

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S – 171 of 2024

(Fateh Muhammad Mubejo & others v. Shah Bux Mubejo & others)

Date of hearing : 04.03.2025

Date of decision : 04.03.2025

Mr. Abdul Mujeeb Shaikh, Advocate for applicants.
Mr. Ahmed Ali Shahani, Assistant Advocate General Sindh.

J U D G M E N T

Zulfiqar Ahmad Khan, J. – The applicants (plaintiffs) have filed this Civil Revision to challenge the judgment and decree dated 29.05.2024 and 31.05.2024, respectively, passed by learned Ist Additional District Judge, Naushahro Feroze in Civil Appeal No. 212 of 2019. The said appeal, filed by the respondents (defendants), resulted in the reversal of the judgment and decree dated 30.05.2019 and 31.05.2019, respectively, passed by learned Ist Senior Civil Judge, Naushahro Feroze in F.C. Suit No. 01 of 2014, whereby the applicants' suit had been decreed. The appellate Court, while setting aside the judgment and decree of the trial Court, issued specific directions to the trial Court for further proceedings.

2. The case pertains to a dispute concerning ownership of agricultural land originally owned by Muhammad Khan, father of respondent No.1. The applicants claimed that Muhammad Khan, through a registered sale deed, sold 5-00 acres from Survey No.89 of Deh Tetri to Muhammad Parial, father of applicants No.1 and 2, who remained in continuous possession with corresponding revenue entries. In 1994, Muhammad Parial gifted the said land to applicants No.1 and 2 through a registered deed, whereafter the revenue record was modified accordingly, and they have remained in possession since then. Additionally, the applicants asserted that applicant No.1, and applicant No.3 through his father Shafi Muhammad, purchased 1-07 acres out of the same survey number from Muhammad Khan in 1984 through a registered sale deed, followed by possession and entry in the revenue records.

3. Upon Muhammad Khan's death in 2008, respondent No.1 allegedly began asserting false ownership claims and attempted to dispossess the applicants using threats and force. The applicants further alleged that respondent No.1, in collusion with revenue officials, forged the revenue record and procured a fraudulent registered sale deed in 2008, allegedly executed by respondents No.2 to 11 (legal heirs of Muhammad Khan) in his favour. The applicants sought a declaration of their lawful ownership, cancellation of the impugned forged deed, and a permanent injunction against interference with their possession or alienation of the suit property.

4. The respondents, conversely, denied that Muhammad Khan ever executed any sale deed in favour of the applicants' predecessors or received consideration. They challenged the authenticity of the sale deeds, alleging discrepancies in sale consideration, lack of valid witnesses, and non-compliance with Article 17(2) of the Qanun-e-Shahadat Order and Islamic requirements. They claimed that the applicants' documents were forged, and the corresponding revenue entries were fraudulent. They contended that Muhammad Khan remained in possession until his death in 2007 (not 2008 as claimed by the applicants), after which the respondents continued to possess the land. They alleged that the applicants unlawfully dispossessed them on 23.12.2013 and falsely asserted ownership. They affirmed the validity of the registered deed dated 16.08.2008 in their favour while challenging the authenticity of the applicants' documents.

5. The trial Court, after framing issues, recording evidence, and hearing both parties, decreed the suit in favour of the applicants by judgment dated 30.05.2019. However, this judgment was reversed by the appellate Court through its judgment dated 29.05.2024, directing the trial Court to record additional evidence, particularly from Tapedar Tetri and the concerned Mukhtiarkar, on oath with an opportunity for cross-examination by both parties. It further directed the production of relevant official records, including evidence from a bank official regarding any mortgage over Survey No.89. The trial Court was also tasked with determining any forgery, fixing responsibility, and, if necessary, initiating

appropriate legal proceedings, including criminal action against responsible individuals, particularly public officials.

6. I have heard the learned counsel for the parties and carefully perused the material available on the record.

7. The core controversy between the parties revolves around the ownership of the land, initially held by one Muhammad Khan. The applicants claim ownership through registered sale deeds allegedly executed by Muhammad Khan in the years 1983 and 1984 in favour of their predecessors, followed by a gift mutation in 1994 and subsequent possession. On the contrary, the respondents refute the sale transactions entirely, alleging that the sale deeds are forged, do not bear valid witnesses, and are the result of collusion between the applicants and revenue officials, including the then Tapedar and Mukhtiarkar of the area.

8. The trial Court decreed the applicants' suit based on the evidence presented. However, the appellate Court, through a well-reasoned judgment dated 29.05.2024, rightly identified serious procedural lapses and material omissions in the trial proceedings. It noted that despite serious allegations of forgery and collusion involving revenue officials and despite official defendants being impleaded, the trial Court failed to summon or examine those officials, the Tapedar and the Mukhtiarkar, whose roles were important to the controversy. Furthermore, despite the plea that the suit land was mortgaged prior to the alleged sale, the record was not called from the concerned bank, nor was any official witness from the concerned bank examined to confirm or rebut this assertion.

9. The appellate Court correctly held that such lapses had resulted in a miscarriage of justice and that additional evidence was necessary to resolve the real controversy between the parties. Relying upon the principles laid down in the cases reported as 2023 YLR 2441, PLD 2002 Supreme Court 615 and 2001 SCMR 772, the appellate Court rightly exercised its jurisdiction under Order XLI Rules 25 and 27, CPC to remand the matter for recording further evidence. The direction to examine the Tapedar, Mukhtiarkar and officials from the bank, subject to

cross-examination by both parties, is essential to determine the authenticity of the documents and allegations of fraud.

10. In view of the appellate Court's findings, it is evident that the trial Court failed to perform its duty to call and examine the official defendants whose involvement was seriously alleged in the pleadings. As a result, important questions surrounding the authenticity of the sale deeds, the alleged mortgage and changes in the revenue record could not be adequately adjudicated. The appellate Court has also rightly emphasized the need to fix responsibility for any forgery, if established, including initiating criminal proceedings against responsible individuals, including public officials.

11. It is well-settled that revisional jurisdiction under Section 115, CPC is limited to correction of jurisdictional errors, material irregularities, or illegality in the proceedings of subordinate courts. The appellate Court, in the present case, acted strictly within the parameters of law and procedural fairness. Its judgment does not reflect any jurisdictional error or illegality, rather it advances the cause of justice by ensuring that both parties are afforded a fair opportunity to substantiate their claims and rebut each other's allegations through relevant official records and testimony.

12. In view of the above, I do not find any merit in the present Civil Revision. The appellate Court's decision is well-reasoned, and calls for no interference. Accordingly, this Civil Revision is **dismissed**. The judgment and decree dated 29.05.2024 and 31.05.2024 passed by the learned 1st Additional District Judge, Naushahro Feroze in Civil Appeal No.212 of 2019 are hereby maintained.

Above are the reasons of my short order dated 04.03.2025.

J U D G E

Abdul Basit