

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision Appln. No. S-23 of 2019

Applicants : 1. Syed Ghalib Hussain Shah s/o Syed Shahnawaz Shah through his legal heirs;
1(a) Moazam Ali Shah
1(b) Azam Ali Shah
1(c) Zaigham Ali Shah
1(d) Asim Ali Shah
2. Mureed Hussain Shah s/o Shahnawaz Shah through his legal heirs;
2(a) Dilshad @ Tahir Shah
2(b) Tarique Hussain Shah
2(c) Kashif Shah
Through Mr. Asadullah Soomro, Advocate

Versus

Respondents : 1. Government of Sindh, through Secretary Revenue Department, Tughlaq House Sindh Secretariat Karachi.
2. Mukhtiarkar Revenue, taluka Rohri
3. Taluka Municipal Officer, Rohri
4. Taluka Nazim Rohri, now Chairman Municipal Committee, Rohri
5. Ghulam Mustafa Shah @ Atif Shah
6. Syed Wasif Ali Shah, both sons of Syed Himmat Ali Shah
(Resp. Nos.01 to 04 through Mr. Zulifiqar Ali Naich, Assistant A.G Sindh)
(Resp.Nos.5 & 6 through Mr. Muhammad Asim Malik, Advocate)

Date of hearing : 21.08.2025

Date of decision : 19.09.2025

J U D G M E N T

KHALID HUSSAIN SHAHANI, J. – Applicants named above have invoked the revisional jurisdiction of this court, challenging the concurrent judgments and decrees passed by both the learned trial court and the learned first appellate court. The applicants seek to impugn the judgment and decree dated 17.11.2016 and 19.11.2016 respectively, passed by the learned IInd Senior Civil Judge, Sukkur dismissing F.C Suit No.147/2011, and the appellate judgment and

decree dated 24.11.2018, passed by the learned Additional District Judge (H), Sukkur dismissing Civil Appeal No.120/2016 and upholding the trial court's decision.

2. The brief facts emanating from the record reveal that the applicants filed a suit for declaration, cancellation and permanent injunction against the respondents claiming co-ownership rights in Survey No. 30 of Deh Kot Mir Yaqoob Ali Shah, Rohri. The applicants contended that the said survey numbers totaling (201-00) acres were originally Jagir of Deh Mir Yaqoob Ali Shah, which was abolished in 1958 under martial law regulation. The applicants claimed that their father had one paisa share in the said survey numbers, and plaintiff No. 1 was gifted one paisa share through gift deed dated 24.02.1988, which was duly mutated in revenue records. The crux of the applicants' case was that respondents No. 5 and 6, being sons of Syed Himat Ali Shah, obtained a gift deed dated 07.06.2006 bearing Registration No. 764 from their father in respect of Survey No. 30, but without proper partition or specific demarcation of boundaries. The applicants alleged this gift deed was illegal under Muhammadan Law as the essential ingredients of a valid gift were not fulfilled. Furthermore, respondents No. 5 and 6 obtained allegedly illegal approval plans from the Municipal authorities and threatened to dispossess the applicants from the disputed plot.

3. The learned trial court framed issues wherein the first issue erroneously mentioned "registered sale deed" instead of "gift deed," which became a contentious point throughout the proceedings. The applicants led evidence through several witnesses including Dilshad Hussain Shah as legal heir and attorney, Syed Kousar Abbas Ali Shah, Nisar Ahmed who was Junior Clerk at TMA Rohri, and Shakeel Ahmed Ansari who served as Tapedar Rohri. The respondent Nos.5 and 6 filed written statements, but failed to adduce evidence despite sufficient opportunities, resulting in the court closing their evidence side suo moto on 25.10.2016. The learned trial court dismissed the suit holding that Survey No.30 had a total area of (29-32) acres with both the plaintiffs and Syed Himat Ali Shah having one paisa share respectively. The court found that Syed Himat Ali Shah, being the owner of one paisa share, was competent to gift his share to defendant No. 6, and therefore the gift deed and approved construction plan were legal.

