IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

C.P No.S-163 of 2026

[Hussain Bux v. Province of Sindh and others]

Petitioner	:	Hussain Bux through Mr. Javed Ahmed Soomro, Advocate.
Respondents No.1 to 4	:	Province of Sindh and others through Mr. Mohsin Ali Khan, Assistant Advocate General, Sindh.
Respondent No.5	:	Nemo.
Respondent No.6	:	Haji Nabi Bux through his attorney namely, Ghulam Qadir in person.
Date of Hearing	:	**23.06.2026**
Date of Judgment	:	**04.09.2026**

JUDGMENT

RIAZAT ALI SAHAR, J.- Through this Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner has called in question the legality and propriety of (i) order dated 04.05.2024 passed by the learned 1st Senior Civil Judge, Jacobabad, whereby his application under Section 12 (2), C.P.C. for recalling the judgment and decree dated 01.04.2017 was dismissed, and (ii) order dated 17.02.2026 passed by the learned Additional District Judge-II, Jacobabad in Civil Revision No.13 of 2024, whereby the Revisional Court maintained the order of the trial Court. The petitioner has further sought setting aside of the judgment and decree dated 01.04.2017 passed in F.C. Suit No.104 of 2015 on the plea that the same was allegedly obtained by fraud, concealment and without impleading him despite his alleged purchase of a portion of the suit property through a registered sale deed.

2. Briefly stated, respondent No.5 Mst. Zareena instituted F.C. Suit No.104 of 2015 before the learned Senior Civil Judge, Jacobabad seeking declaration, cancellation of fraudulent revenue entries, partition, possession, mandatory and permanent injunction regarding agricultural land bearing Survey Nos.67, 68, 69 and 70 situated in Deh Dilawarpur, Taluka and District Jacobabad. After contest, recording of evidence and hearing of the parties, the learned trial Court decreed the suit on 01.04.2017. The record further reveals that respondent No.6, namely Haji Nabi Bux, who was defendant in the suit, challenged the judgment and decree before the appellate forum; however, his appeal was dismissed and the decree attained finality. Thereafter, execution proceedings were initiated by the decree-holder and Execution Application No.07 of 2021 was allowed. Eventually, the Executing Court, vide order dated 16.03.2026, directed issuance of writ of possession in favour of the decree-holder after observing that the judgment and decree had already attained finality up to this Court.

3. The petitioner claims that prior to institution of the above suit he had purchased Plot No.2 admeasuring 2400 square feet carved out from Survey No.67 through a registered sale deed dated 11.06.2013 from respondent No.6 and corresponding Mutation Entry No.36 dated 07.10.2013 was also sanctioned in his favour. According to him, despite knowledge of such transaction, respondent No.5 deliberately omitted to implead him as a party to the suit and succeeded in obtaining judgment and decree by practicing fraud upon the Court. It is his case that he remained unaware of the proceedings and came to know about the decree only when revenue officials allegedly attempted to dispossess him during execution proceedings. On acquiring such knowledge, he filed an application under Section 12 (2), C.P.C. on 04.12.2023 seeking recall of the judgment and decree dated 01.04.2017 on the grounds of fraud, concealment, misrepresentation and violation of principles of natural justice.

4. The decree-holder/respondent No.5 contested the said application by filing written objections, *inter alia*, asserting that the application was hopelessly barred by limitation, that the petitioner had failed to disclose the exact date on which he allegedly acquired knowledge of the decree and that the proceedings had been initiated in collusion with respondent No.6 merely to obstruct execution of a decree which had already attained finality after dismissal of appeal preferred by respondent No.6. Upon hearing the parties and examining the record, the learned trial Court held that although limitation under Article 181 of the Limitation Act could commence from the date of knowledge in appropriate circumstances, yet the applicant had neither disclosed the date of knowledge nor sought condonation of delay despite filing the application after expiry of more than six years from the date of decree. Placing reliance upon *Mst.Zainab and others v. Allah Wasaya through LRs and others* (2014 CLC 1014), the learned trial Court dismissed the application vide order dated 04.05.2024 as being barred by limitation.

