

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

**R.A No.67 of 2009**

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Date

Order with signature of Judge  
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**Present: Mr. Justice Nazar Akbar**

Applicant No.1 : Abdoo S/o Bakhar  
Applicant No.2 : Mst. Toli D/O Bakhar Wd/o Sain Dad  
Applicant No.3 : Mst. Makhan D/o Bakhar  
Applicant No.4 : Mst. Shama Bibi D/o Bakhar W/o Manghoo  
Applicant No.5 : Mst. Salimat Bibi D/o Bakhar W/o Ali  
Applicant No.6 : Mst. Baghi D/o Parto  
Applicant No.7 : Mst. Noor Khatoon W/o Late Ali Muhammad  
All through Attorney Dhani Parto, who is  
present in person.

**Versus**

Respondent No.1 : AMB Sherazi. (Nemo).  
Respondent No.2 : Haji Hashim through his legal heirs. (Nemo).  
Respondent No.3 : Ali Muhammad through his legal heir  
Respondent No.4 : Bashir alias Bashoo  
Respondent No.5 : Ishaque through his legal heirs.  
Respondent No.3, 4 & 5 through  
Mr. Raja Mir Muhammad Khan, advocate.  
Respondent No.6 : Shafi Muhammad through his legal heirs.  
(Nemo).  
Respondent No.7 : Siddique through his legal heirs. (Nemo).  
Respondent No.8 : Hamzo Shah through his legal heirs. (Nemo).  
Respondent No.9 : Suleman through his legal heirs. (Nemo).  
Respondent No.10: Haji Abdul through his legal heirs. (Nemo).  
Respondent No.11: Mukhtiarkar, Bin Qasim Town, Karachi.  
(Nemo).

Date of hearing : **23.10.2018**

Date of judgment : **13.11.2018**

**JUDGMENT**

**NAZAR AKBAR, J:-** This Revision Application is directed against  
the judgment and decree dated **26.02.2009** and **05.03.2009**

respectively, whereby III-Additional District and Sessions Judge, Malir Karachi, dismissed Civil Appeal **No.01/2009** filed by the applicants and maintained the judgment & decree dated **30.11.2000** and **13.12.2000** respectively passed by Ist Senior Civil Judge, Malir, Karachi in Civil Suit No.538/1994 (old No.915/1987) whereby the suit filed by the appellants was dismissed. The applicants preferred this Revision Application against the concurrent findings.

2. Briefly, the facts of the case are that the appellants filed suit No.538/1994 (old No.915/1987) for Declaration, Cancellation and Injunction before the Ist Senior Civil Judge, Malir, Karachi stating therein that one Khahayaro was owner of the agricultural land bearing survey No.83 and 85, situated in Deh Sanhro, Tapo Landhi, Karachi, measuring about 9 acres 7 ghuntas (subject land). Said Khahayaro died leaving behind three sons namely Bakhar, Dhani Parto and Laloo and their names were mutated in the record of rights. Bakhar died in 1953, the names of his legal heirs were mutated in the record of rights as well as the legal heirs of Dhani Parto and Laloo were also mutated in the record of rights. It was averred that subsequently a fraud has been played in the office of record of rights specially in Form-VII and applicant No.1 alongwith other applicants claimed that his father Bakhar had not sold his 3 annas share in agricultural property survey No.85 in Deh Sanhro, Tapo Landhi District Karachi to Respondent No.2, the applicants claimed that Respondent No.2 had falsely and fraudulently sold that share of 3 annas to Respondent No.1. It is also averred that father of applicants namely Bakhar had not sold the land one anna share of agricultural property in survey No.83 to Respondent No.3. It is also averred that Respondent No.3 namely Ali Muhammad had fraudulently sold one anna share in agricultural property survey

No.83, Deh Sanharo, Tapo Landhi, Karachi to AMB Sherazi, Respondent No.1. Respondents No.4 to 8 had also been falsely and fraudulently mutated and brought on record in survey No.83 and 85, Deh Sanharo, Tapo Landhi, Karachi. The record lying with Respondent No.11, Mukhtiarkar also shows that fraud has been played and applicants were fraudulently deprived of their legal rights as per inquiry officer and ACM came to conclusion that all fraud had been committed on mere oral statement and applicants' shares have been falsely sold to AMB Sherazi, Respondent No.1 by giving oral statement to the then Mukhtiarkar in book of statement. There is no documentary proof that any 3 annas share or one anna in survey No.85 and 83 had been sold to anyone. Therefore, applicants had filed above said suit for Declaration, Cancellation and Injunction and claimed that they were entitled to receive back their 3 annas shares in survey No.85 and one any share in survey No.83, mutated in the name of Respondent No.1 and his name be cancelled as the applicants are in possession of subject land.

