

# HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

II<sup>nd</sup> Appeal No.94 of 2023

*[Mst. Sonnan through her legal heirs vs. Late Allah Warrayo through Lrs. & Ors]*

Appellants by: M/s Javed Ali Buriro advocate a/w his associate Maqsood Ali Jatoi.

Private respondents by: Mr. Nasrullah Unar advocate

Official respondents by: Mr Allah Bachayo Soomro Additional A.G

Dated of hearing: **26.05.2025**

Date of decision: **26.05.2025**

## **ORDER**

**ARBAB ALI HAKRO, J:** This Second Appeal has been instituted to assail the judgment dated 18.08.2023, rendered by the learned VII-Additional District Judge, Hyderabad (**Appellate Court**), in Civil Appeal No. 279 of 2022, whereby the said appeal was dismissed. Consequently, the Order dated 04.11.2022, passed by the learned III-Senior Civil Judge, Hyderabad, rejecting the plaint in First Class Suit No. 1884 of 2021 under Order VII Rule 11 C.P.C, was upheld.

2. Learned counsel for the appellants submits that the maternal grandfather of the appellants, namely Balocho, was the owner of agricultural land bearing Survey Nos. 61/1, 47/1, 47/3, and 14/4, measuring 16-00 acres, situated in Deh Hotki, Tapo Tando Jam, Taluka Rural Hyderabad (**the Suit Land**). The said Balocho passed away in the year 1968, leaving behind five surviving legal heirs, namely: (i) Muhammad Ali, (ii) Lal Bux, (iii) Hussain Bux, (iv) Mst. Jannat, and (v) Mst. Sonnan. It is asserted that all the sons of the late Balocho, listed above, died issueless. However, they alienated four acres out of the Suit Land during their lifetimes, while the remaining 12 acres devolved upon his two daughters, who subsequently passed away, leaving the appellants as their only surviving legal heirs. Learned counsel further contends that, upon the approach of Respondent No.1, two orders were passed first by the Assistant Commissioner, Taluka Hyderabad, on 26.05.2021 and subsequently by the Additional Deputy Commissioner, Hyderabad, on 30.07.2021, wherein it was held that the prescribed procedure under the Sindh Land Revenue Act, 1967, had been duly followed in effecting the Foti Khata Badal of the three sons of the late Balocho. However, the

learned counsel avers that these orders of the revenue authorities were not adverse to the appellants. Nevertheless, the Mukhtiarkar, Revenue Taluka Hyderabad, illegally mutated entries bearing Nos. 270 and 271, dated 23.11.2021, in respect of the Suit Land (as available on pages 81 to 89 of the Court's file). Aggrieved by the said entries, the appellants approached the trial Court by instituting a suit for declaration and permanent injunction. However, the plaint was rejected under Order VII, Rule 11 C.P.C on the ground that the appellant's suit was barred in terms of Section 172 of the Sindh Land Revenue Act, 1967, as well as Section 11 of the Sindh Revenue Jurisdiction Act, 1876. Learned counsel for the appellants further submits that the exclusive jurisdiction to determine the legal entitlement of heirs in the property left behind by their predecessor-in-interest vests solely with the Civil Court and the revenue authorities are devoid of any jurisdiction in this regard. However, both the Trial Court and the Appellate Court failed to appreciate that Section 53 of the Sindh Land Revenue Act, 1967, expressly grants individuals the right to seek a declaration from the Court if they consider an entry in the revenue record to be erroneous and if they are in possession of the property in question. In furtherance of his argument, the learned counsel contends that a legal error or procedural defect is amenable to scrutiny and rectification within the scope of a second appeal under Section 100 C.P.C. Nevertheless, he submits that the parties have amicably resolved their dispute and filed a joint application, bearing CMA No. 940 of 2025, under Order XXIII Rule 3 C.P.C. The said application is supported by affidavits executed by the appellant, Muhammad Jamal, and the respondent, Gulab Khan, acting in their individual capacities and as attorneys for the remaining appellants and private respondents, respectively. Learned counsel earnestly prays that, since the Orders rendered by both subordinate Courts are tainted with legal infirmities and considering the well-settled principle that judicial determinations should be based on substantive merits rather than technical formalities, the impugned judgment and Order ought to be set aside. Consequently, the matter may be remanded to the Trial Court for adjudication upon the compromise application in accordance with the terms articulated therein.

