

# IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

## IInd Appeal No.S- 04 of 2018

Appellant: Ismail Jatoi, through Mr. Atta Hussain A. Chandio, Advocate.

Respondents: Deputy Commissioner, Larkana and others through Mr. Abdul Waris Bhutto, Assistant Advocate General, Sindh.

Date of hearing: 26.03.2025

Date of judgment: 11.04.2025

### JUDGMENT

**Jan Ali Junejo, J:--** This IInd Appeal arises from the Judgment and decree dated 30.06.2018 (here-in-after referred to as the Impugned Judgment and Decree), passed by the Court of learned IVth Additional District Judge, Larkana (the Appellate Court), in Civil Appeal No.126 of 2017, whereby the Civil Appeal was dismissed, which was filed against the Judgment and Decree dated: 25.11.2017, passed by the learned IInd Senior Civil Judge, Larkana (the Trial Court), in F.C. Suit No. 39 of 2014 & 136 of 2015, was upheld. The appellant, has challenged both the Impugned Judgment of the Appellate Court and the findings of the Trial Court before this Court by invoking the provisions of Section 100, of the Code of Civil Procedure, 1908.

2. The Appellant/Plaintiff, Ismail S/o Mohammad Suleman Jatoi, filed F.C. Suit No. 39/2014 before the IInd Senior Civil Judge, Larkana, seeking declaration, possession, and a perpetual injunction regarding Plot No. 824/1,6, situated in Ward "C" Christian Colony, Larkana. He claimed ownership of the property through a registered sale deed dated 16.04.2008, legally recorded under registered No. 2362 by the Sub-Registrar, Larkana, and further registered by the Photo Registrar under M.F. Roll No.U-3522 dated 24.04.2008. Subsequently, the property was mutated in his favor on 30.04.2008 by the City Surveyor, Larkana, and official Rule Cards were issued confirming his title. The dispute arose when, on 24.02.2014, the Appellant discovered laborers working on the plot, engaged in boring and excavation under orders from Mukhtiarkar, Revenue Larkana. Upon approaching the Mukhtiarkar's office, the Plaintiff was informed that the Deputy

Commissioner, Larkana, had ordered construction on the property. Despite the Plaintiff's repeated efforts, the officials refused to acknowledge his ownership, compelling him to file the suit, asserting that the Deputy Commissioner and other defendants had no lawful claim over the property and that their actions constituted illegal encroachment. The Trial Court initially dismissed the suit on 15.06.2015, prompting the Appellant to file Civil Appeal No.14/2015 before the II-Additional District Judge, Larkana. The appeal was allowed on 26.01.2016, and the case was remanded with explicit instructions to the Trial Court to determine Issue No.3 (maintainability of the suit) ahead of other issues and provide detailed findings on each issue separately. However, upon rehearing, the IInd Senior Civil Judge, Larkana, again dismissed the suit on 25.11.2017, disregarding the remand order by failing to address Issue No.3 first and improperly consolidating Issues No.1 and 2. The Appellant filed Civil Appeal No.126/2017 before the IV-Additional District Judge, Larkana, arguing that the Trial Court had misread evidence, ignored official admissions, and failed to comply with procedural mandates. Despite substantial documentary evidence, including the Assistant Commissioner's letter dated 16.01.2018 confirming the Appellant's ownership, the Appellate Court upheld the Trial Court's decision on 30.06.2018, rejecting the Appellant's claims.

3. During proceedings of the Suit, the learned trial Court, framed the following issues on 03.09.2014:

1. *Whether the plaintiff is lawful owner of a plot No.824/1, 6 area 74.7 Square yards (376) Square feet and 456 Square feet total area 1129 Square feet Ward "C" Christian Colony, Larkana under registered sale deed No.2362 dated 16.04.2008?*
2. *Whether cause of action arose to the plaintiff as pleaded by him?*
3. *Whether suit of plaintiff is not maintainable against defendants as alleged by defendant No.2?*
4. *What should the decree?*

The examined himself as PW-1 (Ex:41) and produced the following documentary evidence:

*Registered Sale Deed bearing registered No. 2362, dated April 16, 2008, duly registered by the Sub-Registrar, Larkana, and copied by means of microfilming system by the Photo Registrar, Larkana under M.F. Roll No. U-3522, dated April 24, 2008.*