4. Aggrieved by the trial court's decision, the applicants filed Civil Appeal No. 120/2016 which was subsequently transferred to the learned Additional District Judge (H), Sukkur for disposal. The learned appellate court

dismissed the appeal and upheld the trial court's judgment through its detailed judgment dated 24.11.2018. The appellate court relied heavily on the precedents established in **Mst. Sanobdar Sultan & others versus Obaidullah Khan & others (PLD 2009 SC 71)** and **Mst. Roshan Ara Begum & 08 others versus Muhammad Banaras & another (2016 YLR 1300)**, which establish that a co-sharer cannot file a suit for declaration and possession against other co-sharers but can only file a suit for partition. The appellate court found that the plaintiffs had filed an incompetent suit and mere *exparte* proceedings do not entitle plaintiffs to a decree.

5. The learned counsel for the applicants advanced several contentions including material irregularity in framing issues by mentioning "sale deed" instead of "gift deed," improper appreciation of evidence by both lower courts, violation of co-sharer rights under Islamic law arguing that in joint immovable property every co-sharer has ownership rights in every inch of the property until partition by metes and bounds, and that the gift deed in question lacked specific boundaries making it invalid under Muhammadan Law. The counsel further argued that respondents neither cross-examined the applicants' witnesses nor produced any evidence to support their written statement, which should not be treated as evidence against the applicants. The learned counsel relied upon **2024 CLC 1246** and **2024 MLD 1111**.

6. Conversely, the learned counsel for the respondents contended that the gift deed was properly executed and registered with entries made in revenue records including Form VII-B dated 30.05.2007 and Entry No. 5 dated 24.02.1988. The counsel argued that Syed Himat Ali Shah, being the rightful owner of one paisa share, was fully competent to gift his share to his sons, and that the gift deed constituted a valid *Hiba-bil-Iwaz* under Islamic Law where possession was duly transferred making it irrevocable. Most importantly, the counsel contended that the suit was fundamentally flawed as co-sharers cannot seek declaration and possession against other co-sharers with the only remedy being partition. The learned counsel relied upon **Gift Deed No. 764 dated 07.04.2006, Certificate/record to Utaro dated 31.05.2007, and Mst. Roshan Ara Begum & 08 others versus Muhammad Banaras & another (2016 YLR 1300)**.

7. Having heard the learned counsel for the parties at considerable length and perused the voluminous record with meticulous care, this Court frames the following points for determination:

- 1. Whether the present Civil Revision Application is maintainable under Section 115 of the Code of Civil Procedure, 1908?**
- 2. Whether the concurrent findings of both lower courts suffer from material irregularity, illegality, or jurisdictional error warranting interference in revisional jurisdiction?**
- 3. Whether the suit filed by the applicants was competent and maintainable in law, particularly in light of the established legal position regarding co-sharer rights?**
- 4. What should be the decision?**

8. Addressing the first point regarding maintainability, this Court finds the revision application maintainable under Section 115 of the Code of Civil Procedure. The said provision empowers the High Court to call for the record of any case decided by a subordinate court where no appeal lies, and examine whether the subordinate court has exercised jurisdiction not vested in it, failed to exercise jurisdiction vested in it, or acted illegally or with material irregularity in the exercise of its jurisdiction. The present revision challenges concurrent findings of two courts below on substantial questions regarding the competency of the suit and the legal interpretation of co-sharer rights under Islamic law, which fall squarely within the ambit of revisional jurisdiction. As held in **Arthur Lawrence (Private) Ltd. v. Messrs ACTLAW (PLD 2020 Sindh 129)**, the High Court has unfettered revisional power when jurisdiction is invoked on grounds of illegality or material irregularity. *Hence Point No.1 is answered in "Affirmative".*

9. Turning to the second point concerning material irregularity and jurisdictional error, after careful scrutiny of the voluminous record and concurrent findings of both lower courts, this Court finds no material irregularity or jurisdictional error warranting interference in revisional jurisdiction. While the trial court erroneously mentioned "sale deed" instead of "gift deed" in Issue No. 1, this does not constitute a fundamental defect vitiating the entire proceedings. The appellate court correctly observed that this was likely a typographical error that did not prejudice the parties' rights or mislead the proceedings. The entire case revolved around the gift deed, all parties understood the controversy, and no party sought correction during the seven years trial period. Such minor clerical errors, when they do not affect the substantial rights of parties or the merits of the case, cannot be grounds for

interference in revisional jurisdiction. *Hence the Point No.2 is answered accordingly.*

10. Regarding the appreciation of evidence, both lower courts properly considered the documentary evidence on record. The registered gift deed No. 764 dated 07-04-2006, revenue entries in Form VII-B, and official testimonies were duly evaluated. The applicants' contention that respondents did not cross-examine their witnesses or adduce evidence does not automatically entitle them to a decree. The burden remained on the applicants to prove their case on its own strength under Article 117 of the Qanun-e-Shahadat Order, 1984, which provides that the burden of proof lies upon the person who wishes any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts.

