

HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS**Civil Revision Application No.S-274 of 2024**

Present:

Mr. Justice Dr. Syed Fiaz ul Hasan Shah.

Applicant: Abdul Ghaffar S/o Sharf-u-Din through his
Special Attorney Abdul Sattar S/o Sharf-u-Din.
Through Mr. Abid Hussain Chang, Advocate,

Respondents: Yasir S/o Abdul Haleem.
Through, Mr. Nabi Bux Narejo, advocate.

Official Respondents
Through, Mr. Ayaz Ali Rajpar, A.A.G Sindh.

Date of hearing: 11.03.2025.

Date of Judgment: 07 .04.2025

J U D G M E N T

Dr. Syed Fiaz ul Hasan Shah, J: Applicant Abdul Ghaffar being aggrieved has filed this Civil Revision Application impugning the order dated 14.03.2023 passed by learned 1st Additional District Judge, Sanghar in Civil Appeal No.107/2022, whereby the appeal was dismissed and judgment and decree dated 20.10.2022 passed by learned 1st Senior Civil Judge, Sanghar in F.C Suit No.07/2018 vide which said suit was dismissed, was maintained.

1. The brief facts are that the Applicant purchased agricultural land in the name of his minor nephew (Defendant No.1) bearing S. No.414/5, 6, 415/5, 6, 416/1,2,3 & 417/1,2,3 measuring 25-03 acres, situated in Deh Sareji, Taluka Sanghar through statement of sale dated 16.11.1992 and payment of entire consideration amount and the suit land is under the possession of Applicant since purchase, the Applicant also purchased

another land through statement of sale in the name of his minor nephew Jessar and brother Abdul Sattar Narejo and the Applicant purchased the suit land in the name of Respondent/Defendant No.1 only BENAMIDAR and Respondent/Defendant tried to dispossess the Applicant forcibly from the suit land, hence the Applicant filed the suit with following prayers:-

- a) To declare that plaintiff is purchaser and owner of suit land and entitled to retain its possession and also entitled for the transfer of the suit land in his name.
- b) To declare that defendant No.01 is only benamidar and has no any right, title and character over the suit land and he is legally bound to transfer the suit land in the name of plaintiff.
- c) To declare that the action regarding the claim over the suit land, action of forcible dispossession from the plaintiff and also trying to sale the suit land to any influential person are illegal, malafide, null, void, ab-initio and not binding upon the plaintiff.
- d) That Defendant No.01 may be restrained from selling, transferring, leasing and mortgaging the suit land and also from interfering in the peaceful possession of plaintiff over the suit land and defendants No.02 to 04 may be restrained from issuance of fresh sale certificate and defendant No.05 from registering the sale deed in respect of the suit land in the name of any other person, except the plaintiff, in whatsoever manner, by issuing permanent injunction against them.
- e) That, the cost of the suit may be borne by the defendants.
- f) That, any other relief which this Honourable Court deems fit and proper may be awarded to the plaintiff.

2. The Respondent/ Defendant No.1 filed his written statement and contested the suit and in rebuttal by admitting the purchase of suit in the name of Respondent/Defendant No.1 by Applicant but the consideration amount was paid from the income/earning of share of the father of Respondent/Defendant No.1 and Applicant being the eldest was used to managing and maintaining all the affairs of all other brothers, including the affairs of father of the Respondent/Defendant No.1 and general power of attorney was executed in favour of Applicant by the other brothers of the Respondent. It is further stated that the title in the name of Respondent/Defendant No.1 was not consequences of the will/ wish of the Applicant but under the directions of the father of Respondent/Defendant No.1 as his father in fact was the owner of such amount of consideration. The Applicant even at no material times challenged the status of Respondent/Defendant No.1 even on the date of attaining majority nor served any notice. The Respondent/Defendant No.1 also denied the possession of the Applicant by stating that title and possession of suit land is with the Respondent/Defendant No.1. The Applicant has no cause of action to file this suit, hence suit of the Applicant is liable to be dismissed with costs.
3. Based on the pleadings of the parties, the trial court framed the following issues:

ISSUES

1. Whether the plaintiff is owner of the suit land bearing S. No.414/5,6, 415/5,6, 416/1,2,3 & 417/1,2,3 ad-measuring 25-03 acres, situated in Deh Sareji, Taluka Sanghar through statement of sale dated 16.11.1992 in the name of his minor nephew defendant No.1 and another agricultural land purchased in the name of his minor nephew Jessar son of Abdul Rehman Narejo and brother Abdul Sattar son of Sharf-uddin Narejo vide statement dated 16.11.1992?
2. Whether the defendant No.1 is only benamidar and is legally bound to transfer the suit land in the name of plaintiff?

