

JUDGMENT SHEET
THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Second Appeal No. S-24 of 2025

Appellants : Hidayatullah and others through Mr. Jamshed Laghari, Advocate

Respondents Nos. 1 and 2 : Haji Afzal Baloch and Mukhtiar, not represented despite notices

Respondents Nos. 3 to 11 : Supervising Tapedar, Tapo and Taluka Khipro and others through Mr. Muhammad Sharif Solangi, Asst. Advocate General Sindh and Mr. Adnan Khurram Meo Rajput, Advocate (for the Respondents Nos. 9 to 11)

Date of Hearing : 25.08.2026 and 03.09.2026

Date of Judgment : 10.09.2026

JUDGMENT

Muhammad Humayon Khan, J.: The Appellants are the unsuccessful plaintiffs of First Class Suit No. 30 of 2022 before the learned Senior Civil Judge, Khipro, for declaration and permanent injunction. Their case is that they are owners in possession of an area of land measuring 04-23 acres on Survey No. 469 in Deh Bantheri, Taluka Khipro, District Sanghar (hereinafter the “land”) through their father Mitha Khan son of Muhammad Hassan by way of Registered Gift Deed No. 109 dated 09.01.2017 (hereinafter the “Gift Deed”). On an adjoining piece of land, being Survey No. 468, there is Government Mono-Technical and Vocational Training Institute, Khipro, which is stated to be abandoned (and which is hereinafter referred to as the “Institute”). On 01-02-2022 at about 08:00 am, the Respondents Nos. 1 and 2 allegedly began digging furrows on the land through their labour force, and upon being inquired, they told the Appellant No. 1 that they were government contractors and had a working order from the competent authority to construct the Institute on the land. The Appellants stated that the Respondents Nos. 1 and 2 were informed about the ownership of the land being with the Appellants but to no avail.

2. Against the suit, two written statements were filed. The first was filed on 06.05.2023 at Exh-28 purportedly on behalf of the Managing Director/Secretary, Sindh Technical Education and Vocational Training Authority, Karachi (hereinafter “STEVTA”) (Respondent No. 11). It was signed and verified by Mr. Lal Bakhsh, Regional Director, STEVTA, Shaheed Benazirabad (Respondent No. 10), with a coloured photocopy (not original) authority letter. The second was filed on 22.09.2023 at Exh-43 and bears two signatures. The first is that of the Respondent No. 10. (I can say this because the Written Statement at Exh-28 also

bears the same signature.) The second is not named but it appears to be that of the Respondent No. 9. The only verification at the end of this Written Statement is without the statement of the defendant verifying it. There is no stamp on the verification and it simply reads “on SA Before Me...S/d...COC/CMO/Nazir 22-09-2023.” The defence in both the Written Statements is that the Institute has been constructed within its own boundaries and that no area of the Appellants has been occupied. As to the Gift Deed, there is either a one-liner suggesting that the same has been executed with *mala fide* intention or a blank denial of the document, but no ingredients showing voidability or defect have been pleaded.

3. The learned Senior Civil Judge framed five (5) issues and on which the Appellants recorded their evidence. The Respondents did not record any evidence and closed their side. By Judgment and Decree dated 27.09.2024 the learned Senior Civil Judge dismissed the suit. The dismissal was challenged by the Appellants in Civil Appeal No. 40 of 2024 before the learned Additional District Judge, Khipro, which too was dismissed by Judgment and Decree dated 18.04.2025. These concurrent findings have been challenged in this second appeal under s. 100 of the CPC.

4. The appeal was admitted on 05.08.2025 and thereafter taken up on a number of dates for different purposes including service which was done through all modes. Before me it was taken up on 25.08.2026 and 03.09.2026 when I heard Mr. Jamshed Laghari, Advocate for the Appellants, Mr. Muhammad Sharif Solangi, Assistant Advocate General Sindh, and Mr. Adnan Khurram Meo Rajput, Advocate for the Respondents Nos. 9 to 11 and reserved the matter for judgment. Mr. Adnan Khurram Meo Rajput filed his written synopsis which was taken on the record and has been perused by me.

