

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S – 44 of 2015
(*Dr. Washdev v. Mst. Lal Khatoon & others*)

Civil Revision No. S – 45 of 2015
(*Muhammad Amin Bhutto & others v. Mst. Lal Khatoon & others*)

Civil Revision No. S – 47 of 2015
(*Regional Director Colleges, Sukkur & others v. Mst. Lal Khatoon & others*)

Civil Revision No. S – 48 of 2015
(*Jam Abdul Ghaffar Dahar & others v. Province of Sindh & others*)

Date of hearing : **04.11.2024**

Date of decision : **04.11.2024**

Mr. Soomar Das R. Parmani, Advocate for applicants in Civil Revisions No. S-44 & 45 of 2015 and for private respondents No.9, 11, 12, 15, 17 & 18 in Civil Revision No. S-47 of 2015.

Mr. Mukesh Kumar G. Karara, Advocate for applicant No.1 in Civil Revision No. S-48 of 2015 and for private respondent No.2 in Civil Revisions No. S-44, 45 & 47 of 2015.

Chaudhry Shahid Hussain Rajput, Advocate for respondent No.1 in Civil Revisions No. S-44, 45 & 47 of 2015 and for respondent No.16 in Civil Revision No. S-48 of 2015.

Mr. Ahmed Ali Shahani, Assistant Advocate General Sindh for applicants in Civil Revision No. S-47 of 2015 and for official respondents in Civil Revisions No. S-44, 45 & 48 of 2015.

J U D G M E N T

Zulfiqar Ahmad Khan, J. – Through this consolidated judgment, I intend to decide all the captioned Civil Revisions, which challenge the common judgment and decree dated 28.04.2015 and 29.04.2015, respectively, passed by learned Additional District Judge-I, Ghotki, dismissing Civil Appeals No.38, 41 and 43 of 2013, where the applicants (defendants) assailed the judgment and decree dated 30.03.2013 and 03.04.2013, respectively, passed by learned Senior Civil Judge, Ubauro, in F.C. Suit No.13 of 2007, whereby the Suit was decreed in favour of respondent (plaintiff) Lal Khatoon.

2. This case involves a property dispute between the plaintiff and several defendants. The plaintiff is the daughter of Haji Jam Zafaruddin, who passed away on 05.05.1985, and his second wife, Mst. Shamim (defendant No.2). Haji Jam Zafaruddin left behind his legal heirs: two wives, three sons and three daughters from his first wife, and two sons and four daughters (including the plaintiff) from his second wife. At the time of his death, the plaintiff was a minor, around five years old. Haji Jam Zafaruddin owned several properties in Taluka Daharki, District Ghotki, including 11 shops located at Zafar Bazar, Madni Masjid Side, Daharki Town, Taluka Daharki identified as No. TC-1475/2, 1475/3, 1475/4, 1475/5 and 1476 to 1482. The plaintiff claimed her right as a co-sharer in these properties according to Muhammadan law, alleging that defendants No.1 and 3, Jam Abdul Ghaffar (applicant No.1 in Civil Revision No. S-48 of 2015) and Jam Abdul Jabbar, are in illegal possession and have been collecting all the benefits from them. In addition to the shops, a commercial land bearing Survey No.471, measuring 2-34 acres, situated in Deh Jung, Taluka Daharki is also claimed to be property of Haji Jam Zafaruddin. The plaintiff further claimed that, during his lifetime, her father transferred 13 shops (No. TC-1473, 1474, 1475, and 1483 to 1492), situated at Zafar Bazar, Daharki, Taluka Daharki in favour of his second wife and their three daughters, including the plaintiff, through Mutation Form No.44 dated 05.12.1984 in the office of Mukhtiarkar, Ubauro. The plaintiff sought 25% share in these shops, alleging that defendants No.11 to 20 (applicants in Civil Revision Nos. S-44, 45 and 48 of 2015), however, Haji Mehar Din and Haji Ali Ahmed are not in the list of applicants, are illegally in possession.

