HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

R.A No.183 of 2013
[Nadir Hassan vs. Province of Sindh & Ors.]

Applicant	Nadir Hassan: **through M/s M. Saleem Hashmi Qureshi and Zaman Zaib advocates**
Respondents	Province of Sindh & Ors: **through Mr. Wali Muhammad Jamari AAG**
Date of hearing	06.08.2025
Date of decision	19.09.2025

J U D G M E N T

TASNEEM SULTANA, J: The applicant/plaintiff has preferred this Civil Revision Application under Section 115, C.P.C assailing the judgment and decree dated 02.10.2013 and 05.10.2013 rendered by the learned V-Additional District Judge, Hyderabad in Civil Appeal No.277 of 2012, whereby the appeal was dismissed and in result whereof the judgment and decree dated 07.09.2012 and 19.09.2012 passed by the learned V-Senior Civil Judge, Hyderabad in F.C. Suit No.16 of 2001 was maintained.

2. The brief facts of the case are that the applicant/plaintiff instituted F.C. Suit No.112 of 2001 (later renumbered as 16 of 2001) for mandatory and permanent injunction in respect of Revenue Survey Nos.355/A measuring 0.05 acres and 355/B measuring 0.19 acres situated in Deh Ghangra, Tapo Ghangra, Taluka City, District Hyderabad. The stance of the applicant/plaintiff was that his mother, Mst. Khadija, had gifted the said land to him through a registered gift deed dated 15.04.1999, and on the basis of gift deed entry No.94 dated 03.06.1999 was mutated in his favour in Deh Form VII-B. He claimed that he became exclusive owner of the suit land. He further alleged that in February 2001, when he approached the Settlement Department for certified copy of the Field Book, he was informed that 0.04 acre from Survey No.355/A and 0.15 acre from Survey No.355/B had been recorded as part of Pinyari Canal since 1953. According to him, this was factually incorrect as no portion of his land was ever utilized for canal, which in fact ran at a distance. He served legal notice dated 22.02.2001 requiring rectification, but the defendants failed to comply, hence the suit.

3. The respondents/defendants contested the claim by asserting that the disputed land had long been recorded as part of Pinyari Canal since 1953 in the Ghat Wadh Form and Field Book, and as such was Government property not capable of being transferred or gifted. They pleaded that the suit was barred under

Section 172 of the Sindh Land Revenue Act, under Section 11 of Sindh Revenue Jurisdiction Act and under Section 42, 55 and 56 of Specific Relief Act the Civil Court has no jurisdiction to order correction of revenue record without recourse to competent revenue authorities. They also challenged the alleged gift deed, contending that it was never produced and the donor's title was not shown. It was further pleaded that the suit was hopelessly time-barred and without cause of action.

4. The suit was initially decreed ex-parte on 23.01.2008 by the learned IV Senior Civil Judge, Hyderabad. The respondents/defendants preferred Civil Appeal No.13 of 2008, which was allowed by the learned V-Additional District Judge, Hyderabad by setting aside the judgment and decree dated 23.01.2008 and remanded the matter with direction to implead the Irrigation Authorities and Mukhtiarkar as necessary parties.

5. After remand of the matter, necessary parties were impleaded and notices were issued. Upon service the respondents No.3 and 5 filed their written statement(s), whereas remaining respondents/defendants were declared ex-parte. Nevertheless, out of divergent pleadings of the parties the learned trial Court framed four Issues, which are reproduced herein below:

01. Whether the suit is maintainable under the law?

02. Whether the defendants are liable to rectify the relevant record being maintained in the office of defendant No.2 in respect of R.S No.355/A measuring 0-05 acres and R.S No.355/B measuring 0-19 acres situated in Deh Ghangra, Tapo Ghangra, Taluka City, District Hyderabad showing the area of said Survey numbers owned by plaintiff?

03. Whether the defendants are liable to restrain the area of R.S No.355/A situated in Deh Ghangra, Tapo Ghangra, Taluka City, District Hyderabad from 0-05 acres and that of R.S No.355/B, situated in Deh Ghangra, Tapo Ghangra, Taluka City, District Hyderabad from 0-19 acres on any ground for any reason including the one that any area of the said Revenue Survey Numbers had come under Pinyari Canal, Hyderabad?