3. Whether the suit of the plaintiff is not maintainable?
 4. Whether the suit of the plaintiff is barred by law?
 5. Whether the plaintiff has accrued no cause of action to file the suit?
 6. Whether the plaintiff is entitled for the relief claimed?
 7. What should the decree be?
4. After framing of issues, the Applicant/plaintiff despite repeated directions of the trial court, failed to produce his evidence, therefore, his suit was dismissed under order XVII Rule 3 C.P.C vide judgment and decree dated 20.10.2022. Subsequently, the Applicant filed Civil Appeal No.107 of 2022, which was dismissed vide judgment dated 14.03.2023. Aggrieved by this decision, the Applicant has filed the present Civil Revision Application.
5. Heard the learned counsel for the Applicant, Respondent No.1 and learned Assistant A.G and perused the record and the impugned order with their assistance. The point of determination as raised is formed hereunder:
1. Whether a court can dismiss suit under Order XVII Rule 3 CPC without accepting or rejecting the procedure of Order XII Rule 6 CPC?
 2. Whether a court can decide a lis under Order XII Rule 6 CPC at his own?
6. It is settled proposition of law that a question of law can be raised at any stage of the case but it is to be considered in the light of facts and circumstances of each case. It is for the court to decide whether such party can be allowed to raise such objection for the first time before this court or facts and circumstances of a case do not permit to allow a party to raise such question for the first time.

7. This Civil Revision Application is against the concurrent findings of facts. Undoubtedly, the trial court has no other option except to exercise jurisdiction under Order XVII Rule 3 C.P.C in case of deliberated delay by a party and avoiding to produce evidence. It is matter of record that the Applicant/Plaintiff has continuously prolonging the matter and kept on adjournments which led to the trial Court to exercise power as embodied according to the situation. However, the learned counsel for the Applicant/Plaintiff drawn my attention towards the Written Statement filed by the Respondent No.1 in F.C Suit No.07/2018 and stressed that the admission of the Respondent No.1 has been ignored by the courts below.
8. **Unequivocal and clear admission—Court may pronounce Judgment:** It is settled principles of law that when a claim of party who instituted a suit, is admitted by the other party clearly, unambiguous and unequivocally, the Court would have to adopt the procedure under Order XII Rule 6 CPC. Guidance can be taken from the rule laid down by the Honorable Supreme Court of Pakistan in case titled **“Muhammad Rafique and Others versus Manzoor Ahmad and Others” (2020 SCMR 496)**. Therefore, the trial court at first instance ought to examine and decide the procedure under Order XII Rule 6 C.P.C which has not been done in the present case.
9. The Rule 6 of Order XII, Code of Civil Procedure, 1908 provide:

“6. Judgment on admissions. Any party may, at any stage of a suit, where admissions of fact have been made, either on the pleadings, or otherwise, apply to the Court for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties; and the Court may upon such

application make such order, or give such judgment, as the Court may think just.

Rule 1 of Order XV, Code of Civil Procedure, 1908 enunciates:

“Parties not at issue. Where at the first hearing of a suit it appears that the parties are not at issue on any question of law or of fact, the Court may at once pronounce judgment.”

The expression **“without waiting for the determination of any other question between the parties”** as contained in Order XII Rule 6 of the Code of Civil Procedure, 1908 is requirement of law that at the time of preliminary examination of parties, the Court has first to record reasons in case admission of facts or claims is clear, unequivocal and unambiguous, such admission follow by passing of Judgment based on admission as embodied under Order X Rule 1 CPC, Order XIV Rule 1 (5) CPC and Order XV Rule 1 CPC which provides to record the admissions and denials of the parties at the **“first hearing of the suit”** and only in its absence alternatively a Court has to adopt procedure by fixing suit for evidence allowing parties to adduce evidence and produce witnesses and documents. Such an interpretation emerges from the conjoint reading of the provisions of Order X Rule 1; Order XIV Rule 1(5); and Order XV Rule 1 CPC. The cumulative effect of such provisions and the term “first hearing of the suit” can never be earlier than the date fixed for the preliminary examination of the parties and the settlement of issues. The hearing pre-supposes the existence of an occasion and cannot skip away simply when prima facie it seems that clear or evasive admission has come on record.