3. Learned counsel representing the private respondents has not objected to the aforementioned proposal and submits that, since the parties have amicably resolved their dispute, the matter may be remanded

to the Trial Court for adjudication upon the compromise application in accordance with the terms delineated therein.

4. Upon hearing the learned counsel for the respective parties and meticulously perusing the material available on record, it transpires that the impugned Order and Judgment rendered by both the Courts below culminated in the rejection of the plaint in First Class Suit No. 1884/2021 instituted by the appellants. The rejection was premised upon the purported statutory bar enshrined under Section 172 of the Sindh Land Revenue Act, 1967, and Section 11 of the Sindh Revenue Jurisdiction Act, 1876.

5. Undeniably, the appellants, being the legal heirs of the deceased Baloch, comprising his sons and daughters, are in possession of the suit land, whereas the respondents possess no legitimate claim to the entire title or possession thereof. The appellants further assail the legality and jurisdictional competency of mutation entries Nos. 270 and 272 in Deh Form-VII-B, which were unlawfully incorporated in the name of Respondent No. 1, contending that such entries are void ab initio and devoid of lawful authority. Both subordinate Courts, in tandem, upheld the determination that the Assistant Commissioner, Hyderabad, had passed the Order dated 26.05.2021 on the application for modification of Foti-Khata Badal, subsequent to its forwarding by the Mukhtiarkar (Rev.) Taluka Hyderabad. Furthermore, Revenue Appeal No. 21 of 2021, preferred under Section 161 of the Sindh Land Revenue Act, was adjudicated vide Order dated 30.07.2021 by the Additional Deputy Commissioner, Hyderabad. Both the lower Courts erroneously proceeded on the premise that, failing to exhaust the statutory remedies available under Section 164 of the Sindh Land Revenue Act, the appellants were precluded from instituting the suit.

6. Conversely, the appellants, being in possession of the suit land, are gravely aggrieved by the erroneous revenue entries maintained by the Mukhtiarkar, which fail to conform to the requirements stipulated under Section 42 of the Sindh Land Revenue Act. Moreover, the impugned revenue entries were effected without due compliance with the Orders dated 26.05.2021 and 30.07.2021. Accordingly, the suit was unequivocally maintainable under Section 53 of the Sindh Land Revenue Act, 1967, which enables a person aggrieved by an entry in the record of rights concerning property in his possession to institute a declaratory suit for the

vindication of his proprietary and possessory rights. It further posited that since the appellants' grievance pertains exclusively to the revenue entries and not to the Orders rendered by the revenue authorities, the concurrent findings of both Courts holding that the appellants failed to exhaust the statutory remedies are manifestly erroneous and legally untenable under Section 11 of the Sindh Revenue Jurisdiction Act.

7. Strikingly, the counsel representing the respondents refrained from raising any opposition to the legal proposition advanced by the appellants' counsel. It is a well-established principle of law that a Civil Court, a Court of plenary jurisdiction under Section 9 C.P.C, retains the ultimate adjudicatory authority to determine legal rights, including inheritance claims and proprietary entitlements pertaining to agricultural land. The exclusive jurisdiction of the Civil Court is not susceptible to ouster by the Revenue hierarchy where the dispute directly implicates the title to immovable property. Given that the suit of the appellants was maintainable, both lower Courts committed grave illegality in rendering findings contrary to settled law and in failing to adjudicate upon the material issues, thereby occasioning substantial legal error susceptible to rectification under the parameters of Section 100 C.P.C.

8. Now, both the contesting parties jointly moved an application under Order XXIII Rule 3 C.P.C, expressing their mutual resolution of the dispute on terms and conditions delineated in the compromise application. Since the plaint was rejected on a preliminary question of law, the present appeal stands **disposed of** accordingly. The impugned Order and Judgment passed by the lower Courts are hereby set aside, and the matter is remanded to the Trial Court. Simultaneously, the application filed under Order XXIII Rule 3 C.P.C is transmitted to the Trial Court, with explicit directions to adjudicate upon the same in conformity with the prescribed legal framework under Rule 3 of Order XXIII C.P.C.

**JUDGE**

Sajjad Ali Jessar