

Judgment Sheet

HIGH COURT OF SINDH CIRCUIT COURT LARKANA

Civil Revision Application No.S- 22 of 2023

Applicant No.1 : Dewan Lal s/o Jethanand
Applicant No.2 : Roshan Lal s/o Jethanand
Applicant No.3 : Bhagwani Bai w/o Jethanand
Through Mr.Muhammad Qasim Khan, Advocate

Respondent No.1 : Nanik Ram s/o Jethanand. Nemo.
Respondent No.2 : Ballu Ram alias Bal Ram s/o Looniyo
Respondent No.3 : Khattan Lal s/o Mannu Mal
Respondent No.4 : Gobind Ram s/o Mannu Mal
Through Mr. Vinod Kumar G. Jesrani, Advocate

Respondent No.5 : Government of Sindh
Respondent No.6 : Deputy Settlement Commissioner, Evacuee
Property, Jacobabad
Respondent No.7 : Mukhtiarkar (Rev.) Kandhkot
Respondent No.8 : Mukhtiarkar (Estate) Kandhkot
Through Mr.Munawar Ali Abbasi, Assistant
Advocate General, Sindh

Date of hearing : **25.11.2025**

Date of decision : **11.12.2025**

J U D G M E N T

ARBAB ALI HAKRO, J.- The applicants have invoked the revisional jurisdiction of this Court under Section 115 of the Code of Civil Procedure, 1908 (C.P.C), assailing the concurrent findings recorded by the learned Senior Civil Judge, Kandhkot (the "**trial Court**") in F.C. Suit No.61 of 2021 and by the learned District Judge, Kashmore at Kandhkot (the "**appellate Court**") in Civil Appeal No.65 of 2022, whereby their suit and subsequent appeal stood dismissed.

2. Briefly stated, the case of the applicants is that the suit property¹ was originally acquired by their grandfather, Punaji, son of Khushhal Mal,

¹ admeasuring 3595 square feet and bearing Property No.1- 166 situated at Gulsher Mohla, Kandhkot

through an open auction held on 20.10.1964, duly approved by the then Additional Settlement Commissioner, Khairpur Division, vide order dated 31.10.1964. The Record of Permanent Transfer was accordingly maintained in his name at page No.26, Volume IX and page No.103, Volume VIII. During his lifetime, Punaji constructed two houses on the said plot: one measuring 1400 square feet for his own residence and another measuring 700 square feet, annexed to a shop, which was let out on rent, while he disposed of the remaining portion of the plot. After the demise of Punaji, the applicants continued to receive rent from the suit property until January 2020, when respondents Nos. 2 to 4, on the strength of a purported and fabricated agreement to sell, allegedly dispossessed the tenant and unlawfully occupied the premises. It is the specific case of the applicants that respondents No.2 to 4 concocted false documents and procured mutation entries in their favour, which are fictitious, void, and non-operative against the lawful rights of the applicants. Consequently, the applicants instituted a suit before the trial Court, seeking a Declaration, Possession, Cancellation of Documents, Mesne Profits, and a Mandatory and Permanent Injunction. They prayed for declaration of ownership to the extent of their lawful share, recovery of possession, permanent restraint against alienation, mesne profits at the rate of Rs.20,000/- per month with 10% annual increment, and other consequential reliefs.

3. Upon service, the private Respondents/defendants contested the suit by filing a joint written statement, wherein they raised preliminary objections as to maintainability, limitation, misjoinder and non-joinder of parties and lack of cause of action. They asserted that the plaintiffs/applicants had not approached the Court with clean hands and that the suit was barred under the Specific Relief Act and the Limitation Act. On merits, they denied the plaintiffs' claim of ownership and possession, contending that defendant No.2 had lawfully purchased his house from the original owner, Asghar Ali Khan Suhriyani, through a registered sale deed No.608 dated 03.12.2020

before the Sub-Registrar, Kandhkot. They further pleaded that the plaintiffs' residence was situated far from the property of defendant No. 2, with intervening houses belonging to third parties. They alleged that the plaintiffs, harbouring ulterior motives, had cast "evil eyes" upon the valuable property of the answering defendants and had attempted to usurp it by adopting a cunning attitude.

4. The trial Court framed issues, recorded evidence of both sides. It ultimately dismissed the suit vide Judgment and decree dated 13.08.2022, holding, inter alia, that the applicants failed to establish ownership, illegal dispossession, or entitlement to mesne profits. The appeal preferred by the applicants before the appellate Court met the same fate and was dismissed vide Judgment and decree dated 01.12.2022. This sequence of events has precipitated the present Civil Revision.