5. Learned Mr. Jamshed Laghari for the Appellants contended, inter alia, that the impugned Judgments and Decrees of the learned Courts below suffer from illegalities and misreading and non-reading of evidence and therefore require interference in second appeal under s. 100 of the CPC. He contended that the findings of the learned Courts below are beyond the pleadings and evidence of the parties and proceed on matters which were not in dispute. Relying on *Abdul Aziz v Abdul Hameed through LRs* 2022 SCMR 842, he stated that the Gift Deed being a registered document carries a presumption of correctness and the learned Courts below have failed to appreciate it. He referred to *Liaqat Ali alias Khabar and others v Habibullah and others* 2022 CLC 1583 and argued that mere omission of an entry in the record of rights does not render their title invalid and the learned Courts below have committed a serious illegality in ignoring this principle. He argued that the learned Courts below have committed a serious error of law in ignoring that the Respondents had not produced any evidence to rebut the case of the Appellants and

as such their written statement did not have any value. On this proposition, he relied on *Abdul Rauf v Ch. Muhammad Ahmed and another* 2008 YLR 464 (Karachi). He contended that the learned Courts below have shown confusion between Survey Nos. 468 and 469 and as such they have misread the evidence on the record. He referred to an application under r. 18 of O. XVIII read with s. 151 of the CPC (Exh-53) for demarcation and measurement of the area of land. He contended that the said Application was allowed by Order dated 16.12.2023 and, upon the said Order, multiple demarcations were conducted and under the last demarcation an area of 00-38 acres from Survey No. 469 was found to be in possession of the Institute. He submitted that this was completely ignored by the learned Courts below and therefore there is non-reading of evidence in the impugned Judgments and Decrees. Finally, he prayed for the appeal to be allowed and the suit to be decreed as prayed.

6. On the other hand, Mr. Adnan Khurram Meo Rajput for the Respondents Nos. 9 to 11 opposed this appeal and supported the impugned Judgments and Decrees. His main contention was the scope of this second appeal being limited to the grounds specified in s. 100 of the CPC. He contended that there are concurrent findings of two Courts below which cannot be reopened by this Court in second appeal and no ground covered by s. 100 of the CPC has been agitated by the Appellants. He contended that there is no misreading or nonreading of evidence by the learned Courts below and as such, while relying on *Muzafar Iqbal v Mst. Rifat Parveen and others* 2023 SCMR 1652 and *Muhammad Khan v Mst. Rasul Bibi* PLD 2003 SC 676, he stated that the findings of the learned Courts below cannot be interfered with. Learned Counsel also argued that the Gift Deed was not proved by the Appellants and that only a photocopy thereof was brought on the record which does not suffice as proof. He contended that the photocopy was produced in violation of the provisions relating to primary and secondary evidence in the Qanun-e-Shahadat Order, 1984 (hereinafter the “QSO”). He argued that even as an oral instrument the ingredients of the gift were not proved. Learned Counsel also argued that the site inspection/demarcation did not fulfil the legal requirements and does not have any evidentiary value. He finally prayed for the dismissal of this appeal. Mr. Muhammad Sharif Solangi, Assistant Advocate General Sindh, also opposed the appeal and supported the findings of the learned Courts below.

7. In my view, the following two points fall for the determination of this second appeal within this Court’s jurisdiction under s. 100 of the CPC:

- i) Whether, upon the pleadings of the parties, the ownership of Survey No. 469 was genuinely disputed and, if not, did the learned Courts below correctly apply the law and the evidence in deciding the suit upon a purported failure to prove title?

ii) What was the legal and evidentiary effect of the demarcation of the land under r. 18 of O. XVIII of the CPC and what turns upon the failure of the learned Courts below in considering the said demarcation?

