

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

*Civil Revision Application No. S-04 of 2023*

Applicant : Jan Muhammad Jakhrani (Since dead through his LRs), *through* Mr. Vinod Kumar G. Jesrani, Advocate.

Respondents : Late Qamaruddin, his LRs and Others, *through* Mr. Abdul Ghani Bijarani, Advocate for Respondent No.01 to 04, Mr. Nizamuddin Magsi, Advocate for Respondent No.05 and Mr. Munawar Ali Abbasi, Assistant Advocate General, Sindh.

Date of Hearing : 28.08.2025.

Date of Decision : 28.08.2025.

**JUDGMENT**

**Ali Haider 'Ada'.J:-** The applicant, through the instant Civil Revision Application, has assailed the judgment and decree dated 27.08.2022 passed by the learned Senior Civil Judge, Kandhkot (Trial Court) in F.C. Suit No. 223 of 2019, and has also called into question the judgment and decree dated 01.12.2022, whereby the learned District Judge, Kashmore @ Kandhkot (Appellate Court), maintained and upheld the findings of the Trial Court.

2. Concisely, the facts are that Respondents No. 1 to 4 / Plaintiffs (wherein Respondent No. 1 having expired during the proceedings, his legal heirs were brought on record in his place) instituted a civil suit against the applicant seeking possession of the suit property bearing Survey No. 284, admeasuring 17-09 acres (approximately 779,724 square feet), situated at Deh and Taluka Kandhkot (Suit Property). Out of the said land, Respondent No. 1 claimed to have purchased 2,000 square feet, Respondent No. 2, 3 purchased 4,000 square feet, and Respondent No. 4 purchased 4,000 square feet, all through registered sale deeds executed in the year 2001 by the original owner, Muhammad Ishaque Khan Malik. It was the case of the Respondents that the applicant (who was arrayed as Defendant in the trial proceedings) had illegally occupied a portion of the suit property on the basis of registered sale deeds which they alleged to be fraudulent and void. Accordingly, the Respondents prayed before the trial Court for cancellation of the said sale

deed in favour of the applicant / Defendant No. 1 and for delivery of possession of the area unlawfully occupied by him.

3. Before the trial Court, the applicant, as Defendant No. 1, filed his written statement and took the plea that in the year 2006, he had purchased an area measuring 10,500 square feet from the suit property through a registered sale deed executed by Teja Ram and Umesh Lal, who had themselves acquired the said portion from the original owner, Muhammad Ishaque Khan Malik, through a registered sale deed executed in the year 2000. The applicant further contended that he subsequently purchased another area measuring 10,500 square feet from one Ghulam Yaseen through a registered sale deed executed in the year 2012. Ghulam Yaseen, who has been impleaded as Respondent No. 5 in the present civil revision and was cited as Defendant No. 2 before the Trial Court, had purchased the said portion of the suit property from the original owner, Muhammad Ishaque Khan Malik, in the year 2006 through a registered sale deed. The applicant thus asserted that the sale deeds in his favour are genuine and that he is in lawful possession of the portion of the suit property acquired by him under valid documents.

4. The learned trial Court framed the following issues:-

1. Whether the suit of plaintiffs is not maintainable according to law?
2. Whether the plaintiffs are legal and lawful owners of the suit property?
3. Whether the defendant No.1 is in illegal and unlawful possession of the suit property?
4. Whether the registered sale deed No. 380 dated 06.05.2006 and sale deed No.271 dated 10.03.2012 so also entry No. 85 dated 09.05.2007 and entry No. 363 dated 02.12.2013 kept in the revenue record of rights regarding the suit property are forged and fabricated =, hence liable to be cancelled?
5. Whether the plaintiffs are entitled to the relief claimed for?
6. What should the decree be?

5. After framing of issues, the evidence of the Plaintiffs / Respondents was recorded, followed by the recording of evidence from the Applicant / Defendant. Upon closure of evidence from both sides, the learned trial Court summoned the Assistant Commissioner, Kandhkot, as a Court Witness. The said official appeared and produced the relevant revenue record pertaining to both parties, along with an enquiry report, which was taken on record and examined by the Court.

