

ORDER SHEET  
**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**  
**C. P. No. D – 1056 of 2022**

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| Date of hearing | Order with signature of Judge |
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**Hearing of case**

For hearing of main case

**12.09.2024**

Mr. Munawar Hussain Memon, Advocate for petitioners.  
Mr. Asif Hyder K. Phulpoto, Advocate for respondents No.1 to 4.  
Mr. Ghulam Abbas Kubar, Assistant Advocate General Sindh.

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This Constitutional Petition challenges the order dated 09.06.2022, passed by the Revisional Court in Civil Revision No.18 of 2020, whereby the revision application made by the respondents / defendants against dismissal of their application under Order VII Rule 11, CPC vide order dated 29.02.2020, passed by the trial Court, was allowed on two grounds; first on the point of limitation and second that a prior Suit filed by the respondents, which was actually dismissed, some findings were given in respect of the disputed entry. On the basis of those findings, the Revisional Court allowed the application under Order VII Rule 11, CPC and rejected the plaint of F. C. Suit No.101 of 2019.

When posed with the apparent illegalities, learned Counsel for the respondents admitted that the findings of the Revisional Court's order pertain to the earlier Suit, which was dismissed. Not only so, with regard to the limitation, learned Counsel for the petitioners states that in limitation, the date of knowledge is important and since the petitioners were not party to the prior litigation, therefore, they only came to know about it once the respondents attempted to take over the possession of the land, which fact is described in Paragraph No.14 of their plaint (Page-97).

Learned AAG Sindh also supports the view that the matter may be decided on merits rather than on technicalities. It is an established position enshrined in the Hon'ble Supreme Courts various judgments that the

matters should be decided on merits not on technicalities, and if there is a dispute, appropriate issues be framed, evidence be led and a speaking judgment be rendered.

Learned Counsel for the respondents states that the respondents have a plausible case of their entitlement to the subject land, which they can prove before the trial Court by adducing the evidence, subject of the rival claim and evidence.

We, therefore, **allow** this Constitutional Petition, set aside the Revisional Order, and remand the matter back to the trial Court to de novo hear the parties, the said Court could even frame an issue with regard to limitation, also with regards the value of findings given by the previous Court, and after evaluating the evidence led, decide the case on merits. Let the needful be done within four months.

J U D G E

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Abdul Basit