8. As I have already mentioned, there is no genuine challenge as to the execution of the gift or the ownership of Survey No. 469 in favour of the Appellants. This is for two reasons. The first reason follows from the nature of denial by the Respondents Nos. 9 and 10, and 11 in their respective written statements. The relevant paragraphs in the plaint are paras 1, 2 and 3 and in which the Appellants have stated as follows (emphasis in original):

- “1. That, the Plaintiffs are legitimate owner of Agriculture Land Admeasuring Survey No. 469, Area 04-23 (Acres-GHUNTAS), situated in Deh BANTHERI, Taluka Khipro, District Sanghar.
2. That the above agriculture land was Originally belong to the father of Plaintiffs which they received from him (namely **Mitha Khan** S/o Muhammad Hassan Hingoro) by way of Registered Gift Deed No. 109, Dated 09-01-2017, executed before the District Registrar Sanghar. The Registered Gift Deed No. 109, Dated: 09-01-2017 was executed for a total Area of Agriculture Land 15-15 (Acres-GHUNTAS)...Out of above joint holding of the Plaintiffs a piece of land i.e. **Agriculture Land Survey No. 469, Area 04-23 (Acres-GHUNTAS), situated in Deh BANTHERI, Taluka Khipro, District Sanghar subject matter of this SUIT, hereinafter called as SUIT LAND.** Since the above mentioned Gift Deed has not yet been mutated in the records of rights, therefore, the same is still mutated in the name of Mitha Khan S/o Muhammad Hassan Hingoro vide VF-VII-B Entry No. 70, Dated: 23-03-2013, of Deh BANTHERI, Taluka Khipro, District Sanghar.
3. That, since the receipt of above gift the Plaintiffs are in the peaceful possession and enjoyment of the SUIT Land exclusively being the legitimate owner and title holder of the SUIT Land.”

9. The aforementioned paragraphs have been replied to by the Respondents Nos. 9 and 10, and 11 in their respective written statements in the following manner:

<u>Respondents Nos. 9 and 10 (Exh-43) at para 1</u>	<u>Respondent No. 11 (Exh-28) at paras 1, 2 and 3</u>
That the Contents of Para No. 1, 2 & 3 are not commendable let the plaintiff prove before this Honourable Court of Law.	1. That the contents of Para No. 1 are vehemently denied. Furthermore, it is submitted that letter dated 23-04-1992 by divisional Officer, technical Education, Hyderabad was communicated to the Assistant Commissioner / Land Acquisition Officer, Khipro for payment to the landlord namely Mr. Manthar S/o Mithoo Faqir and transfer the suit accordingly in the Record of Rights.

