

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA
Civil Revision No.S-138 of 2023
Waqar Rahim and another Versus Province of Sindh and others

DATE ORDER WITH SIGNATURE OF HON'BLE JUDGE

01. For orders on CMA No.793/2023 (S/A)
02. For hearing of main case.

Before

Mr Justice Nisar Ahmed Bhanbhro

Applicants: Waqar Rahim and Muhammad Saqib
Through Mr. Muhammad Uzair Shaikh, advocate.
Respondent No 1 to 5: Province of Sindh and others
Through Mr. Abdul Waris Bhutto, Assistant A. G. Sindh.
Respondent No 6: Nemo
Date of hearing: 26-05-2025
Date of order: 26.05.2025

ORDER

Nisar Ahmed Bhanbhro, J. Through this Civil Revision Application under section 115 of CPC, the applicant has challenged the concurrent findings of the courts below wherein plaint of F.C suit No.47 of 2021 Re Waqar Rahim and another Versus Province of Sindh and others was rejected by the Court of Learned Senior Civil Judge Shikarpur (Trial Court) vide orders dated 09-01-2023 (1st impugned order) and appeal No 04 of 2023 Re Waqar Rahim and another Versus Province of Sindh and others preferred by the applicants was also dismissed vide orders dated 31-08-2023 (2nd impugned order) by the Court of Learned Additional District Judge/Model Civil Appellate Court Shikarpur (Appellate Court).

2. The facts giving cause to file this revision application are that the applicants are the owners of the landed property Survey number 176/6-21 acres of Deh Raees Wah of Taluka and District Shikarpur (the Suit Property) purchased by them from Iftikhar Ahmed vide registered sale deed dated 16.04.2011. The applicants have transferred an area of about 3-0 acres of the Suit Property to Irfan Ahmed through registered sale deed dated 28.04.2014. The Suit Property originally belonged to Hindus and it was allotted to Mst. Shehzadi Begum through settlement department, thereafter it travelled to the ownership of different persons through registered sale deed from year 1975. The Applicants also purchased the property from subsequent owners and entries in record of rights were recorded in their favor. In year 2020 when applicants approached Revenue Authority for grant of certified true copy of the mutation form/village form VII-B, they came to know that entry in record of rights recorded in their favor stands cancelled by the orders of Deputy Commissioner Shikarpur dated 10-09-2015 on an appeal filed by Respondent No 6. On coming into knowledge of such cancellation order passed by Deputy Commissioner, applicants filed Civil Suit before Trial Court seeking declaration that they were the lawful owners of the suit property and their right to immovable property was infringed by the Deputy Commissioner without issuing any notice and giving them the right of hearing. Applicants sought declaration that the order passed by the Deputy Commissioner was void and permanent injunction that the order passed by the Deputy Commissioner was not binding upon applicants as such cannot take effect against them.

3. Learned Trial Court issued notices of the suit to the respondents in particular respondent No.6 who appeared before the trial court and filed an application under order VII rule 11 CPC, objection to the same were filed by the Applicants. The Learned Trial Court after hearing the parties rejected the plaint vide order dated 08-01-2023 by non-suiting the applicants on the ground that the applicants had assailed the order of Revenue Authority without availing the remedy available under section 161 and 164 of Sindh Land Revenue Act, 1967. The Applicants preferred appeal against the 1st impugned order before the Court of Learned District Judge Shikarpur, which was made over to the Learned Appellate Court for disposal in accordance with law. The Appellate Court heard the parties, declined the appeal vide 2nd impugned order confirming that there was no illegality in the orders passed by the learned Trial Court. Hence this revision application.

4. The notices of this Revision Application were issued to the respondent No.6, despite of the service, he has chosen to remain absent. Since this is revision application calling in question the orders passed by the courts below under order 7 rule 11 CPC and pending adjudication since last about two years, therefore, this matter is being decided with the assistance of the Learned Assistant Advocate General.

5. Mr Muhammad Uzair Shaikh Learned Counsel for the applicants contended that the applicants acquired the right of ownership in the Suit Property by way of registered sale deed and the Revenue Authority had no jurisdiction to entertain any appeal/revision against the entry which was outcome of a registered sale deed and incorporated in the revenue record in terms of section 41 and 42 of Sindh Land Revenue Act, 1967. He contended that the applicants did not file the appeal against order of Deputy Commissioner Shikarpur, as from the face of it the order was illegal, as the jurisdiction of the revenue courts as defined under section 172 of Sindh Land Revenue Act 1967, pertained to the correction of entries and periodical records. The Revenue Authorities cannot cancel the registered sale deed, which is sole domain of the Civil Court. He prayed for setting aside the impugned order and remanding the matter back to Trial Court for decision on merits after framing of issues and recording of evidence.

