

THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

C.P No. S-337 of 2026

[Manzoor Ahmed & others Vs. Jameel Ahmed & others]

Petitioners : Through Mr. Abdul Khaliq Kalhoro,
Advocate

Respondent No.1 : Jameel Ahmed, present in person

Respondents No.2 to 19 : Nemo

Respondents No.20 to 26 : Through Mr. Abdul Waris Bhutto,
Assistant Advocate General, Sindh
along with Saeed Ahmed Jokhio,
Mukhtiarkar, Sijawal Junejo, District
Kamber-Shahdadkot

Date of Hearing : **19-10-2026**

Date of Order : **19-10-2026**

ORDER

ARBAB ALI HAKRO, J:- Through this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as '**the Constitution**'), the petitioners, who are defendants No.2-A, 2-B, 2-D, 2-F and 3 to 6 in F.C. Suit No.91 of 2021 pending before the learned Senior Civil Judge, Shahdadkot (hereinafter referred to as '**the trial court**'), assail the order dated 28.10.2024 (hereinafter referred to as '**the trial court's order**'), whereby their application under Order I Rule 10(2) read with section 151 CPC for addition of five persons as defendants was dismissed and the order dated 22.01.2025 passed by the learned Additional District Judge-II, Shahdadkot (hereinafter referred to as '**the revisional court**'), whereby their revision under section 115 CPC against that order was dismissed in *limine* (hereinafter referred to as '**the revisional order**').

2. The facts necessary for disposal of this petition are that respondents No.1 to 19, the legal heirs of late Ali Muhammad Umrani, instituted the suit on 27.08.2021 for declaration, cancellation of entries and permanent injunction in respect of 27-00 acres comprising Survey Nos.81, 135, 137, 176, 178, 344, 524, 534/1 and 534/2 of Deh Jalil Kalhoro, Taluka Sijawal Junejo, tracing their title to a registered sale deed dated 19.01.1978 and Entry No.421 dated 22.07.1981. The entries assailed in the plaint are Entry No.255 and the chain following it in favour of Shadi Khan Kalhoro and his heirs i.e. Entries Nos.243, 417 and 12, relating to Survey Nos.524, 534/1 and 534/2 and Entry No.79 together with sale deed No.743 of 1995 in favour of Kareem Bux Chandio, relating to Survey Nos.135, 178, 534/1 and 534/2. No entry relating to Survey Nos.81, 137, 176 or 344 is challenged, and no person recorded against those survey numbers has been impleaded.

3. The petitioners, who are the heirs of Shadi Khan Kalhoro, moved the trial court to add Muhammad Soomar, Hakim Ali, Udhal Khan, Noor Muhammad and Ghulam Shabir as defendants on the footing that Form VII-B records them as owners of Survey No.81 under Entry No.189, Survey No.137 under Entry No.76, Survey No.176 under Entry No.229 and Survey No.344 under Entry No.302. The plaintiffs objected that they are the masters of their suit and claim nothing against those persons. The trial court dismissed the application, holding that the contest between the plaintiffs and the contesting defendants is confined to the survey numbers claimed by the latter, that the proposed persons have neither come forward nor instituted any proceedings of their own and that a decree in the suit would not bind them. The revisional court dismissed the revision at the threshold, recording that learned counsel for the applicants, when asked what prejudice they would suffer if the proposed persons were not joined, had no answer. Issues in the suit were settled on 04.11.2024, and the suit stands at the stage of the plaintiffs' evidence.

4. Learned counsel for the petitioners contends that prayer clause (a) of the plaint seeks a declaration of ownership over all nine survey numbers; that the persons recorded as owners of four of those numbers are therefore necessary parties; that Order I Rule 10(2) CPC empowers the court to add a party at any stage, either on the application of either party or of its own motion; and that a decree passed in the absence of those persons would deny a fair trial under Article 10-A of the Constitution and invite proceedings under section 12(2) CPC. He has filed a statement relying upon **Abdul Aziz**,¹ **Muhammad Shakeel**² and **Dr. Muhammad Akbar**.³

5. Respondent No.1, present in person, and the learned Assistant Advocate General support the impugned orders.

6. I have heard learned counsel for the petitioners, respondent No.1 and the learned Assistant Advocate General and have perused the record with their assistance.

