

# IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

*Second Civil Appeal No. S-03 of 2024*

Appellants : Hyder Abbas and another *through* Mr. Ajmair Ali Bhutto, Advocate.

Respondents : Ashfaque Ahmed and others (*Nemo*)  
Mr. Abdul Waris Bhutto, Assistant Advocate General, Sindh for Official Respondents.

Date of Hearing : 06.10.2025.

Date of Decision : 06.10.2025.

## **JUDGMENT**

**Ali Haider 'Ada'.J:-** Through this Second Civil Appeal, the appellants have assailed the judgment dated 30.04.2024 and the decree dated 06.05.2024 passed by the learned Additional District Judge-I, Shahdadkot (Appellate Court) in Civil Appeal No. 05 of 2023, whereby the appellate Court upheld the judgment and decree dated 21.11.2022 passed by the learned Senior Civil Judge, Shahdadkot (Trial Court) in F.C. Suit No. 107 of 2017. Being aggrieved by the concurrent findings of the Courts below, the appellants, as plaintiffs, have preferred the present appeal, having remained unsuccessful before both the fora.

2. The appellants, being plaintiffs, filed a Civil Suit before the learned trial Court seeking declaration, cancellation, recovery, and permanent injunction. The suit was founded on the claim of ownership arising out of inheritance. The appellants contended that, being lawful owners of the inherited suit land, they were entitled to its ownership, and further asserted that the sale deed and gift deed executed in respect of the inherited property by the respondents was illegal, invalid, and liable to be cancelled. Upon service of notice, the private respondents filed their written statement, wherein they denied the allegations and maintained the legality of their sale deeds and gift deeds. After completion of pleadings, the learned trial Court proceeded to frame the following issues:

01. *Whether, the suit of the plaintiffs not maintainable and barred by limitation act?*
02. *Whether, the registered sale deed bearing No.21 dated 15<sup>th</sup> January, 1976 is false, forged and manipulated documents and is liable to be cancelled?*

03. *Whether, the gift deeds bearing No.520, dated 29<sup>th</sup> September, 1976 and No.521 and 522 dated 06<sup>th</sup> October, 1976 are false, forged and manipulated documents and are liable to be cancelled?*
04. *Whether, the agreement to sale dated 10.01.2017 executed during the pendency of F.C.Suit No.48/2017 is false, fabricated, null and void having no value under the law?*
05. *Whether, the defendants No.1 to 5 are lawful owner of the suit property and they have purchased the same through registered sale deed which is valid and legal documents, as well as they are owners by way of gift deeds, which are valid and legal documents?*
06. *Whether, the private defendants are in unlawful and illegal possessions of the suit land and they are liable to pay an amount of 10 Millions to plaintiffs as mesne profit?*
07. *Whether, the plaintiffs are entitled to the relief claimed?*
08. *What should the decree be?*

3. After framing of the issues, the learned trial Court, without recording evidence of the parties, proceeded to pass the impugned judgment and decree under Order XVII Rule 3 of the Code of Civil Procedure. The said judgment and decree were subsequently upheld by the learned Appellate Court, which also maintained the findings recorded under Order XVII Rule 3 CPC.

4. It is pertinent to mention that prior to the passing of the present impugned judgment and decree, the suit of the appellants had earlier been dismissed by the learned trial Court on the same ground under Order XVII Rule 3 CPC. The said dismissal was challenged before the Appellate Court, which remanded the matter to the trial Court for further proceedings. However, upon remand, the learned trial Court once again proceeded to decide the matter in the same manner and passed the impugned judgment and decree, which were later affirmed by the learned Appellate Court.

