

**Order Sheet**  
**IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD**  
**R.A No.10 of 2019**

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<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE(S)</b>
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For hearing of main case.

Date of hearing : 04.10.2023  
Date of Order : 04.10.2023

None present for the Applicant.

**ORDER**

**ARSHAD HUSSAIN KHAN, J.-** Through instant revision application under Section 115 CPC, the applicant has assailed the judgment dated 05.11.2018 and decree dated 07.11.2018 passed by the learned Additional District Judge, Matiari in Civil Appeal No.13 of 2016 (Re: Muhammad Ismail v. Haji Pir Bux and others), whereby the judgment dated 30.07.2016 and consolidated decree dated 02.08.2016 passed by the learned Senior Civil Judge, Matiari in F.C Suit Nos.216 of 2012 (Old No.350 of 2012) and F.C Suit No.18 of 2013 (filed by both the parties) were maintained.

2. From the record it appears that this civil revision application was presented in the office on 14.10.2019 and lastly it was fixed on 16.09.2019; however, since then neither the applicant nor his Counsel turned up to pursue this revision application, as such, I have gone through the record made available before me.

3. Briefly the facts giving rise to the present revision application are that the respondent / plaintiff Haji Pir Bux filed F.C Suit No.216 of 2012 (Old No.350 of 2012) and applicant / plaintiff filed F.C Suit No.18 of 2013. Upon notices both the parties contested the proceedings. The learned trial Court consolidated both the suits and on the basis of divergent pleadings framed the issues and recorded the evidence of the parties and after hearing the learned Counsel for the parties partly decreed the suit filed by plaintiff Haji Pir Bux vide judgment dated

30.07.2016 and consolidated decree dated 02.08.2016; whereas the suit filed by applicant/plaintiff Muhammad Ismail was dismissed. Thereafter, both the parties being aggrieved preferred Civil Appeal Nos.13 & 16 of 2016 against the said judgment and consolidated decree before the lower Appellate Court. The lower Appellate Court while considering the record dismissed both the appeals filed by the applicant / respondent and maintained the judgment and consolidated decree passed by the learned trial Court.

4. From the perusal of record, it appears that the applicant has now attempted to reopen the case through this revision application under Section 115 CPC, inter alia, on the ground that the impugned judgment and decree passed by the Courts below are illegal, void and liable to be set aside; that the learned trial Court while passing the impugned judgment has failed to consider that while decreeing the suit the defence plea could not be appreciated and considered and this fact has also been overlooked by the lower Appellate Court; that the trial Court has committed illegality while decreeing the suit; whereas, the lower Appellate Court has summarily dismissed the appeal filed by the present applicant without considering or appreciating the record.

5. This is a revision application under Section 115 CPC. The provision of Section 115 CPC envisage interference by the High Court only on account of jurisdiction alone, i.e. if a Court subordinate to the High Court has exercised a jurisdiction not vested in it, or has irregularly exercised a jurisdiction vested in it or has not exercised such jurisdiction so vested in it. It is settled law that when the Court has jurisdiction to decide a question it has jurisdiction to decide it rightly or wrongly both in fact and law. Mere fact that its decision is erroneous in law does not amount to illegal or irregular exercise of jurisdiction. For the applicant to succeed under Section 115 CPC, he has to show that there is some material defect in procedure or disregard of some rule of law in the manner of reaching that wrong decision. In other words, there must be some distinction between jurisdiction to try and determine the matter and erroneous action of a Court in exercise of such jurisdiction. It is also

settled principle of law that erroneous conclusion of law or fact can be corrected in appeal and not by way of revision, which primarily deals with the question of jurisdiction of a Court i.e. whether a Court has exercised the jurisdiction not vested in it or has not exercised the jurisdiction vested in it or has exercised the jurisdiction vested in it illegally or material irregularity.

6. No any illegality or infirmity has been mentioned in the application which could warrant interference in the impugned decisions by this Court. It is well settled that if no error of law or defect in procedure had been committed in coming to a finding of fact, the High Court cannot substitute such findings merely because a different findings could be given. It is also settled law that concurrent findings of the two Courts below are not to be interfered in revisional jurisdiction, unless extraordinary circumstances are demonstrated by the applicant. It is also trite law that a revisional Court does not sit in reappraisal of evidence and it distinguishable from the Court of appellate jurisdiction.

7. The upshot of the above discussion is that there appears no illegality, irregularity or jurisdictional error in the findings of the Courts below which could warrant interference of this Court. Hence, this Revision Application is found to be meritless and is accordingly dismissed alongwith pending application(s), if any.

JUDGE

Shahid