6. Thereafter, upon hearing the parties, the learned trial Court passed judgment and decree whereby the suit was decreed to the extent of possession of the suit property as claimed by the Respondents / Plaintiffs. However, with regard to the prayer for cancellation of the sale deeds in favour of the Applicant / Defendant No. 1, the Court answered the issue in the negative and declined to cancel the documents, holding them to be valid. Aggrieved by the said judgment, the applicant preferred an appeal, which was dismissed, thereby affirming the findings of the trial Court. The applicant has now challenged both the concurrent findings of the Courts below through the present civil revision.

7. Learned counsel for the applicant contends that the learned trial Court, while acknowledging the validity of the sale documents relied upon by the applicant, erred in holding that the applicant is in illegal occupation of the suit property. It is argued that the trial Court itself observed that the sale deeds through which the applicant acquired the property were not bogus or forged, and this fact was further corroborated by the Court Witness, the Assistant Commissioner, who affirmed the genuineness of the documents in his testimony. It is further submitted that the finding of illegal occupation by the applicant is without lawful justification and is based on a misappraisal of the evidence available on record. Learned counsel further submits that the process adopted by the trial Court in calling the Assistant Commissioner as a Court Witness was procedurally flawed, as he was neither examined on oath nor subjected to cross-examination by the applicant's side, despite the fact that his testimony was relied upon by the Court. It is pointed out that the Assistant Commissioner produced and exhibited an enquiry report which had earlier been prepared in connection with proceedings under the Illegal Dispossession Act, filed by one of the Respondents / Plaintiffs before the learned IIInd Additional District & Sessions Judge, Kandhkot. The trial Court, without affording the applicant a fair opportunity to contest the veracity of said document, placed undue reliance on the same and passed the impugned judgment and decree. Learned counsel prays that the matter may be remanded to the trial Court for fresh decision after granting the applicant an opportunity to cross-examine the Court Witness and contest the material relied upon. Reliance is placed upon the case as reported PLD 2005 SC 244 and 2005 SCMR 911.

8. Conversely, learned counsel for the Respondents / Plaintiffs contends that the applicant is in unlawful possession of a portion of the suit property,

without any legal entitlement or lawful authority. It is submitted that there are discrepancies in the boundaries described in the sale deeds in favour of the applicant as compared to his actual possession. Learned counsel argues that the Assistant Commissioner was summoned as a Court Witness, and the opportunity to cross-examine him was indeed provided but was not availed by the applicant; thus, at this belated stage, raising an objection on this ground is untenable. The learned counsel fully supports the findings recorded by the Courts below and prays for dismissal of the revision.

9. Learned counsel appearing for Respondent No. 5, namely Ghulam Yaseen, who had earlier purchased a portion of the suit property from the original owner Muhammad Ishaque Khan Malik and subsequently sold it to the applicant supports the stance of the applicant and adopts his arguments.

10. Learned Assistant Advocate General submits that the matter is essentially a private dispute involving no government interest, and as regards the impugned judgment and decree, the same has been passed after due appreciation of evidence and does not warrant interference in revisional jurisdiction.

11. I have considered the arguments advanced by the learned counsel for the parties and perused the material available on record with utmost care. The matter has been examined in the light of available material and evidence with judicial scrutiny.

12. First and foremost, it is pertinent to determine the extent and nature of the suit property. The property bearing Survey No. 284 comprises a total area of 17-09 acres, equivalent to approximately 779,724 square feet, situated at Deh and Taluka Kandhkot (suit property). The applicant has claimed to have purchased a total area of 21,000 square feet, comprising 10,500 square feet from Teja Ram and Umesh Lal, and another 10,500 square feet from Respondent No. 5 (Defendant No. 2), namely Ghulam Yaseen. It is not disputed that both sets of vendors had acquired their respective portions from the original owner, Muhammad Ishaque Khan Malik, through registered sale deeds. On the other hand, the Respondents / Plaintiffs assert ownership over relatively smaller portions of the same property, having purchased 2,000 square feet, 4,000 square feet, and another 4,000 square feet, respectively, also from the original owner, Muhammad Ishaque Khan Malik. Thus, even after accounting for the area claimed by both the applicant and the Respondents /

Plaintiffs, a substantial portion of the suit property remains unclaimed or unaffected. From the total area of approximately 779,724 square feet, the combined area claimed by the applicant and Respondents / Plaintiffs amounts to only a fraction thereof, indicating that a major portion of the suit property remains intact and undisputed.

