

**IN THE HIGH COURT OF SINDH CIRCUIT COURT
LARKANA**

Civil Revision Application No.S-93 of 2019

Applicant : **Hajjan son of Muhammad Channo
Through Mr.Zeb Hussain Pathan, Advocate**

Respondent No.1 : **Abdul Haleem s/o Jiand Khan Jessar,
Through Mr. Atta Hussain Chandio, Advocate**

Govt. of Sindh : **Through Mr. Abdul Waris Bhutto, A.A.G**

Date of hearing: **16-05-2025**

Date of Judgment: **30-05-2025**

JUDGMENT

Jan Ali Junejo, J;- Through the present Civil Revision Application, the Applicant seeks to challenge the judgment dated 20.09.2019 (hereinafter referred to as the *Impugned Judgment*) rendered by the Court of the IInd Additional District Judge, Larkana (the *Appellate Court*). By the Impugned Judgment, the Appellate Court dismissed Civil Appeal No. 50 of 2017, which had been filed against the judgment dated 20.02.2017 and the consequent decree dated 23.02.2017 passed by the Court of Senior Civil Judge-III, Larkana (the *Trial Court*) in F.C. Suit No. 100/2015. Through the said judgment and decree, the Trial Court decreed Respondent No.1's suit for Declaration, Possession, and Permanent Injunction.

2. The brief facts of the case are that the Respondent No.1 (Plaintiff), Abdul Haleem Jessar, asserted ownership over agricultural land comprising Survey No.106/1 admeasuring 00-11 ghuntas and Survey No. 107 admeasuring 01-07 acres, situated in Deh Nasirabad, Tapo Yakoo Sandeelo. His claim was based on Entry No. 145 dated 27.02.2003 in the revenue record, along with mortgage

documentation reflected in Entry No. 09 dated 26.05.2011. Respondent No.1 alleged that in the year 2014, the Applicant (Defendant No.1) unlawfully encroached upon a portion of the said land measuring approximately 00-03 ghuntas and 297 square feet, where he constructed a residential structure and/or a hotel. A demarcation exercise conducted by the Mukhtiarkar and the Survey Team on 29.09.2014 confirmed the encroachment. Accordingly, Respondent No.1 prayed for a judgment and decree against the Applicant and other defendants, seeking:

- **Declaration** of his ownership rights,
- **Possession** of the encroached portion of land, and
- **Permanent Injunction** restraining the Applicant and others from further interference.

3. Upon service of summons, the Applicant (Defendant No.1) appeared and filed a written statement. He denied the ownership claims of the Plaintiff and asserted that his possession of the disputed land was ancestral, dating back to 1968. He relied on an unregistered *Iqrarnama* (gift deed) allegedly executed by Shah Muhammad in favour of his mother. The Applicant challenged the credibility of the demarcation report, contending that it was flawed due to prevailing waterlogged conditions at the site and that a re-demarcation of the land was pending. He ultimately prayed for the dismissal of the suit.

4. In light of the divergent pleadings of the parties, the learned Trial Court framed the following issues for adjudication: (1) Whether, the suit of the plaintiff is not maintainable and barred under the law? (2) Whether, the defendant No.1 illegally occupied the area about 00-03 Ghunta and 297 Square Feet from survey number 106/1 and 107 for his house and hotel belonging to the plaintiff? (3) Whether the plaintiff is sole owner of the land/area 00-03 Ghunta and 297 Square Feet out of Sr. No. 106/1 and 107 of Deh Nasirabad Rati Tapo Yaqoo Sandilo Taluka Bakrani? (4) Whether, the measurement of the suit land was

properly made by the defendants Nos. 2, 3 & 4 in presence of parties? (5) Whether the proceedings of suit land pending before the defendant No.5 if so what is its effect? (6) Whether the plaintiff is entitled for the relief as claimed? and (7) What should the order be?. In Order substantiate his version, the Respondent No.1 (Plaintiff) examined himself (Exh.39) and produced Entry No.145 (Ex.39/A), mortgage record (Ex.39/B), demarcation reports (Ex.39/C–D), Mukhtiarkar’s report (Ex.39/E). The Respondent No.1 also examined *Witnesses*: Abdul Ghani (Ex.40) and Muhammad Chuttal (Ex.41) corroborated encroachment. On the other hand, the Applicant examined himself, who produced Unregistered *Iqrarnama* (Ex.50/A), letters (Ex.50/1–2), who also examined *Witness*: Asghar Ali Channa (Ex.51) supported ancestral possession. The trial Court decreed the plaintiff’s suit in full, declaring his ownership. The Appellate Court upheld this decision, leading to the present Civil Revision Application.

