

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. S-818 of 2025

'Mst. Javeria and another vs. Muhammad Ali and others'

Petitioner	:	Mr. Safdar Mehmood, Advocate
Respondents	:	M/s. Naeem Akhtar & Saad Naeem Advocates for Respondent No.1
Date of Hearing	:	19.05.2026
Date of Announcement	:	18.07.2026

ORDER

MUHAMMAD HASAN (AKBER), J.- The Order dated 31.07.2025 passed by the learned XII Additional District & Sessions Judge, South Karachi in Civil Revision No. 36 of 2025, has been assailed in this petition, which upheld the Order dated 05.03.2025, passed by the learned III Senior Civil Judge, Karachi South, in Civil Suit No. 264 of 2024 [**the impugned Orders**]. During the pendency of the revision, the suit was administratively transferred to the learned XIV Civil Judge, South Karachi.

2. Briefly, Respondent No.1 (**husband**) and petitioner No.1 (**wife**) were married, whereas petitioner No.2 is the brother of petitioner No.1. Due to matrimonial disputes, the marriage was dissolved, whereafter the husband filed a Civil Suit No.264 of 2024 before the learned III Senior Civil Judge, Karachi South, against his wife and her brother for recovery of cash Rs.2,50,000/-, sixteen tolas of gold ornaments, and certain original documents, alleging that these articles were taken away by them from his matrimonial home. It was claimed that the said articles were removed by the wife when she left for Rawalpindi along with their four children on 10.06.2023. The husband claimed that he also lodged a complaint with the police and filed a criminal miscellaneous application, but no relief came forth, following which he filed this suit.

3. A joint written statement was filed by the petitioners 1 & 2 before the trial Court denying all adverse allegations and raising preliminary legal objections, including a challenge to the territorial jurisdiction of the trial court. They also filed an application under Order VII Rule 10 read with Section 151 CPC., seeking return of the plaint on the ground that the trial court lacked territorial jurisdiction to entertain the suit since both the petitioners were permanent residents of Rawalpindi and the matter was in reality a matrimonial dispute between husband and wife. Both the learned Courts below rejected the application on the premise of sections 16(f) and 20 CPC., hence this petition.

4. Heard the learned counsel for the parties and carefully perused the record with their able assistance.

5. The first and most glaring error in the original order by the learned trial Court dated 05.03.2025 is the provision of law on which the learned Court chose to rest its decision to dismiss the petitioners' application. The learned trial court held that the allegations in the plaint brought the matter within the domain of Section 10 CPC, and on that basis dismissed the application. Section 10 CPC is a provision that deals with a stay of a suit where the subject matter in issue is also directly and substantially in issue in another suit previously instituted between the same parties pending before a court in Pakistan. It has absolutely nothing to do with the question of territorial jurisdiction of a Court to entertain a suit. The application was filed by the petitioners under Order VII Rule 10 CPC, which mandates a Court to return a plaint for presentation before the proper Court where it finds that it lacks territorial jurisdiction to try the suit. The two provisions operate in entirely separate and distinct fields of Civil Procedure Code [CPC.]. Invoking Section 10 of the Code to dismiss an application for return of plaint under Order VII Rule 10 of the Code reveals that the learned trial court did not actually apply its mind to the actual controversy. There was no mention of any previously instituted parallel suit, and no question of *res sub judice* arose on the record. The trial court was obligated under Order VII Rule 10 of the Code to examine the plaint and its attachments and to determine whether it had territorial jurisdiction. It bypassed this entire exercise and dismissed the application by reference to a wholly irrelevant provision of law.

6. Secondly, the learned Revisional Court, in its impugned Order dated 31.07.2025, appears to have sensed this difficulty and made no effort to justify the learned trial Court's reliance on Section 10 of the Code. Instead, the revisional court conducted its own analysis and concluded that the suit could attract Section 16(f) or Section 20 of the Code of Civil Procedure, 1908. The revisional court reasoned that Respondent No. 1 had averred in the plaint that the articles were taken away from the matrimonial home situated at House No. S-5, Street No. 8, Phase VII Extension, Defence Housing Authority, Karachi, and that the cause of action had therefore arisen partly within the local limits of the trial court, thereby validating the trial court's assumption of jurisdiction. On this basis the revision was dismissed.

7. I have carefully considered the reasoning of both the learned Courts and am of the humble view that both the learned Courts also failed to consider that the relationship and the claims between the parties arise out of matrimonial dispute between husband and wife, arising out of divorce and the allegation of leaving of wife with children and other items etc., and that too regarding household items, which are governed under the provisions of special laws under the Muslim Family Law Ordinance 1961, the Family Courts Act 1964 and the Family Courts Rules 1965. These special laws and rules clearly define territorial jurisdictions of the Courts for initiation of actions with special considerations to the place of residence of the wife/ female and the children. The Family Courts have been empowered with exclusive jurisdiction to deal with all issues *inter se* husband and wife and their respective claims.

