

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Civil Revision Application No. S- 20 of 2023

(Khursheed Ahmed Vs. Ghulam Abbas Jagirani & others).

Applicant:	Khursheed Ahmed, <i>through</i> Mr. Shakeel Ahmed S. Abro, Advocate.
Respondents No.1&2:	Ghulam Abbas (deceased), through L.Rs and Mst. Maryam, through Mr. Atta Hussain A. Chandio, Advocate.
Respondent No.3 to 5:	<i>through</i> Mr. Liaquat Ali Shar, Additional Advocate General, Sindh.
Date of Hearing :	18.08.2025.
Date of Decision :	04.09.2025.

JUDGMENT

Ali Haider 'Ada'.J:- Through this Civil Revision, the applicant assailed the decree and judgment dated 28-11-2022, passed by the learned Additional District Judge-III, Larkana, in Civil Appeal No. 44 of 2022, titled Ghulam Abbas (through his legal heirs) vs. Khursheed Ahmed (Applicant/Plaintiff). By the impugned judgment, the Appellate Court set aside the decree passed in favour of the applicant/plaintiff by the learned trial Court in the original civil suit.

2. The nutshell of the case is that the applicant filed Civil Suit No. 43 of 2020 on 22-09-2020 against the defendant Ghulam Abbas (who expired during the pendency of the proceedings, and whose legal heirs were impleaded through an amended title dated 12-11-2021), as well as against Defendant No. 2 Nadir Ali, Defendant No. 3 Mst. Maryam, and the revenue hierarchy. The applicant's main plea was that, in the year 2003, he had purchased the suit property from his father, Abdul Salam, through a registered sale deed. The property pertains to Survey No. 430, measuring a total area of 3-17 acres, out of which the applicant purchased 01-28½ acres (i.e., 50% of the total share), situated at Deh Fatehpur, Tapa Kanga, Larkana. It was further pleaded that Defendants No. 1 and 2 are co-owners of the remaining 50% share in the same survey number, and the applicant has no concern or dispute regarding their share. The applicant averred that, approximately two months prior to the filing of the suit, he was illegally dispossessed from his share of the property by Defendants No. 1 (Ghulam Abbas) and No. 2 (Nadir Ali). Upon confronting them

about one to two weeks before filing the suit, they refused to restore possession. The applicant, therefore, specifically pleaded that the cause of action arose when he was dispossessed two months prior to the suit by the aforementioned defendants. Accordingly, the applicant sought a decree for restoration of possession. Additionally, he prayed that if any entries or alleged documents have been mutated or recorded in the name of Defendant No.03 Mst. Maryam), the same may be declared illegal, void, and liable to be cancelled.

3. On the other hand, a written statement was filed on behalf of the defendants, wherein they strongly denied the claim of the applicant. It was asserted that the registered sale deed relied upon by the applicant is false, fabricated, and bogus. Defendant No. 3 had already challenged the validity of the said sale deed in earlier proceedings. A significant point raised by the defendants was that Defendant No. 2, Nadir Ali, had passed away on 25-06-1997, allegedly due to a dispute over irrigation (water) rights between the parties. It was therefore contended that the present suit is not maintainable against a deceased person, as the applicant has claimed that he was dispossessed in the year 2020 by the hands of Defendants No. 1 and 2, whereas Defendant No. 2 had already died in 1997.

4. That thereafter, the learned trial Court framed the following issues for determination, which are reproduced as under:-

1. Whether suit as framed is maintainable under law?

2. Whether father of plaintiff was bonafide owner (1.281/2 ACRES/ 50% of survey No. 430 entire admeasuring 3.17 acre at Deh Fatehpur Tapo Kanga Taluka and District Larkana?

3. Whether father of plaintiff has sold out suit property in his favour through sale deed dated 25.11.2013 and he was in possession thereof but later on dispossessed?

