

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

Civil Revision Application No.S-70 of 2024

For Appellant:	Mr. Waqar Ahmed Chandio, Advocate
For Respondents:	Mr. Peerano Khan Jatoi, Advocate
For Government of Sindh:	Mr. Abdul Waris Bhutto, Asstt. A.G
Date of hearing:	16-04-2025
Date of Judgment:	30-04-2025

JUDGMENT

Jan Ali Junejo, J.— This Civil Revision Application under Section 115 of the Code of Civil Procedure, 1908, is directed against the concurrent findings of the learned Appellate Court (Additional District Judge-IV, Larkana) in Civil Appeal No.177 of 2023 and learned Trial Court (Senior Civil Judge-III, Larkana) in F.C. Suit No.04 of 2022. The Trial Court, through its judgment dated 21.10.2023 followed by Decree, decreed the suit of the Respondents for declaration, possession, and permanent injunction concerning Survey No.89/2, measuring 1-32 ghuntas, situated in Deh Mehrabpur, Taluka Bakrani, District Larkana. This judgment was upheld by the learned Appellate Court vide its judgment dated 30.04.2024 followed by Decree (hereinafter referred to as the “*Impugned Judgment & Decree*”), thereby affirming the decree in favour of the Respondents. The Applicant now seeks interference by this Court in revisional jurisdiction, asserting that both Courts below failed to adjudicate vital legal and factual

issues, including the application of limitation law and enforceability of an alleged sale agreement dated 10.07.1985.

2. The Respondents (Plaintiffs) instituted F.C. Suit No.04/2022 claiming ownership and possession of Survey No.89/2 (1-32 ghuntas) on the basis of inheritance from their grandfather Allahyar Jatoi, who owned agricultural land that was distributed among his sons. The Applicant (Defendant) contested the suit, asserting ownership and possession by virtue of a written sale agreement dated 10.07.1985, allegedly executed by Ali Khan (one of the co-sharers) in favour of the Applicant. He claimed possession since 1985 and raised the plea of limitation under Articles 3 and 120 of the Limitation Act. The Trial Court framed issues regarding ownership, possession, and maintainability, and eventually decreed the suit. The Appellate Court dismissed the Applicant's appeal, holding that the Applicant had no lawful title.

3. Learned counsel for the Applicant argued that the courts below committed a serious legal error by failing to properly apply the law governing limitation. It was contended that the suit was filed after an unreasonable delay of 35 years from the date of alleged dispossession or adverse possession in 1985, and thus the claim was clearly barred under Article 120 of the Limitation Act. It is further argued that both courts failed to determine the mixed question of law and fact by not recording evidence regarding the exact date of dispossession or discontinuation of possession. It is further contended that the Applicant had produced the sale agreement dated 10.07.1985 and examined witnesses, yet the Trial Court erroneously ignored the admissibility and legal effect of the

agreement, particularly regarding enforceability against the share of Ali Khan only. The learned counsel for the Applicant thus prayed that the impugned judgments and decrees be set aside and the matter be remanded for trial on merits after proper framing and adjudication of all issues.

4. Conversely, learned counsel for the Respondents as well as the learned AAG for the official respondents argued that the judgments of the courts below were well reasoned and based on a thorough appreciation of the record, including revenue entries, Form VII-A and VII-B, and official reports, all confirming the lawful title of the Respondents. It was further argued that the alleged agreement dated 10.07.1985 was never registered and had already been the subject of previous litigation (Suit No.23/2021), which was dismissed for being time-barred. The alleged sale agreement was unregistered and unenforceable under law, and the Applicant failed to establish possession with legal authority. Therefore, the impugned concurrent findings require no interference. Lastly they pray for dismissal of the Civil Revision Application.

5. Upon considering the arguments advanced by the learned counsel for both the parties and examining the impugned judgments, pleadings, and evidence, this Court finds multiple legal and procedural infirmities in the approach adopted by the Courts below:

Firstly, the Trial Court's reasoning under Issue No.1 merely concluded that "limitation is a mixed question of law and fact" without analyzing the specific provisions under the Schedule-I to the Limitation Act applicable to the present dispute.

Secondly, neither the judgment of the Trial Court nor that of the Appellate Court identifies or determines the *date of dispossession* or *discontinuation of possession*. The precise accrual of cause of action, a precondition under Order VII Rule 6, CPC, was ignored. The record shows the alleged sale took place on 10.07.1985 and possession was claimed thereunder; yet, the courts failed to examine whether the claim was within limitation and whether the possession was continuous, permissive, or adverse.

Thirdly, although the Trial Court acknowledged that the matter involved a “*mixed question of law and fact*” in its reasoning under Issue No. 1, it prematurely decided the issue without properly appreciating the evidence regarding the accrual of the cause of action. The trial Court failed to consider the relevant legal provisions concerning possession, the enforceability of the Sale Agreement insofar as it related to Respondent No. 2, Ali Khan, and its unenforceability concerning the remaining shareholders who were not signatories to the Sale Agreement. It is a settled principle that when the question of limitation involves a mixed question of law and fact, it must be determined after a full trial, not prior to or during the framing of issues. The Trial Court’s erroneous application of this principle has resulted in a miscarriage of justice.

