

HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Civil Revision Application No.S-468 of 2024

[Abdul Hameed and others v. Abdul Hakeem]

Applicants by : Mr.Munawar Ali Abro, Advocate

Respondent by : Mr.Sintosh Kumar J-Kalal, Advocate

Dates of Hearing : 20.04.2026 & 29.04.2026

Date of Decision : 14.05.2026

ORDER

ARBAB ALI HAKRO J:- The applicants have invoked the revisional jurisdiction of this Court under section 115 CPC, calling into question the judgment dated 21.01.2015, passed by the learned 2nd Additional District Judge, Mirpurkhas in Civil Appeal No. 58 of 2014, whereby the appellate Court maintained the order dated 23.04.2014, passed by the learned I-Senior Civil Judge, Mirpurkhas in F.C. Suit No. 231 of 2012. By the said order, the trial Court, treating Issues Nos. 1 and 2 as preliminary issues, held the suit to be not maintainable and returned a finding that the plaintiffs had no cause of action.

2. The factual background, as emerges from the record and the impugned judgments, is that the applicants, being the legal heirs of late Peer Bukhsh, instituted suit seeking (i) declaration of ownership in respect of the house bearing Custodian No. 583, comprising C.S. Nos. 323 to 330 situated at Chaki Para, Mirpurkhas, or in the alternative ownership of all C.S. numbers except C.S. No. 328; (ii) recovery of compensation for use and occupation at the rate of Rs. 2000 per month and (iii) delivery of vacant possession after ejection of the respondent. The suit was founded upon an agreement dated 09.06.1960, allegedly executed between the predecessor-in-interest of the plaintiffs, namely Haji Phool Mohammad, and the original allottee, Mir Khan, son of Sajan Faqir, whereby the latter purportedly retained only half of the house and transferred the

remaining portion to Haji Phool Mohammad. The plaint further averred that the Deputy Settlement Commissioner, Mirpurkhas, cancelled the allotment of Mir Khan on 16.04.1971 and transferred the entire house to Haji Phool Mohammad; that Mir Khan subsequently accepted the said decision and requested that the payment made by him be treated as payment made by Phool Mohammad; that a Permanent Transfer Deed was thereafter issued in favour of Phool Mohammad; that subsequent litigation initiated by Mir Khan culminated in dismissal of his challenge up to the High Court and that after the death of Mir Khan and his father, possession of the house was handed over to Peer Bukhsh, who thereafter rented out the premises. It was alleged that after the tenant vacated the house, the respondent unlawfully occupied the same without permission.

3. The respondent filed a written statement denying the claim and specifically pleaded that the suit was not maintainable in its present form, that the plaintiffs had no cause of action, and that the alleged agreement did not confer any title or enforceable right upon the plaintiffs.

4. The trial Court framed Issues No. 1 and 2 as preliminary issues, namely (i) whether the suit was not maintainable and (ii) whether the plaintiffs had no cause of action. After hearing both sides, the trial Court held that the agreement relied upon by the plaintiffs had already been declared null and void in earlier litigation, including F.C. Suit No. 316 of 1979, Civil Appeal No. 28 of 1991, and proceedings before the High Court; that the plaintiffs had previously filed T.C. Suit No. 36 of 2009 which was rejected under Order VII Rule 11 CPC; and that in the absence of a prayer for specific performance, a bare suit for possession and compensation was not maintainable. The suit was accordingly dismissed.

5. The appellate Court, upon re-appraisal of the record, affirmed the findings of the trial Court. It held that the plaintiffs admittedly did not possess any valid title; that Section 8 of the Specific Relief Act permits recovery of possession only by a person holding a lawful title, and that the agreement relied upon by the plaintiffs did not create any enforceable right. The appellate Court concluded that the suit was rightly held to be not maintainable.

6. Learned counsel for the applicants contends that both Courts below acted with material irregularity in treating Issues No. 1 and 2 as preliminary issues. It is argued that the controversy involved mixed questions of law and fact, requiring evidence and therefore could not be decided under Order XIV Rule 2 CPC. It is further submitted that the Courts below failed to appreciate the effect of the Permanent Transfer Deed allegedly issued in favour of Phool Muhammad and the subsequent conduct of the parties.

7. Conversely, learned counsel for the respondent supports the impugned judgment and order and submits that the maintainability of the suit was a pure question of law, arising from admitted facts and that the plaintiffs could not seek possession or compensation without first establishing their legal character through a declaratory or specific performance suit. It is argued that the earlier judgments declaring the agreement void had attained finality and, therefore, no factual inquiry was required.

8. Heard arguments and perused the record.

9. The central question requiring determination is whether the trial Court was justified in treating Issues No. 1 and 2 as preliminary issues within the contemplation of Order XIV Rule 2 CPC and whether the findings recorded thereon suffer from any jurisdictional defect warranting interference in revision.

10. Order XIV Rule 2 CPC mandates that where issues both of law and fact arise, and the Court is of the view that the case may be disposed of on an issue of law alone, it shall try that issue first. The jurisprudence consistently holds that only a pure question of law, capable of disposing of the suit without requiring evidence, may be tried as a preliminary issue. Where the issue is a mixed question of law and fact, or where evidence is necessary to determine the legal consequence, the Court must refrain from invoking Rule 2.

11. In the present case, the maintainability of the suit turned upon admitted and undisputed facts: that the agreement relied upon by the plaintiffs had been declared null and void in earlier proceedings; that such findings had been upheld up to the High Court; that the plaintiffs had previously filed a suit which was

rejected under Order VII Rule 11 CPC and that the plaintiffs had not sought any declaratory or specific performance relief in respect of the alleged agreement. These facts were not in dispute and were acknowledged by the plaintiffs themselves before the trial Court.

12. The question whether a bare suit for possession and compensation is maintainable without first establishing title is a pure question of law, and the answer flows directly from Section 8 of the Specific Relief Act and the settled principle that possession cannot be recovered without establishing a legal right. The trial court, therefore, acted within its jurisdiction in treating Issues Nos. 1 and 2 as preliminary issues.

13. The appellate Court has correctly observed that the plaintiffs did not hold any valid title and that the agreement relied upon did not confer any enforceable right. The earlier judgments, which had attained finality, conclusively declared the agreement void. In such circumstances, the plaintiffs could not circumvent the legal requirement of seeking declaratory relief by filing a suit confined to possession and compensation.

14. Revisional jurisdiction under section 115 CPC is supervisory in nature and is not intended to permit re-appraisal of concurrent findings of law recorded by both Courts below. Interference is warranted only where the subordinate Court has acted without jurisdiction, failed to exercise jurisdiction, or acted with material irregularity. No such infirmity has been demonstrated.

15. The findings of both Courts below are firmly rooted in admitted facts and settled legal principles. The trial Court rightly invoked Order XIV Rule 2 CPC, and the appellate Court correctly affirmed that approach. No illegality, material irregularity, or jurisdictional defect is discernible.

16. In view of the foregoing discussion, this Civil Revision Application is devoid of merit and is accordingly dismissed. The judgment, decree and order of the Courts below are maintained. There shall be no order as to costs.

JUDGE