

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S-104 of 2023

Applicant : Shoukat Ali s/o Rao Shabeer Ahmed,
expired through his legal heirs:

- 1(a) Shazia Shoukat d/o late Shoukat Ali
- 1(b) Rao Shahzad Ali s/o late Shoukat Ali
- 1(c) Shumaila d/o late Shoukat Ali
- 1(d) Rao Faisal s/o late Shoukat Ali
- 1(e) Qurat-ul-Ain d/o late Shoukat Ali
- 1(f) Qandeel d/o late Shoukat Ali
- 1(g) Iram Saba d/o late Shoukat Ali
- 1(h) Manal d/o late Shoukat Ali
- 1(i) Shamim Ara wd/o late Shoukat Ali

Through Mr. Jamshed Ahmed Faiz,
Advocate

V E R S U S

Respondents : 1. Province of Sindh, through Secretary
Revenue Department/Local Government
of Sindh to be served through learned,
A.A.G

2. Assistant Commissioner Ghotki, the then
Administrator of Municipal Committee
Ghotki, former DDO (Revenue) Ghotki

3. Mukhtiarkar & City Survey Officer,
Ghotki, through Mr. Ahmed Ali Shahani,
Assistant Advocate General

4. Assistant Commissioner (Revenue),
Ghotki

Date of hearing : 08.09.2025

Date of order : 19.09.2025

J U D G M E N T

KHALID HUSSAIN SHAHANI, J. – The legal heirs of late Shoukat Ali, have invoked the revisional jurisdiction of this court, challenging the order dated 27.02.2023, passed by the learned II-Additional District Judge, Mirpur Mathelo in Civil Miscellaneous Application Nil of 2015. Through the impugned order, the application under Section 12(2) CPC filed by the Province of Sindh was admitted to regular hearing. The applicants seek the setting aside of the impugned order and dismissal of the Section 12(2) application with costs.

2. The genesis of this litigation traces back to a civil suit bearing F.C.S. No. 04/2009, Re (Shoukat Ali v/s Municipal Committee Ghotki through its CMO & 03 others) filed by the plaintiff/applicant on 27.01.2009 before the Court of the learned Senior Civil Judge, Ghotki. The plaintiffs claimed ownership of 1330 square feet of land situated at Deh Odherwali, Taluka Ghotki, Hussain Beli Road, as per the Revenue Record of Rights. The primary grievance in the original suit was challenging an order dated 11.08.1998, passed by the Assistant Commissioner Revenue Ghotki, whereby the disputed property was included in favor of Municipal Committee Ghotki, and the subsequent bogus entry bearing No. 205/A made in the City Survey Record without any previous record justifying such inclusion.

3. The suit proceeded through its normal course with Municipal Committee Ghotki filing its written statement on 04.05.2010. During the pendency of proceedings, both parties filed a compromise application under Order XXIII Rule 3 CPC, which was initially dismissed by the trial court on 19.08.2015, with an observation that though compromise was made between plaintiff and defendant No.01, but the defendants Nos.02 (The Mukhtiarkar and City Survey Officer Ghotki) and defendant No. 03 (The Assistant commissioner Ghotki), though they filed written statement, yet not made party in compromise; besides, the suit was not withdrawn against defendants Nos.02 to 04. Subsequently, the plaintiffs filed Civil Miscellaneous Appeal No. 15/2015 before the District Judge Ghotki, which was transferred to and decided by the learned IV-Additional District Judge Mirpur Mathelo through a detailed judgment and decree dated 12.10.2015, whereby the suit was decreed in terms of the compromise effected between the plaintiff and Municipal Committee Ghotki.

4. The compromise decree dated 12.10.2015 was subsequently challenged through multiple legal proceedings. A review application by Municipal Committee Ghotki was dismissed on 17.11.2016. Civil Revision No. 115/2016 filed by Municipal Committee Ghotki before this Court was dismissed through an order dated 19.03.2019. Constitutional Petition No. 814/2019 filed by Municipal Committee Ghotki before the Division Bench of this Court was dismissed on 15.02.2022. Significantly, none of these orders were challenged before the Honorable Supreme Court, thus achieving complete finality.