8. While interpreting the cumulative effect of the provisions of section 17 of the Family Courts Act (XXXV of 1964), Rule 6 of the Family Court Rules 1965 and sections 16 to 20 of the Civil Procedure Code 1908, the Honourable Supreme Court of Pakistan in '*Mst. Yasmeen Bibi vs. Muhammad Ghazanfar Khan and others*' (PLD 2016 SC 613) categorically declared that the provisions of Sections 16 to 20, CPC. stood excluded from the proceedings between husband and wife before the Family Court; thus, the question of its territorial jurisdiction would never arise, provided that the Family Court where the wife resides shall have the exclusive jurisdiction over all such matters. The Court further observed that even where immovable property was involved and even irrespective of the location of such property involved in the matrimony, the same would also be tried and would fall within the exclusive domain of the Family Court to pass a decree in relation to such property. The following excerpts from the Judgment authored by His Lordship Justice Dost Muhammad Khan shed light on the basic objectives for providing such special treatment to females and children and also provide clear guidelines to deal with such matters:

“11. Keeping in view the clear and manifest intention and object of the Legislature by drastically amending the provisions of the Family Courts Act, a Division Bench of the Peshawar High Court, after elaborately dealing with the same held that, "by now, the Family Court alone has exclusive jurisdiction to deal with all the matrimonial disputes of whatever nature, irrespective of territorial jurisdiction, provided that the Family Court where the wife resides shall have the jurisdiction to entertain such suits/claims [see. *Muhammad Tariq v. Mst. Shaheen* (PLD 2006 Peshawar 189)]. The view held by the Division Bench of the Peshawar High Court was not set aside by the Supreme Court thus, the same had attained finality and has got strong persuasive effects, which cannot be lightly ignored.

12. Keeping in view the agonies of the parties, particularly the wife, in matrimonial disputes to curtail the mischief of delay and to shorten the life of litigation in such cases, the Law and Justice Commission of Pakistan recommended to the Federal Government and all the Provincial Governments to establish Family Courts in each District and Tehsil Headquarter, which shall be preferably presided over by a female Judge so that the wives who are not well acquainted and familiar with the court proceedings are provided maximum protection and friendly environments.

14. It is demonstrably clear from these drastic amendments made in the Family Courts Act including the new provisions added therein, that the Legislature was well aware of the miseries and plight of the wives, seeking relief through the obsolete law then in vogue thus, to minimize the same not only all matrimonial disputes were brought under one and the same umbrella of the Family Court but also provided for the target date, both for the Family Court and for the Appeal Court, by which such cases shall be decided conclusively. The jurisdiction and powers of all other courts thus stand excluded in these matters much less Civil Court therefore, pushing one or the other party to the Civil Court would be in clear violation of the mandatory provision of the law on the subject and would amount to reverse the efficacious remedies available to them under the new scheme of law.”

9. Even on the merits of the reasoning adopted by the revisional court, this court finds the analysis unsatisfactory. The question of which provision of the Code of Civil

Procedure governs territorial jurisdiction is not to be answered in vague and approximate terms. The revisional court said that either Section 16(f) or Section 20 of the Code may be attracted, without specifically determining which provision applied and why. This equivocation is itself an indication that the matter was not examined with the precision that an application under Order VII Rule 10 of the Code demands.

10. To assess the question properly, it is necessary to look into the nature of the suit as disclosed by the plaint of Respondent No. 1. The suit is for recovery of movable property and documents along with cash. It is not a suit for immovable property and does not fall within Sections 16(a) to 16(e) of the Code. Section 16(f) of the Code carves out an exception to the general rule of *mobilia sequuntur personam* by providing that suits for the recovery of movable property actually under distraint or attachment, or suits to obtain relief respecting or for compensation for wrong done to movable property, may be instituted in the court within whose local limits the property is situate at the commencement of the suit, or the defendant resides or carries on business. The revisional court invoked this provision as one of the possible bases for jurisdiction. However, applying Section 16(f) to the facts of this case does not assist Respondent No. 1 at all. If the articles are situated at Rawalpindi, as the petitioners assert and as the plaint itself obliquely acknowledges by describing both petitioners as residents of Rawalpindi, then the property is not within the jurisdiction of the trial court. If the test is the residence of the defendants, both of them are stated to be residents of Rawalpindi. Either way, Section 16(f) of the Code points to a court at Rawalpindi and not to the trial court at Karachi South.

11. So far as Section 20 of the Code is concerned, it provides that other suits not covered by earlier provisions shall be instituted in a court within the local limits of whose jurisdiction the defendants actually and voluntarily reside at the time of the institution of the suit, or where the cause of action wholly or in part arises. The revisional court held that the cause of action arose in part within the trial court's jurisdiction because the articles were taken away from a house in DHA, Karachi. This reasoning rests on a selective reading of the plaint. A cause of action for recovery of movable property wrongfully detained is a composite cause of action. The initial act of taking possession of the articles is one element, but the decisive element that crystallises the cause of action for recovery is the wrongful detention of the articles and the refusal to return them on demand. The plaint of Respondent No. 1 does not state that any demand for return of the articles was made or refused within the territorial limits of the trial court. On the contrary, the entire chain of events narrated in the plaint after the departure of Petitioner No. 1 from Karachi took place at Rawalpindi. The communication by Petitioner No. 2 to Respondent No. 1 regarding the divorce was made from Rawalpindi. The alleged detention of the articles continued at Rawalpindi. The alleged refusal to return, which is the foundation of the recovery claim, occurred at Rawalpindi. There is therefore no part of the cause of action that arose within the local limits of the trial court on the basis of which jurisdiction under Section 20 of the Code could be assumed by that court.