*Six certified copies of Extract Form concerning the Suit Property.*

*Copy of a Property Rule Card showing mortgage etc. of Suit Property in Court cases sometime in past.*

*Site plan sanctioned by T.M. Larkana.*

The Plaintiff asserted that the sale deed was legally executed and remained intact, that he had paid all due taxes, and that his name was still recorded in official revenue and municipal records. Per contra, the Defendants examined:

1. DW-1: Ghous Bux Jatoi (Mukhtiarkar Revenue, Larkana) (Ex:57).
2. DW-2: Parvez Ali Bhutto (Mukhtiarkar, Revenue, Larkana) (Ex:99).
3. DW-3: Rustam Khan Lashari (Regional Director, Katchi Abadi, Larkana) (Ex:110).

The Defendants following documents:

- Attested P.S. Copy of Ruled Card No. 6606 (Ex:99-A), presented by DW-1 Parvez Ali Bhutto (Mukhtiarkar).
- Attested P.S. Copy of Card of Sub-Division Bearing No. 824/1 (Ex:99-B), original seen and returned.
- Entry dated November 29, 2007 (Ex:99-C), Entry dated August 6, 1997 (Ex:99-D), and Entries dated April 30, 2008 (Ex:99-E and Ex:99-F), reflecting revenue records.
- Letter to Katchi Abadi (Ex:99-G) and P.S. Copy of Letter issued by Katchi Abadi dated June 20, 2014 (Ex:99-H).
- Letter issued by the Hon'ble Sessions Judge, Larkana (Ex:99-I).
- Attested P.S. Copy of Notification regarding Survey No. 824/1 and 825 (Ex:110-A), Map of Allotment for an area of 824 (Ex:110-B), and List of Allotment (Ex:110-C), produced by DW-2 Rustam Khan Lashari.
- Application of Gul Muhammad for NOC (Ex:110-D), Challan by which Gul Muhammad purchased a plot (Ex:110-E), Order of Deputy Director and Application of Muhammad Ismail (Ex:110-F and 110-G), and Letter dated November 26, 1997 (Ex:110-H).

The Defendants claimed that the land belonged to the Government Collectorate, arguing that only 50.66 square yards had been allotted to one Gul Muhammad, who later sold the property to third parties. They alleged that the

Appellant's title was fraudulent, but failed to produce any cancellation order or document proving such fraud.

4. The learned counsel for the Appellant contended that both the Trial Court and the Appellate Court failed to adjudicate the legal issues framed in the suit. Specifically, the Trial Court ignored the direction given in Civil Appeal No.14/2015, where it was explicitly instructed to decide Issue No.3 (maintainability of the suit) ahead of other issues. Instead, the Trial Court once again disregarded this instruction, leading to a gross miscarriage of justice. The counsel argued that the findings on Issue No.3 were erroneously recorded as "negative", contradicting admitted documentary evidence showing that the Appellant is the lawful owner of the suit property through a registered sale deed. The City Surveyor's mutation entry and Rule Cards corroborate the Appellant's claim, which was not denied by the Respondents. The Assistant Commissioner's letter dated 16.01.2018 also recognized the Appellant's ownership, further strengthening his case. It is further argued that the Appellate Court failed to decide the pending application under Order 41 Rule 27 (1)(b) CPC, which sought additional evidence crucial for determining the matter. It is further argued that the Trial and Appellate Courts failed to apply proper legal scrutiny and misread the documentary and oral evidence, thereby violating fundamental principles of justice. Lastly, the learned counsel prayed for allowing the IInd Appeal.

5. The learned Additional Advocate General (AAG) contended that the Trial Court's judgment was based on sound legal reasoning. He argued that the Appellant failed to produce a valid allotment order proving the ownership of the suit land beyond his sale deed. It is further contended that the suit land was part of Government Collectorate property, and the Appellant could not claim ownership without proper documentary proof. He further contends that the Regional Director, Katchi Abadi, confirmed that the Appellant's predecessor-in-title had only been allotted 50.66 square yards, whereas the Appellant was claiming ownership of 1129 square feet. It is further argued that the Assistant Commissioner's contradictory letters were insufficient to establish ownership. It is further contended that the findings of the Trial Court on Issue No.3 (maintainability of the suit) were correct as the Appellant failed to prove lawful entitlement over the suit property. It is further contended that the Appellate Court rightly upheld the dismissal of the suit as per legal and factual considerations. Lastly, the learned AAG prayed for dismissal of the IInd Appeal.

