be borne by the defendants.*
- e) Any other relief this honourable court deems fit and proper.*

3. The Defendant/Respondent No.4 contested the suit by filing a written statement wherein he categorically refuted the Applicants' claims. He asserted that the suit land was originally owned by a Hindu Khatedar to the extent of 0-75 paisa, while the remaining 25 paisa share constituted Muslim property vested in the elders of Respondent No.4. It is further averred that the Revenue Officer erroneously allotted the entire 100 paisa share of the suit survey numbers. Upon discovering this irregularity, the elder of Respondent No.4, namely Imam Bux son of Muhammad Rind, approached the Deputy Commissioner/Collector, who referred the matter to the learned Additional Commissioner, Hyderabad Division, Hyderabad. In suo motu jurisdiction, the Additional Commissioner summoned all concerned parties, including the predecessor of the Applicants, who duly appeared and engaged legal counsel. After affording a fair opportunity of hearing to all stakeholders, the Additional Commissioner rendered an order in Case No. 513-6-37/87, dated 20.12.1987, titled *Re: Imam Bux Rind vs. Bassar Samejo and others*, whereby 25 paisa share was excluded from the suit land and other survey numbers. Having remained unchallenged before any judicial or quasi-judicial forum, the said Order has attained finality. It is further stated that as of present, the 25 paisa share stands lawfully recorded in the name of Respondent No.4. Additionally, it is asserted that the predecessor of the Applicants lacked a valid cause of action, was not entitled to the reliefs sought and that the suit was otherwise untenable in law.

4. The Mukhtiarkar (Estate), Badin (Respondent No.3), for himself and on behalf of Respondent No.1, filed a written statement contesting the suit on both legal and factual grounds, wherein he categorically denied all adverse contentions raised by the predecessor of the Applicants against them. It is asserted that the suit land was originally a joint property, with a 25 paisa share belonging to Muslim proprietors and the remaining 0-75 paisa share vested in Hindu ownership. It is further averred that the suit land, bearing Survey No. 154, was erroneously included in the Barrage schedule as a full rupee share, leading to its grant in favour of the predecessor of the Applicants, thereby creating ambiguity. Upon discovery of this discrepancy, the Muslim shareholders in the suit land approached the Revenue Forum, which, after due verification of the record, submitted a detailed report to the Additional Commissioner, Hyderabad Division. Upon taking cognizance of the matter in the exercise of suo motu jurisdiction, the Additional Commissioner excluded the Muslim share to the extent of 25 paisa from the T.O. Form in respect of the suit land. However, Para No.6 of the plaint acknowledges that a notation regarding the restoration of the grant of land is available on the body of the A-Form. It is further stated that upon verification of official records, the T.O. Form of grantee Ali Muhammad was issued after the correction of the area to 3-15 acres, corresponding to the 0-75 paisa share of Survey No. 154. The office record unequivocally reflects that the T.O. Form for an area of 3-15 acres from Survey No. 154 has already been issued in favour of the predecessor of the Applicants, strictly to the extent of his 0-75 paisa share. It is further asserted that the predecessor of the Applicants lacked any legal character to claim title over the 25 paisa share in the suit land, which lawfully belongs to the Muslim shareholders.

5. Arising from the contentious pleadings of the parties, the Trial Court framed issues and recorded evidence from both sides, encompassing arguments in pro and contra. Upon the culmination of the trial, the Trial Court vide impugned Judgment and Decree dated 10.12.2022 dismissed the suit instituted by the Applicants. Discontented and aggrieved by the said adjudication, the Applicants preferred an appeal, which was subsequently dismissed by the learned Appellate Court through the impugned Judgment dated 19.08.2023 and Decree dated 25.08.2023. Consequently, the Applicants have invoked the revisional jurisdiction of this Court by filing the instant Civil Revision Application.

6. At the very outset, learned counsel representing the Applicants contends that the suit land was lawfully allotted to the predecessor-in-interest of the Applicants in 1974 and that he had duly discharged his financial obligations by remitting the entire instalments. He further assails the findings of both the courts below, asserting that they have egregiously misread the F-Yadashat Form

(Exh.107/A), thereby rendering their determinations legally infirm. It is further urged that the courts below have failed to appreciate the documentary evidence the Applicants adduced, particularly regarding the payment of instalments. Learned counsel emphasizes that the subsequent Order dated 16.04.2001, passed by the Commissioner, remains unchallenged by Respondent No.4, thereby attaining finality. He further castigates the reliance placed by both the courts below upon the Order dated 20.12.1987, rendered by the Additional Commissioner, Hyderabad, contending that such reliance is legally untenable. In substantiation of his arguments, learned counsel refers to Entry No.40 (Exh.76/2) and Entry No.146 (Exh.76/C), produced by the Applicants in their evidence, and submits that these documents unequivocally establish that the suit land is vested in the Sindh Government. However, both the courts below, in manifest disregard of the record, erroneously hold that the suit land is originally owned by a Hindu Khatedar. Lastly, it has been submitted that the judgments and decrees rendered by both the courts below suffer from patent illegalities and jurisdictional infirmities, are not sustainable under the law, and are liable to be set aside.