5. Feeling aggrieved, the petitioner preferred Civil Revision No.13 of 2024 before the learned Additional District Judge-II, Jacobabad. After hearing learned counsel for the parties and perusal of the entire record, the Revisional Court observed that the impugned judgment and decree had been passed on 01.04.2017, whereas the application under Section 12 (2), C.P.C. was filed only on 04.12.2023, well beyond the prescribed period of limitation. The Revisional Court further noticed that no application for condonation of delay accompanied the application under Section 12 (2), C.P.C. and concurred with the findings of the trial Court that the proceedings had been initiated merely to prolong execution of the decree in favour of respondent No.5, who had already been deprived of her lawful inheritance for a considerable period. Consequently, the Civil Revision was dismissed on 17.02.2026, maintaining the order of the trial Court.

6. The petitioner has now invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution, challenging both the aforesaid orders as well as the original judgment and decree dated 01.04.2017. It is asserted in the petition that the Courts below failed to appreciate that fraud vitiates even the most solemn proceedings; that limitation commences from the date of knowledge where fraud is alleged; that the petitioner is a *bona fide* purchaser through a registered instrument executed prior to institution of the suit; that valuable proprietary rights have been adversely affected without affording him an opportunity of hearing; and that the concurrent findings recorded by the Courts below suffer from material illegality, jurisdictional error and misreading of the record, warranting interference by this Court in exercise of its constitutional jurisdiction.

7. Learned counsel for the petitioner, learned Assistant Advocate General, Sindh, learned counsel for respondent No.5 and respondent No.6, who is present in person as attorney, have been heard at considerable length. The record of the Courts below has also been carefully examined with their able assistance.

8. Learned counsel for the petitioner contended that the impugned orders passed by both the Courts below are contrary to law, facts and the settled principles governing proceedings under Section 12 (2), C.P.C. He contended that the petitioner is a *bona fide* purchaser of Plot No.2 admeasuring 2400 square feet carved out from Survey No.67 through a registered sale deed dated 11.06.2013, much prior to the institution of F.C. Suit No.104 of 2015, yet respondent No.5 intentionally concealed this material fact and deliberately omitted to implead him as a party in order to obtain an *ex parte* advantage. Learned counsel contended that the judgment and decree dated 01.04.2017 are the outcome of fraud, concealment and misrepresentation, therefore, such decree is a nullity in the eye of law and can be questioned whenever the fraud comes to the knowledge of the aggrieved person. He further contended that the petitioner acquired knowledge of the decree only when execution proceedings were initiated and writ of possession was sought to be executed, where after he promptly invoked Section 12 (2), C.P.C. Learned counsel contended that both the Courts below adopted a hyper-technical approach by dismissing the application solely on limitation without examining the serious allegations of fraud. In support of his submissions, learned counsel placed reliance upon the judgment of this Court rendered in C.P. No.D-510 of 2006 (Muhammad Shamim and others v. Mst. Suraiya Khanum through legal heirs and others), decided on 17.03.2022.

9. Conversely, learned Assistant Advocate General, Sindh supported the impugned orders and submitted that both the trial Court and the Revisional Court have recorded concurrent findings after proper appreciation of the available material. He contended that the application under Section 12 (2), C.P.C. was admittedly instituted more than six years after passing of the judgment and decree and neither the alleged date of knowledge was disclosed nor any application for condonation of delay accompanied the proceedings. According to him, the petitioner failed to establish any jurisdictional defect, illegality or perversity in the concurrent findings warranting interference in constitutional jurisdiction. He, therefore, prayed for dismissal of the petition.

10. Respondent No.6, who appeared in person being attorney, adopted the submissions advanced on behalf of the petitioner. He maintained that he had already transferred Plot No.2 in favour of the petitioner through a registered sale deed in the year 2013 and, therefore, the petitioner had acquired lawful proprietary rights before institution of the original suit. According to him, non-impleadment of the petitioner materially prejudiced his vested rights and, therefore, the judgment and decree deserved to be recalled to enable the petitioner to contest the matter on merits.

11. I have given my anxious consideration to the submissions advanced by the learned counsel for the parties and have carefully examined the record produced before this Court.