10. The aspiration of law required that the case to be proceeded step by step and it is not permissible to skip the prescribed laws and procedure

and directly jump over the stage of evidence by invoking provisions of Order XVII Rule 3 CPC. The trial Court first had to form its opinion that the matter needs to be disposed of as per requirement of Order XII Rule 6 CPC or otherwise as the law does not prohibit the Court to not look into pleadings and record of both the parties at preliminary examination in order to appreciate admission or denial of parties.

11. **Judgment on admission through suo motu powers**—Indisputably, in the present case, the applicant has not filed an application for Judgment on admission. However, non-filing of an application does not preclude the court to look into record at preliminary examination and pass judgment on admission subject to that such admission is unambiguous, clear and unequivocal. The Division bench of Delhi High Court in **Parivar Seva Sansthan Vs Dr Ms Veena Kalra AIR 2000, Delhi 349 DB** in which it was observed:

12. "Bare perusal of the above Rule shows that it confers very wide powers on the Court to pronounce judgment on admissions at any stage of the proceedings. The admission may have been made either in pleadings or otherwise. The admission may have been made orally or in writing. The Court can act on such admissions either on an application of any party or on its own motion without determining the other questions. Even constructive admission firmly made can be made the basis. Any plea raised against the contents of the documents only for delaying the trial being barred by Ss.91 and 92 of the Evidence Act or other statutory provisions can be ignored. These principles are well settled by catena of decisions in Dudh Nath Pandey Vs Suresh Chandra AIR 1986 SC 1509, in Surjit s. Kazakhstan ISP Ltd. Vs Charanjit Lal 1998.2.DLT 476; Laxmi kant vs MN Dastur 1998.4.AD (Delhi). The use of the word any stage in the rule itself shows that the intention of legislature is to give widest possible meaning. Thus, mere framing of issues cannot by itself

deter the Court to pass judgment on admissions under O.12 R.6 CPC ".

13. In **ITDC Ltd. v. M/s. Chander Pal Sood and Sons**, 84 (2000) DLT 337

DB, the Hon'ble Delhi High Court of held as under:

"17. Order 12 Rule 6 of Code gives a very wide discretion to the Court. Under this rule the Court may at any stage of the suit either on the application of any party or of its own motion and without determination of any other question between the parties can make such order giving such judgment as it may think fit on the basis of admission of a fact made in the pleadings or otherwise whether orally or in writing...."

14. **Judgment on admission—discretionary powers:** It is pertinent to note

that the Rule provides that the court "may" pronounce or pass Order or judgment based upon admission of a party thus it is clear that the legislative intent is to confer discretionary powers on the court and a judgment based on admission cannot be claimed as matter of right. The legislative intent is further clarified by the proviso to Order VIII Rule 5 CPC. The proviso provides even when the fact has been admitted by an admission of a party, the court has discretionary power to require admitted fact to be proved through any other mode means. However, such discretion has to be exercised reasonably and not arbitrarily. When the Court deals with an application under Order 12 Rule 6, CPC, the Court is entitled to see, not only the pleadings but also documents in order to find out the admitted position emerging from the record. This is because of the expression "or otherwise" as found in the Order 12 Rule 6 CPC.

15. The very object of the principles is to truncate the need of trial when admission by the opposite side is clear or the same can be inferred. It is

now no *res integra* that relegating a party to suffer the peril of trial when the same is avoidable on the touchstone of the above principles subject to circumstances of case that a judicial discretion is required to be applied.

16. Undoubtedly, the Qanun-e-Shahadat Order, 1984 requires mandatory duty to prove the pleadings under its provisions and mere pleadings cannot be made the basis for grant of a decree and facing oppositely the evidence alone cannot be considered to grant a decree. This point has eminently dealt with by apex Court in case “**Sardar Muhammad Naseem Khan v. Returning Officer, PP-12 and others**” (2015 SCMR 1698) has observed as follows:

"3. ... The importance of the pleadings and its legal value and significance can be evaluated and gauged from the fact that it is primarily on the basis thereupon that the issues are framed; though the pleadings by themselves are not the evidence of the case, the parties to litigation have to lead the evidence strictly in line and in consonance thereof to prove their respective pleas."