12. The position of Petitioner No.2 deserves particular and separate examination, because the revisional court did not address it with the seriousness it warranted. Petitioner No. 2 is described in the plaint of Respondent No. 1 as a resident of Rawalpindi Cantt. He is not stated anywhere in the plaint to have been a resident of Karachi at any material time. He is not stated to carry on business within the local limits of the trial court. His entire alleged role, as narrated in the plaint, is confined to Rawalpindi. The plaint states that Petitioner No. 2 called Respondent No. 1 at Rawalpindi and communicated to him the position regarding the divorce. The plea that he assisted Petitioner No. 1 in taking away the articles does not in itself give rise to a cause of action that accrued within the jurisdiction of the trial court, because the act of facilitation attributed to him in the plaint is not connected to any act done or transaction completed within the local limits of the trial court. The revisional court's response to this was that the question of the impleading of Petitioner No. 2 and the non-maintainability of the suit against him were matters to be agitated before the trial court and could not be adjudicated in the revision. With respect, this approach is unsatisfactory. The application filed by both petitioners under Order VII Rule 10 of the Code specifically raised the question of the territorial jurisdiction of the trial court to entertain the suit against both of them. An examination of that application required the court to determine, on the basis of the plaint, whether any ground for jurisdiction existed as against each of the defendants. Since the plaint discloses no basis whatsoever for assuming jurisdiction over Petitioner No. 2, neither the trial court nor the revisional court was justified in directing him to contest the suit through trial before raising this fundamental objection. The return of the plaint under Order VII Rule 10 of the Code is a remedy that operates at the threshold and is intended precisely to spare a defendant from undergoing the rigours of a trial before a court that has no jurisdiction to try the suit against him.

13. The revisional court's refusal, during the hearing of final arguments in the revision, to allow the petitioners to refer to the attachments of the plaint was also an error. The examination under Order VII Rule 10 of the Code requires the court to look at the plaint as a whole, which necessarily includes all documents and annexures forming part of it. The attachments to the plaint are integral to the pleading and cannot be excluded from consideration when the court is discharging its obligation to determine jurisdiction. The revisional court's observation that attachments were not required for the purpose of returning the plaint on jurisdictional grounds is contrary to well settled principle. The whole purpose of requiring the court to read the plaint under Order VII Rule 10 of the Code is to enable it to form a proper view on jurisdiction from all the material placed before it as part of the pleading. Excluding the attachments from consideration defeats this purpose and produces a distorted picture of the jurisdictional question.

14. The revisional court also discussed the principle of *mobilia sequuntur personam* but applied it in a manner that requires correction. This principle, in the context of the Code of Civil Procedure, is part of the framework of Section 16(f) and refers to the rule that movable property follows the person of the owner in terms of the law governing it. Its application to questions of civil jurisdiction in this court's view does not assist in

sustaining jurisdiction before the trial court, because even if the owner of the movables is Respondent No. 1 who is a resident of Karachi, the articles are stated to be detained with the defendants at Rawalpindi, and the exception carved out by Section 16(f) of the Code directs the court to the place where the property is situate or where the defendant resides, both of which in this case are at Rawalpindi. The revisional court's application of this principle therefore does not support the conclusion it reached.

15. From the above, it appears that in the instant case, both the learned Courts below were not properly assisted about the above-referred decision and guidelines. Taking the above discussion into consideration and following the ratio settled in the case of Mst. Yasmeen Bibi supra, I am of the humble view that both the impugned Orders are unsustainable in law, having been passed without considering the above-referred decision of the Honourable Supreme Court but instead based upon an inapplicable provision of law without any application of mind to the entire controversy and the relationship between the parties. The impugned revisional order dated 31.07.2025 has compounded the error by upholding a legally unsustainable order on fresh reasoning that is itself not supported by the plain, making it a fit case for exercise of writ jurisdiction under Article 199 of the Constitution.

16. For the foregoing reasons, this petition is allowed, and both the impugned Orders dated 31.07.2025 and 05.03.2025 are set aside; the petitioners' application under Order VII Rule 10 read with Section 151 CPC. is allowed; and the plaint in Civil Suit No.264 of 2024 is ordered to be returned to Respondent No.1 for presentation before the Court of competent jurisdiction in accordance with law.

The petition therefore stands allowed in the above terms with no order as to costs.

Before parting with this Judgment, the able legal assistance extended by learned Mr. Safdar Mahmood learned Advocate for Petitioner and by M/s. Naeem Akhtar & Saad Naeem Advocates for Respondent No.1 is appreciated.

J U D G E