6. Mr Abdul Waris Bhutto, Learned Assistant Advocate General supported the impugned orders on the ground that applicants had a remedy available with them to approach the revenue courts. There is no illegality or irregularity in the impugned orders, revision application merits dismissal.

7. Heard arguments and perused the material available on record.

8. Meticulous perusal of the record revealed that applicants acquired the right of ownership in the suit property by way of registered sale deed in year 2011 and entries in the record of rights were recorded on the basis of registered sale deed. Under the provisions of Sindh Land Revenue Act 1967, the Registration Authority is required to send a copy of the registered sale deed to the Assistant Commissioner of the Taluka concerned within a period of 03 months and the revenue authority is under an obligation to incorporate the entry in record of rights as envisaged under section 41 and 42 of Sindh Land Revenue Act 1967. The entry in the record of rights recorded on the basis of registered documents attaches the presumption of truth unless the registered sale deed is cancelled by the Competent Court of law. For cancellation of registered sale deed an exercise of recording evidence is mandatory to arrive at a definite conclusion that the registered instrument was void and cannot be enforced. For seeking the relief of cancellation of the registered document the injured person is mandated to bring a suit for cancellation under section 39 of the Specific Relief Act 1877. No such suit

was ever filed before Court of law seeking cancellation of the Registered Sale Deed executed in between applicants and previous owner Iftikhar Ahmed in the year 2011.

9. It appears from the record, that the Respondent No 6 filed a revenue appeal under section 161 of the Sindh Land Revenue Act 1967 before Deputy Commissioner Shikarpur, seeking cancellation of the entries made in record of rights for the landed properties viz survey No 176 (the Suit Property) and others which were owned by Shahzadi Begum the grandmother of Respondent No 6. Learned Deputy Commissioner examined the appeal filed by Respondent No 6 and recorded following findings in its order dated 10.09.2015 while disposing of the Revenue Appeal:

“From the above, I have considered the valuable arguments of the party and I am convinced that the documents viz. General Power of Attorney is managed and fictitious neither it stand registered and sale of valuable land on the paper of notary public signed is not justified it presumed as oral sale and all legal owners and persons who signed the stamp paper were alive or otherwise and no alive certificate has been obtained by the Mukhtiarkar or Sub – Registrar, therefore, the entries kept on the basis of above documents are mal fide, Mst. Shahzadi Begum wife of Mir Wazarat Hussain owned the disputed land through his claim since 1975, under the Rehabilitation laws. Therefore she was real owner of the disputed land and did not sell out to the Respondents. Hence the transfer of the disputed land in the names of the Respondents is managed on and without any valid record. All the entries made in the name of Respondents are forged and made in collusion with the village staff due to the death of real land owners and migration of father of applicant abroad and also without obtaining the alive certificate.

Therefore the respondents have taken advantage and got the land transferred in their names. Hence the entries made in the name of Respondents are hereby ordered to be cancelled and Mukhtiarkar Revenue Shikarpur is directed to hold jalsa e Aam for a fresh Foti Khata made after fulfilling all codal formalities. Applicant is directed to seek remedy from competent court of law for cancellation of Registered Sale Deeds respectively.

10. From perusal of order passed by Deputy Commissioner an inference can be drawn that all the entries in the record of rights regarding the lands of Shahzadi Begum were ordered to be cancelled, which per observation of Learned Deputy Commissioner were result of fraud. The order passed by the Deputy Commissioner is self-contradictory, as by cancelling the entries in record of rights Mukhtiarkar concerned has been directed to effect Foti Khata of original owner through jalsa e aam and at the same time an advice has been tendered to the Respondent No 6 to seek cancellation of registered sale deeds from a competent court of law. In presence of a registered sale deed, the entry in the record of rights would not be considered a substantial document. The Registered Document would be considered more authentic as the entries in revenue record do not confer any right or title in the lands, they are maintained for fiscal purposes. The Revenue Court being quasi-judicial forum cannot record findings of fact against an entry in record of rights based upon registered documents. Fraud needs a proper determination by way of recording evidence and such an exercise cannot be undertaken by Revenue Court. It is domain of the Civil Court to record a finding as to the genuineness or otherwise of a written registered instrument and a party can seek cancellation of registered instrument by bringing a suit under Specific Relief Act 1877.