5. At the very outset, learned counsel for the applicants submitted that both the courts below misread and ignored material evidence and their concurrent findings are perverse and unsustainable. He argued that the suit property was lawfully acquired by the applicants' grandfather, Punaji, son of Khushhal Mal, through auction proceedings duly approved by the competent authority, and that the Permanent Transfer Record stands in his name. The applicants, being lawful heirs, continued to enjoy possession and to receive rent until January 2020, when respondents Nos. 2 to 4 unlawfully occupied the premises based on fabricated documents and a false agreement to sell. Counsel contended that the respondents failed to produce any valid title document and that their possession is illegal. He emphasized that the trial Court wrongly shifted the burden of proof to the plaintiffs and dismissed the suit on technical grounds, and that the appellate Court repeated the same error. In support of his submissions, learned counsel placed reliance upon the case law reported as **PLD 2011 SC 119, 2024 SCMR 1709, 2023 SCMR**

344, PLD 2014 SC 331, 2009 CLC 1070, 2014 CLC 655, 2016 MLD 70, 2022 SCMR 933, PLD 2025 SC 302, 2025 SCMR 1262 and 2001 SCMR 772.

6. Conversely, learned counsel for respondents No.2 to 4 submitted that the suit was not maintainable, barred by limitation and hit by provisions of the Specific Relief Act. He argued that the plaintiffs had no cause of action, nor produced any succession or ownership document, while respondent No.2 lawfully purchased his house from Asghar Ali Khan Suhriyani through registered sale deed No.608 dated 03.12.2020. It was contended that the plaintiffs' property lies elsewhere, separated by intervening houses and that the suit was filed with ulterior motives to usurp the respondents' lawful property. Both courts below, after framing proper issues and recording evidence, rightly dismissed the claim.

7. Learned Assistant Advocate General, Sindh, appearing for the official respondents, supported the concurrent findings, submitting that the applicants failed to establish ownership or possession through cogent evidence and that mutation entries or mere assertions cannot confer title. He argued that revisional jurisdiction under Section 115 CPC cannot be invoked to disturb concurrent findings of fact unless they are shown to be perverse or illegal. He prayed for dismissal of the revision application.

8. Having heard the learned counsel for the applicants, the learned counsel for the private respondents, as well as the learned Assistant Advocate General representing the official respondents and having meticulously perused the record, including the impugned judgments and decrees.

9. At the very threshold, it is imperative to delineate the contours of revisional jurisdiction under Section 115 C.P.C. The revisional power is not an appellate jurisdiction; it is supervisory in nature, confined to correcting

jurisdictional errors, illegality, or material irregularity. The revisional Court does not sit as a Court of re-appraisal of evidence, nor does it substitute its own findings of fact unless the concurrent findings are shown to be perverse, capricious, or manifestly contrary to law. This principle has been consistently reiterated by the august Supreme Court, holding that revisional jurisdiction is not a forum for rehearing but for rectification of grave legal error.

10. Thus, the applicants must demonstrate that the courts below either misapplied the law, misread or ignored material evidence, or acted in excess or failure of jurisdiction.

11. The fulcrum of the controversy revolves around the 700 sq ft. portion of Property No.1-166, Gulsher Mohalla, Kandhkot, described in the plaint with specific boundaries but without any survey number. The plaintiffs trace their title to the Permanent Transfer Deed (PTD – Ex. 18/A), which evidences an auction purchase in 1964 by their grandfather, Punaji, son of Khushhal Mal.

12. Conversely, the defendants rely upon a registered sale deed dated 03.12.2020 (Ex . 25/A) executed by Asghar Ali Suhriyani, describing the purchase of 673 sq ft. out of Survey No.428, Deh Kandhkot, with boundaries overlapping those in the plaint. Additionally, defendant No.2 claimed the purchase of another portion from co-sharer Nanik Ram through a sale agreement.

13. The trial Court framed Issue No.2 specifically on whether the suit property was inherited property of the plaintiffs. This issue subsumed the identification dispute. Upon evidence, the trial Court found that plaintiff Dewan Lal himself admitted in cross-examination that his brother Nanik Ram had sold the disputed portion to defendant Ballu Ram. Defence witnesses corroborated this. Thus, the courts below concluded that the suit property claimed by the plaintiffs and the property possessed by the defendants was

indeed the same, but lawfully alienated by co-sharer Nanik Ram. This finding is fortified by Article 113 of the Qanun-e-Shahadat Order, 1984, which provides that facts admitted need not be proved. Once the plaintiff admitted alienation by his brother, the burden shifted, and the plaintiffs could not dislodge the defendants' possession.