3. The plaintiff also asserted that defendant No.1 (Jam Abdul Ghaffar) obtained a general power-of-attorney from defendant No.2 (plaintiff's mother) on 19.11.1986, which she claimed was illegal. The plaintiff contended that defendant No.2 had no authority to represent her and

other minor heirs and that, based on this power-of-attorney, defendant No.1 transferred the ownership of the 13 shops to third parties. Additionally, the plaintiff claimed she has not been given possession of her share of the inherited properties, including 33½ percent of Survey No.458, measuring 3-28 acres, and 50 percent of Survey No.459, measuring 5-38 acres, both situated in Deh Jung, Taluka Daharki. These properties were transferred through a mutation recorded under Jiryan No.23 of Book 1978-79 at Form VII, but remain in the possession of defendants No.1 and 3. The plaintiff also pointed out other inherited properties, including agricultural land bearing Survey Nos.113/2, 113/3, 113/4, 113/5, 114/4, 136/1 and 137/2, totaling 0-24 ghuntas out of 12-1 acres, situated in Deh Wahi Gul Khan, Taluka Daharki, and a commercial plot identified as Block No.75/1, measuring 0.5¾ ghuntas out of 1-16 acres, situated in Deh Takya Muhammad Panah, Taluka Daharki. These properties have not been partitioned and are still under the illegal possession of defendants No.1 and 3.

4. The plaintiff claimed that, after her father's death, she was unaware of the illegal transactions and had assumed that her family members would protect her share of the inheritance, especially considering her residence in Karachi after marriage to Shahid Khan Dahar. The plaintiff approached her mother (defendant No.2) for assistance, who informed her about the sale and transfer of the properties by defendant No.1 through the general power-of-attorney. When the plaintiff contacted defendant No.1, he stated that all the properties had been sold. She then sought the property records from the official defendants, but after receiving no response, she filed a complaint with the Provincial Ombudsman, which resulted in the release of the property records. The plaintiff approached defendants No.1 to 3 and demanded her rightful share in the properties, who initially agreed but later refused during a family meeting on 10.03.2007. The plaintiff has requested that the forged power-of-attorney

be declared null and void. She has sought her legal recognition as a rightful co-owner of the properties. She has also demanded the partition and possession of her share, compensation for the loss of income from the properties since her father's death (1985), in the form of mesne profits at a rate of Rs.1,00,000/- per month, and a permanent injunction to prevent further transfers of the properties without her consent.

5. The main defendants No.1 to 3 filed their joint written statement denying the plaintiff's claims. They asserted that defendants No.1 and 3 are not in illegal possession of the disputed property. They clarified that Survey No.471, situated in Deh Jung, is still registered in the name of Haji Jam Zafaruddin, and the Fouti Khata has not yet been changed in favour of his legal heirs. Defendant No.1, having obtained a general power-of-attorney from defendant No.2 (a *pardah-nasheen* lady), sold the shops and paid the proceeds to her for the plaintiff's share, intended for her maintenance and marriage. It was mentioned in the written statement that defendant No.2, being an illiterate woman, lacked proper legal knowledge and mistakenly, in good faith and delusion, granted the power-of-attorney to defendant No.1. Furthermore, Survey No.291, situated in Deh Daharki, was donated by the late grandfather of defendant No.3 to the Government Girls Degree College, Daharki, and was later adopted by defendant No.3. The defendants also contended that not a single ghunta of the plaintiff's share in Deh Jung, Deh Takya Muhammad Panah and Deh Wahi Gul Khan is in the possession of defendants No.1 and 3. They denied any family meeting or agreement regarding compensation to the plaintiff, claiming that such a statement was merely a baseless allegation.

6. Defendants No.11, 12, 14, 15, 16, 16-A, 17, 18, 19 and 20 filed their written statements, denying the allegations made by the plaintiff. They asserted that they lawfully purchased the relevant properties through registered sale deeds and claim to be bona fide purchasers.

7. Official defendants No.7 and 7-A filed their written statement denying the plaintiff's allegations. They asserted that the college is operating in the defunct Dispensary of Daharki, which was originally owned by the defunct District Council, Sukkur, and is now under the District Government of Ghotki. The college was established in 1995. They stated that late Ahmed Yar Khan (plaintiff's grandfather) owned land bearing Survey No. 292 (1-36), which was donated to the Local Government. It was alleged that despite donating of the land, the plaintiff, defendants No.1 to 3 and other heirs sold the property through registered sale deeds for commercial purposes, including the construction of shops and markets, generating significant revenue. Additionally, PTCL purchased 12,000 square feet from Survey No.291, and the District Council donated 7,000 square feet to the Government Girls High School, Daharki. The official defendants requested that the sale deeds executed by the plaintiff and defendants No.1 to 3 concerning Survey Nos.291 and 292, along with the subsequent entries, be cancelled.