6. After carefully considering the arguments advanced by the counsel for both parties and thoroughly examining the available evidence, it is apparent that the Trial Court was expressly directed to first adjudicate Issue No. 3 concerning the maintainability of the suit before addressing any other matters. However, despite this unequivocal directive, the Trial Court once again failed to comply with the order dated January 26, 2016. Instead, it proceeded to decide Issues No. 1 and 2 together (though in earlier Judgment, the Issues Nos.1 & 2 were separately discussed) and, while addressing Issue No. 3, merely relied on the reasoning provided for Issues No. 1 and 2 without conducting an independent discussion on its merits. This failure to adhere to the mandated procedure constitutes a clear violation of the judicial directive. The Appellate Court, in turn, disregarded this significant procedural flaw and routinely affirmed the Trial Court's ruling, resulting in an unjust outcome. The Trial Court overlooked critical evidence supporting the Appellant's position, such as mutation entries, Rule Cards, and the City Surveyor's admission, all of which substantiated the Appellant's claim. Additionally, a letter from the Assistant Commissioner dated January 16, 2018, explicitly recognized the Appellant's ownership, yet this was not given due consideration in the judicial analysis. The trial Court also failed to uphold the legal weight of a registered sale deed, which, under well-established legal norms, is presumed valid unless convincingly disproven—a principle that was disregarded in this case. The Appellant submitted an application to introduce further evidence to clarify ownership records, but the Appellate Court neglected to rule on it, constituting a procedural lapse that influenced the case's outcome. Interestingly, the same Trial Court had earlier, in its judgment dated June 15, 2015, expressly acknowledged the Appellant as the legitimate owner while addressing Issue No. 1 and conclusively deciding it in the affirmative. However, in a subsequent judgment delivered on November 25, 2017, the court deviated from its previous determination without the introduction of any fresh evidence, thereby casting serious doubts on the consistency and reliability of its judicial reasoning. Furthermore, the Trial Court did not adhere to the remand order in Civil Appeal No. 14/2015, which required Issue No. 3 (maintainability) to be adjudicated independently. Instead, it improperly merged multiple issues, flouting procedural norms. The Trial Court's judgment reflects a misinterpretation of evidence and key admissions, including:

- The registered Sale Deed, Extract Form, and Site Plan.

- The City Surveyor's official record, which unequivocally demonstrated the Plaintiff's ownership.
- The Assistant Commissioner's letter dated January 16, 2018, affirming the Plaintiff's title.
- The Defendants' failure to provide a cancellation order or any evidence undermining the Plaintiff's ownership.

It is a settled principle of law that a registered sale deed carries a presumption of correctness unless stronger evidence is brought forward to challenge its authenticity. The Honourable Supreme Court of Pakistan in ***Rasool Bukhsh and another v. Muhammad Ramzan (2007 SCMR 85)*** has categorically held that: *"It is a settled law that the registered document has sanctity attached to it and stronger evidence is required to cast aspersion on its genuineness as law laid down by this Court in Mirza Muhammad Sharif's case NLR 1993 Civil 148"*. It was further held by the Honourable Supreme Court of Pakistan that: *"It is pertinent to mention here that the registered document is not only binding to the parties in the document but is equally applicable to the 3rd party. See Gosto Beharidas's case AIR 1956 Kalkata 449"*. Applying this principle, it is evident that the registered Sale Deed in favor of the Appellant stands valid unless rebutted by strong evidence, which the Respondents have failed to produce. The Respondents did not bring on record any document, order, or cancellation notice that could cast aspersion on the genuineness of the registered sale deed. Moreover, the registered instruments, including the mutation entry and Rule Cards in favor of the Plaintiff, are not only binding upon the parties to the instruments but are equally applicable to third parties, including the Defendants in the present case. This position has been reaffirmed in ***Abdul Aziz v. Abdul Hameed (2022 SCMR 842)***, wherein the Honourable Supreme Court of Pakistan held:

*"We also note that registered document carries presumptions attached to it under Sections 35, 47 and 60 of the Registration Act, 1908 and under Article 90 of the Qanun-e-Shahadat Order, 1984 and the court will presume correctness of the registered document in accordance with the presumptions attached unless the same are disputed or rebutted. For this if any authority is needed, reference may be made to "Muhammad Siddique (deceased) v. Mst. Noor Bibi (deceased)" (2020 SCMR 483), "Abdul Razaq v. Abdul Ghaffar" (2020 SCMR 202); "Anjuman-e-Khuddam-ul-Quran, Faisalabad v. Lt. Col (R) Najam Hameed" (PLD 2020 SC 390); "Muhammad Idrees v. Muhammad Pervaiz" (2010 SCMR 5); "Rasool Bukhsh and another v. Muhammad Ramzan" (2007 SCMR 85)"*.

