

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P No. D- 670 of 2025
[Mst. Sitaran Bibi Vs. Province of Sindh and others]

C.P No. D- 671 of 2025
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BEFORE

Mr. Justice Arshad Hussain Khan
Mr. Justice Syed Fiaz-ul-Hassan Shah

Petitioner : Through Mr. Sadam Hussain Khaskheli
Advocate.

Respondent-6 : Through Mr. Yaseen Leghari, Advocate.
Through Mr. Muhammad Ismail Bhutto,
Addl. A.G.

Date of hearing & order: 27.05.2025.

ORDER

ARSHAD HUSSAIN KHAN, J. – The above Constitutional Petitions are being decided by this common order as these are between the same parties and involve similar questions of law and facts.

2. Through instant constitutional petitions filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed the order(s) dated 07.04.2025, passed by learned Additional District Judge, Matli, who while dismissing Revision Application(s) maintained the order dated 10.3.2025, passed by learned Senior Civil Judge Matli, dismissing application under Article 84 of Qanun-e-Shahdat Order moved in F.C. Suit.

3. The facts of the case in nutshell are that the petitioner filed First Class Suit for Declaration, Cancellation and Permanent Injunction against respondents in respect of agricultural land bearing Survey Nos. 369/1 to 4, 7/1, 324, 352, 353, 351, 350(2-06) area 30-34 acres, 299/A(3-15), 299/B(3-22), area 6-37 acres in all 37-31 acres situated in Deh and Tapo Dasti Taluka Matli District Badin. In the said suit Plaintiff claimed that her share has fraudulently been sold out by her brother to respondent No.6; therefore, she prayed for cancellation of sale deed. On service of summons respondent(s) / defendant(s) appeared, filed written statement denying the claim of the Plaintiff. On the pleadings of the parties, learned trial court framed

the issues and started recording evidence in the matter. The Plaintiff led evidence of her witnesses and closed the side; while respondent No.6 was still leading evidence and the case was at the verge of finalization, when plaintiff / petitioner changed her counsel and moved an application under Article 84 of the Qanun-e-Shahadat Order praying for sending the original Sale Deed dated 01.02.2006 with original CNIC to expert for verification of her thumb impression and further to verify the name of plaintiff from NADRA record. Learned trial court after hearing both the parties dismissed the application. Being aggrieved, the Plaintiff filed Civil Revision Application, which was also dismissed, hence the instant Constitutional Petitions.

4. Learned counsel argued that nobody will be prejudiced if the subject application is allowed and on the contrary the dispute should have been resolved on the report of fingerprint expert but learned trial court committed illegality in rejecting the application; that Sub Registrar is not expert of handwriting / fingerprint expert, therefore, he cannot testify the thumb impression to be of the petitioner; that the subject application has no relevance with the evidence of respondents, the report of fingerprint expert would be helpful in fair and impartial decision of the case but both the courts below have failed to apply its judicial mind and dismissed the application. He lastly prayed for allowing the instant Constitutional Petitions and setting aside the orders of both the courts below.

5. The stance of private respondent is that the petitioner herself put her thumb impression on Sale Deed before Sub-Registrar at the time of registration and through subject application the petitioner intends to cause delay in trial; therefore, the application was rightly dismissed the courts below, as such, the present Constitutional Petition is not maintainable and is liable to be dismissed.

6. Admittedly, the Plaintiff filed suit before the trial court claiming that her share has fraudulently been sold out by her brother to respondent No.6; therefore, she prayed for cancellation of sale deed. During pendency of the suit, plaintiff moved an application under Article 84 of the Qanun-e-Shahadat Order, 1984 for comparison of her thumb impression on the sale deed. The said application was dismissed by the trial court, vide impugned order dated 10.3.2025. An excerpt of the order is reproduced below:

“ I have heard learned counsel for the parties and perused contents of instant application along with supporting affidavit of Plaintiff, carefully. Obviously, in instant suit issues were framed by the court on 22-07-2022 and Plaintiff evidence side was concluded on 29-08-2023. Defendants have also examined their 04 witnesses and the matter is fixed for future evidence of defendant side.

Admittedly, evidence of Plaintiff Mst. Sitaran Bibi was recorded by the court on 29-08-2023 and thereafter instant application in hand was moved by Plaintiff on 03-03-2025 I am agree with contention of Mr. Abdul Haque Laghari that delay in filing of instant application is not explained in affidavit of plaintiff.

The Plaintiff filed instant application under article 84 of Q.S.O 1984 wherein the contention of learned counsel for defendant No.6 is that Plaintiff Mst. Sitaran Bibi herself executed registered Sale Deed before Sub-Registrar Matli and put her RTI but now she on instance of some elements *mala fidely* denying her thumb impression of registered Sale Deed thus expert opinion is necessary. The scheme of legislature as provided in Article 84 of Q.S.O 1984 is that at first instance the court will examine and verify disputed thumb impression and if feels that expert opinion is necessary then send disputed thumb impression to expert. Here in instant suit evidence of plaintiff side is concluded and defendants have also examined their witnesses and now the matter is fixed for further evidence of defendant side. The defendants have opposed the instant application being filed just to linger on the matter. In these circumstances I am of the view that at this stage there is no need of sending alleged registered Sale Deed and thumb impression of Plaintiff to expert for his opinion.

In view of the above discussion and reasons the instant application merits no consideration and the same is hereby dismissed.”

7. Perusal of the above order reflects that the trial court without giving cogent reasoning dismissed the application merely on the grounds that the evidence of plaintiffs' side is concluded and the subject application has been moved to linger on the proceedings. In this male dominated society where the female legal heirs are consistently deprived even of their 'Sharai' shares in inheritance matters like sisters, the principle of caution in protecting the legitimate rights of illiterate, parda observing ladies must be applied dynamically. It is a settled law that the beneficiary of any transaction involving parda nasheen and illiterate women has to prove that the transfer was with free consent and will of the lady, she was aware of the meaning, scope and implications of the transfer document that she was executing. She was made to understand the implications and consequences of the same and had independent and objective advice either of a lawyer or a male member of her immediate family available to her. While rendering this view, we are fortified by the dictum laid down by the Supreme

Court in the case of *Ghulam Muhammad v. Zohran Bibi and others* [2021 SCMR 19].

8. In case of any dispute regarding genuineness of signatures/ thumb impressions, Articles 59 and 84 of the Qanun-e-Shahadat Order, 1984 are enabling provisions of law. Refusal to get comparison of thumb impressions / signatures amounts to negation of justice. The report of finger print and handwriting experts are always open to objection by either side. There will be no harm to any party rather it will be appropriate and imperative to reach a just and proper conclusion that signatures / thumb impressions will be got compared. Therefore, reaching a fair conclusion is more necessary to soothe the litigants than to deliver a wrong decision hurriedly.

9. Since the matter is still pending adjudication before the trial court, as such, no prejudice would be caused to either party if the sale deed sought to be cancelled is sent to Forensic Science Laboratory for comparison of thumb impression / signature of the petitioner / plaintiff. Conversely same would be in the interest of justice for a fair and just decision of the case.

10. In the circumstances, the instant Constitutional Petition is allowed. Resultantly, the impugned order of trial court is set-aside. The trial shall send the subject sale deed to the Forensic Science Laboratory for comparison of thumb impression / signature of the petitioner / plaintiff through fingerprint expert. Meanwhile the trial court may proceed with the matter and conclude the same but shall pass final judgment after taking into consideration the report of fingerprint expert.

These Constitutional Petitions stand disposed of.

JUDGE

JUDGE