

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

C.P No. S-523 of 2025

[Kamal & others v. Muhammad Bachal & others]

Counsel for Petitioners: Mr. Aqeel Ahmed Siddique , Advocate

Counsels/ Representatives for Respondents: Mr. Manzoor Ahmed Lund, Advocate

Date of Hearing: 20.02.2026

Date of Judgment: 20.04.2026

JUDGMENT

RIAZAT ALI SAHAR, J: - Initially, instant petition was filed on 26.11.2026 before Division Bench of this Court being C.P. No.D-3220/2016; however, subsequently, it was placed before a Single Bench being C.P. No.S-523/2025 in view of Circular dated 19.10.2025 issued by this Court. Through the instant Constitutional Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the Petitioners have invoked the constitutional jurisdiction of this Court, seeking redress against the impugned order dated 23.08.2016 passed by the learned District Judge, Tando Allahyar in Civil Revision No.02/2016, whereby the application under Section 12 (2), C.P.C. was dismissed on technical grounds without affording proper opportunity to lead evidence. Thus, seeking following reliefs:

“It is therefore prayed that this Honourable Court may be pleased to set-aside the Order of the trial court and remand back the case to trial court for deciding the matter after taking evidence of both the parties, meanwhile Status Quo may kindly be maintained.”

2. The brief background of the matter, as gathered from the record, is that the Petitioners, along with other villagers, claim to be long-standing occupants of Bhadda land situated between Deh Sandki and Deh Thul, Taluka Chamber, District Tando Allahyar, where they have established residential houses, mosque, madrassah, school and other civic amenities since the time of their forefathers. It is their case that the said land, being Bhadda land, is not transferable to any

outsider and is meant for the use and benefit of local peasants residing thereon. The controversy arose when the predecessor of Respondent No.1 allegedly initiated proceedings before revenue authorities and civil courts, culminating in a decree in his favour in the year 1979, which, according to the Petitioners, was obtained through fraud, misrepresentation and suppression of material facts, particularly regarding the possession and existence of the village settlement. The Petitioners further assert that earlier revenue proceedings had already negated the entitlement of the said respondent to the land and cancelled any purported grant, yet such material facts were concealed. Subsequently, the Petitioners sought to challenge the said decree by filing an application under Section 12 (2), C.P.C., which was dismissed by the trial Court on the ground of limitation, and the said dismissal was maintained by the learned District Judge in revision vide order dated 23.08.2016, hence, the present Constitutional Petition seeking redress against the alleged illegality and miscarriage of justice.

3. Learned counsel for the Petitioners contended that the impugned orders passed by the learned Courts below are patently illegal, arbitrary and contrary to settled principles of law, inasmuch as the application under Section 12 (2), C.P.C. was dismissed merely on technical grounds of limitation without addressing the serious allegations of fraud, misrepresentation and suppression of material facts, which, by their very nature, vitiate even the most solemn proceedings and can be agitated at any stage. He argued that the predecessor of Respondent No.1 had, in collusion with others, managed to obtain a decree in respect of Bhadda land by concealing the true factual position that the Petitioners and other villagers were in settled, long-standing possession of the land, having constructed houses, mosque, madrassah and other structures thereon since generations. It was further contended that the revenue record and earlier proceedings before the competent revenue authorities, including orders of the Board of Revenue, had already negated the entitlement of the respondent to any grant of the said land, yet such

vital documents were deliberately withheld from the Civil Court, thereby rendering the decree a nullity in the eye of law. He further submitted that the learned Courts below failed to appreciate that in cases involving fraud, the bar of limitation does not strictly apply in its rigid form, particularly where the aggrieved parties were neither impleaded nor served in the original proceedings and were kept in complete ignorance of the litigation affecting their valuable rights. Learned counsel emphasized that the Petitioners, being illiterate peasants, came to know about the fraudulent decree only much later, whereafter they promptly availed the remedy under Section 12 (2), C.P.C., thus the delay, if any, stood sufficiently explained. He also contended that the Courts below erred in not framing proper issues nor allowing the parties to lead evidence to substantiate their respective claims, thereby depriving the Petitioners of a fair opportunity of hearing, which is violative of the principles of natural justice. Lastly, he maintained that the Civil Court had no jurisdiction to override or disregard the findings of the revenue authorities regarding cancellation of grant of Bhadda land, and as such, the entire proceedings culminating in the impugned decree are *coram non iudice*, liable to be set aside, with a direction to remand the matter for fresh adjudication after recording evidence.