11. The Revenue Court/Deputy Commissioner Shikarpur exercised a jurisdiction which was not vested in it, and passed an order under section 161 of the Land Revenue Act 1967, cancelled the entries without deliberations on the registered document, since the entries in the record of rights were incorporated pursuant to registered sale deeds therefore such entries can only be cancelled if registered sale deeds are set at naught by the Competent Court of law. Revenue Court is competent to entertain the matters pertaining to the correction of the entries in the periodical record affected by the revenue hierarchy itself. Revenue Court cannot examine the validity of the registered sale deed as the same requires recording of evidence. Whereas, the Revenue Court which is a Quasi Judicial forum exercises its jurisdiction in summary manner as has been done by the learned Deputy Commissioner in its order dated 10-09-2015. The careful perusal of the order dated 10-09-2015 revealed that the revenue court trespassed its jurisdiction while deciding the fate of the revenue entries incorporated in year 1975 and onwards. Section 53 of the Sindh Land Revenue Act, 1967 attaches a presumption of truth to such long standing entries of 40 years unless the contrary is proved and such contrary is only proved by way of recording evidence.

12. Memo of Revenue Appeal No 106 of 2015 available at page No 65 of the revision application transpired that the applicants were not arrayed as party in the Revenue Appeal. Deputy Commissioner passed the order dated 10.09.2015 behind the back of Applicants; they were denied the fundamental right to own property guaranteed under article 23 of the Constitution. The failure on the part of Deputy Commissioner to afford an opportunity of hearing to the applicants offended their fundamental rights as to the fair trial enshrined under article 10- A of the Constitution on this score alone the order dated 10.09.2015 loses its validity and propriety.

13. I have examined the memo of plaint in the suit filed by the applicants, wherein the applicants have sought relief of declaration that the order dated 10.09.2015 was void and illegal and permanent injunction that the revenue authorities be restrained from acting upon the illegal order. The Learned Trial Court has non-suited the applicant on the ground he did not avail the remedy of appeal or revision before the revenue hierarchy. The appellate Court maintained the order of trial court on the said premise that the suit was not maintainable, needless to say that the Civil Courts is a court of ultimate jurisdiction even in a case if a person does not avail remedy of appeal before revenue forum and the civil court is of the view that bone of contention between the parties cannot be thrashed out without recording of evidence, proper course would be to entertain the suit, to frame issues and afford opportunity to parties to prove their claim by recording evidence. The observation of the learned courts below that the suit of the plaintiff was barred by the law in terms of section 172 of Sindh Land Revenue Act, as the applicant had not availed remedy by way of filing appeal appears to be reasonable as the applicant is in possession of registered sale deed and no suit whatsoever has been preferred by any party seeking its cancellation. The relief of declaration that impugned order dated 10.09.2015 was void and illegal did not require the recording of evidence, therefore the Courts below rightly exercised its jurisdiction by rejecting the plaint.

14. This court is slow in disturbing the concurrent findings of fact recorded by the courts below under its revisional jurisdiction conferred under section 115 CPC unless it is established on the record that findings of the courts below suffered from illegality, irregularity or jurisdictional error, or there is misreading or non-reading of the evidence on record. The case being not so, as such did not require interference by this Court.

15. Since the impugned order passed by the Deputy Commissioner Shikarpur suffered from jurisdictional error and has been passed without affording a right of hearing to the applicants, which in my considered view does not sustain under the law. This Court under its revisional jurisdiction conferred under section 115 CPC cannot exercise powers to examine the legality of the orders passed by the Revenue Courts, however under its constitutional jurisdiction conferred under article 199 of the Constitution can check and examine the validity, correctness and propriety of the orders passed by any quasi judicial forum. It is a settled proposition of law that for the safe administration of justice and ensure the protection of the rights of the parties a litigation brought under one jurisdiction can be converted into other falling under the lap of jurisdiction of this Court, though no formal request be made or not by the Learned Counsel for the parties in that regard, because it is the duty of the Court to ensure that a right belonging to a person must go to him.

16. The Doctrine of *ex debito justitia* would be fully attracted in circumstances of the present case, which is exercised by the Court to advance the cause of justice so also to prevent the injustice. No fetters are placed on this Court to convert one type of the proceedings into other, provided that the Court has jurisdiction to entertain and decide the lis under adjudication. This Court enjoys supervisory powers over the revenue courts which are quasi – judicial forum to adjudicate revenue claims. However it would be a fallacy of thought to treat this court as a court of appeal against the order passed by the Revenue Court. For the safe administration of justice and to ensure the right of fair trial is available to every individual without any discrimination, it is essential to examine the order passed by Deputy Commissioner Shikarpur by converting this civil revision application into a constitution petition for issuance of writ in the nature of certiorari.