5. The controversy took a new dimension when the Province of Sindh, through its Regional Director Local Government Sukkur, filed an application under Section 12(2) CPC on 19.04.2022 before the learned II-Additional District Judge Mirpur Mathelo. Another similar application was filed on 25.05.2022 without any apparent permission to amend the earlier application. The Section 12(2) application alleged that the compromise decree was obtained through fraud and misrepresentation, claiming that the Secretary Local Government Sindh was not made a necessary party and that the then Taluka Municipal Officer had no authority to enter into compromise regarding valuable government property without proper approvals.

6. The learned court of II-Additional District Judge, Mirpur Mathelo, after hearing arguments from both sides, passed the impugned order dated 27.02.2023, framing issues for determination regarding whether the judgment and decree dated 12.10.2015 was obtained by fraud or misrepresentation and whether the court had jurisdiction over the subject matter. The court observed that serious controversial questions had been raised and directed that the application be decided after recording evidence.

7. The foremost legal issue requiring consideration is the maintainability of this revision under Section 115 CPC. The impugned order dated 27.02.2023 merely framed issues in a pending application under Section 12(2) CPC without adjudicating the substantive rights of the parties. Such orders are interlocutory in nature and, as a settled principle of law, revisions ordinarily do not lie against interlocutory orders. The superior courts, including the august Supreme Court, have consistently held that a revision is maintainable only when the order impugned finally determines the rights of the parties or disposes of the proceedings altogether, while routine interlocutory directions must await the culmination of the trial and be assailed in appeal, as they merge into the final verdict. This bar, however, is not without exception. Where an interlocutory order is shown to suffer from a jurisdictional defect of a fundamental character, revisional jurisdiction may in principle be invoked. The law draws a distinction between mere procedural irregularities, which do not attract revisional interference, and assumption of jurisdiction where none exists, which goes to the very root of the proceedings. Nevertheless, whether such a defect exists is a matter that the trial court must first examine in the course of deciding the pending Section 12(2) application.

8. The doctrine of merger, as authoritatively laid down in *Sahabzadi Maharunisa v. Mst. Ghulam Sughran* (PLD 2016 SC 358), clarifies that once a decree of a trial court is carried before a superior forum and affirmed, the decree of the lower court merges into that of the higher forum. The operative decree thereafter is that of the superior court, and it is that decree alone which subsists for purposes of further challenge under Section 12(2) CPC. In the present case, the compromise decree dated 12.10.2015 was affirmed by this Court in Civil Revision No.115 of 2016 on 19.03.2019. *Prima facie*,

therefore, the decree of the trial court merged into the order of this Court, leaving little room for its independent re-examination by a subordinate forum. Nonetheless, it will be for the learned trial court to determine, in the first instance, whether the doctrine of merger operates to bar its jurisdiction in entertaining the pending Section 12(2) application.

9. The Province of Sindh has argued that since it was not a party to the earlier proceedings, the bar of merger cannot restrict its right to challenge the decree. This contention, however, must also be viewed in the light of the principle that merger attaches to the decree itself rather than to the parties litigating it. Once affirmed by a superior court, the decree obtains a character of finality that binds not only the immediate parties but also governs subsequent challenges by any person claiming to be aggrieved. Whether, in these circumstances, the Province of Sindh retains a tenable right of challenge before the court of first instance is again a jurisdictional matter which requires careful adjudication by the learned Additional District Judge.

10. Serious objections have also been raised with respect to the *locus standi* of the province to maintain the application. Article 140-A of the Constitution commands that political, administrative, and financial responsibility be devolved to elected local governments, which constitute an independent tier of governance. Section 7 of the Sindh Local Government Act, 2013 declares municipal committees to be corporate entities with perpetual succession, power to hold property, and authority to sue and be sued in their own name. Read with Section 126, which provides for appointment of legal advisors by councils, the statutory framework confers on local bodies the competence to represent themselves in litigation without provincial interference. The province's invocation of a *parents patriae* role to protect municipal property must be weighed against this constitutional and

statutory autonomy of local governments. Whether the Province, acting through its Regional Director, possesses standing to pursue the Section 12(2) application is thus a matter that the trial court must address as a preliminary question.