4. Notices were issued to the respondents, whereupon Respondent No.1, being one of the legal representatives of late Muhammad Bachal as well as Special Power of Attorney holder for the remaining private respondents, appeared through learned counsel and filed counter affidavit contesting the petition. Learned counsel for the said respondents vehemently opposed the maintainability of the instant Constitutional Petition and contended that the same is misconceived, not maintainable and liable to be dismissed in limine. It was argued that the original suit bearing F.C. Suit No.298 of 1971 was lawfully instituted, properly contested, and culminated in a judgment and decree dated 29.05.1979, which was subsequently upheld by the appellate Court and further maintained by this Honourable Court in Civil Revision No.25 of 1983 vide judgment

dated 30.05.1996, thus attaining finality. Learned counsel emphatically denied the allegations of fraud or misrepresentation, asserting that the entire record reflects due process, framing of issues, recording of evidence and adjudication on merits. It was further contended that the application under Section 12 (2), C.P.C. was filed after an inordinate and unexplained delay of more than three decades, i.e., on 11.02.2012, which is hopelessly barred by limitation and the plea of alleged knowledge in July 2011 is false and an afterthought. Learned counsel maintained that both the trial Court and the revisional Court have concurrently held the application to be time barred, which findings do not call for interference in constitutional jurisdiction. He further argued that the Petitioners have no locus standi, right or title in the suit property, nor were they parties to the original proceedings, therefore, they cannot assail a decree which has already attained finality up to the level of this Honourable Court. Lastly, it was contended that the instant proceedings have been initiated merely to harass the legal heirs of the deceased respondent and to disturb settled rights, hence, the petition, being false, frivolous and vexatious, is liable to be dismissed with costs.

5. Heard and record perused. The controversy in the present matter lies within a narrow compass. The Petitioners seek constitutional interference against the order dated 23.08.2016 passed by the learned District Judge, Tando Allahyar in Civil Revision No.02 of 2016, whereby the order of the learned trial Court dismissing the application under Section 12 (2), C.P.C. was maintained. The foundation of the Petitioners' case is that the original decree dated 29.05.1979 was the product of fraud, concealment and misrepresentation, therefore, the same ought not to have been protected on the ground of limitation alone. On the other hand, the private respondents have strongly relied upon the fact that the decree in question had already travelled through the hierarchy of Courts, stood affirmed in appeal and thereafter even in Civil Revision before this Court, thus attaining finality long ago, whereas the application

under Section 12 (2), C.P.C. was brought after more than three decades. In such circumstances, this Court is called upon to examine whether the concurrent findings recorded by the Courts below suffer from any jurisdictional defect, patent illegality, material irregularity or perversity warranting interference in exercise of constitutional jurisdiction under Article 199 of the Constitution.

6. It is a settled principle that constitutional jurisdiction is not a substitute for ordinary remedies nor a forum to reappraise facts, especially where concurrent findings have been recorded by competent courts. Such jurisdiction is exercised sparingly and only in cases of jurisdictional defect, misreading of evidence, illegality, or grave miscarriage of justice. In the present case, the decree dated 29.05.1979 had already undergone appellate and revisional scrutiny, culminating in its affirmation by the High Court on 30.05.1996, thereby attaining finality. The attempt to reopen the matter through an application under Section 12 (2), C.P.C. after several decades is legally untenable, as it undermines the principle of finality and the stability of judicial decisions.

7. No doubt, the proposition that fraud vitiates the most solemn transactions and proceedings is equally well recognized. A judgment or decree obtained by practicing fraud upon the Court is not to be allowed to stand merely because it is old. However, this salutary principle does not mean that a vague, bald or belated allegation of fraud, unsupported by specific particulars and credible material, would automatically obliterate limitation, finality and procedural safeguards. Fraud is a serious allegation. It must be pleaded with precision, supported by particulars and shown through *prima facie* material to be of such character that it goes to the root of the proceedings. Mere dissatisfaction with an old decree, or reassertion of a claim already lost in prior proceedings, cannot be dressed up as fraud so as to unsettle rights which have stood concluded for decades.

8. In the present case, the Petitioners have failed to place on record any definite and unimpeachable material to *prima facie*

establish that the decree dated 29.05.1979 was procured by practising fraud upon the Court, it being well-settled that every incorrect assertion or disputed claim does not amount to fraud unless the same is shown to be deliberate, material and causative of the decree; rather, what emerges is an attempt to reopen a long-concluded lis on the basis of belated and unsubstantiated factual assertions. Likewise, the plea of acquiring knowledge in July, 2011 was rightly disbelieved by the Courts below, for when the decree had remained in the field for decades and had undergone appellate as well as revisional scrutiny, the burden to explain ignorance for over thirty years was extraordinarily heavy, particularly in view of the Petitioners' own claim of continuous possession and use of the land, rendering their explanation wholly unconvincing and devoid of confidence.

9. The law of limitation, though at times appearing harsh, is grounded in sound public policy to prevent revival of stale claims where evidence has faded and rights have long been settled; thus, a party invoking Section 12 (2), C.P.C. after an inordinate delay of over three decades must present a case of exceptional clarity and substance, which the Petitioners have failed to do, rendering their claim inherently unreliable and time-barred. Furthermore, the contention that limitation becomes irrelevant in cases of fraud is misconceived, as even in such cases the burden lies heavily on the claimant to precisely establish the manner and timing of knowledge and the reasons for prior ignorance; in the absence of such cogent explanation, the Courts below were justified in rejecting the plea of delayed knowledge and treating the application as barred by limitation.