17. In the case of FIA through Director General FIA and others Versus Syed Hamid Ali Shah and others reported as **PLD 2023 Supreme Court 265**, the Honorable Supreme Court seized with a matter of exercise of powers by High Court under section 561 – A CrPC for quashing of FIR lodged by FIA against employees of FIA was pleased to observe in Para 5 of the judgment as under:

“In the present case, as the High Court was competent to judicially review the acts of registering the FIR and conducting the investigation by the Officers of FIA in the exercise of its Constitutional Jurisdiction under Article 199 of the Constitution, therefore, the acceptance of the criminal miscellaneous application filed by some of the accused persons under section 561 – A CrPC, and the reference to section 561 – A while quashing the FIR have no material bearing on the Jurisdiction of the High Court while passing the impugned judgment. Even otherwise if the reasons stated for passing the impugned judgment fall within the scope of the jurisdiction of the High Court under article 199 of the Constitution, the reference to a wrong or inapplicable provision of law will not by itself have any fatal consequences. The High Court has observed in the impugned judgment that the matter in issue, which relates to the violation of the terms and conditions of the

service of CDA employees, does not constitute the offence of misconduct punishable under section 5 (2) of PCA nor are the ingredients of the offence of Criminal Breach of Trust under section 409 PPC made out. The High Court has also specifically quoted the statement made before it by the Addl. Director, FIA that “FIA has concluded investigation and no element of bribery has been found in the entire inquiry against any official of CDA” with the said observations, the High Court has quashed the FIR, by holding that FIA authorities have failed to legally justify their actions of initiating the inquiry and registration of the FIR. These reasons squarely fall within the scope of the provisions of Article 199(1)(a)(ii) of the Constitution.”

18. In the cases of Noman Mansoor alias Nomi and another Versus the State and another reported as **PLD 2024 Supreme Court 805**, Mian Asghar Ali Versus Government of Punjab reported as **2017 SCMR 118**, Commissioner of Income Tax Abottabad Versus Messers ED ZUBLIN AG Germany and another reported as **2020 SCMR 500** the Honorable Supreme Court has been pleased to hold that there is no bar on High Court for conversion of one type of proceedings into other.

19. I am of the considered view that in order to examine the Correctness, Propriety and validity of the Order dated 10.09.2015 passed by Learned Deputy Commissioner this is a fit case to convert the proceedings under section 115 CPC into Constitution Petition under article 199 of the Constitution both falling within the lap of jurisdiction of this Court and are supervisory and corrective measures to check that the forums below exercised the jurisdiction vested in them or transgressed the jurisdiction or powers. Accordingly this civil revision application is converted into Constitution Petition as no prejudice would be caused to either side, rather it will advance the cause of justice. Office to assign fresh number to this revision application as constitution petition by red ink.

20. Sequel to above discussion The discussion made herein above leads to a firm conclusion that the order dated 10.09.2015 passed by the Deputy Commissioner Shikarpur offended the fundamental rights of the Petitioner as to the fair trial enshrined under article 10 – A of the Constitution, for the safe administration and to advance the cause of justice it is imperative that before passing any order against any party an opportunity to defend the case is the basic requirement of law, which in the present case has been denied without any reasonable cause, as such the impugned order dated 10.09.2015 is void, perverse, infirm and illegal, thus requires interference of this Court under its writ jurisdiction. Consequently, this Constitution Petition (converted from revision application) is allowed, impugned order dated 10.09.2015 passed by the Deputy Commissioner Shikarpur in revenue appeal No 106 of 2015 Re Syed Shujaat Ali Versus Mst Jamil Begum and others is hereby set aside.

21. The revenue appeal No 106 of 2015 Re Syed Shujaat Ali Versus Mst Jamil Begum and others filed by the Respondent No 6 (Appellant in revenue appeal) shall be deemed to be pending before Deputy Commissioner Shikarpur, the applicants shall appear before Deputy Commissioner and will file an application for impleading them as party to the appeal,

thereafter, the Learned Deputy Commissioner shall decide the matter afresh by affording an opportunity of hearing to all concerned whose interests are involved in the land. The parties would be at liberty to agitate any issue before the Deputy Commissioner including but not limited to the jurisdiction to entertain a revenue appeal concerning entries outcome of registered sale deed. The Deputy Commissioner /Revenue Court shall decide the revenue appeal afresh within a period of three months from the date of receipt of this order.

The revision application (constitution petition) stands disposed of in above terms along with listed applications if any.

JUDGE

Asghar/P.A

cc