	2. That the contents of Para No. 2 are denied as the Suit Land was acquired from the brother of the plaintiffs being the Attorney of the landlord namely Mr. Manthar S/o Mithoo Faqir and gift deed No. 109 dated 09-01-2017 has been executed after 25 years with Malafide intention. 3. That the contents of Para No. 3 of the plaint are denied and further submitted that the peaceful possession of the suit land has continuously been in the hands of STEVTA since 1992 for imparting technical education to the downtrodden segment of the society.
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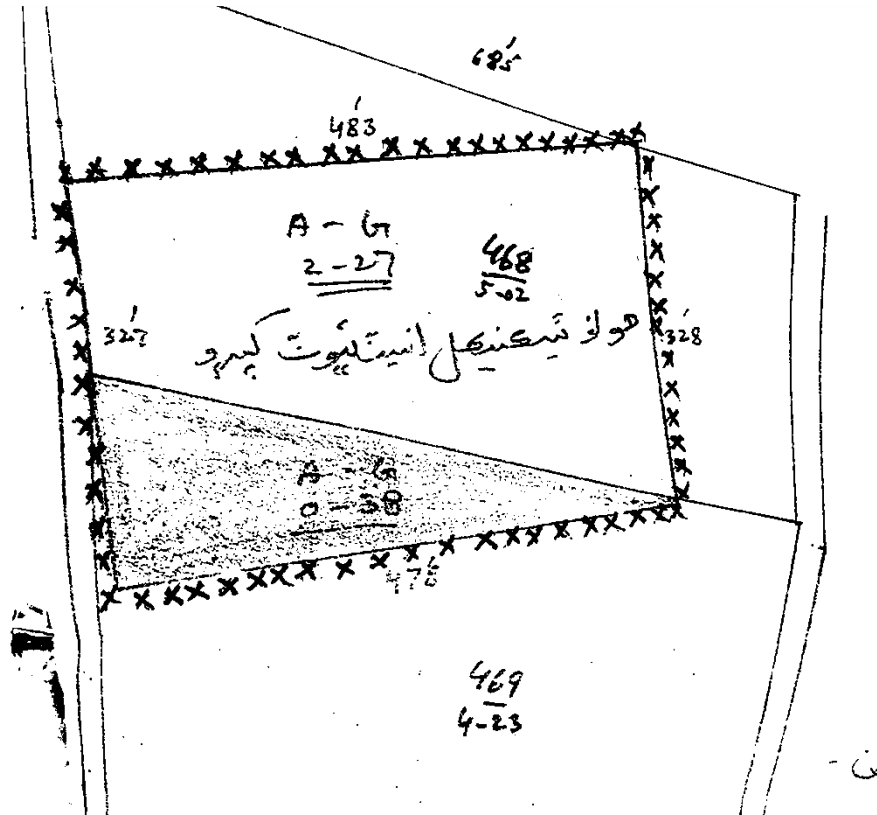
10. It will be seen that the Respondents Nos. 9 and 10 have given an evasive denial on the ownership of the Appellants and as to which it is already well-established that a simple or evasive denial is no denial and in fact amounts to admission by virtue of rr. 3, 4 and 5 of O. VIII of the CPC. Reference in this regard may be made to *Ghulam Rasool through LRs and others v Muhammad Hussain and others* PLD 2011 SC 119. On the other hand, the Respondent No. 11 has not denied the Gift at all. Indeed, it has been stated by it that “gift deed No. 109 deed 09-01-2017 has been executed after 25 years with Malafide intention [sic.]” which appears to acknowledge the execution but not its efficacy (which was a matter for evidence and none was led). In this sense, neither the execution of the Gift Deed nor the ownership is disputed, except on the plea that the land was acquired in the year 1992 from Mr. Manthar son of Mithoo Faqir. This defence needs to be considered from a separate angle (which will in turn deal with the second reason I proposed to discuss above). The plea in respect of the prior acquisition was a positive plea and the burden to prove it fell on the Respondents. To prove their plea, the Respondent No. 11 did not place any document on the record to reflect the acquisition of Survey No. 469 before the execution of the Gift Deed, and that being so, when no evidence was led nor any document produced with the Written Statement, the plea remained unestablished. Consequently, in my view, the learned Courts ought not to have dismissed the suits concurrently on this ground which had not been made out by the Respondents and which the Appellants therefore could not have been compelled to prove.

11. Even assuming for argument’s sake that there was a specific and sufficient denial of the Gift Deed in the written statements, it will be seen that no question to this effect was put to the witnesses during cross-examination nor any evidence in rebuttal was recorded. Dost Muhammad, Junior Clerk, Sub-Registrar Office, Sanghar appeared as Official Witness (Exh-33) and produced the relevant excerpt from the record relating to the registration of the Gift Deed. The main witness was

Hidayatullah (Appellant) (Exh-49) who deposed in detail about the Gift Deed and was cross-examined but no question as to the title or ownership of the land was put to him. Thereafter, his brother, Muhammad Zahid son of Mitha Khan (Exh-50) supported the Gift Deed but was not cross-examined despite opportunity. In this regard, it is already well-settled that any material point in examination-in-chief not confronted in cross-examination is deemed to have been admitted. It is therefore beyond denial that the ownership of Survey No. 469 has never been challenged by the Respondents during trial proceedings and they cannot later on take a contrary stand, one which they could have taken at the earliest during the suit but did not.

12. I am surprised to note that the learned Senior Civil Judge has observed that the Appellants should have sought a declaration of ownership for the entire area of the land under the Gift Deed and that they were incorrect to seek a declaration only in respect of Survey No. 469. With all due respect, this could not have been so. The Appellants were fully right in seeking a declaration in respect of the area actually under dispute, being Survey No. 469, and in my view, if they did seek a declaration for the entirety of the gifted area, there could have been an arguable point against their cause of action for introducing a prayer beyond the subject. On any view of the matter, it is quite clear that the ownership of the Appellants on Survey No. 469 and the Gift Deed were beyond any genuine dispute for the learned Courts below to have resorted to a roving scrutiny thereof.