8. The trial Court, after reviewing the pleadings of the parties, framed the following issues:

1. *Whether the suit of the plaintiff is maintainable under the law?*
2. *Whether the suit of plaintiff is under valued?*
3. *Whether the defendant No.1 sold the suit property to defendant No.11 to 21 on the basis of fraudulent General Power of Attorney purported to have been executed by the defendant No.2 mother of plaintiff in his name?*
4. *Whether the Power of Attorney bearing registration No.276 dated 19.11.1986 registered in the office of Sub Registrar Mirpur Mathelo is forged, fabricated, null, void, abinitio without legal force and liable to be canceled?*
5. *Whether S.No.291 deh Daharki was donated by grand father of defendant No.1 and 3 to Government Girls College Daharki during his life time?*

6. *Whether the suit land situated in deh Jung is still in the name of late Haji Jam Zafaruddin Khan predecessor in interest of plaintiff and the defendants No.1 and 3 and fouti khata has not been changed as yet?*
7. *Whether the share of plaintiff in the land situated in deh Jung, Takio Muhammad Pannah and Wahi Gul Khan is not in possession of the defendants No.1 and 3?*
8. *Whether the plaintiff has cause of action to file suit against the defendants No.1 to 3 and 11 to 21?*
9. *Whether the plaintiff is entitled for the relief claimed?*
10. *What should the decree be?*

9. To support their respective claims, both parties presented evidence. The plaintiff's attorney was examined and submitted the true copy of the disputed power-of-attorney, attested copies of entries in Form VII-B of Daharki, Jung and Wahi Gul Khan Dehs, an entry in the register of disputes for Deh Wahi Gul Khan, an entry in the Dakhil Kharij register of Deh Jung, extracts from the Bastagi Register (Tax Register) of Town Committee Daharki, a true copy of the entry in the pher-phar register of Town Committee Daharki, letters from the Directorate of Provincial Ombudsman (Mohtasib) Sindh, a power-of-attorney, a true copy of the Dakhil Kharij register and true copies of entries in Form VII-B. Additionally, witness Riaz Ahmed was examined in support. On the defendants' side, Abdul Hafeez, Assistant Professor and Authorized Officer of defendant No.7, was examined and produced the application of Jam Ahmed Yar Khan, a forwarding letter, order and attested copy of a letter. Following this, defendants No.11, defendant No.18's attorney and defendant No.20 were examined. Finally, the evidence of defendant No.1 was recorded.

10. The trial Court, after hearing the parties, decreed the suit with costs through the judgment and decree dated 30.03.2013 and 03.04.2013, respectively. It held that the plaintiff, being a legal heir and the daughter of deceased Jam Zafaruddin Khan, is entitled to the relief claimed. The trial

Court further determined that a fraud had been committed against the plaintiff through the preparation and execution of a false, void and fabricated general power-of-attorney, which was subsequently cancelled. Defendants were directed to hand over possession of the plaintiff's rightful share, and the revenue authorities were instructed to demarcate and partition the suit property, ensuring possession is handed over to the plaintiff. Additionally, defendants No.1 to 3 were ordered to pay mesne profits to the plaintiff at the rate of Rs.1,00,000/- per month until the decree is satisfied. This decision was challenged by the defendants through three separate appeals, as mentioned above. All the appeals were dismissed by a common judgment and decree dated 28.04.2015 and 29.04.2015, respectively. Consequently, the instant Civil Revisions have been filed, challenging the judgments and decrees of the Courts below.

11. Heard learned Counsel for the parties and perused the material available on record with their assistance.

12. At the very outset, learned Counsel for the main respondent in Civil Revision No. S-47 of 2015 has stated that the respondent does not intend to dispossess the applicants, provided the disputed land from Survey Nos.291 and 292 of Deh and Tapa Daharki is used for college, school or related educational purposes. In light of this undertaking, learned AAG Sindh chose not to press Civil Revision No. S-47 of 2015. Consequently, this revision is hereby **allowed**, as the plaintiff has not made any claim against the college or school in her plaint. The reasons for allowing the revision are that learned Counsel for the main respondent has already affirmed that the respondent does not wish to dispossess the applicants from the aforesaid land. Furthermore, in cross-examination conducted by Counsel for defendants No.1 to 3, the plaintiff's attorney was asked whether the area of Survey No.291 had been donated by Jam Ahmed Yar Khan, the plaintiff's grandfather, to the government for construction of the