04. What should the decree be?

6. On the aforesaid Issues the applicant/plaintiff examined himself, whereas the respondents/defendants examined Assistant Executive Engineer Phuleli Bund Sub-division and Senior Clerk of Settlement Department Hyderabad. The learned trial Court after hearing the parties vide judgment dated 07.09.2012 and decree dated 19.09.2012 dismissed the suit of the applicant/plaintiff being not maintainable. For the sake of reference, the concluding paragraphs of the trial Court's judgment are reproduced below:

ISSUE NO.2

".....The plaintiff has failed to prove his possession over the suit land as alleged in the plaint in circumstances with substantial material. The disputed area has already been utilized in continuation of Pinyari Canal and the said area is not in possession of the plaintiff, hence the claim of the plaintiff with regard to title of disputed area is false and based on fraudulent entry kept in record of rights on the basis of gift deed dated 15.4.1999. In the circumstances the plaintiff is neither competent to file this suit nor has any cause of action accrued to him to bring the suit so he is not entitled for correction of area of suit survey numbers in the Field Book. The issue No.2 is therefore answer in the negative"

ISSUE NO.3

.....I have already held in the foregoing issue No.2 that the plaintiff has failed to prove his possession over the disputed area with further that according to entries being maintained in Book and Ghat Wadh Form the disputed area had utilized in Pinyari Canal in the year 1953. It is admitted position that the plaintiff has also not sought any relief of possession or compensation of the utilized area. In view of the above circumstances, and my findings on issue No.2, I answer this issue No.3 in the negative.

ISSUE NO.1.

I have held in issue No.2 that the plaintiff is neither competent to file this suit nor has any cause of action accrued to him to bring this suit, therefore suit is not maintainable. The issue No.1 is therefore answered in the negative.

ISSUE NO.4.

In view of my findings on the above issues, the suit of the plaintiff is hereby dismissed, with no order as to cost. Let the decree be prepared accordingly."

7. Against the aforesaid judgment and decree of the trial Court, the applicant/plaintiff preferred Civil Appeal No.277 of 2012 before the learned V-Additional District Judge on 02.10.2013, however, the learned Appellate Court dismissed the appeal while holding that *(i) appellant neither in his pleadings nor in his evidence has alleged to be in possession of area utilized in Pinyari Canal, (ii) that he has not examined any official of the Land Survey or Barrage Department to prove that the land, shown to have been utilized in Pinyari Canal, is actually not utilized and available at site,* (iii) *that the appellant has produced copy of field book that was maintained on 07.01.1953 and according to same an area of 0-4 acres from R.S No.355/A and an area of 0-15 from R.S No.355/B had gone in Pinyari Canal, therefore, there remained only an area of 0-01 acre in R.S No.355/A while an area of 0-4 acre in R.S No.355/B* and (iv) *that entry No.94 dated 03.06.1999, maintained on the basis of gift deed in favour of the appellant by her mother, shows an area of 0-05acres in R.S No.355/A while an area of 0-19*

in R.S No.355/B, therefore, said entry itself appears to be incorrect at the relevant time the said survey numbers were having less area as that of shown in the entry. Hence the applicant/plaintiff this revision application against concurrent findings referred to above.

8. Learned counsel for the applicant contended that both the Courts below misread and non-read material evidence; that the registered gift deed of 1999 was a valid document transferring ownership in favour of the applicant/plaintiff and the subsequent mutation corroborated that ownership; that the official records prepared decades earlier were factually erroneous and could not nullify a registered instrument of title; that the land lies approximately 500 feet away from the canal and departmental entries showing it as canal alignment were incorrect; that the authorities failed to act upon the legal notice served in February 2001, which constituted arbitrary inaction; that refusal of injunction has resulted in depriving the applicant/plaintiff of his property rights without due process, contrary to constitutional guarantees under Articles 23 and 24, and that equity demanded judicial intervention.

9. Conversely, learned AAG supported the concurrent findings of the Courts below and contended that the disputed land had been part of the canal alignment since 1953, as reflected in Ghat Wadh Forms and Deh records prepared by competent officer; that a private deed or fiscal mutation cannot prevail over long-standing Government records which enjoy statutory presumption of correctness under Section 52 of the Sindh Land Revenue Act; that the donor of the gift had no established title and could not transfer better rights than she herself possessed; that Civil Courts lack jurisdiction to direct rectification of revenue entries; that injunction is barred by Section 56(d) of the Specific Relief Act, 1877 as it would restrain sovereign functions; that the applicant/plaintiff had wholly failed to establish possession; that applicant/plaintiff produced no independent survey, demarcation, or cadastral map to displace official records; that applicant/plaintiff had also failed to prove possession, admitting that he had never cultivated the land and producing no crop statements or witnesses; that the suit was not maintainable before a Civil Court, as correction of revenue entries lies with revenue.

10. Heard. Record perused.

11. The foundation of the applicant's/plaintiff's claim is predicated upon Mutation Entry No.94, dated 03.06.1999, purportedly made on the basis of an alleged gift from his mother. The entire edifice of the applicant's/plaintiff's case thus rests upon the said mutation; however, it is a settled principle that mutation entries are maintained solely for fiscal purposes and, by themselves, neither confer nor extinguish ownership rights. It was incumbent upon the applicant/plaintiff to establish the title of the alleged donor as well as the

genuineness and validity of the purported gift deed, obligations which he has failed to discharge.