10. The next limb of argument advanced on behalf of the Petitioners was that the Courts below ought to have framed issues and recorded evidence instead of dismissing the matter on technical grounds. This contention also does not carry weight in the facts of the present case. Before embarking upon a full-fledged evidentiary inquiry, the Court was first required to determine whether the application itself was maintainable and within time. Where the

application, on the face of the record, is grossly belated and fails to disclose a legally sustainable explanation for such delay, the Court is not bound to convert every such proceeding into a roving trial. Procedural law does not compel futile exercise. If the basic threshold of limitation and maintainability is not crossed, refusal to record evidence cannot automatically be termed illegality.

11. It is an admitted position that the Petitioners were not parties to the original suit culminating in the decree dated 29.05.1979, and even if their claim of possession is taken at face value, they have failed to establish the requisite legal standing to challenge a decree inter partes after the lapse of decades; the concurrent finding of the Courts below in this regard suffers from no arbitrariness or perversity and, therefore, does not warrant interference in constitutional jurisdiction, which cannot be invoked to unsettle final adjudications at the instance of persons whose claims rest on disputed facts. Likewise, the contentions relating to the nature of land, its alleged status as Bhadda land and prior revenue proceedings raise intricate questions of title and factual determination which cannot be adjudicated in proceedings under Article 199, particularly against concurrent findings in Section 12 (2), C.P.C. proceedings, and if the Petitioners indeed possessed any independent enforceable rights, the proper course was to avail remedies provided by law rather than to mount a collateral challenge to a decades-old decree through constitutional jurisdiction.

12. Another important aspect which cannot be ignored is that the original decree was not left standing in isolation; it was affirmed in appeal and then maintained by this Court in revision. The effect of such successive affirmation is that the matter stood conclusively adjudicated through competent judicial forums. To permit reopening at this distant stage, in the absence of demonstrable jurisdictional defect or clearly proved fraud on the Court, would amount to unsettling the doctrine of finality itself. The law leans in favour of conclusiveness of litigation. Public confidence in the judicial process would be gravely undermined if decrees affirmed through hierarchy of

Courts are permitted to be casually reopened after decades on the basis of unsubstantiated allegations.

13. The learned counsel for the Petitioners also invoked the principle of natural justice, arguing that the Petitioners, being illiterate peasants, were deprived of fair opportunity. The contention, though emotionally appealing, cannot displace legal requirements. Principles of natural justice are meant to ensure fairness in proceedings; they do not override mandatory legal bars, nor can they be invoked to defeat settled rights where the litigant has failed to demonstrate timely and lawful pursuit of remedy. Sympathy cannot substitute law. Courts are bound to decide on legal principle and judicial discipline, not on compassionate conjecture.

14. From perusal of the impugned order of the revisional Court, it appears that the learned District Judge considered the relevant facts, examined the chronology of litigation, took note of the date of decree, the date of filing of the application under Section 12(2), C.P.C., the plea of knowledge set up by the applicants and thereafter found no illegality in the order of the learned trial Court. The order impugned before this Court does not disclose any patent misreading of record, non-reading of material evidence, or assumption of jurisdiction not vested by law. It is a reasoned order based upon a plausible view of the matter. Merely because the Petitioners desire a fuller inquiry does not render the order unlawful.

15. I am also mindful of the fact that stale claims, when entertained after long intervals, ordinarily prejudice the opposite side in a profound manner. Witnesses may no longer be available, parties may have died, memories fade, documents may not remain intact and the legal heirs of original litigants are dragged into protracted uncertainty regarding rights that had long been treated as settled. The present case is a stark example, where the legal heirs of the original decree-holder are being compelled to defend a decree passed in 1979 and reaffirmed long ago. Courts must guard against abuse of process under the guise of belated invocations of fraud.

16. Upon anxious consideration of the entire matter, I find that the Petitioners have failed to point out any jurisdictional defect, patent illegality, perversity, or miscarriage of justice in the concurrent findings recorded by the Courts below. The application under Section 12 (2), C.P.C. was filed after an inordinate and unexplained delay of over three decades; the plea of delayed knowledge was not shown to be credible; the allegations of fraud were general and unsubstantiated; the decree sought to be challenged had already attained finality through appellate and revisional scrutiny; and no case for constitutional interference has been made out. The impugned order dated 23.08.2016 passed by the learned District Judge, Tando Allahyar in Civil Revision No.02 of 2016, therefore, does not call for interference by this Court in exercise of its constitutional jurisdiction.

17. For the foregoing reasons, this Constitutional Petition, being devoid of merit, is **dismissed**. Consequently, the impugned order dated 23.08.2016 passed by the learned District Judge, Tando Allahyar, as well as the order of the learned trial Court dismissing the application under Section 12 (2), C.P.C., are **maintained**. Any interim order, if operating, stands recalled and the pending applications, if any, also stand disposed of.

JUDGE

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