4. Whether father of defendant No.3 acquired the suit property vide sale deed 6.02.1947 from original owner Gurmukh Das S/o Kohri malh Vide D.K entry No. 238?

5. Whether after death of father of defendant No.3 she inherited suit property and is in possession thereof?

6. Whether plaintiff is entitled for relief?

7. What should the decree be?

5. After framing the issues, a full-fledged trial was conducted, during which both parties led their respective evidence. Additionally, the concerned revenue officials also recorded their evidence. Thereafter, upon conclusion of the evidence and hearing arguments from both sides, the learned trial Court decree the suit in favour of the applicant.

6. Being aggrieved by the judgment and decree passed by the learned trial Court, the opposing party challenged the same through Civil Appeal. The learned Appellate Court, while adjudicating the matter, observed that the applicant had failed to produce the marginal witnesses of the registered sale deed, which was a significant piece of evidence to prove its authenticity. Furthermore, the Appellate Court held that the suit, having been filed against a person who had already passed away (Defendant No. 2), was not maintainable to that extent. On these grounds, the learned Appellate Court set aside the judgment and decree of the trial Court. which is now under challenge through this present Civil Revision.

7. The learned counsel for the applicant submitted that the learned trial Court rightly considered the registered sale deed, and it was specifically pleaded by the applicant that he is entitled to possession of the suit land by virtue of the said registered instrument. He further contended that although Defendant No. 3, Mst. Maryam, had challenged the applicant's legal character and ownership, her civil suit was dismissed, and the said judgment had attained finality. Regarding the objection concerning Defendant No. 2 (Nadir Ali), the learned counsel candidly admitted that Nadir Ali had passed away prior to the institution of the suit. However, he argued that the entire suit cannot be rendered non-maintainable merely on that ground, as the cause of action and reliefs were not solely based on the alleged acts of the deceased defendant. In support of his submissions, he placed reliance on the following precedents: 2013 SCMR 464, PLD 2003 Lahore 615, PLD 2009 Karachi 227, 2019 SCMR 1726, and 2020 SCMR 463.

8. Conversely, the learned counsel for the defendants/respondents argued that from the outset, in their written statement, they had specifically pleaded that Defendant No. 2, Nadir Ali, had passed away much prior to the institution of the suit. Despite this, the learned trial Court proceeded to conduct the trial and eventually passed a decree

against a deceased person, which, according to counsel, amounts to a grave illegality and material irregularity. He further submitted that a bare perusal of the plaint, as well as the applicant's deposition recorded on 12-08-2021, clearly shows that the applicant consistently maintained that he approached Defendants No. 1 and 2 for restoration of possession. Since Defendant No. 2 was already deceased, such assertions cast serious doubt on the credibility of the applicant's claim. On this basis, he argued that the claim for possession is misconceived and that the applicant approached the court with unclean hands. He maintained that the learned Appellate Court rightly interfered in the judgment and decree of the trial Court, as the latter failed to adjudicate the matter in accordance with law. In support of his arguments, the learned counsel relied upon 2017 CLC 382, PLD 2023 Lahore 585, PLD 2022 AJK 40, PLD 2009 SC 183, and 2022 CLC 1945.

9. The learned Additional Advocate General submitted that the matter at hand is essentially a private dispute, and no government interest is involved. However, he concurred with the position that the learned trial Court proceeded against a deceased person, which is against the basic principles of law and natural justice.

10. Arguments heard. Record perused.

11. First and foremost, it is essential to examine the cause of action as pleaded by the applicant, and against whom such cause of action is alleged. A bare reading of the plaint, as well as the applicant's deposition, reveals that he has categorically stated that he was dispossessed by Defendants No. 1 and 2 in the year 2020, approximately two months prior to the institution of the suit, which was filed in September 2020. In such circumstances, the burden squarely lies upon the applicant to substantiate these assertions with credible and admissible evidence. For ready reference, Article 117 of the Qanun-e-Shahadat is reproduced below:

117. Burden of proof. (1) Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Illustrations

(a) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed.