13. Another important aspect of the case arises from the findings of the learned trial Court on Issues No. 2 and 3, wherein it was held that, based on the enquiry report submitted by the Assistant Commissioner in proceedings under the Illegal Dispossession Act, the boundaries mentioned in the applicant's sale deeds do not correspond with his actual physical occupation. On this basis, the learned trial Court concluded that the applicant is in illegal possession of a portion of the property claimed by the Plaintiffs / Respondents. However, it is to be noted that the said enquiry report was not prepared in the context of the present civil suit but was instead submitted during proceedings initiated by the Plaintiffs / Respondents under the Illegal Dispossession Act. Those proceedings, it is relevant to mention, concluded unsuccessfully for the Plaintiffs / Respondents, and only thereafter was the civil suit instituted. Therefore, reliance by the trial Court on an enquiry report originating from separate and previously concluded proceedings, without independent adjudication within the framework of the present civil suit, raises concerns about the evidentiary weight assigned to such a document particularly in the absence of its formal proof in accordance with law.

14. It is imperative to acknowledge that the criteria for evaluating evidence in criminal and civil proceedings are distinct, divergent, and governed by separate legal standards. In the instant matter, the learned trial Court appears to have placed reliance upon the enquiry report prepared in connection with a criminal case registered under Sections 3 and 4 of the Illegal Dispossession Act, 2005. However, such reliance is legally untenable for the reason that proceedings in a criminal case are fundamentally different from those in a civil suit. The former is concerned with the determination of guilt or innocence beyond a reasonable doubt, whereas the latter is adjudicated on the basis of the preponderance of probabilities and its own peculiar facts, pleadings, and evidence. Therefore, the findings, observations, or conclusions recorded in a criminal case cannot be imported into or made the basis for the determination of rights and liabilities in a civil matter. It is a well-settled proposition of law that the determinations rendered by a Criminal Court do not exert a binding

influence upon a Civil Court, nor do they carry any evidentiary value for adjudicating civil disputes. This principle finds authoritative support from the judgment of the Honourable Supreme Court of Pakistan in the case of *Karachi Transport Corporation and another v. Muhammad Hanif and others* (2009 SCMR 1005).

15. According to the record, the learned trial Court mainly relied upon the evidence of the Assistant Commissioner, who was summoned and examined as a Court witness. However, it is apparent from the deposition that his evidence was recorded without administering an oath. In this regard, it is imperative to consider Section 5 of the Oaths Act, 1873, which, for ready reference, is reproduced hereunder:

*5. Oaths or affirmations to be made by witnesses; interpreters; Jurors.- Oaths or affirmations shall be made by the following persons:-*

*(a) all witnesses, that is to say, all persons who may lawfully be examined, or give, or be required to give, evidence by or before any Court of person having by law or consent of parties authority to examine such persons or to receive evidence;*

*[and]*

*(b) interpreters of questions put to, and evidence given by, witnesses*<sup>9</sup>

*[(c) \* \* \* \* \*]*

*[Provided that where the witness is a child under twelve years of age, and the Court or person having authority to examine such witness is of opinion that, though he understands the duty of speaking the truth, he does not understand the nature of an oath or affirmation, the foregoing provisions of this section and the provisions of section 6 shall not apply to such witness, but in any such case the absence of an oath or affirmation shall not render inadmissible any evidence given by such witness nor the obligation of the witness to state the truth.]*

*Nothing herein contained shall render it lawful to administer, in a criminal proceeding, an oath or affirmation to the accused person, [unless he is examined as a witness for the defence,] or necessary to administer to the official interpreter of any Court, after he has entered on the execution of the duties of his office, an oath or affirmation that he will faithfully discharge those duties.*