Girls College. The plaintiff's attorney replied "*I do not know whether the area of S.No:291 was donated by Jam Ahmed Yar Khan the grand father of the plaintiff to the Govt: for the construction of Girls College.*" This response reflects that defendants No.1 to 3 were implicitly agreeing with the position, while the plaintiff's attorney was unaware of this detail, which is ultimately irrelevant as the plaintiff did not make any claim regarding it. Further, in cross-examination by DDA on behalf of defendants No.4 to 10, the plaintiff's attorney stated "*I do not know whether prior to the Girls College Daharki there was a small dispensary for Daharki at that place.*" This admission indicates that the plaintiff's attorney acknowledged the existence of the college on the subject land. The acknowledgment continued when the plaintiff's attorney admitted "*I do not know since then the Girls College Daharki is established but the college is existing. It is correct to suggest that Girls college Daharki is situated on S.No:291 deh Daharki.*" This admission becomes even more significant considering that, on the one hand, the plaintiff's attorney demonstrated full awareness of the plaintiff's father's properties but, on the other hand, showed unawareness regarding the establishment date of the college, despite being 53 years old at the time of his deposition on 19.09.2011 and the fact that his marriage to the plaintiff took place on 06.11.1995, as deposed by his witness Riaz Ahmed.

13. The remaining Civil Revisions have been filed by the subsequent purchasers of the property, the defendants, who claim to have lawfully acquired the disputed property from Jam Abdul Ghaffar (defendant No.1). They assert that they obtained the property based on a general power-of-attorney allegedly granted to him by the plaintiff's mother (defendant No.2). However, the authenticity and validity of this power-of-attorney are heavily disputed, with the plaintiff asserting that the document is forged and fraudulent. Jam Abdul Ghaffar, who is both the applicant in one of the revisions and a respondent in others, is at the center of this dispute. He is accused of executing the contested transactions without rightful authority.

14. The crux of the dispute revolves around the claim by the plaintiff that a general power-of-attorney, allegedly executed by her mother (defendant No.2) on 19.11.1986, in favour of defendant No.1, was fraudulent and void ab initio. This central issue was meticulously examined by the trial Court, which found that the power-of-attorney was forged, illegally executed and liable to be annulled. The plaintiff presented substantial evidence, including documentary proof and testimonies, to substantiate her claim. During the trial, the plaintiff's attorney's cross-examination revealed key admissions that further corroborated the plaintiff's case, particularly regarding the fraudulent nature of the power-of-attorney and its subsequent misuse by defendant No.1. As a result, the trial Court rightly concluded that the power-of-attorney was a fraud and thus could not stand legally.

15. In the case at hand, the written statement filed by the defendants No.1 to 3, particularly paragraph No.5, contains a crucial admission that significantly impacts the overall dispute and the legal standing of the case. The admission made by the defendants, especially defendant No.1, that the power-of-attorney was executed by defendant No.2 (the plaintiff's mother) in "good faith" and in "delusion" but "mistakenly" due to her illiteracy, is a critical element in determining the legitimacy of the document and the actions taken on its basis. The relevant portion of the written statement reads as follows:

"That defendant No.2 is an illiterate woman, she has no proper knowledge of law. She gave attorney power to defendant No.1, mistakenly, in good faith and in delusion."

16. The defendants' admission that the power-of-attorney was executed in "good faith" and in "delusion", but "mistakenly" casts doubt on the legality and integrity of the document. This is because a power-of-attorney, particularly one that involves the transfer of property rights, must be executed with full awareness and understanding of its implications. The

fact that the document was allegedly signed by an illiterate person who did not fully comprehend its legal significance renders it highly suspect and likely invalid. This admission provided a substantial foundation to declare the power-of-attorney as forged and void ab initio. By admitting that the power-of-attorney was executed mistakenly, the defendants inadvertently supported the plaintiff's argument that the document was forged or executed under duress or misunderstanding. This bolsters credibility to the plaintiff's allegations of fraud and strengthens the case for the cancellation of the power-of-attorney.

17. The manner in which defendant No.1 treated his sister, the plaintiff, has significant implications for both the legal and familial aspects of the case. Defendant No.1's actions, as an elder brother, not only raise serious legal questions regarding the legitimacy of the power-of-attorney, but they also demonstrate a gross breach of the moral and ethical responsibilities he owed to his sister, especially as her co-heir. The impact of his actions on the plaintiff's life is profound, as she was deprived of her rightful share of the inheritance. His decision to act on the power-of-attorney, which was executed by their illiterate mother without understanding its full legal consequences, suggests a complete disregard for his sister's rights and welfare. This is particularly alarming given that the power-of-attorney was granted when the plaintiff was a minor, making her vulnerable to exploitation.

18. Defendant No.1's testimony reveals several key admissions that expose flaws in his actions. He admitted to being appointed as the general attorney by his mother, despite lacking legal authority. His statement that his sisters acted only at their husbands' instigation reveals an attempt to justify his behaviour in a biased manner, disregarding his sister's legal rights to the inheritance. Additionally, his admission that he sold the plaintiff's share without her consent highlights his exploitation of his

position as an elder brother, prioritizing personal gain over familial responsibilities.