A must prove that B has committed the crime.

(b) A desires a Court to give judgment that he is entitled to certain land in the possession of B by reason of facts which he asserts, and which B denies be true.

A must prove the existence of those facts

12. However, upon careful perusal of the applicant's pleadings and evidence, the claim appears to be frivolous in nature, made only to establish a ground for dispossession. Notably, Defendant No. 2 (Nadir Ali) had passed away in the year 1997, which is almost 23 years prior to the alleged incident of dispossession. It is highly improbable that the applicant was unaware of his death, particularly when the parties reside in the same vicinity and the death of Defendant No. 2 (allegedly due to a water dispute) was widely reported in the leading Sindhi daily newspaper, "Daily Kawish". Therefore, the applicant's assertion that Defendant No. 2, a deceased person, along with Defendant No. 1, dispossessed him in 2020 is not only factually incorrect, but also legally untenable. Such a plea lacks credibility, and casts serious doubt on the bonafide of the applicant. It reflects that the applicant has approached the Court with unclean hands, and the plea appears to have been crafted merely to create a semblance of cause of action.

13. It would be pertinent to mention here that the term "cause of action" refers to the entire bundle of facts which the plaintiff must assert and, if disputed, prove in order to establish his legal right to relief. It encompasses all material facts which, if established, would entitle the plaintiff to a judgment in his favour. In other words, cause of action is the foundation of a civil suit, and unless it is clearly disclosed and supported by evidence, the suit cannot be maintained under law. This principle has been consistently upheld by the Superior Courts, which have held that the absence of a valid cause of action renders the suit liable to be rejected under Order VII Rule 11(a) of the CPC, 1908. Reliance is placed upon the case of *Pakistan Agricultural Storage and Services Corporation Ltd vs Mian Abdul Latif and others* P L D 2008 Supreme Court 371. Further support is also drawn from the case of *Moulvi Shahzado Dreho vs Syed Khursheed Ahmed Shah and others* P L D 2012 Sindh 158

14. The matter before this Court necessitates the determination of a critical procedural and substantive question of law: whether legal proceedings instituted against a person who was already deceased at the time of institution can be sustained in law, and if not, whether the subsequent substitution of legal heirs can cure this fundamental defect. In the present case, it is not disputed by applicant/plaintiff that the case was instituted by him against a person who had already expired prior to the initiation of those proceedings. His only plea is that he was unaware of the death of the said person at the time of filing. It is trite law that a suit or legal proceeding instituted against a person who is not alive at the time of institution is a nullity in law. A dead person is not a juristic person and, as such, cannot be impleaded as a party. Consequently, there is no valid lis (legal contest) before the court, and the proceeding is void from its inception. The substitution of legal representatives under the procedural laws (such as Order XXII of the Code of Civil Procedure, 1908) is only permissible in cases where a party to a properly instituted suit dies during the pendency of the proceedings. The provision does not apply where the suit was originally filed against a deceased person. In such cases, there is no valid defendant to begin with, and thus, the Court acquires no jurisdiction over the matter. The above position is not merely academic; it finds support in several authoritative pronouncements of the Superior Courts including *Hafiz Brothers (Pvt.) Ltd. v. Pakistan Industrial Credit and Investment Corporation Ltd.* (2001 SCMR 1), *Mehr Muhammad v. Deputy Settlement Commissioner & Others* (1979 SCMR 182), *Abdul Samad & Others v. Habib Bank Limited* (2018 CLD 1203), *Syed Najaf Ali Shah v. Muhammad Iqbal & Others* (2022 CLC 1945).