5. The learned counsel for the Applicant contended that the impugned judgments of both the trial Court and appellate Court are unsustainable in law and fact. He argued that the Applicant has been in uninterrupted possession of the suit property since 1968, based on an *Iqrarnama* executed by Shah Muhammad in favor of the Applicant’s mother, and that the Applicant’s house and hotel have existed on the site for decades. He further submitted that the measurement and demarcation proceedings relied upon by the Respondent were conducted in violation of due process, as the land was waterlogged and the report was prepared without proper notice or participation of the Applicant. The learned counsel also emphasized that the *Iqrarnama*, though unregistered, evidences long-standing possession, and that the matter of measurement is still pending before the competent revenue authorities, thereby ousting the jurisdiction of the civil court. He asserted that the suit is barred by limitation, suffers from misjoinder and non-joinder of necessary parties, and was filed with

malafide intent to harass the Applicant. In view of these submissions, the learned counsel prayed for the Civil Revision Application to be allowed, the impugned judgments and decrees to be set aside, and the suit of the Respondent to be dismissed with costs.

6. The learned counsel for Respondent No.1 vehemently opposed the Civil Revision Application, submitting that the Respondent is the lawful owner of the suit property as evidenced by valid title documents, including Entry No.145 dated 27.02.2003 and mortgage Entry No.09 dated 26.05.2011, duly corroborated by computerized land records. He argued that the demarcation and measurement were conducted by the Mukhtiarkar and Survey Team in the presence of both parties, and the resulting reports, as well as the testimony of independent witnesses, conclusively establish that the Applicant has illegally encroached upon 00-03 Ghunta and 297 Square Feet of the Respondent's land. The learned counsel further submitted that the Iqarnama relied upon by the Applicant is unregistered, unsubstantiated, and legally inadmissible for establishing title or ownership, as per settled law. He maintained that the civil court rightly exercised its jurisdiction as the dispute pertains to title and possession, not mere measurement, and that the Applicant failed to produce any credible evidence of ownership or lawful possession. Accordingly, he prayed for the dismissal of the Civil Revision Application with costs, upholding the concurrent findings of the Courts below.

7. The learned Assistant Advocate General supported the arguments advanced by the counsel for Respondent No.1 and submitted that the impugned judgments are based on sound appreciation of evidence and correct application of law. He emphasized that the documentary evidence produced by the Respondent, including valid entries in the revenue record and the official demarcation report,

fully establish the Respondent's ownership and the Applicant's status as a trespasser. He pointed out that the Applicant's reliance on an unregistered Iqarnama is legally misconceived and cannot override the lawful title of the Respondent. Furthermore, he submitted that the pendency of measurement proceedings before revenue authorities does not oust the jurisdiction of the civil court in matters of title and possession. He therefore prayed for the Civil Revision Application to be dismissed as being devoid of merit and for the judgments and decrees of the courts below to be maintained.

8. I have carefully considered the arguments advanced by the learned counsel for the Applicant, the learned counsel for Respondent No.1, and the learned Additional Advocate General. I have also thoroughly examined the material available on record. Upon perusal of the record, it is evident that the concurrent findings of both the learned Trial Court and the Appellate Court unequivocally establish Respondent No.1 as the lawful owner of the suit property, bearing Survey Nos. 106/1 and 107, situated in Deh Nasirabad, Tapo Yako Sandeelo, Taluka Bakrani, District Larkana. Respondent No.1 adduced irrefutable documentary evidence, including Form VII-B (Ex.39/A) reflecting his ownership since 2003 and mortgage records (Ex.39/B) with Askari Bank, which are statutorily recognized under the Sindh Land Revenue Act, 1967 as conclusive proof of title (As per Explanation (c)(iii) to Section 56-A, of the Act, 1967 to the extent that "land owner" shall include "a person who has mortgaged, with possession, his land or any portion thereof). In stark contrast, the Applicant failed to substantiate his claim of lawful possession, relying solely on an unregistered Iqarnama (Ex.50/A) purportedly executed in 1968. Under Section 17 of the Registration Act, 1908, any instrument purporting to create an interest in immovable property valued above Rs.100 must be compulsorily registered. The Iqarnama, being unregistered and unattested, is inadmissible in evidence and