12. The controversy involved in the present petition essentially revolves around the legality of the concurrent findings recorded by the learned trial Court and the learned Revisional Court whereby the petitioner's application under Section 12 (2), C.P.C. was dismissed primarily on the ground of limitation. The record leaves no room for doubt that the original F.C. Suit No.104 of 2015 was instituted in the year 2015 and, after full-fledged trial, culminated into a judgment and decree dated 01.04.2017. The said decree was not only challenged by respondent No.6 through statutory remedies but the appellate proceedings ultimately terminated against him, whereby the decree attained finality. Thereafter, execution proceedings were initiated and were ultimately allowed, resulting in issuance of writ of possession on 16.03.2026. It was only after culmination of all these proceedings that the petitioner sought to challenge the decree by filing an application under Section 12 (2), C.P.C. on 04.12.2023.

13. The learned trial Court dismissed the application after recording a categorical finding that although limitation may commence from the date of knowledge in appropriate cases involving fraud, the petitioner had failed to disclose even the alleged date on which he acquired such knowledge. Equally significant is the fact that no application seeking condonation of delay was filed despite the extraordinary lapse of more than six years from the date of decree. The Revisional Court independently re-examined the record and concurred with the findings of the trial Court, observing that the application appeared to have been filed only to obstruct execution of a decree which had already attained finality after exhaustion of statutory remedies. Thus, both the Courts below have returned concurrent findings on questions of fact as well as law.

14. It is a settled principle that constitutional jurisdiction under Article 199 of the Constitution is supervisory and not appellate in nature. Unless concurrent findings are shown to suffer from jurisdictional defect, patent illegality, material irregularity, misreading or non-reading of evidence resulting in miscarriage of justice, this Court ordinarily refrains from substituting its own opinion merely because another view may also be possible. At the very outset, it is to be observed that the jurisdiction of this Court under Article 199 of the Constitution is supervisory in nature and not that of a regular appellate Court. The Constitutional jurisdiction is intended to correct jurisdictional defects, patent illegality, arbitrariness, perversity or violation of law resulting in miscarriage of justice. It is not designed to re-appraise evidence or substitute concurrent findings of fact merely because another view is possible. Therefore, unless the impugned orders are shown to have been passed without lawful authority, in excess of jurisdiction, in violation of mandatory provisions of law or suffer from patent perversity, this Court would be slow in interfering with concurrent findings recorded by the Courts below.

15. The pivotal question requiring determination is whether the learned Courts below committed any legal error in holding the petitioner's application under Section 12 (2), C.P.C. to be hopelessly barred by limitation. The record unmistakably reflects that the judgment and decree sought to be recalled were passed on 01.04.2017, whereas the petitioner instituted the application under Section 12 (2), C.P.C. on 04.12.2023, after the lapse of more than six years. It is equally borne out from the application itself that the petitioner did not mention the specific date, month or even the year when he allegedly came to know about the decree. The entire pleading merely states that "few days ago" the Mukhtiarkar attempted to dispossess him and disclosed the existence of the decree. Such vague and evasive pleading neither satisfies the requirement of law nor furnishes any factual foundation from which limitation could be computed. More importantly, despite the extraordinary delay, admittedly no application seeking condonation of delay was ever filed before the learned trial Court. These deficiencies have been concurrently noticed by both the Courts below while dismissing the application. Mere allegation of fraud does not automatically arrest the running of limitation. A party invoking Section 12 (2), C.P.C. must first establish, through specific pleadings supported by *prima facie* material, as to when the alleged fraud came to his knowledge and what prevented him from approaching the Court within the prescribed period. Such foundational facts are conspicuously absent in the present case. The entire edifice of the petitioner's case rests upon the assertion that respondent No.5 intentionally omitted to implead him despite his purchase through a registered sale deed. Undoubtedly, fraud vitiates even the most solemn judicial proceedings. However, fraud is a serious allegation carrying grave civil consequences and must be pleaded with specificity and proved by cogent, convincing and unimpeachable material. Bald, sweeping and general allegations cannot constitute proof of fraud.