7. Conversely, learned counsel for Respondent No.4 argues that the suit land was originally owned by a Hindu Khatedar (0-75 paisa share), while the remaining 25 paisa share belonged to Muslim Khatedar, including the elders of Respondent No.4. He contends that the Revenue Officer erroneously allotted the entire 100 paisa share, disregarding the vested proprietary rights of the Muslim Khatedar. Upon discovering this irregularity, Imam Bux, the elder of Respondent No.4, approached the Deputy Commissioner/Collector, who referred the matter to the Additional Commissioner, Hyderabad Division. Exercising suo motu jurisdiction, the Additional Commissioner summoned all concerned parties, including the predecessor of the Applicants, conducted hearings, and vide Order dated 20.12.1987, excluded the 25 paisa Muslim share from the suit land. He has contended that the said Order attained finality as it remained unchallenged before any judicial or quasi-judicial forum. Lastly, learned counsel submits that the revisional jurisdiction of this Court is limited, and interference with concurrent findings of fact is warranted only in cases of gross misapprehension of evidence or jurisdictional infirmity. He maintains that the judgments and decrees of the courts below are legally sound and do not suffer from any patent illegality or material irregularity warranting interference.

8. Learned Additional Advocate General, while repudiating the Applicants' assertions, contends that the instant Revision is legally unsustainable. He argues that the case falls within the ambit of concurrent findings of fact recorded by the courts below, which, under settled principles of law, cannot be interfered with by the Revisional Court. He further maintains that the scope of

revisional jurisdiction is inherently limited and does not extend to the re-appreciation of evidence or factual determinations made by the inferior courts. Consequently, he submits that the present Revision is not maintainable and warrants outright dismissal.

9. Having heard the learned counsel representing both parties and meticulously examined the impugned judgments and decrees, as well as the record, with their assistance.

10. Before delving into the merits of the case, it is imperative to delineate the scope of revisional jurisdiction under Section 115 of C.P.C. It is a well-settled principle of law that revisional jurisdiction is not akin to appellate jurisdiction, and interference with concurrent findings of fact recorded by the courts below is warranted only in cases where there is a manifest misapprehension of evidence, a jurisdictional defect, or a material irregularity that has occasioned a miscarriage of justice. The revisional Court is not to re-appreciate evidence or substitute its own findings for those of the courts below unless the findings are perverse or based on a complete misreading of the record.

11. In the present case, the Applicants have assailed the concurrent findings recorded by the learned Trial Court and the learned Appellate Court, contending that both courts have misread the evidence and failed to appreciate the legal implications of the documents produced by the Applicants. It is, therefore, incumbent upon this Court to scrutinize whether the findings recorded by the courts below suffer from any legal infirmity warranting interference in revisional jurisdiction.

12. The Trial Court, upon meticulous examination of the pleadings and evidence, framed issues to adjudicate the dispute. In addressing issues, the Trial Court noted that the burden of proof lay upon the applicants. Applicant No.1, Gul Bahar Ali, testified that the suit land was allotted to his father in 1974-75. He produced documentary evidence supporting this claim, including the allotment order and land record entries. In cross-examination, Respondent No.4 Bassar conceded that the land was indeed allotted in 1974-75, leading the Trial Court to affirm that the suit land was granted to the plaintiffs' predecessor to the extent of 100 paisa shares. Regarding Issue No. 02, the trial Court held that the burden of proof rested upon defendant No.4, who argued that the suit land initially belonged to a Hindu Khatedar (0-75 paisa share) and Muslim Khatedar (25 paisa share), including the elders of defendant No.4. He asserted that the Revenue Officer erroneously allotted the entire 100 paisa share to Ali Muhammad. Respondent No.4's elder, Imam Bux, had challenged this allotment before the Commissioner, Hyderabad, who, vide Order dated 20.12.1987, excluded the Muslim share of 25 paisa from the suit land. In compliance with this Order, the entry with respect to the excluded share was rectified in revenue