Fourthly, the Trial Court’s findings on the validity of the agreement dated 10.07.1985 are superficial. The evidence on record shows that Ali Khan had only 33 paise share in the property. The agreement—if valid—could only be enforceable to the extent of Ali Khan’s share. The remaining co-owners’ shares were never conveyed or authorized to be

sold. Thus, to the extent of 33 paisa, the agreement may be enforceable (subject to evidence); however, for the remaining 67 paisa, it is void and unenforceable, being executed without authority.

Fifthly, the suit of the Respondents was for declaration and possession. The burden lay upon them to establish the date when their right to possession was denied. The absence of any specific date of dispossession or denial of title materially affects the claim. The Courts below overlooked this crucial omission.

6. In light of these deficiencies, the concurrent findings suffer from *patent illegality* and *material irregularity*, warranting interference in revisional jurisdiction under Section 115 CPC. The proper course is to set aside the impugned judgments and remand the matter to the learned Trial Court to frame appropriate issues and decide the suit afresh on merits after recording comprehensive evidence.

7. It is also a matter of record that the parties involved in F.C. Suit No.04/2022 and F.C. Suit No. 23/2021 are the same, and the issues arising from the pleadings in both suits are identical. Therefore, to avoid multiplicity of proceedings, the trial court is obligated to consolidate both suits, frame consolidated issues, and adjudicate them through a single, consolidated judgment. This approach is in accordance with the principle laid down by the Hon'ble Supreme Court of Pakistan in ***Zahid Zaman Khan and others v. Khan Afsar and others (PLD 2016 Supreme Court 409)***, wherein it was observed that: *it is settled law that it is the inherent power of the court to consolidate suits and the purpose behind it is to avoid multiplicity of litigation and to prevent abuse of the process of law and court and*

to avoid conflicting judgments. No hard and fast rule forming the basis of consolidation can be definitive and it depends upon the facts and the points of law involved in each and every case, obviously where the court is persuaded that the interests of justice so demand, consolidation can be ordered, provided no prejudice is caused to any litigant and there is no bar in the way of the courts to consolidate the suits”.

8. It is a well-established principle of law that the revisional jurisdiction of the High Court is intended to rectify, obviate, and prevent the commission of jurisdictional errors, illegalities, and material irregularities committed by subordinate Courts, as enunciated by the Honourable Supreme Court of Pakistan in the case of ***Saif-ur-Rehman v. Ijaz and others (2023 SCMR 2133)***. It is equally settled that where an appellate Court decides a matter in disregard or violation of the principles laid down by the Honourable Supreme Court, such decision amounts to a material irregularity or illegality within the purview of Section 115 of the Code of Civil Procedure, 1908. In this regard, reliance is also placed on the authoritative judgment of the Apex Court in ***Noor Hussain and others v. Mst. Hussain Bibi and others (2007 SCMR 378)***.

9. In light of the above discussion, the Civil Revision Application filed on behalf of the Applicant is allowed. Consequently, the judgments and decrees dated 21.10.2023 and 30.04.2024, passed by the learned Senior Civil Judge-III, Larkana (Trial Court) and the learned Additional District Judge-IV, Larkana (Appellate Court), respectively, are hereby set aside. The Suit is remanded to the learned Trial Court for *de novo* adjudication, strictly in accordance with law, after properly framing and determining all

relevant factual and legal issues. In particular, the learned Trial Court shall address and record findings on the following aspects:

- The date of dispossession or discontinuation of possession of Respondents Nos.1 to 3;
- Whether possession of the suit land was delivered to the Applicant as part performance of the sale agreement dated 10.07.1985, or whether the Applicant forcibly or illegally assumed possession, and if so, the manner and circumstances thereof;
- Whether the sale agreement dated 10.07.1985 is legally enforceable to the extent of the 33 paisa share of Ali Khan (Respondent No.2), and void and unenforceable with respect to the shares of the remaining co-owners who were neither signatories to nor had authorized the sale of their shares;
- The applicability of relevant provisions of Schedule-I to the Limitation Act, 1908, particularly in light of Order VII Rule 6 of the Code of Civil Procedure, 1908, regarding the accrual of cause of action and limitation.

10. The learned Trial Court shall accordingly frame consolidated issues, including, but not limited to, questions relating to limitation and the enforceability or unenforceability of the sale agreement dated 10.07.1985. The Court shall permit the parties to adduce additional evidence, if necessary, for the proper adjudication of the matters in dispute. In view of the observations made in Paragraph No. 7 supra, the Trial Court shall consolidate both suits and render a consolidated judgment. Both suits shall be decided on their merits and in accordance with law within a period of three (03) months from the date of receipt of this judgment.

JUDGE