19. Defendant No.1's statement also introduces an element of family dynamics, where he mentions the financial burden of paying for his sisters' marriages. While it is customary for brothers to contribute to the marriage expenses of their sisters, this assertion becomes problematic in the context of the dispute. Defendant No.1 implies that, by spending the money from the sale of the property on his sisters' marriages, he had fulfilled his duties as a brother. However, this reasoning fails to account for the fact that he effectively curtailed the plaintiff's entire share of the property in lieu of these expenses. This action represents an imbalance in the familial responsibilities that were owed to his sister, as it appears to justify taking her inheritance and using it for his own purposes, under the guise of fulfilling his duties as a brother.

20. The argument that he used the proceeds of the property sale to cover marriage expenses is weak and insufficient to override the plaintiff's legal entitlement to her share. By unilaterally selling the property and keeping the proceeds without her consent, defendant No.1 undermined his sister's rights and essentially deprived her of her rightful inheritance. This has long-term financial and emotional impacts for the plaintiff, as she was left without her share of the family property, which could have been a critical asset for her well-being and future security.

21. Defendant No.1's admission that, as a brother, he occasionally gave something to the plaintiff demonstrates a token recognition of her share, but it does not justify his actions in denying her the full inheritance she was legally entitled to. His acknowledgment that he did not know whether the plaintiff had received a fair share, or whether her "sharaee" share was distributed to her, further suggests negligence and an absence of genuine concern for her rights. This casual acknowledgment of her

entitlement to a share, coupled with the failure to act in accordance with those rights, highlights the exploitation of his position and his lack of commitment to treating his sister equitably.

22. The trial Court thoroughly evaluated the plaintiff's claim regarding her rightful share in inherited properties, including agricultural land and commercial plots, which defendants No.1 to 3 allegedly withheld. While the defendants denied ownership, the plaintiff provided strong evidence, including revenue records and official documents, proving her legal entitlement. As the legitimate daughter of late Haji Jam Zafaruddin Khan, the plaintiff was entitled to a share of the disputed properties. The trial Court determined that the general power-of-attorney executed by defendant No.2 on behalf of the minor children was unlawful, as it lacked a Court order or guardianship certificate, rendering it void. Based on compelling evidence of fraud, the sale of the property by defendant No.1 was deemed unlawful. Regarding the purchasers of the properties, who claimed to be bona fide buyers through registered sale deeds, the trial Court concluded that the sales were made without the consent of all legal heirs and were based on a fraudulent power-of-attorney allegedly executed by defendant No.2, the plaintiff's mother, rendering the sales legally invalid. Additionally, one of the key issues in the suit was the plaintiff's demand for mesne profits at the rate of Rs.1,00,000/- per month from defendants No.1 to 3 for wrongful possession and non-payment of benefits from the inherited properties since her father's death in 1985. After considering the plaintiff's evidence and the defendants' refusal to acknowledge her rightful share, the trial Court granted this relief. After careful consideration, the trial Court ordered the defendants to return possession of the disputed properties to the plaintiff and instructed the revenue authorities to partition and demarcate the land. The trial Court's decision to rule in the plaintiff's favour was well-founded and upheld on appeals.

23. A review of the judgments of the Courts below shows that neither any of these Courts decided the case perversely, nor it could be said that they acted illegally or with material irregularity in the exercise of their jurisdiction. Where a lower Court passes an order in exercise of its jurisdiction, the High Court has not to interfere with it in revision unless the order (being sought revision), if allowed to stand, is likely to occasion a failure of justice or cause an irreparable injury, which is not the case at hand. In the absence of any defect in the concurrent findings of both the Courts below, interference of High Court in civil revision as held by the Supreme Court in the case of Abdul Mateen and others v. Mst. Mustakhia (2006 SCMR 50), amounts to improper exercise of revisional jurisdiction.

24. In light of the detailed analysis above, I conclude that there is no merit in the remaining Civil Revisions. The judgments and decrees passed by learned Additional District Judge-I, Ghotki and learned Senior Civil Judge, Ubauro, are sound and well-founded in law. Therefore, these revisions (Civil Revisions No. S-44, 45 & 48 of 2015) are hereby **dismissed**. However, as per para No.12, Civil Revision No. S-47 of 2015 is **allowed**.

These are the reasons of the short order dated 04.11.2024. Office is directed to place a signed copy of this judgment in the connected files.

Abdul Basit

J U D G E