11. The province has also alleged that the compromise decree was procured by fraud and misrepresentation, particularly by the Taluka Municipal Officer acting beyond his authority and by non-impleadment of the Secretary Local Government. It is settled law that fraud, if established, vitiates the most solemn proceedings; however, the jurisprudence of the superior courts makes a sharp distinction between fraud and mere irregularities. Lack of internal authorization or omission to implead an officer may amount to an irregularity, but such defects do not ipso facto constitute fraud for purposes of Section 12(2) CPC. Fraud must be specifically pleaded with material particulars and proved through cogent evidence, not inferred from vague assertions. Whether the pleadings of the province meet this threshold, and whether evidence exists to substantiate such allegations, is a matter that lies within the province of the learned Additional District Judge to examine it before whom the application under section 12(2) is already pending.

12. The aspect of limitation and delay also arises with some force. The compromise decree was passed in 2015 and stood upheld through multiple proceedings up to 2019, yet the province waited until 2022 to file its application under Section 12(2) CPC. Even more striking is the fact that the underlying City Survey entry, made pursuant to the Assistant Commissioner's order dated 11.08.1998, was never challenged within the sixty days period prescribed under the Sindh City Survey Act, 1987 and the Rules of 1988, thereby attaining finality by operation of law. Superior courts

have consistently held that while fraud may extend or exclude limitation, even allegations of fraud must be pursued diligently, for equity aids the vigilant and not those who slumber over their rights. Learned Additional District Judge must therefore consider whether the inordinate lapse of time renders the province's application incompetent on the ground of limitation.

13. Another notable feature is the filing of two separate applications under Section 12(2) CPC within a short interval, without seeking amendment of the first application. Such duplicative proceedings prima facie offends established procedural norms and risk causing confusion and multiplicity of litigation. The law does not sanction parallel challenges to the same decree before the same forum without formal consolidation or amendment. Learned Additional District Judge must scrutinize whether the second application is procedurally maintainable at all or whether it constitutes an abuse of process.

14. The principle of res judicata, both in its direct and constructive forms, also arises from the record. The compromise decree has been the subject of review, revision, and constitutional petition, all of which were dismissed. The issues now raised are substantially similar to those already adjudicated or which could have been raised earlier. Section 11 CPC prohibits re-agitation of such matters under the cover of new pleadings or fresh applications. Learned Additional District Judge is therefore under an obligation to consider whether the province's application is hit by res judicata or constructive res judicata, thereby foreclosing further inquiry.

15. At the very least, the repeated attempts to unsettle a compromise decree that has passed through multiple tiers of judicial scrutiny border on abuse of process and forum shopping, which the superior courts have repeatedly deprecated. Compromise decrees, once sanctioned by the court, embody both the contract between the parties and the judicial command of

the court. Endless re-openings of such decrees corrode certainty in civil justice and undermine public confidence in the finality of judicial determinations. While this Court refrains from recording a conclusive finding at this interlocutory stage, the Lower Court must remain vigilant to ensure that its processes are not misused to prolong litigation already settled by competent courts.

16. For the reasons discussed, this Civil Revision Application is held to be not maintainable and is accordingly dismissed. No order as to costs is made in view of the constitutional dimensions involved. Nonetheless, this Court cannot remain unmindful of the serious objections raised concerning forum competence, the doctrine of merger, and the *locus standi* of the Province. Although no revisional interference is exercised at this interlocutory stage, the learned II-Additional District Judge, Mirpur Mathelo is directed to consider these questions as preliminary objections before embarking upon trial of the Section 12(2) application. It is clarified that nothing contained in this order shall prejudice the rights of any party to assail the final outcome of the Section 12(2) proceedings before the competent forum in accordance with law. The instant Civil Revision stands disposed of with all listed application(s).

J U D G E