12. The applicant/plaintiff examined himself at Ex.50 and Ex.94 and produced the mutation entry along with a legal notice. However, during cross-examination, he unequivocally admitted that he had not produced the alleged gift deed; further conceded that the record of the disputed land is maintained by the Settlement Department; and acknowledged that in the Field Book major portions of his survey numbers are reflected under the Pinyari Canal. He also admitted that he had not approached the Revenue Authorities for correction of the record prior to instituting these proceedings. These admissions, in themselves, strike at the very root of his case. Moreover, although the applicant/plaintiff sought to base his entire claim upon the alleged gift deed, as observed earlier, neither the said deed nor any of its witnesses have been produced."In the case of *Muhammad Sarwar vs. Mumtaz Bibi and others* (**2020 SCMR 276**) has observed as under:

> *5. Further, on the basis of the alleged oral gift, a gift mutation bearing No.252 dated 17.06.1985 was sanctioned in favour of the petitioner. In terms of section 42 of the Land Revenue Act, 1967, it is obligatory that a mutation of this nature be sanctioned in Majlis-e-Aam so that every person of the village may have knowledge of such alienation and the possibility of fraud, collusion or secretly undertaken transaction may be eliminated. It is clear from the record that the aforenoted provisions of section 42 ibid were not followed. It is also noticeable that the concerned Tehsildar who had allegedly sanctioned the mutation namely Rehmat Ali and another witness of the mutation namely Anwar Hussain (Patidar) were material witnesses of the alleged gift mutation. They were however not produced for any valid reason. Therefore the presumption of Article 129 of the Qanun-e-Shahadat Order by reason of withholding of the best evidence can also be drawn against the Petitioner. The petitioner also failed to independently prove the validity of the alleged gift mutation. This Court has held in a number of judgments that where the validity of a gift mutation is challenged, it is incumbent upon the beneficiary not only to prove the validity and legality of the gift mutation by producing all relevant evidence but it is also necessary that the gift itself be proved through cogent and reliable evidence. Both the said requirements were admittedly not met. Neither the alleged oral gift was proved by any credible evidence nor was the legality or validity of the alleged gift mutation proved by producing credible evidence."*

13. It is a cardinal principle, reiterated time and again by the Supreme Court that mutation entries are made only for fiscal purposes. They neither confer nor extinguish proprietary rights (*mutationes sunt ad solutionem vectigalium, non ad probationem dominii*—mutations exist for the payment of revenue, not for proof of dominion). It was emphatically held that ownership of immovable property cannot be established merely by a mutation entry, therefore, the reliance of the

appellant on mutation as conclusive proof of title was legally untenable. In the case of Rehmat Noor vs. Zulqarnain (**2023 SCMR 1645**) the Apex Court held that a mutation cannot by itself be considered a document of title. Relevant observations are reproduced below:

> *"……There is no cavil with the proposition that a mutation is always sanctioned through summary proceedings and to keep the record updated and for collection of revenue such entries are made in the relevant Register under section 42 of the Land Revenue Act, 1967. It has no presumption of correctness prior to its incorporation in the record of rights. It is also settled law that entries in mutation are admissible in evidence but the same are required to be proved independently by the persons relying upon it through affirmative evidence. An oral transaction reflected therein does not necessarily establish title in favour of the beneficiary. A mutation cannot by itself be considered a document of title.[2] We also note that the respondent failed to prove the instrument of gift mutation in line with the requirement of Qanun-e-Shahadat, 1984, She examined only one witness of subject gift mutation."*

14. Conversely, the respondents/defendants produced official witnesses who fully corroborated the stance of the official respondents. DW-1, Qazi Khalid, Assistant Engineer, Phuleli Sub-Division, Hyderabad, deposed that, according to the record of the Settlement Department, Survey Nos.355/A and 355/B formed part of the Pinyari Canal since the year 1953. Although he admitted that he had not personally verified the boundaries, he affirmed that the entries were duly reflected in the official record. DW-2, Dilawar Hussain, Senior Clerk of the Settlement Department, produced the original Field Book, Ghat Wadh Form, and Deh Form, and confirmed that since 1953, the disputed portions of land had consistently been recorded as forming part of the canal. He further clarified that the subsequent entry in the name of the applicant/plaintiff was made thereafter, whereas originally the land stood recorded in the name of the Government. These records, having been prepared by public functionaries in the discharge of their statutory duties, enjoy a presumption of correctness under Section 52 of the Sindh Land Revenue Act, 1967, which presumption cannot be displaced except by cogent, reliable, and independent evidence. The applicant/plaintiff, however, failed to produce the survey number, demarcation, cadastral map, or any technical witness. His solitary assertion that the land lies '500 feet' away from the canal cannot, in law, prevail against decades-old official record. In this regard, the legal maxim *acta publica praesumuntur rite esse acta*, official acts are presumed to have been rightly done, applies with full force.