14. I have also adverted to the case law and the documentary record relied upon by the learned counsel for the applicants, particularly the Permanent Transfer Deed (Ex. 18/A), which was produced in evidence and forms the substratum of their claim. It is manifest from a bare perusal of the said PTD that the property bearing No.1-166, situated at Gulsher Mohalla, Kandhkot, admeasuring 3595 square feet, was permanently transferred in the name of Punaji, son of Khushhal Mal, pursuant to auction proceedings held on 20.10.1964 and duly approved by the Additional Settlement Commissioner on 31.10.1964. The recital of the PTD leaves no ambiguity that Punaji was the transferee and not Khushhal Mal, though the latter was the evacuee owner whose interest was settled through auction. In this backdrop, the observation of the learned appellate Court that the PTD stood in the name of Khushhal Mal and that Punaji had no authority to transfer ownership appears to be a misreading or conflation of the historical chain of title, whereby the evacuee interest vested in Khushhal Mal was divested and transferred to Punaji through lawful auction.

15. Nevertheless, the gravamen of the appellate Court's reasoning was not confined merely to the nomenclature of the transferee rather it was predicated upon the applicants' failure to establish their own legal character as heirs of Punaji through the production of a succession, heirship documents or any other cogent proof of inheritance. The law is well settled that under Section 42 of the Specific Relief Act, 1877, a plaintiff seeking declaratory relief must demonstrate a subsisting legal character or right to property. Mere

reliance upon ancestral possession or oral assertions, without documentary proof of succession, cannot confer *locus standi*. The evidentiary burden, as ordained by Articles 117 and 126 of the Qanun-e-Shahadat Order, 1984, lies upon the party asserting ownership. In the absence of a succession proof or mutation entries lawfully reflecting inheritance, the claim remains unsubstantiated. Thus, even if the appellate Court inadvertently misstated the name of the transferee in the PTD, the substantive finding that the plaintiffs failed to prove lawful succession and inheritance stands unimpeached. The applicants cannot derive any advantage from the PTD in favour of Punaji unless they first establish their status as his legal heirs through competent evidence. In the absence of such proof, their claim collapses notwithstanding the technical misdescription in the appellate Judgment.

16. Under Section 42 of the Specific Relief Act, 1877, a declaratory suit requires the plaintiff to establish a legal character or right to property. Without succession documents, the plaintiffs lacked *locus standi*. The appellate Court rightly held that applicants could not confer ownership rights they did not lawfully possess, echoing the principle enunciated in a case of **Mst. Saadia Abdul Shakoor**².

17. The plaintiffs alleged forcible dispossession in January 2020. However, their own witnesses (PW-2 Jai Ram Das and PW-3 Mohan Lal) contradicted this assertion. Jai Ram Das admitted that he voluntarily paid rent to the defendant, Ballu Ram, without coercion. Mohan Lal acknowledged the execution of the rent agreement with defendant No.3. Neither witness substantiated the forcible eviction. Thus, Issues No.3 and 4 were rightly answered in the negative. The claim for mesne profits also failed because unlawful occupation was not proved.

² Mst. Saadia Abdul Shakoor v. Nadia Chaudhry (2015 MLD 951)

18. The trial Court observed that plaintiffs suppressed the fact that their brother Nanik Ram had sold the disputed portion to defendant Ballu Ram for consideration of Rs.2,050,000/-. This suppression deprived them of the right to equitable relief. The maxim *he who seeks equity must come with clean hands* was invoked. The plaintiffs' concealment of material facts rendered their suit mala fide.

19. This principle is entrenched in jurisprudence: equity aids the vigilant, not those who slumber on their rights. The plaintiffs, having concealed alienation by their own co-sharer, cannot invoke equitable jurisdiction.

20. The concurrent findings of the courts below are based on admissions, documentary evidence, and consistent testimony. They are neither perverse nor contrary to law. No jurisdictional defect, illegality or material irregularity has been demonstrated. The revisional Court cannot re-appraise evidence merely because the applicants desire a different conclusion.

21. The law is settled that concurrent findings of fact, even if erroneous, are binding unless shown to be manifestly unjust or illegal. In the present case, the findings are reasoned, supported by evidence and in consonance with statutory provisions.

22. I have examined the case law cited by learned counsel for the applicants. While those authorities emphasize principles such as misreading of evidence vitiating findings and mutation entries not conferring title, they do not advance the applicants' position in the peculiar facts of this case. The precedents are distinguishable, and the concurrent findings of the courts below remain legally sound and free from any irregularity warranting revisional interference.

23. In the totality of circumstances, the applicants have failed to establish any legal right or cause of action. The plaintiffs suppressed this fact,

failed to produce succession documents and could not prove unlawful dispossession. Both the trial Court and the appellate Court rightly dismissed their claim. Accordingly, the impugned judgments and decrees are upheld. The Civil Revision, being devoid of merit, is **dismissed**. There shall be no order as to costs.

JUDGE

Qazi Tahir PA/*