11. The most crucial aspect of this case revolves around the third point concerning the competency and maintainability of the suit. The concurrent findings of both lower courts that the suit was not maintainable are legally sound and supported by well-established precedents that have attained the status of settled law. The jurisprudence on co-sharer rights has been consistently developed by the superior courts, establishing clear principles that govern such relationships.

12. The law is well-settled that a co-sharer cannot file a suit for declaration and possession against another co-sharer, with the only remedy available being partition of the joint property. This principle is based on the fundamental concept that in joint immovable property, each co-sharer is interested in every inch of the property irrespective of the quantity of his interest. The Supreme Court of Pakistan in **Mst. Sanobdar Sultan & others v. Obaidullah Khan & others (PLD 2009 SC-71)** clearly established that co-sharers cannot maintain suits for declaration and possession against other co-sharers.

13. The Lahore High Court in **Mst. Roshan Ara Begum & 08 others v. Muhammad Banaras & another (2016 YLR 1300)** reinforced this principle, holding that established law prohibits co-sharers from filing suits for declaration and possession against other co-sharers, with partition being the only available remedy. The Court observed that when parties are admittedly co-sharers in joint property, the proper course is to seek partition rather than declaration of ownership, as each co-sharer already has a recognized legal right in the property.

14. However, the law also recognizes certain exceptions to this general rule. The Supreme Court in **Fazal v. Ghulam Muhammad (2003 SCMR 999)** established that while co-sharers generally cannot file declaratory suits against each other, an exception exists when one co-sharer attempts to change the nature of joint property or threatens to divest others of their rights. In such exceptional circumstances, an injunctive suit is maintainable to protect the co-ownership rights from being unlawfully interfered with.

15. Examining the present case through this legal framework, the applicants sought declaration of ownership and cancellation of the gift deed. However, their own pleadings and evidence establish that both parties were admittedly co-sharers in Survey No. 30, each holding one paisa share. The applicants did not specifically plead or prove that respondents were changing the nature of the joint property in a manner that would harm their co-ownership rights. Instead, what transpired was a valid gift of a defined share by Syed Himat Ali Shah, who was the rightful owner of one paisa share and was competent to gift his specific share to his sons under Islamic law. The documentation presented demonstrates proper procedure was followed. The gift deed was registered as Hiba-bil-Iwaz with proper revenue entries, making it legally valid under Islamic law. Under the principles of Islamic jurisprudence governing gifts, **Hiba-bil-Iwaz** (gift with consideration) is a recognized form of transfer where registration is mandatory and makes the gift irrevocable, physical possession delivery is not always required unlike simple Hiba, and gift of undivided shares (Musha) in divisible property is permissible. The gift deed in question appears to fulfill these requirements, being duly registered with proper revenue documentation.

16. The appellate court correctly observed that sufficient documentary evidence was brought on record before the learned trial court in connection with registered gift deeds, but the applicants only deposed that such deeds were forged and liable to be cancelled. Such evidence was insufficient and unreliable to conclude that the gift deeds were forged and liable to be cancelled because law commands that documentary evidence excludes oral evidence and presumption of truth is attached to registered documents under the law until and unless proved otherwise.

17. Furthermore, the evidence of Nisar Ahmed Bhatti, Junior Clerk TMA Rohri, established that the area of S.No.30 is (29-32) acres, and that defendants No. 5 and 6 applied for approval of building plan through proper written application to the competent authority, which was approved based on

NOC dated 07.06.2007 issued by the concerned Nazim. The building plan was approved in the name of Syed Ghulam Mustafa Shah and Wasif Ali Shah based on proper documentation. Significantly, the learned counsel for plaintiffs did not cross-examine this official witness at all, which undermines their challenge to the validity of the approvals.