17. In contrast, the facts admitted need not be proved as provided by Article 113 of Qanun-e-Shahadat Order, 1984 is consistent in equation with Order XII Rule 6 CPC which is reproduced below:

"Facts admitted need not be proved—No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule or pleading in force at the time they are deemed to have admitted by their pleadings:

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions."

18. I have seen the Written Statement filed by the Respondent No.1. For the convenience, the relevant paragraph is reproduced as under:

“Regarding the para-1 of the plaint it is respectfully but specifically submitted that though the plaintiff had purchased the suit land in name of the answering defendant but consideration whereof was paid from the income / earning of share of father of answering defendant. It is worth to add here that it was the present plaintiff who, being the eldest, was managing and maintaining all the affairs of all other brothers, including father of the answering defendant. It was the reason that at later time even general power of attorney was executed in favour of the plaintiff by other brothers.

It is further submitted that the title in name of the answering defendant was not the consequence of the will / wish of the present plaintiff but direction of the father of answering defendant as he (father of answering defendant) in fact was the owner of such amount (consideration). In view of these explanations, the contents of the para-1 of the plaint are not denied.

2. That, the para-2 of the plaint is admission of fact that such title was an acknowledgment of rights / shares of other brothers. Without prejudice to this, it is respectfully submitted that else there was no other reason or justification for purchasing the properties by plaintiff in names of his nephews.
3. Contents of the para-3 of the plaint are vehemently denied being entirely incorrect, false and baseless one.

Without prejudice to above, it is respectfully submitted that the plaintiff has pleaded no reason or justification for purchasing the lands in names of answering defendant and other nephews. In absence thereof, the sale being past and closed transaction were / are not open to be claimed benami or otherwise”

19. In the present case, the trial Court has not formed opinion with regard to the facts by indepth examination of pleadings and unnoticing that there is no denial to the factum that the disputed land has purchased by the Applicant. A finding on the point of admission either in terms of clear and unequivocal or unclear and ambiguous ought to record. On the contrary, the trial Court has skipped the procedure of Order X and Order XIV CPC and adopted procedure of Order XVII CPC and while adopting such jumped over procedure, the findings on Issue No.2 have been given which are contrary to pleadings and it is clear case of mis-reading and non-reading of record. The relevant portion is re-produced as under:

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“Defendant No.1 in written admitted that he is benamidar but he denied payment of purchasing price by plaintiff by stating that **he became a benamidar under the directions of his father and his father was owner of such amount / consideration**”

Emphasized supplied.

20. The trial Court must proceed the matter in between the lines of pleadings and its confirmatory evidence, if so recorded. When the pleadings are based either on admission it has to announce Judgments with reasons or alternatively record reason of unclear or ambiguous admission and only then to proceed with the matter by recording evidence after proper appreciation of evidence and record. The trial Court has not formed opinion about Judgment on admissions of Respondent No.1 or alternatively holding that such admission is not clear or it is ambiguous which needs full trial. Notably, the basic provision of procedure has skipped away and on the contrary, the finding has given while deciding the matter under Order XVII Rule 3 CPC which is not the part of pleadings of the Respondent No.1 and this aspect has also ignored by the Appellate Court and a jurisdictional error surfaced

out before me. The findings of the Appellate Court are incorrect by misreading of the evidence that the Respondent No.1 has become benamidar under direction of father who was the owner of such consideration (which is not stated in the pleadings). The law does not permit the parties to take departure from the pleadings. The courts below have seriously erred by permitting the Respondents to take departure from the pleadings and have wrongly appreciated it. The finding is in contravention of paragraph-1,2&3 of the Written Statement re-produced herein above at para-18 of this Judgment. It is settled law that parties are bound by their pleadings, and for this reason, parties have to appear in the witness box to confirm their pleadings and nothing else, and departure from pleadings is not permissible **(2012 SCMR 251), (2019 MLD 61)**. The Hon'ble Supreme Court of Pakistan further elaborated this view in ***"Sardar Muhammad Naseem Khan vs. Returning Officer, PP-12 and others"* (2015 SMCR 1698)** as under:

"The importance of the pleadings and its legal value and significance can be evaluated and gauged from the fact that it is primarily on the basis thereupon that the issues are framed; though the pleadings by themselves are not the evidence of the case, the parties to a litigation have to lead the evidence strictly in line and in consonance thereof to prove their respective pleas. In other words, a party is bound by the averments made in its pleadings and is also precluded from leading evidence except precisely in terms thereof. A party cannot travel beyond the scope of its pleadings. It may be pertinent to mention here, that even if some evidence has been led by a party, which is beyond the scope of its pleadings, the Court shall exclude and ignore such evidence from consideration".