7. The jurisdiction invoked is that of certiorari under Article 199(1)(a)(ii) of the Constitution, which is available to an aggrieved party, where no other adequate remedy is provided by law, against an order passed without lawful authority. Where the order impugned is that of a court which had jurisdiction to decide the matter, the enquiry is confined to whether the court acted without jurisdiction, in excess of it, or in a manner so grossly erroneous as to amount to a failure to exercise it; the correctness of the decision on its merits is not the test. A court which has jurisdiction to decide a matter has jurisdiction to decide it rightly or wrongly, and this Court does not sit as a court of appeal over the subordinate courts in the exercise of its constitutional jurisdiction.⁴ The jurisdiction is supervisory, and the High Court

¹ *Abdul Aziz v. All Pakistan Clerks Association* 2025 SCMR 515.

² *Muhammad Shakeel v. Additional District Judge, Faisalabad* PLD 2025 SC 572.

³ *Dr. Muhammad Akbar v. Mst. Safia Kakar* 2023 MLD 24.

⁴ *Muhammad Husain Munir v. Sikandar* PLD 1974 SC 139; *Shajar Islam v. Muhammad Siddique* PLD 2007 SC 45.

may nullify a decision only if it is beyond jurisdiction or grossly erroneous, without substituting its own conclusions for those reached by the courts below. The Federal Constitutional Court of Pakistan has further emphasised that relief under Article 199 is to be granted strictly in accordance with law and not on considerations of equity or compassion which the law does not sanction.⁵ Two further features of the Article deserve notice. Clause (1A) now precludes this Court from making any order or giving any declaration beyond the contents of the application filed under clause (1). The memorandum of this petition, it may be observed, contains no prayer clause; the only relief that can be read from its opening paragraph is setting aside the two impugned orders.

8. Turning to the provision under which the application was made, Order I Rule 3 CPC permits joinder as defendants of all persons against whom any right to relief is alleged to exist; Rule 9 declares that no suit shall be defeated by reason of the non-joinder of parties and that the court may deal with the matter in controversy so far as regards the rights and interests of the parties actually before it; Rule 10(2) empowers the court, at any stage of the proceedings, with or without an application, to add any person who ought to have been joined or whose presence is necessary to enable the court to adjudicate effectively and completely upon and settle all the questions involved in the suit; and Rule 13 requires every objection on the ground of non-joinder to be taken at the earliest possible opportunity and, in all cases where issues are settled, at or before such settlement. Section 43 of the Specific Relief Act, 1877 (hereinafter referred to as '**SRA**') completes the scheme: a declaration binds only the parties to the suit and persons claiming through them.

⁵ *Vice Chancellor, Shaheed Mohtarma Benazir Bhutto Medical University v. Altaf Hussain Somroo* (F.C.P.L.A. No.14 of 2025, Federal Constitutional Court of Pakistan, decided on 07.01.2026).

9. The Supreme Court has drawn a distinction between the two classes of persons whom Rule 10(2) contemplates. A necessary party is one in whose absence no effective order can be passed at all; a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision of the question involved in the proceedings.⁶ The object of the rule is to bring before the court all persons who are parties to the dispute relating to the subject matter, so that the dispute may be determined in their presence and multiplicity of proceedings avoided.⁷ It is equally settled that the plaintiff is *dominus litis* and that it is his prerogative to choose the person against whom he seeks relief and to implead him as the defendant.⁸ Read together, these propositions yield a clear rule. The power under Rule 10(2) belongs to the court and is exercised to secure an effectual adjudication of the questions actually in issue; it does not confer upon a defendant a right to compel the plaintiff to litigate against persons from whom the plaintiff claims nothing. If the plaintiff elects to leave out a person against whom his claim might have been directed, the consequence is visited upon the plaintiff: under Rule 9 the court confines its decision to the parties before it, and under section 43 SRA any declaration it makes does not bind the absentee.

10. Applying these principles, the petition fails on several independent grounds. First, the petitioners are not aggrieved persons within the meaning of Article 199 in relation to the relief sought. On their own showing, their interest, derived from Shadi Khan Kalhoro, is confined to Survey Nos. 524, 534/1 and 534/2. The persons they sought to add are recorded against Survey Nos. 81, 137, 176 and 344, in which the petitioners assert no title. Whether or not those persons are joined, the defence of the petitioners in respect of their own survey numbers is neither enlarged nor curtailed.