13. I now turn to the second point for determination. The record reflects that two applications for demarcation were made by the Appellants under r. 18 of O. XVIII read with s. 151 of the CPC. The first (Exh-39) was filed on 05.08.2023 and was dismissed being premature on 17.10.2023. The second Application was filed on 16.12.2023 (Exh-53) which was allowed by Order dated 16.12.2023 upon no-objection by the Respondents. Thereafter, demarcation was conducted thrice but the last report was taken on the file without being returned as unsatisfactory under r. 10(3) of O. XXVI of the CPC. That Report was submitted by the Administrative Officer to Director of Settlement Survey and Land Records, Hyderabad, by Letter No. GD/Court/2184 of 2024 dated 20.09.2024 (pp. 437 to 449 of the R&Ps of the Trial Court) which was taken on record vide Case Diary dated 23.09.2024. According to the said Report, demarcation of Survey Nos. 468, 469 and 470 was carried out in the presence of Hidayatullah (Appellant No. 1), Mr. Salahuddin, Incharge Principal of the Institute, and revenue and survey officials, and upon demarcation it was found that an area of 00-38 acres from Survey No. 469 was occupied by the Institute. The map of the demarcation was also filed with the report and the relevant portion of which is reproduced below for reference (p. 443 of the R&Ps; in the actual map the shaded area in blue colour is in Survey No. 469 (owned by the Appellants) and in yellow is in Survey No. 468 (owned by the Institute)):



14. I may note that although the application was made under r. 18 of O. XVIII read with s. 151 of the CPC, in its substance it was an application for the appointment of a commission for local investigation under O. XXVI of the CPC and was acted upon as such. Now, the contention advanced at the bar is that the demarcation was not evidence and the concerned survey official should have been produced in evidence. However, this contention is based on a misconception of r. 10(2) of O. XXVI of the CPC according to which (emphasis added by italicisation):

“10. (2) Report and depositions to be. The report of the Commissioner and the evidence taken by him (but not the evidence without the report) *shall be evidence in the suit and shall form part of the record*; but the Court, or with the permission of the Court, any of the parties to the suit *may* examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation.”

15. Thus, on the language of r. 10(2) of O. XXVI, the report of the demarcation dated 20.09.2024 along with all attached documents (taken on record vide Case Diary dated 23.09.2024) had in and of itself become evidence in the case. Thereafter, again on the language of the provision itself (“may” having been used), it was only subject to the discretion of the Court and upon the asking of the parties who wished to confront the evidence produced upon demarcation, to cross-examine the concerned witness. Reference may be made to *Zaheer-ud-Din and others v Mst. Khurshida Begum* 1996 CLC 580. It seems to me that the report of demarcation was akin to (but not the same as; and I say so only for illustrative purposes) an

examination-in-chief and the subsequent exercise would have been a cross-examination with the permission of the learned Senior Civil Judge.

16. In my view, because the Appellants did not have any grievance as against the demarcation exercise, it was not required of them to have cross-examined or produced in evidence the survey official concerned. And perhaps even the Respondents did not have any grievance until then against the demarcation. However, if they did, it was their duty to have requested the learned Court below to put the witness through cross-examination to examine the matters provided for in r. 10(2) of O. XXVI. Because they failed to do so at the relevant time, in my view, they cannot do so at this belated stage, and because the demarcation is now a part of evidence by compulsion of the law, the Respondents are bound by the consequences thereof. Reference may be made to *Akbar Ali and others v Province of Punjab and others* 1990 CLC 718 and *Mrs. Razia Ahmed and another v Karachi Building Control Authority and 2 others* PLD 2000 Karachi 288. I did consider whether the Court should remand the matter to the Trial Court for the cross-examination exercise, but in my view that would amount to giving a fresh opportunity to the Respondents to do something that they earlier had failed to do, and it is well-settled that law only favours the diligent and not the indolent.