21. It is also against the law that denial in a Written Statement of a fact pleaded in a suit cannot be termed as an admission though evasive denial is an admission which is subject to the settled guidelines i.e. clear,

unequivocal, unambiguous and meaningful. Reliance can be placed in the case laws **2017 SCMR 855, PLD 2004 Lahore 125, 1994 CLC 123 and PLD 2020 Lahore 1166**. The Hon'ble Supreme Court of Pakistan has interpreted the provision of Order XII Rule 6 C.P.C that decree on admission, admission must be unequivocal, clear, unconditional and unambiguous. Reliance can be placed on "**Mc Donald Layton & Company Pakistan Ltd V. Uzin Export-Import Foreign Trade Co. and others**" (1996 SCMR 696). Therefore, the trial court had to decide the matter in the lights of guidelines settled by the apex Court.

22. The arguments of the Counsel for Applicant about the impugned Order is fallacious on the point of dismissal of suit under Order XVII Rule 3 CPC as well as that his pendency of application for transfer of case as the trial Court was not restrained to proceed with the matter and it had no option except to proceed with the suit as mere filing of transfer application is not sufficient to withhold procedure of law and it also caused harassment to other-side by holding case for indefinite time period. However, this Court has framed the point of determinations which are solely substantive questions of law, therefore, I abstain to offer any views on the factual aspect of the present Revision application. It is settled law that Revisional power of this Court extends only to the error of law or material irregularity, including misreading and non-reading of the evidence, that may significantly impact the outcome of a case.
23. The procedural law is unstrained scope for activity of court to try a case and such successive horizontal rows of procedure cannot casually be ignored. Conversely, if a court takes a divergent way adopting discretion for intravenous access to reach a conclusion, it has to record reasons though the discretion is recognized and understand as course of conduct, action, or thought judiciously and persuasively reminding oneself with essential components of various doctrines settled by

superior courts. For instances, in case “**Chairman Regional Transport Authority Rawalpindi v. Pakistan Mutual Insurance Company Limited, Rawalpindi**” (PLD 1991 SC 14); the Supreme Court held that “*In exercising discretionary powers, one has to deal without discrimination, fairly, justly and reasonably*”.. and in another case “**Sabir Iqbal v. Cantonment Board Peshawar**” (PLD 2019 SC 189), it was held that “*the Court will quash the exercise of discretionary powers in which there is not a reasonable relationship between the objective which is sought to be achieved and the means used to that end...*”.

24. By using discretion, the procedural law is not framed to ignore it. The Court cannot be skipped away from the mandatory procedure of cumulative effect of Rule 1 of Orders X, XIV and XV CPC that is “at the first hearing of the case” which mean the stage of preliminary examination and settlement of issues, and straightaway lending on Order XVII CPC and demand evidence cannot be termed as discretion but contrary to the language of Order XII Rule 6 CPC which read “**without waiting for the determination of any other question between the parties**” and made it mandatory upon court to firstly deal with the issue of admission and to decide the same through speaking order. It is not permissible to huddled the rights of parties while hanging the point of “admission”. Therefore, I am inclined to allow this Civil Revision application while I am restraining myself to give any direction on this point of admission and leaving this aspect for the trial court to deal with it in accordance with law and dictum of superior courts on “admission”. Consequently, the judgment and decree dated 14.03.2023 passed by learned Additional District Judge-I, Sanghar is set-aside with direction to trial court to decide the matter afresh.
25. It may be observed that it is for the trial court to preliminary examine and record findings on the point of admission as to whether it is clear,

unambiguous, unconditional and unequivocal or otherwise. Once the trial Court reaches out that it is clear, unequivocal and without any ambiguity, it has to pronounce judgment without delving further into matter for trial of suit. Conversely, in case the trial Court arrives at the conclusion that the admission is not in accordance with the parameters of Order XII Rule 6 CPC and guidelines laid down by Hon'ble Supreme Court of Pakistan, it has to record reasons for it and then to proceed with the matter as per available mode of prove with liberty to pass an appropriate order and costs in case of failure of Applicant to appear or to give evidence as the case may be.

26. The Civil Revision Application stands disposed of.

JUDGE

Faisal