7. It is also a well-documented fact that the Respondents have not contested the validity of the registered Sale Deed executed in favor of the Appellant before any competent Court of law. In this regard, reference may be made to the authoritative ruling of the Honourable Supreme Court of Pakistan in the case of *Amir Jamal and others v. Malik Zahoor-ul-Haq and others* (2011 SCMR 1023), wherein it was explicitly observed that: *“We have heard the learned counsel and have also perused the record. In exercise of writ jurisdiction, question of title of a property cannot be gone into by the High Court. The scope of Article 199 is dependent on the questions which are devoid of factual controversy. A registered instrument can only be cancelled by a civil court of competent jurisdiction on the ground of fraud or otherwise. Section 39 of the Specific Relief Act provides that a party which seeks cancellation of a registered instrument has to file a civil suit by approaching the civil court of competent jurisdiction and writ jurisdiction in such matters is barred”*. The respondents did not offer compelling evidence to dispute the registered sale deed, which is assumed to be valid under sections 35, 47, and 60 of the Registration Act, 1908. This legal oversight by both the trial and appellate courts resulted in an erroneous dismissal of the case, as they did not properly consider this fundamental principle. Additionally, the trial Court failed to follow a remand order from a higher Court (Civil Appeal No.14/2015), and the appellate court ignored this procedural mistake, rendering its judgment unsustainable. Upon reviewing the evidence, including documentary and oral testimonies, and relevant legal precedents, the following findings emerge:

- The appellant has demonstrated ownership through a valid registered sale deed, mutation entry (a record of ownership transfer), and official Rule Cards, all of which remain unchallenged.
- The respondents did not produce any legal documents or orders to disprove the appellant’s ownership.
- The Courts misapplied the law by not recognizing the required legal presumption for registered documents, which contradicts Supreme Court decisions in cases like *Rasool Bukhsh* (2007 SCMR 85) and *Abdul Aziz* (2022 SCMR 842).
- The trial Court’s disregard for the remand order in Civil Appeal No.14/2015 made its decision procedurally flawed.

The learned trial Court neglected to adjudicate the critical question concerning the maintainability of the Suit, a fundamental prerequisite under

established legal principles. It is well-settled that a matter cannot be conclusively resolved without first addressing this threshold jurisdictional issue. The Supreme Court of Pakistan has consistently emphasized this principle in precedents such as *Administrator, Thal Development through EACO Bhakkar and others v. Ali Muhammad* (2012 SCMR 730) and *Bharoo and 2 others v. Chief Settlement Commissioner and 2 others* (1999 SCMR 786). These rulings affirm that maintainability is a foundational inquiry that must precede any substantive adjudication. Consequently, this case warrants remand to the trial Court for a fresh determination specifically on Issue No. 3, which pertains to the Suit's maintainability ahead of other issues and provide detail findings on each issue separately, ensuring procedural fairness and adherence to judicial precedent.

8. Upon thorough examination of the arguments presented and the evidence available in the record, this Court concludes that the Impugned Judgments and Decrees rendered on November 25, 2017 (by the Trial Court) and June 30, 2018 (by the Appellate Court) contain legal deficiencies and are hereby overturned. Consequently, F.C. Suit No. 39/2014 (renumbered as Suits 66/2014 and 136/2015), instituted by the Appellant, is remanded to the Trial Court. The Trial Court is directed to re-evaluate **Issue No. 3** through a detailed ahead other issued and provide detail findings on each issue separately, independent analysis grounded in the existing evidentiary record, ensuring both parties are granted a fair opportunity to present their arguments. A fresh judgment and decree must be rendered in strict alignment with the principles outlined in this Judgment within a period of three months under intimation to the learned Additional Registrar of this Court. All parties will independently bear their respective legal costs incurred during these proceedings.

**JUDGE**