records. The Mukhtiarkar Estate, Badin (Respondent No.3) supported the claim of Respondent No.4, contending that the suit land was erroneously granted as a full rupee share despite its joint ownership structure. Upon realization of the error, the Additional Commissioner, Hyderabad Division, invoked suo motu jurisdiction, reviewed revenue records, and vide Order dated 20.12.1987, excluded the Muslim share of 25 paisa from the suit land allocation. The Trial Court further observed that the applicants had omitted material facts in their pleadings and evidence, specifically failing to mention the Order dated 20.12.1987. Applicant No.1 (F) did not refer to the Order in examination-in-chief and professed ignorance during cross-examination. However, P.W-03 Ghulam Hussain admitted that such proceedings took place before the Commissioner, Hyderabad, indicating that there was a dispute concerning the 25 paisa share in the suit land. This omission and subsequent contradictions led the Trial Court to infer the intentional concealment of material facts. Upon perusal of Order dated 20.12.1987 (Ex .107/B), the Trial Court confirmed that the Deputy Commissioner, Badin, had referred the matter to the Additional Commissioner, who declared that the Muslim share of 25 paisa was wrongly included in the grant and ordered its exclusion. This Order was never challenged before a competent forum, so it attained finality. Consequently, the Trial Court concluded that Respondent No.4 had successfully demonstrated that the grant of 25 paisa shares was improper, and rectification was justified.

13. The Appellate Court, upon reappraisal of the record and evidence, affirmed the findings of the Trial Court. The Appellate Court held that the Trial Court had correctly determined that the land was initially granted erroneously. Upon realization of the error, the Additional Commissioner rectified the mistake vide Order dated 20.12.1987 by excluding the Muslim share (25 paisa) from the T.O. Form issued in favour of the applicants. The applicants did not challenge the exclusion order before any revenue forum, thus allowing the Order to attain finality.

14. Both the Trial Court and Appellate Court undertook a comprehensive examination of the documentary and oral evidence and arrived at consistent conclusions. The applicants failed to establish their claim, concealed material facts and did not challenge the exclusion order at any subsequent revenue forum, leading to the Order attaining finality. The revenue records were rectified pursuant to lawful administrative action, justifying the exclusion of 25 paisa Muslim shares from the suit land. In light of settled legal principles, the findings of both courts are legally sound, and no jurisdictional infirmity or misreading of evidence warrants interference.

15. Notwithstanding that the trial Court did not frame any issue regarding the maintainability of the suit, it must still be examined in light of Section 11 of the

Sindh Revenue Jurisdiction Act, 1876² and Section 36 of the Colonization and Disposal of Government Lands Act, 1912³, which regulates civil court jurisdiction over land revenue disputes. Section 11 precludes civil courts from entertaining suits unless all available revenue remedies have been exhausted, while Section 36 explicitly ousts civil jurisdiction in matters concerning the grant, cancellation, or disposal of government land. In the present case, the Applicants challenged the cancellation of allotment before the Commissioner, who subsequently restored the suit land. However, they failed to produce the restoration order as evidence. Furthermore, the Applicants did not contest the Additional Commissioner's Order dated 20.12.1987, which rectified the erroneous grant and attained finality. Given that their dispute pertains to the cancellation and rectification of government land allotment, they were required to seek redress before the revenue authorities rather than the civil Court. Their failure to do so raises jurisdictional infirmities, rendering the suit legally untenable under the aforementioned provisions.

16. It is a well-settled principle of law that revisional jurisdiction is circumscribed by narrow parameters, and interference with concurrent findings of fact recorded by the courts below is warranted only in cases of gross misapprehension of evidence or jurisdictional infirmity. The courts below have rendered their findings after due appreciation of the evidence available on record, and no material irregularity or jurisdictional defect has been pointed out that would warrant interference by this Court.

17. Accordingly, the instant Civil Revision Application stands **dismissed**.

JUDGE

AHSAN K. ABRO

² 11. **Suits not to be entertained unless plaintiff has exhausted right of appeal.** No Civil Court shall entertain any suit against the Government on account of any act or omission or any Revenue officer unless the plaintiff first proves that, previously to bringing his suit, he has presented all such appeals allowed by the law for the time being in force as, within the period of limitation allowed for bringing such suit, it was possible to present.

³ 36. **Jurisdiction of Civil Court barred as regards matter arising under the Act.** – A Civil Court shall not have jurisdiction in any matter of which the Collector is empowered by this Act to dispose of and shall not take cognizance of the manner in which the [Provincial Government], [Board of Revenue] or Collector or any other Revenue Officer exercises any power vested in it or in him by or under this Act.