15. In the case of *Muhammad Yar (Deceased) through L.Rs. and others v. Muhammad Amin (Deceased) through L.Rs. and others* (2013 SCMR 464), the Honourable Supreme Court of Pakistan considered the question of a suit instituted against a deceased person. The Apex Court observed: “Attending to the first question, the legal position by now is quite settled and explicit, in that, where a suit/lis is against only one defendant/respondent of the case, undoubtedly it shall be invalidly instituted being against a sole dead person (defendant) and shall be a nullity in the eyes of the law as a whole; it shall be a still born suit/lis; an altogether dead matter, which cannot be revived; it shall, thus not merely be a defect which can be cured, rather fatal blow to the cause. However, the position shall be different where the lis is initiated against more than one

defendants/respondents and out of them only one or few are dead, while the other(s) is/are alive. In such a situation, it shall be a validly initiated suit/lis in respect of the respondent(s), who are alive, but invalid qua those, who are dead".

In the present matter, the entire cause of action has been shown by the Applicant against Defendant No.2, who was admittedly deceased at the time of institution of the Suit. Therefore, in view of the dictum laid down by the Honourable Supreme Court of Pakistan, the Suit against the deceased Defendant No.2 is a nullity and invalid. Accordingly, the entire Suit, being instituted against a dead person, fails qua Defendant No.2.

16. It is indeed surprising and legally concerning, that when it came to the notice of the trial Court that the suit had originally been instituted against a deceased person, no corrective measures were taken. Instead of halting the proceedings upon discovery of this fundamental defect, the trial court continued with the case and proceeded as though the proceedings were valid. More significantly, the applicant himself did not file any application for withdrawal of the suit in order to reinitiate it properly. The only possible inference that can be drawn from this course of conduct is that the applicant's intention was not bona fide, but rather aimed at securing an ex parte decree or advantage by avoiding proper contest. This is clearly an abuse of the process of the Court.

17. It is the duty of Court to ensure that proceedings before it are fair, lawful, and not rendered futile or illegal by reason of fatal procedural defects. When it became known that the person against whom the suit was filed had already passed away, the court ought to have treated the suit as a nullity and dismissed it on that ground alone. Allowing the trial to continue despite such a glaring jurisdictional defect not only violates settled legal principles but also results in a miscarriage of justice. The Courts must not become instruments for enabling parties to obtain relief through unlawful or dishonest means.

18. The legal doctrine of "*Substratum fails, structure falls*", reflects a principle: *If the very foundation of a legal proceeding is defective, the entire structure built upon it must collapse.*

19. The jurisdiction of this Court under Section 115 of the Code of Civil Procedure, 1908, is supervisory in nature and strictly limited. It does not

permit re-appraisal of evidence as in an appellate forum. Interference is warranted only where the subordinate court:

1. has exercised jurisdiction not vested in it by law;
2. has failed to exercise jurisdiction so vested; or
3. has acted in the exercise of its jurisdiction illegally or with material irregularity.

In the present case, the Applicant has failed to demonstrate that the matter falls within any of the above categories. The Appellate Court exercised its jurisdiction properly, appreciated the evidence in accordance with law, correctly applied the legal principles, and reached a plausible conclusion on the basis of the material available on record. The mere possibility of a different view on the same evidence does not justify interference in revision. The limited scope of revisional jurisdiction has been reaffirmed by the Honourable Supreme Court of Pakistan in Case of *Haji Wajdad v. Provincial Government through Secretary, Board of Revenue, Government of Balochistan, Quetta and others (2020 SCMR 2046)*. As no jurisdictional defect, illegality, or exceptional circumstance has been shown, no case for interference under Section 115, C.P.C. is made out.

20. For the foregoing reasons and in view of the detailed legal discussion above, it is held that the applicant's case is not covered under legal principle which could validate the decree obtained by him from the trial Court. The suit, having been instituted against a deceased person, was a nullity in law and could not result in any enforceable or binding decree. Accordingly, the instant Civil Revision Application is hereby dismissed. Since the decree and judgment of the trial Court have already been set aside by the learned appellate Court, no interference is called for by this Court. However, the applicant shall remain at liberty to assert his rights, if any, by instituting a properly framed suit before a competent forum, in accordance with law.

JUDGE