⁶ *Muhammad Arif v. District and Sessions Judge, Sialkot* 2011 SCMR 1591; *Muhammad Shakeel* (n.2 above).

⁷ *Province of the Punjab v. Muhammad Akram* 2023 SCMR 755.

⁸ *Muhammad Shakeel* (n.2 above).

Neither court below found any prejudice to the petitioners, and none is pleaded in this petition beyond a general invocation of Article 10-A. The right to a fair trial secured by that Article belongs to the parties before the court and is served by hearing them; it does not entitle a defendant to dictate to the plaintiff whom he must sue.

11. Secondly, the plaintiffs seek no relief against the proposed persons. No entry in their names is sought to be cancelled. If the declaration sought under prayer clause (a) is read as extending to Survey Nos. 81, 137, 176 and 344, the only consequence in law is that any such declaration will not bind persons who are not parties to the suit, and the trial court may, under Order I Rule 9 CPC, confine its decision to the rights of the parties before it. The plaintiffs have chosen to run that risk. It furnishes the contesting defendants with a point of defence and, if raised in accordance with law, an issue; it does not furnish a ground for compelling impleadment at their instance.

12. Thirdly, the proposed persons have never sought to be joined. The Supreme Court has held that the right to be joined belongs to the person whose interest is at stake, that such a person is ordinarily allowed to join if he applies and that a person who does not consider it appropriate to join the proceedings to assert his rights cannot later be permitted to join them without explanation or justification; the same judgment recognises that a person affected by a decree passed in his absence has his own remedies in law.⁹ The record further indicates that Entry No.302 in respect of Survey No.344 was recorded on 20.09.2022 on the strength of a sale deed dated 22.04.2022, that is, after the suit was filed on 27.08.2021. A transferee *pendente lite* takes subject to Section 52 of the Transfer of Property Act, 1882, and is bound by the result of the suit; he is not a necessary party to it and the onus of seeking joinder, if he wishes to be heard, lies upon him.

⁹ *Jamil Ahmed v. Mst. Zarina Bibi* PLD 2026 SC 380.

13. Fourthly, the objection was not pursued with the diligence the law demands. It does not appear in the petitioners' written statement, as the plaintiffs asserted in their affidavit before the trial court, and the petitioners have not denied it; the application was filed some two and a half years after the suit was instituted. Since it preceded the settlement of issues on 04.11.2024, Rule 13 does not operate as a bar, but the Supreme Court's insistence that such objections be raised at the earliest opportunity¹⁰ is a consideration that weighs against interference in a jurisdiction that is discretionary in its nature.

14. The authorities cited by the petitioners do not advance their case. In **Abdul Aziz**, the intervener itself applied to be impleaded; the trial court allowed the application; the High Court restored that order; and the Supreme Court declined to interfere because both courts had found, on the facts, that the outcome of the suit could adversely affect the intervener's rights in land claimed by it. The judgment counsels deference to reasoned findings of the courts below on the question of joinder; here, those findings are against the petitioners. **Muhammad Shakeel** was a case in which the defendants' plea of non-joinder was rejected, both because it had not been raised at the earliest and because the person concerned was not necessary to the decision of the core issue; the judgment affirms the plaintiff's prerogative to choose his defendant and confines the certiorari jurisdiction to jurisdictional error. Read as a whole, it supports the respondents rather than the petitioners. **Dr Muhammad Akbar** is a decision of the Balochistan High Court in revision, where the trial court itself directed the impleadment of co-heirs and purchasers in a suit for partition, and the plaintiffs supported that course; it is persuasive at best and distinguishable on both counts. The Supreme Court decision there, **Mian Zafar Ali**¹¹, remanded a suit after full trial for non-joinder of co-sharers of a joint khata whose rights were directly in issue; that

¹⁰ *Muhammad Arif* (n.7 above); *Muhammad Shakeel* (n.2 above).

¹¹ *Mian Zafar Ali v. Mian Khursheed Ali* 2020 SCMR 291.

was an appeal on the merits, not the exercise of certiorari against an interlocutory refusal, and it lays down no rule that a defendant may compel the joinder of strangers to the relief claimed.

15. For the foregoing reasons, no illegality or jurisdictional defect is found in either the trial court's order dated 28.10.2024 or the revisional order dated 22.01.2025. The petition is **dismissed**, with no order as to costs.

JUDGE

Zulfiqar