3. Summons were issued to Respondents and written statement was filed on behalf of Respondent No.5 by his one of the legal heirs wherein she denied the allegations of the applicants, she has stated that Khayaro was not the owner of the disputed land and  $\frac{1}{4}$  share in survey No.83 belongs to Ishaques on of Haji Hashim and all of them have died about more than 20 years back and said Ishaque had left behind legal heirs i.e three sons namely Haji Hashim, Siddique and Shafi Muhammad and two daughters namely Mst. Saran and Mst. Hasna, out of them, Haji Hashim and Shafi Muhammad had died. It was further averred that Mst. Husna had also died left behind three sons namely Ali Muhammad Nabi Bux and Gul Muhammad. Mst Saran also died left behind three sons namely Din Muhammad, Ali

Muhammad and Moula Bux and two daughters Mst. Appan and Mst. Maimoona. It was also averred that Ishaque son of Haji Hashim and his brothers Hamzo and Suleman have 1/8 share that is two annas in a rupee in survey No.85, Deh Sanharo Tapo Landhi, Karachi, therefore, applicants and Khahayaro have no right in the subject land or in the share of Respondent No.5 Ishaque son of Haji Hashim, Hamzo son of Haji Hashim, Respondent No.8 and Suleman son of Haji Hashim, Respondent No.9. It was also denied that the names of applicants have been mutated in the share of Respondent No.5, therefore, no fraud has been committed with the applicants. The mutation made in the record of rights of survey No.83 were legal and the applicants have no right in the shares of late Ishaque son of Haji Hashim Respondent No.5, Hamzo Respondent No.8 and Suleman Respondent No.9 and applicants are not in possession of subject land.

4. Respondents No.3, 4, 5, 6, 8 and 9 have also filed their separate written statement wherein they have also denied the allegations of the applicants. They stated that legal heirs of Respondent No.4 Bashir alias Bashoo son of Adnan as such they have inherited six annas in a rupee share in survey No.83 and two annas share in a rupee share in survey No.85. Legal heirs of Respondent No.8 Hamzos on of Haji Hashim inherited the share of Hamzo in survey No.83 and legal heirs of Respondent No.9 Suleman son of Haji Hashim also inherited the share of Respondent No.9 in survey No.83 and 85 of the disputed land.

5. After framing issues, recording evidence and hearing learned counsel for the parties, learned trial Court had dismissed said suit by judgment & decree dated **30.11.2000** and **13.12.2000** respectively.

Against said order, the applicants preferred civil appeal bearing **No.01/2001** before III-Additional District Judge, Malir, Karachi, which was also dismissed by judgment and decree dated **26.02.2009** and **05.03.2009** respectively, hence the applicants preferred the instant Revision Application against said concurrent findings.

6. On **23.10.2018** attorney of applicants namely Dhani Parto was present in person and submitted that his counsel is not appearing for the reasons best known to him and they have already filed written arguments, therefore, this case may be decided on the basis of available record and written arguments submitted by them. Therefore, this case was reserved for judgment on **23.10.2018** when learned counsel for Respondents No.3, 4 and 5 was directed to file written arguments within one week which he filed on **26.10.2018**. I have gone through the written arguments filed by the respective parties and perused the record.

7. I have gone through the written arguments filed by both the sides. The applicant was required to satisfy the Court that what material irregularity was committed by the two Courts below whereby the suit has been dismissed and even the appeal has been dismissed. The case of the plaintiffs/applicants was that a fraud has been committed by the Respondents in collusion with the Revenue department whereby names of the applicants were changed in respect of the property in dispute. Both the Courts below have concurrently held that the allegation of fraud or forgery in the Revenue record has allegedly taken place in the year **1932** whereas the predecessor in interest of the appellant/applicants has died in **1953**. Neither the particulars of fraud have been presented before the Court in the form of evidence nor anybody else come forward to support the contention

of the applicants. The applicants have not filed any receipt of payment of dhal or any other official document showing their name or name of predecessor in interest in the suit property. Even the date of so-called alleged tempering with the record is not mentioned in the pleadings.

8. In view of the above there is no justification to interfere in the concurrent findings of the Courts below, therefore, this Revision Application is dismissed alongwith pending application(s).

JUDGE

Karachi  
Dated:13.11.2018

Ayaz Gul/P.A