16. The record reveals that the original suit was not decreed ex parte. Rather, it was contested by the parties, evidence was recorded, issues were framed and thereafter judgment and decree dated 01.04.2017 were passed. The decree was subsequently challenged by respondent No.6, the very person from whom the petitioner claims title, but the appellate proceedings ended against him and the decree attained finality. It is also strange to note here that the respondent No.6 who contested the entire proceedings did not mention with regard to sale of the subject property in favour of petitioner. Therefore, the present proceedings virtually amount to an indirect attempt to reopen litigation which has already traversed the entire hierarchy provided by law. Significantly, except for producing the registered sale deed, the petitioner has not brought on record any material demonstrating that respondent No.5 deliberately concealed his alleged interest or practiced fraud upon the Court. Whether omission to implead the petitioner was legally justified or otherwise is a matter altogether different from establishing fraud of such magnitude as would render the decree a nullity. The material available on record falls far short of meeting the high threshold required for setting aside a decree under Section 12 (2), C.P.C.

17. Another aspect which cannot be ignored is that respondent No.6, the petitioner's own vendor, had already challenged the judgment and decree through the statutory appellate hierarchy but remained unsuccessful. Thereafter, execution proceedings were initiated and allowed, culminating in issuance of writ of possession by the Executing Court on 16.03.2026 after specifically observing that the decree had attained finality up to this Court. The law strongly favours finality of judicial proceedings. Endless litigation not only undermines certainty of rights but also erodes public confidence in the administration of justice. Once a decree has attained finality after exhaustion of the remedies provided by law, it cannot ordinarily be permitted to be reopened through collateral proceedings unless exceptional circumstances of the highest order are established. The present case does not disclose any such extraordinary circumstance warranting interference by this Court.

18. As far as the reliance of the learned counsel for the petitioner upon the judgment dated 17.03.2022 rendered in *Muhammad Shamim and others v. Mst. Suraiya Khanum through her legal heirs and others* is concerned, with utmost respect, it is wholly misplaced and distinguishable on facts as well as law. In the cited case, the decree sought to be recalled was a compromise decree allegedly procured through an attorney who happened to be the real brother of the plaintiff. The record itself disclosed glaring circumstances giving rise to serious suspicion regarding fraud and misrepresentation. The attorney was admittedly not authorized to defend the suit or enter into compromise; the defendants were served through the plaintiff's own brother; substantial admissions emerged during cross-examination; the compromise travelled beyond the pleadings; and the trial Court had failed to examine these fundamental jurisdictional defects. In those peculiar circumstances, this Court held that the Revisional Court ought to have exercised its suo motu jurisdiction under Section 115, C.P.C., notwithstanding limitation, to rectify patent illegality and fraud apparent on the face of the record.

19. The factual matrix of the present case is entirely different. Here, the decree dated 01.04.2017 is not a compromise decree, but a judgment rendered after regular trial upon framing of issues, recording of evidence and hearing of the contesting parties. There is no allegation of defective service upon the defendants, no unauthorized attorney representing any party, no compromise beyond pleadings, nor any admitted material demonstrating fraud practiced upon the Court itself. Furthermore, unlike the cited case, the present petitioner has approached the Court after more than six years without disclosing the date of knowledge and without seeking condonation of delay. Thus, the ratio laid down in the case of Muhammad Shamim was founded upon exceptional facts involving manifest fraud and jurisdictional error, none of which exist in the present matter. Consequently, the said judgment does not advance the petitioner's case in any manner.

20. The record of the present case demonstrates that the original suit instituted by respondent No.5 was decided after regular trial, framing of issues and recording of evidence, culminating in judgment and decree dated 01.04.2017. The respondent No.6, who was the principal contesting defendant and the very person through whom the petitioner claims title, availed the statutory remedy of appeal but remained unsuccessful. Consequently, the decree attained finality and execution proceedings were thereafter initiated. It is an admitted position that the petitioner was not a party to the original proceedings. His claim is entirely derivative, being founded upon an alleged sale deed executed by respondent No.6. The fate of such derivative claim cannot be examined in isolation from the litigation already contested by his predecessor-in-interest. Once respondent No.6 unsuccessfully challenged the judgment and decree before the competent forums, and the decree attained finality, any collateral challenge by a person claiming through him must satisfy the strict requirements prescribed by law. Such challenge cannot succeed merely on general allegations of fraud unsupported by specific particulars and convincing evidence. The learned trial Court has rightly observed that although limitation may, in appropriate circumstances, commence from the date of knowledge, the petitioner failed to disclose the precise date on which such knowledge was allegedly acquired. This omission goes to the very root of the matter. Unless the date of knowledge is specifically pleaded and *prima facie* established, the Court cannot determine whether the proceedings have been instituted within the prescribed period. The petitioner also omitted to file any application seeking condonation of delay despite approaching the Court after more than six years. These are not mere technical defects but substantive legal deficiencies affecting the maintainability of the proceedings themselves. The learned Revisional Court independently examined the matter and concurred with these findings. This Court finds no illegality, irregularity or perversity in such concurrent conclusions.