15. It is further pertinent to observe that the applicant/plaintiff never demonstrated what title, if any, his mother possessed at the time of the execution of the alleged gift deed. The gift deed itself was never produced before the Court, nor was any prior entry evidencing her ownership placed on record. Once the

official record establishes that the land had already been utilized as part of the canal since 1953, the donor was divested of any subsisting right or title to transfer in 1999. By operation of the well-settled principle that no person can convey a better title than that which he himself possesses, the applicant/plaintiff could derive no valid ownership through the subsequent mutation.

16. The contention of the applicant's/plaintiff's counsel that several defendants were proceeded ex parte is of no legal consequence. A decree cannot be granted merely on account of the absence of some parties when the documentary record itself negates the applicant's/plaintiff's claim. Similarly, the objection that the written statement filed on behalf of the official respondents/defendants was unauthorized is rendered immaterial in the face of the unimpeached official record produced by the Settlement Department. Likewise, the statement of the Mukhtiarkar, purporting to verify the subsequent mutation, does not advance the applicant's/plaintiff's case, as such verification cannot override the long-standing entries dating back to 1953.

17. The concurrent findings of the two Courts below are based on correct appreciation of the above evidence and suffer from no illegality. At this stage it is also necessary to recall the scope of revisional jurisdiction vested in this Court under Section 115, C.P.C. This jurisdiction is supervisory in nature and is not to be exercised as if it were a second appeal. The revisional Court is not to reappraise the entire evidence or substitute its own conclusions for those of the Courts below merely because another view is possible. Interference is justified only in three eventualities: when a subordinate Court has exercised jurisdiction not vested in it by law, when it has failed to exercise jurisdiction so vested, or when in exercising jurisdiction it has acted illegally or with material irregularity and such illegality has occasioned failure of justice.

18. It is also a settled principle that concurrent findings of fact, if supported by the record and not shown to be perverse, cannot be disturbed in revision. The scope is confined to examining jurisdictional defects or material irregularities; it does not extend to reassessing oral and documentary evidence already considered by the Courts below. In the present case, both the trial Court and the appellate Court have concurrently held against the applicant/plaintiff after due appraisal of the evidence. Their findings are supported by official records of 1953 and by the admissions of the applicant/plaintiff himself. No jurisdictional defect or material illegality has been pointed out which may justify interference by this Court. I am fortified in this regard by the decision reported as *Muhammad Sarwar vs. Hashmal Khan* (**PLD 2022 SC 13**), wherein the Supreme Court has held as under:

> *6. It is well settled exposition of law, deducible from plethora of dictums laid down by superior courts that section 115, C.P.C. empowers and mete out the High Court to satisfy and reassure itself that the order of the*

subordinate court is within its jurisdiction; the case is one in which the court ought to exercise jurisdiction and in exercising jurisdiction, the court has not acted illegally or in breach of some provision of law or with material irregularity or by committing some error of procedure in the course of the trial which affected the ultimate decision. If the High Court is satisfied that aforesaid principles have not been unheeded or disregarded by the courts below, it has no power to interfere in the conclusion of the subordinate court upon questions of fact or law. In the case of Atiq-ur-Rehman v. Muhammad Amin (PLD 2006 SC 309), this Court held that the scope of revisional jurisdiction is confined to the extent of misreading or non-reading of evidence, jurisdictional error or an illegality of the nature in the judgment which may have material effect on the result of the case or the conclusion drawn therein is perverse or contrary to the law but the interference for the mere fact that the appraisal of evidence may suggest another view of the matter is not possible in revisional jurisdiction. So far as challenge to the concurrent findings of the courts below in the revisional jurisdiction of the High Court, this Court has held in the case of Ahmad Nawaz Khan v. Muhammad Jaffar Khan and others (2010 SCMR 984), that High Court has very limited jurisdiction to interfere in the concurrent conclusions arrived at by the courts below while exercising power under section 115, C.P.C. Similar view was taken in the case of Sultan Muhammad and another v. Muhammad Qasim and others (2010 SCMR 1630) that the concurrent findings of three courts below are not opened to question at the revisional stage.

19. In view of the foregoing reasons, the impugned judgments and decrees are found to be free from any illegality or material irregularity, having been rendered upon due and proper appreciation of the record. Consequently, the instant revision application is devoid of merit and is hereby dismissed, with no order as to costs.

JUDGE

Sajjad Ali Jessar