incapable of conferring title, as reiterated by superior Courts. Under Islamic law, a gift (hiba) is deemed valid and legally binding only when the following three essential conditions are fulfilled:

1. **Declaration of the Gift by the Donor:** The donor must make a clear and unequivocal declaration of the intention to gift.
2. **Acceptance of the Gift by the Donee:** The donee must accept the gift during the lifetime of the donor.
3. **Delivery of Possession:** Actual or constructive delivery of the gifted property (corpus) must be made, transferring control from the donor to the donee.

9. Once these three fundamental elements are satisfied, a valid gift comes into existence. Such a gift may be made orally, provided the aforementioned prerequisites are duly met. In the present case, it is evident from the record that the Applicant failed to establish the essential ingredients required for a valid gift before the Trial Court. Furthermore, the Applicant did not produce the marginal witnesses to the "Iqrarnama" during the proceedings. There was also no attempt to prove that the said witnesses were either deceased or untraceable. Consequently, the contents of the "Iqrarnama" were not substantiated before the Trial Court. In this context, reference is made to the judgment in **Anwar Ahmad v. Mst. Nafis Bano through Legal Heirs (2005 SCMR 152)**, wherein the Honourable Supreme Court of Pakistan held that: *"Reverting to the production and exhibition of said document, it was incumbent upon the appellant to examine attesting witness Syed Azizul Hassan Notary Public to prove its execution, as according to the appellant himself, this document was written in the City Courts. Non production of this witness to prove the contents of the document was fatal to the case of the appellant with the legal consequence that the recitals of this document cannot be said to have been proved in terms of Article 78 of Qanun-e-Shahadat 1984. It was stated at the Bar that the attesting witness had died before his evidence could be recorded at the trial but mere statement would not exonerate the appellant of his legal obligation to prove the contents of*

a disputed document. This fact should have been pleaded before the trial Court and having established non-availability of the witness by reason of his death, steps should have been taken to adduce secondary evidence with the leave of the Court. Simply because no objection was raised to the production of document would not render the document as proved”.

10. Furthermore, the Applicant’s vague assertions of ancestral possession since 1968 lacked corroboration through revenue records, mutation entries, or any legally tenable proof of allotment in the alleged “Goth Abad Scheme”. The demarcation conducted by the Mukhtiarkar (Ex.39/C-E) lawfully confirmed the Applicant’s encroachment of 0.3 Ghuntas and 297 Square Feet, a process validated by independent witnesses (Ex.40-41) and unchallenged in procedural fairness. The Appellate Court rightly dismissed the Applicant’s speculative allegations of flawed demarcation, noting that no evidence of fraud or procedural illegality was adduced. Both Courts appropriately dismissed the Applicant’s reliance on unauthenticated letters (Annex.50/1-2) and inconsistent testimonies. The findings of the Courts below are rooted in a meticulous evaluation of evidence and application of settled law, leaving no room for interference in revisional jurisdiction under Section 115, CPC, which mandates restraint unless jurisdictional error or material illegality is shown. The Applicant’s possession, being devoid of documentary legitimacy, is conclusively deemed unauthorized, illegal, and in the capacity of a trespasser. In Case of ***Abdul Rashid v. Ghulam Nabi Khan and another (1996 SCMR 864)***, it was observed by the Honourable Supreme Court of Pakistan that: *“So, the possession of the plaintiff was consistent with continuance of his title in spite of the possession of the petitioner, whatever may be its duration. It is a case by a person entitled to possession as owner against a person in possession without title. In such a case, unless the petitioner succeeds in establishing that his possession had matured into title by reason of his adverse possession for over 12 years,*

he cannot prevent the plaintiff from obtaining the possession of the property by means of a suit. It is well settled that a mere trespass over 12 years will not extinguish the title of the true owner nor trespasser will acquire title by prescription. The petitioner has failed to prove the starting time from which his possession became adverse to that of the plaintiff. The onus to prove that the suit was barred by time was rightly placed on him which he failed to discharge issue was decided against him by the Trial Court”.