21. It is equally significant that the allegations of fraud remain wholly unsubstantiated. Fraud undoubtedly vitiates judicial proceedings; however, the burden of proving fraud is exceptionally heavy. Courts have consistently held that fraud is never presumed and must be established through cogent, reliable and convincing evidence. Mere assertions that the petitioner was not impleaded, without establishing deliberate concealment or deception practiced upon the Court, are insufficient for invoking the extraordinary remedy provided under Section 12 (2), C.P.C.

22. The Honourable Supreme Court of Pakistan has repeatedly emphasized that constitutional jurisdiction is supervisory and cannot be converted into another appellate forum for reassessment of evidence or substitution of concurrent findings unless the impugned orders suffer from jurisdictional defect, patent illegality, material irregularity or perversity resulting in miscarriage of justice. It is also held that where two Courts have concurrently recorded findings of fact after proper appreciation of the available material, interference in constitutional jurisdiction is warranted only in exceptional circumstances. Likewise, the law equally recognizes that limitation is founded upon public policy. It is intended to secure certainty, finality and repose in litigation. Although allegations of fraud may, in appropriate cases, postpone the commencement of limitation, such allegations must be pleaded with precision and proved through convincing evidence. Fraud cannot be inferred merely from suspicion, conjecture or vague assertions. The superior Courts have also consistently recognized that while procedural laws are handmaids of justice, they cannot be ignored altogether. A litigant invoking equitable jurisdiction must himself satisfy the statutory requirements prescribed by law. The extraordinary constitutional jurisdiction cannot be exercised to circumvent mandatory provisions relating to limitation, particularly where the party has failed to explain the delay or disclose the foundational facts necessary to invoke the equitable discretion of the Court.

23. For the foregoing reasons, I am of the considered view that the petitioner has failed to demonstrate any jurisdictional defect, patent illegality, material irregularity, misreading or non-reading of evidence, or perversity in the impugned orders passed by the learned trial Court and the learned Revisional Court. Both the Courts below have concurrently held that the application under Section 12 (2), C.P.C. was hopelessly barred by limitation, as the same had been instituted after more than six years from the date of judgment and decree without disclosure of the alleged date of knowledge and without any application for condonation of delay. These findings are fully borne out from the record and are supported by sound legal reasoning. The allegations of fraud advanced by the petitioner remain unsupported by any convincing material. The mere fact that the petitioner claims to be a purchaser through respondent No.6 does not, by itself, establish that respondent No.5 obtained the judgment and decree by practicing fraud upon the Court. The decree dated 01.04.2017 was passed after a contested trial and has already attained finality after exhaustion of the statutory remedies by respondent No.6 himself. The subsequent execution proceedings have also culminated in issuance of writ of possession. Permitting reopening of such concluded proceedings on vague and unsubstantiated allegations would defeat the settled principles governing finality of litigation and would undermine the sanctity attached to judicial determinations.

24. Having examined the entire record with anxious consideration, I find that both the Courts below have exercised jurisdiction vested in them strictly in accordance with law and have assigned cogent, convincing and legally sustainable reasons for dismissing the petitioner's application under Section 12 (2), C.P.C. Accordingly, finding no merit whatsoever in this Constitutional Petition, the same is dismissed. The orders dated 04.05.2024 passed by the learned 1st Senior Civil Judge, Jacobabad and 17.02.2026 passed by the learned Additional District Judge-II, Jacobabad are hereby maintained. Consequently, all pending applications, if any, also stand disposed of.

JUDGE

Qazi Tahir PA/*