17. In these circumstances, the learned Courts below have misread the material evidence brought on the record and misapplied the law on burden of proof, appraisal of evidence, evasive and specific denial, and appointment of commissions and status of commission reports under r. 10 of O. XXVI of the CPC read with r. 18 of O. XVIII and s. 75 of the CPC. The learned Courts below have misdirected their attention to matters which were, with all due respect, not relevant to the controversy in the least and they have altered the dispute from one of mere demarcation into one of proof of title without justification. Mr. Adnan Khurram Meo Rajput was perfectly right in his arguments as to the scope of second appeals under s. 100 of the CPC, but in my respectful view those arguments do not help the Respondents because the case is clearly one which is covered by the same scope.

18. For these reasons, I hold as follows in my answer to the two points for determination:

(1) Whether, upon the pleadings of the parties, the ownership of Survey No. 469 was genuinely disputed and, if not, did the learned Courts below correctly apply the law and the evidence in deciding the suit upon a purported failure to prove title?	No as to both parts. The ownership of Survey No. 469 was beyond any genuine dispute and the learned Courts below have committed a serious error of law and misreading of evidence in deciding the suit upon a
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	purported failure to prove title when no such proof was needed.
(2) What was the legal and evidentiary effect of the demarcation of the land under r. 18 of O. XVIII of the CPC and what turns upon the failure of the learned Courts below in considering the said demarcation?	i) The report of demarcation was evidence under r. 10(2) of O. XXVI read with r. 18 of O. XVIII of the CPC, and upon failure of the Respondents to object to the same, the same went unrebutted. ii) The failure of the learned Courts below in considering the said demarcation created a situation of nonreading of evidence and misapplication of law covered by s. 100 of the CPC. iii) On the contents of the unrebutted report, area of 00-38 acres from Survey No. 469 is held to be in possession of the Institute without any entitlement or proof of prior acquisition.

19. I therefore dispose of this appeal in the following terms:

- i)

This appeal is allowed with costs throughout. The costs of all the proceedings (without markup) are to be paid by the Respondents Nos. 9 to 11 upon execution.
- ii)

Consequently, the impugned Judgments and Decrees of both the learned Courts below are set aside.
- iii)

Civil Appeal No. 40 of 2024 is allowed. F.C. Suit No. 30 of 2022 is decreed in the following terms:

a.

The suit as to prayer clauses (A) and (B) is decreed as prayed, and I hold that the Appellants are the owners of Survey No. 469, admeasuring 04-23 acres, in Deh Bantheri, Taluka Khipro, District Sanghar, and that the action of the concerned Respondents of raising construction on the area of 00-38 acres out of Survey No. 469 without acquisition is illegal, unlawful and unauthorised *ab initio*.

b.

The suit as to prayer clause (C) is decreed in the following terms:

i.

The Respondents Nos.9 to 11 are given the opportunity to acquire the area occupied (00-38 acres) from Survey No. 469 subject to proper proceedings for acquisition under the Land Acquisition Act, 1894, and if they choose to do so, the acquisition shall be keeping in mind the date of taking of possession being 01.03.2022 and the prevailing

market value. Such acquisition, if the Respondents Nos. 9 to 11 desire to take up the same, shall be initiated within forty-five (45) days from today and all formalities should be fulfilled and notices of proceedings under the 1894 Act, if initiated, should reach the Appellants within that time.

- ii. During these forty-five (45) days, the operation of this judgment as to Prayer Clause (C) shall remain suspended to allow the Respondents their full opportunity to initiate acquisition proceedings. If such proceedings are initiated, they shall be expeditiously (and preferably within ninety (90) days) concluded while complying with all legal and procedural requirements.
- iii. If the proceedings as stated above are not initiated within the given period of forty-five (45) days, the suit shall be deemed to be decreed as prayed as to Prayer Clause (C) as well and the decree shall be in the following terms:
 1. the Respondents shall be restrained from raising construction on the area of 00-38 acres occupied by the Institute; and
 2. by moulding the relief as warranted in the circumstances of the case, if any construction has been raised during the pendency of the dispute, the same shall be demolished upon execution, and the possession of the Appellants, if no longer with the Appellants, shall be restored by the Executing Court, if and when execution proceedings are initiated, through all modes and powers at its disposal.

20. R&Ps of the case may be returned back to the respective Courts.

JUDGE

APPROVED FOR REPORTING

Faisal