In light of the above, the omission to administer an oath to the Assistant Commissioner prior to recording his deposition constitutes a serious procedural irregularity that strikes at the root of the evidentiary process. The Oaths Act, 1873, mandates that all witnesses, other than those specifically exempted by law, must testify under oath or affirmation to ensure the sanctity and reliability of their statements. Evidence recorded in contravention of this

mandatory requirement not only loses its evidentiary value but also renders any reliance placed upon it legally questionable. Consequently, the findings of the learned trial Court, which are predominantly based upon such defective testimony, cannot be sustained in law and are liable to be disregarded for want of proper legal foundation.

16. This procedural omission raises serious questions regarding the admissibility and reliability of the testimony, as administering an oath is fundamental to ensuring the veracity and accountability of the witness's evidence. In this context, the fact that the trial Court examined the Assistant Commissioner without administering an oath is a matter of considerable concern and renders his evidence infirm. The Assistant Commissioner was summoned as a Court witness to give deposition and not merely to produce documents. Under Order XVI, Rule 6 of the Code of Civil Procedure, 1908 (CPC), a person may be summoned to produce documents without being summoned to give evidence, whereas Order XVI, Rule 7 CPC applies to persons who are present in Court to give evidence or produce documents. The record and judgment explicitly indicate that the Assistant Commissioner was summoned as a Court witness, and therefore, the procedural safeguards pertaining to examination on oath ought to have been observed.

17. Moreover, Order XVI, Rule 14 CPC empowers the Court to summon any person whose evidence appears to be essential for the just decision of the case. For ready reference, the provision is reproduced below:

*14. Court may of its own accord summon as witnesses strangers to suit. Subject to the provisions of this Code as to attendance and appearance and to any law for the time being in force, where the Court at any time thinks it necessary to examine any person, including a party to the suit and not called as witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession on a day to be appointed, and may examine him as a witness or require him to produce such document.*

18. It is undisputed that the Court is duly authorized under Order XVI, Rule 14 CPC to summon any person whose evidence is necessary for the just determination of the matter. However, this authority must be exercised in strict compliance with procedural safeguards. The evidence of the Assistant Commissioner, being recorded under the garb of a Court witness, ought to have been recorded in accordance with the provisions of the Qanun-e-Shahadat Order, 1984. This entails that the evidence must be recorded under

the same procedural framework and standards that govern the evidence tendered by the parties themselves, ensuring uniformity, reliability, and the right of the opposing party to test the veracity of such evidence through cross-examination. Failure to adhere to these requirements results in a serious procedural infirmity which vitiates the evidentiary value of such testimony and consequently impacts the integrity of the Court's findings based thereon.

19. Furthermore, a perusal of Article 134 of the Qanun-e-Shahadat Order, 1984, clearly indicates that when a person is summoned and called to testify as a witness, it is essential to adhere to the prescribed procedure. This includes recording the examination-in-chief first, followed by affording the opposing parties the opportunity to cross-examine the witness. For ready reference, the relevant provision is reproduced as under:

*Article 134. Cross-examination of person called to produce a document: A person summoned to produce a document does not become a witness by the mere fact that he produces it and cannot be cross-examined unless and until he is called as a witness.*

20. Non-compliance with these mandatory procedural requirements undermines the evidentiary value of the testimony and compromises the right of a fair trial guaranteed to the parties under the law. At this stage, the contention of learned counsel for the Respondents / Plaintiffs that the opportunity for cross-examination was afforded to the Applicant but was not availed lacks legal force. The record reflects that the deposition of the Assistant Commissioner was not properly recorded in accordance with the mandatory procedural requirements. The learned trial Court failed to administer the oath to the Assistant Commissioner, who was summoned as a Court witness, and did not follow the due process prescribed for examination-in-chief and subsequent cross-examination under the Qanun-e-Shahadat Order. Therefore, it cannot be said that the Applicant was afforded a fair and meaningful opportunity to cross-examine the witness, as the very procedure for recording and evaluating evidence stood vitiated from the outset. The law is well-settled that adherence to due process in the examination and cross-examination of witnesses is not a mere formality but a fundamental safeguard ensuring fairness in judicial proceedings. In this regard, the Honourable Supreme Court of Pakistan, in the case of *Mehrab Khan v. Abdul Nabi (PLD 2005 SC 244)*, laid down authoritative guidance, holding as follows:

*“6. We have heard the learned counsel for both the sides and have also gone through the relevant provisions of law i.e. Order XVIII, Rule 18, C.P.C. Undoubtedly the Court is empowered to inspect the site but simultaneously it is under an obligation to record the evidence of the parties with opportunity to the other side of cross-examining the witnesses if it wanted to form an opinion in respect of particular factual controversy. In the instant case admittedly no evidence was recorded nor opportunity of cross-examination was given. It is also one of the grievance of the learned counsel for the petitioner that after compiling the report before passing decree, no opportunity of hearing was given to the petitioner. Thus following the guidelines noted in the judgment in the case of Ugam Singh (ibid), we are inclined to agree with the contention put forward by the learned counsel for the petitioner.*

*7. Thus for above reasons, the petition is converted into appeal and allowed. As a result whereof the impugned judgment passed by the learned High Court as well as the Majlis-e-Shoora and the Court of Qazi, are set aside and the case is remanded to the learned Qazi, Sarwan, Mastung, Sub-Division Dusht to proceed afresh in accordance with the provisions of law and dispose if of expeditiously as far as possible within a period of three months preferably from the stage of remand of the case by the Majlis-e-Shoora vide judgment dated 29th February, 2000. Parties are left to bear their own costs.*

*Emphasis supplied.*

The above dictum makes it abundantly clear that recording of evidence in accordance with law and affording the opposite party a proper opportunity of cross-examination are essential components of a fair trial. Any failure to adhere to these procedural safeguards renders the proceedings fundamentally defective, thereby vitiating the findings based upon such irregular evidence. Accordingly, in the present case, the reliance placed by the learned trial Court upon evidence recorded in violation of these mandatory principles is legally untenable and cannot be sustained.

21. Furthermore, a clear legal issue emerges from the admitted fact that the sale deeds of both parties have already been declared genuine by the competent revenue authorities, leaving no dispute as to the validity of their respective titles. The controversy is confined solely to the determination of actual possession and the precise demarcation of the respective portions of the suit property, which remains unresolved. In such circumstances, it was incumbent upon the learned trial Court to invoke and strictly adhere to the procedural framework laid down under **Order XXVI of the Code of Civil Procedure, 1908, read with Section 75 CPC**, which provides a comprehensive mechanism for conducting local investigations, measurements, and boundary demarcations in matters where physical possession and extent of property are

in dispute. Failure to follow these statutory safeguards not only undermines the adjudicatory process but also risks a miscarriage of justice by leaving critical factual controversies unaddressed. The core issue in the present case is not ownership, as both parties hold valid documents of title, but rather the correct identification, demarcation, and allocation of the specific portions falling to each party within the larger surveyed area. Although the Assistant Commissioner was summoned as a Court witness, his testimony was confined merely to producing a report from separate proceedings and acknowledging the genuineness of the sale documents, without undertaking the essential task of determining actual possession or conducting a boundary demarcation. This crucial exercise can only be effectively carried out through the appointment of a Local Commission, who, under the supervision of the Court, must conduct a detailed survey of the property. The Commissioner shall be assisted by the concerned **Assistant Commissioner, Mukhtiarkar, Tapedar, and a technical team from the Survey Department of the Board of Revenue, Sindh**, to carry out a proper demarcation and prepare a map/report clarifying the exact boundaries of the suit land and identifying any area encroached upon by either of the parties. It is pertinent to emphasize that a Civil Court is required to resolve disputes conclusively, leaving no room for ambiguity or uncertainty regarding the rights of the parties. Moreover, while a Local Commission is not a Court in itself, it functions as a Court-appointed fact-finding mechanism to aid the Court in arriving at a just and legally sound determination. For ready reference, **Order XXVI, Rule 9 CPC** provides:

*“9. Commissions to make local investigations. In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court:*

*Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules”.*

22. It is pertinent to note that the primary object behind the appointment of a Local Commission is to obtain elucidation on any specific matter in dispute between the parties. The phrase “elucidation of any matter in dispute” clearly indicates that a Local Commission is appointed solely for the purpose of providing clarification on factual or technical aspects relevant to the case and does not extend to deciding or adjudicating the matter as a sole arbitrator. In

this Context, support is drawn from the case of *Behram Khan vs. Resident of Patipura*. 2021 MLD 146. Further reliance is placed upon the case of *Zainullah vs Hizbullah and others* (2022 PLD Baluchistan 81), as held that:

13. *The object for appointment of local commissioner is to seek elucidation of any matter in dispute. The word 'elucidating any matter in dispute' indicates that the local commissioner can be appointed only to get certain clarification. It appeared from the record that the parties were agreed for appointment of local commissioner. The petitioner/ plaintiff in his application for appointment of local commissioner has never authorized the local commissioner as Referee. The parties had not agreed on Referee to decide the matter. The term 'appointment of local commissioner' and Referee are not synonymous. The purpose for appointment of local commissioner is only to seek elucidation of any matter in dispute not as sole arbitrator. When the parties led evidence the court while deciding the matter has to look into the evidence. Reliance is placed on the case of Muhammad Bakhsh v. Nazim Din PLD 1978 Lahore 31, wherein it was held:*

*"41. Now this is established law that section 75 as well as Order XXVI, do not allow delegation of powers by the Court to the Local Commissioner to decide material issues. His report cannot be considered to be a finding. It is only the proceedings of an inquiry for the information of the Court after which the Court is bound to give its own finding on each and every issue, it is only an evidence under Order XXVI, Rule 12 and not a decision. Tincowrl Deb i v. Suttya Doyal Banerji and another (6 Cal. L J 105), Sawan Mal v. Raunaq Mal (AIR 1922 Lah. 47), Firm of Seth Vishindas Nihalchand v. Nazarali Samji (AIR 1924 Sindh 9),*

*Aesarmal and another v. Hundomal and another (AIR 1925 Sindh 265), Bharat Chandra Chakrabarty v. Kiran Chandra Bai (AIR 1925 Cal. 1069 ), Tulsi Ram v. Dina Nath and others (AIR 1926 Lah. 145), Bhoianath Roy v. Bata Krishna Roy and others (AIR 1927 Pat. 135), Nalini Kumar Chakrabarty V. Gadadhar Chaudhry and others (AIR 1929 Cal. 418), Ugra Naraln Choudhary and others v. aribans Choudhary and others (AIR 1930 Pat. 557), Dargahan Bibi v. Jyott Prasad Singh Der. (AIR 1934 Pat. 35), Ram Krishna Dalmta and others v. Chand (AIR 1960 Punj. 430). In Ram Krishna Muraji v. Rattan Chand (AIR 1931 P C 613).*

23. Given that both sides' sale deeds are facially genuine and the dispute turns on identity, boundaries, and actual possession, a local investigation under Section 75 CPC read with Order XXVI Rules 9-10 CPC is indispensable. The Local Commissioner's report shall be treated as evidence and not as a determinative finding; the Trial Court must render independent findings on each issue after considering objections and the entirety of the record.