11. Furthermore, the Applicant did not request the trial or Appellate Court to summon the marginal witnesses to the *Iqrarnama* through the process of the Court if he was unable to produce the marginal witnesses at his own. As a result, the Applicant has failed to meet the mandatory requirements set forth under Article 80 of the Qanun-e-Shahadat Order, 1984, which stipulates that if no attesting witness can be located, it must be established that the witnesses have either passed away or are untraceable. This omission critically undermines the Applicant’s claim regarding the contents and validity of the *Iqrarnama*. In this regard, reliance is placed on the authoritative judgment of the Honourable Supreme Court of Pakistan in the case of *Sheikh Muhammad Muneer v. Mst. Feezan (PLD 2021 Supreme Court 538)*, wherein the Honourable Court held as follows:

“The petitioner presumably was not able to locate a witness (Allah Ditta). The burden to produce or summon him lay upon the petitioner, which is not alleviated merely by saying he could not be found. Article 80 of the Qanun-e-Shahadat provides, that:

80. Proof where no attesting witness found. If no such attesting witness can be found, it must be proved that the witnesses have either died or cannot be found and that the document was executed by the person who purports to have done so.

The Article states that it must be proved that the witness had either died or could not be found. Simply alleging that a witness cannot be found did not assuage the burden to locate and produce him. The petitioner did not lead evidence either to establish his death or disappearance, let alone seek permission to lead

secondary evidence”.

12. Furthermore, the scope of revisional jurisdiction under Section 115 of the Code of Civil Procedure is narrowly defined. The High Court may interfere only where the subordinate Court has: (a) exercised a jurisdiction not vested in it by law; (b) failed to exercise a jurisdiction so vested; or (c) acted in the exercise of its jurisdiction illegally or with material irregularity. In the present case, the Applicant has failed to demonstrate the existence of any such jurisdictional error or material irregularity. The Courts below were fully competent to entertain and adjudicate the suit, and they exercised their jurisdiction strictly in accordance with law. The mere disagreement of the Applicant with the concurrent findings of fact does not constitute a valid ground for interference in revision. It is a well-settled principle that a revisional Court, while exercising jurisdiction under Section 115 C.P.C., does not ordinarily interfere with concurrent findings of fact recorded by the Courts below. This principle rests on the rationale that the appellate forum is the final authority for the resolution of factual disputes. However, this rule is not absolute and is subject to exceptions. Intervention may be warranted in cases involving gross misreading or non-reading of material evidence, or where the courts below have acted illegally or with material irregularity in the exercise of their jurisdiction. In this regard, reference may be made to the authoritative judgment of the Hon'ble Supreme Court of Pakistan in ***Haji Wajdad v. Provincial Government through Secretary, Board of Revenue, Government of Balochistan, Quetta and others (2020 SCMR 2046)***, wherein the Court reiterated the limited scope of revisional jurisdiction and the exceptional circumstances under which it may be invoked. It is evident from the record that the Applicant has not been able to establish any gross misreading or non-reading of evidence, nor has he demonstrated any illegality or material irregularity warranting interference. Furthermore, no exceptional

circumstances have been shown that would justify the revisional Court's intervention in the concurrent findings of fact recorded by the learned Courts below.

13. In view of the foregoing discussion, this Court finds no merit in the present Civil Revision Application. Accordingly, the Civil Revision Application is hereby dismissed for lack of substantive merit. The concurrent findings of fact, as recorded in the impugned judgment dated 20.09.2019 passed by the learned IInd Additional District Judge, Larkana ("Appellate Court"), and the earlier judgment dated 20.02.2017 followed by the decree dated 23.02.2017 passed by the learned Senior Civil Judge-III, Larkana ("Trial Court") in F.C. Suit No. 100 of 2015, are upheld.

JUDGE