18. The principle established in **Haji Muhammad Sarwar Khan versus Hussain Nawab & others 1992 CLC 1915 (Lahore)** is relevant here, wherein the Honourable High Court observed that the plaintiff has to succeed on his own legs and any weakness or shortcoming in claim of defendant would be irrelevant for lending strength to his own weak case. Similarly, in **Karam Hussain Khan & others versus Sairan Bibi & others 2013 MLD 713 (LAHORE)**, the Court held that the party that alleges a particular fact is bound to prove the same and that it is not necessary to discuss evidence of parties in verbatim rather the appellate court is required to give its findings on issues in view of material available on record.

19. The applicants' case suffers from fundamental legal infirmity. They filed a suit seeking declaration of co-ownership rights against parties who were already recognized co-sharers, and sought cancellation of a validly executed and registered gift deed without establishing any legal grounds for such cancellation. The gift deed was executed by Syed Himat Ali Shah in favor of his sons, and there is no dispute that he was the rightful owner of one paisa share in the property. Under Islamic law and the civil law of Pakistan, an owner has the absolute right to dispose of his property through gift, sale, or other lawful means.

20. The applicants' argument that the gift deed lacked specific boundaries and was therefore invalid under Muhammadan Law is misconceived. The gift deed was executed as Hiba-bil-Iwaz and was properly registered with revenue authorities. The entry in Form VII-B and other revenue records establishes the validity of the transaction. The law does not require that every gift deed must specify exact metes and bounds when it concerns a defined share in joint property, particularly when the share is clearly identified as "one paisa share" out of the total holding.

21. Moreover, the conduct of the applicants during the lengthy litigation process raises questions about the bona fides of their claim. The case consumed precious time of the learned trial court for about eight years, and the applicants failed to seek correction of the alleged error in framing of issues during this entire period. Their application for transfer of the case from one

court to another, and their counsel's failure to appear on crucial dates, suggests a dilatory approach to litigation that is not conducive to the ends of justice.

22. The law is clear that courts should not encourage multiplicity of litigation or allow parties to forum shop. When a clear legal remedy exists in this case, partition of the joint property, - parties cannot be permitted to pursue alternative remedies that are not recognized in law. The principle of *res judicata* and the doctrine of election of remedies support this approach. This Court also notes that the applicants have not challenged the validity of their own gift deed dated 24.02.1988, which was also executed without specific demarcation of boundaries. This selective challenge to similar transactions further undermines the credibility of their legal position and suggests that their objection is not based on genuine legal concerns but rather on an attempt to prevent the respondents from exercising their lawful rights.

23. The concurrent findings of both lower courts are based on proper appreciation of evidence and correct application of legal principles. Both courts correctly identified that the dispute was essentially between co-sharers and that the appropriate remedy was partition rather than declaration and cancellation. Both courts also correctly found that the gift deed was validly executed by a competent person in favor of his legal heirs and that proper approvals were obtained from municipal authorities based on this valid title.

24. While this Court appreciates the applicants' concern for protecting their co-ownership rights, the law provides adequate protection for co-sharers through partition proceedings, where each party's rights can be properly demarcated and protected. The doctrine established in **Fazal v. Ghulam Muhammad** (*supra*) creates an exception for injunctive relief when one co-sharer attempts to change the nature of joint property, but such circumstances are not established in the present case. The respondents' construction activities, if any, were based on their legitimately acquired share through a valid gift deed and proper municipal approvals. The scope of revisional jurisdiction under Section 115 of the Code of Civil Procedure is limited and this Court cannot interfere with concurrent findings of facts unless they are based on no evidence or are perverse. The findings in the present case are based on proper appreciation of documentary and oral evidence and are supported by well-established legal principles. The concurrent conclusions drawn by both lower courts do not suffer from any jurisdictional error, illegality, or material irregularity that would warrant interference by this Court.

25. Based on this comprehensive analysis of legal principles, factual matrix, and the evidence on record, this Court concludes that the suit was correctly dismissed by both lower courts as being not maintainable in law. No jurisdictional error or material irregularity has been established that would warrant interference in revisional jurisdiction. The concurrent findings are based on proper appreciation of evidence and correct application of legal principles, and the established legal position regarding co-sharer rights has been properly followed.

26. The Civil Revision Application is accordingly dismissed. The concurrent judgments and decrees of both lower courts are upheld and confirmed. The applicants are at liberty to pursue their remedy through appropriate partition proceedings if they so desire, where their rights as co-sharers can be properly protected and demarcated according to law. No order as to costs. The office is directed to send back the record to the court of origin along with a copy of this order.

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