24. In exercise of revisional jurisdiction under Section 115, C.P.C., interference is warranted where the Courts below act illegally or with material irregularity in the exercise of jurisdiction or where material evidence is

misread or not read at all. In the instant case, the Trial Court committed patent illegalities and material irregularities by: (i) examining the Assistant Commissioner as a Court Witness without administering oath, in derogation of Section 5 of the Oaths Act, 1873, and without adhering to the scheme of Articles 132–134 of the Qanun-e-Shahadat Order, 1984 for examination-in-chief, cross-examination and re-examination; (ii) placing decisive reliance upon an enquiry report emanating from proceedings under the Illegal Dispossession Act, which was neither prepared for the present suit nor duly proved through its maker on oath and tested by cross-examination, thereby treating an unproved document as substantive evidence; and (iii) failing to invoke the mandatory procedural mechanism apt for the real controversy—identity, boundaries and possession—by omitting to order a local investigation/demarcation under Section 75 read with Order XXVI Rules 9–10, C.P.C., notwithstanding that both sides held facially genuine registered instruments from a common vendor. The Appellate Court, instead of curing these jurisdictional defects, merely affirmed the decree without addressing or rectifying the above procedural lapses, thus itself failing to exercise the jurisdiction vested in it to scrutinize and correct such material irregularities and misdirection. Cumulatively, the misreading and non-reading of material evidence, the admission and reliance on inadmissible and unproved material, and the disregard of mandatory procedural safeguards have occasioned a miscarriage of justice; consequently, both impugned judgments are liable to be set aside in revisional jurisdiction under Section 115, C.P.C.

25. For the foregoing reasons, and upon a holistic appraisal of the record and applicable law, this Civil Revision is partly allowed. The judgment and decree dated 27.08.2022 passed by the learned Senior Civil Judge, Kandhkot in F.C. Suit No. 223 of 2019, and the judgment and decree dated 01.12.2022 passed by the learned District Judge, Kashmore at Kandhkot, are set aside for material irregularity and illegality in the exercise of jurisdiction. The matter is remanded to the learned Trial Court with the following directions to ensure a procedurally sound and conclusive adjudication:

*(a) The Assistant Commissioner, earlier treated as a Court Witness, shall be examined afresh strictly in accordance with law—oath to be administered under Section 5 of the Oaths Act, 1873; examination-in-chief, cross-examination and re-examination to be recorded per Articles 132–133 of the Qanun-e-Shahadat Order, 1984. Both sides shall be afforded a fair and effective opportunity to cross-examine; if any party declines or defaults, the Trial Court shall record reasons contemporaneously.*

*(b) A Local Commissioner shall be appointed under Section 75 read with Order XXVI Rules 9-10, C.P.C., preferably with consent of parties, failing which suo motu, with clear terms of reference to conduct a geo-referenced demarcation of the suit property using the relevant cadastral/survey and revenue records, prepare a scaled site plan with coordinates, identify and quantify any overlaps/encroachments, and submit a speaking report with annexures. Upon filing, the Trial Court shall invite objections within a fixed period and, record evidence of the Commissioner, permit the Commissioner's cross-examination under Order XXVI Rule 10(2), treating the report as evidence and not a determinative finding.*

*(c) The Trial Court shall render a fresh judgment afresh, upon considering the entire material already on record together with: (i) the Assistant Commissioner's testimony recorded in accordance with law; (ii) the Local Commissioner's demarcation report filed under Section 75 read with Order XXVI Rules 9-10, C.P.C., along with any annexures; (iii) the Commissioner's oral evidence, if recorded, with the parties' cross-examination; and (iv) all material placed on record in respect of the demarcation proceedings and any subsequent documents duly brought on record in accordance with law. The Court shall evaluate this corpus of evidence holistically, assign evidentiary weight with reasons, and then decide the suit strictly on the merits, ensuring that any relief of possession, injunction, or ancillary relief flows from demarcation-backed findings and remains consistent with the parties' proved titles.*

*(d) The entire exercise—recording of the Assistant Commissioner's testimony, completion of the local investigation, receipt and decision of objections, evidence (if any) on objections, final arguments and judgment—shall, as far as practicable, be concluded within three (03) months from receipt of this order; in case of impediments beyond the Court's control, the learned Trial Court may adopt lawful coercive measures, substitute the Commissioner, or seek assistance of the competent survey/revenue authorities, recording reasons for any extension.*

It is clarified that, save for identification of the procedural infirmities and the framework herein prescribed, no opinion is expressed on the merits of the parties' respective claims, which shall be determined afresh in accordance with law. The present Civil Revision Application stands disposed of in these terms.

**JUDGE**