5. Learned counsel for the appellants has mainly contended that the learned trial Court, in a harsh and mechanical manner, passed the impugned judgment and decree without properly considering the material available on record, and without affording the appellants a fair opportunity to lead their evidence and defend their case. It is further argued that although the earlier judgment and decree had been set aside in appeal and the matter was remanded for a fair hearing, yet the learned trial Court, without passing any written order on the adjournment applications, again decided the matter under presumptions and surmises. Such approach, according to learned counsel, was also erroneously endorsed by the learned Appellate Court,

without judicially examining the material aspects of the case. He further contended that due to a serious apprehension to their lives, the applicants had moved a transfer application before this Court at its Principal Seat, which was subsequently transferred to this Court's Circuit Bench at Larkana. It is submitted that owing to such genuine fear and security concerns, the learned trial Court proceeded to pass the impugned verdict against the applicants.

6. Conversely, the learned Assistant Advocate General, Sindh has supported the impugned judgments, contending that the appellants are habitual in delaying the proceedings and avoiding appearance before the learned trial Court. Therefore, the invocation of jurisdiction under Order XVII Rule 3 CPC by the trial Court was lawful and justified.

7. After admission of this Second Civil Appeal, notices were issued to the private respondents on 24.09.2024. Despite service through all recognized modes, including publication, none of the private respondents appeared before this Court. Accordingly, service upon them was held to be good and sufficient. So far as the official respondents are concerned, the learned Assistant Advocate General represents them.

8. Having perused the material available on record and heard the arguments advanced by the learned counsel for the respective parties, the matter now stands ripe for determination on merits.

9. In order to properly appreciate the legal position, it is essential to reproduce the provisions of **Order XVII Rule 3 of the Code of Civil Procedure**, which reads as under:

*3. Court may proceed notwithstanding either party fails to produce evidence, etc.- Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the Court may, notwithstanding such default, proceed to decide the suit forthwith.*

10. There are certain essential preconditions for invoking Order XVII Rule 3 CPC. The evidence of a party cannot be closed merely on the ground of non-production or non-appearance. The said provision can only be applied where sufficient material is already available on record enabling the Court to decide the matter on merits. However, upon perusal of the impugned judgment of the trial Court, it appears that such legal requirements were not fulfilled. The trial Court failed to properly appreciate and evaluate the material

available on record proceeded to dismiss the matter. Such an approach does not fall within the true spirit or ambit of Order XVII Rule 3 CPC.

11. Furthermore, no doubt the Courts are not bound to proceed according to the will of the parties; however, it is equally settled that litigation should not be concluded in a hasty or mechanical manner. The Courts are expected to ensure that the process of justice is not compromised merely for the sake of expeditious disposal. It is a well-recognized principle that justice hurried is justice buried.

12. A valuable right of a party cannot be defeated or discarded on mere technicalities. Therefore, in order to avoid any irregularity or miscarriage of justice, the matter must be decided after proper appraisal and consideration of the entire material available on record.

13. Even otherwise, the language employed in Order XVII Rule 3 CPC, by using the expression "*the Court may, notwithstanding such default, proceed to decide the suit forthwith*", is permissive and discretionary in nature, and does not, in all circumstances, entail penal consequences. This legal position has been clearly settled in the case of **Muhammad Asif Awan v. Dawood Khan and others (2021 SCMR 1270)**.

14. Furthermore, under Order XVII Rule 3 CPC, where either party fails to produce evidence or take necessary steps for the progress of the case, the Court may proceed to decide the suit notwithstanding such default. The expression "decide the suit forthwith", used at the end of Rule 3, has been judicially interpreted to mean that the suit is to be decided without undue delay, and that no further adjournments shall be granted to the defaulting party who had already been afforded reasonable opportunities to produce evidence or cause attendance of witnesses. However, the term "decide the suit forthwith" does not imply that the Court must dispose of the case on the same day, nor does it authorize dismissal of the suit merely as a penal measure. Reliance in this regard is placed upon the case of **Lutfullah Virk v. Muhammad Aslam Sheikh (PLD 2024 SC 887)**. Further support is drawn from the case of **Muhammad Aslam v. Nazir Ahmed (2008 SCMR 942)**, wherein it was held that:

*"It may be pointed out here that though under Order XVII, Rule 3, C.P.C. it has been provided that where sufficient cause is not shown for the grant of adjournment the Court may proceed to decide the suit forthwith but the words used in the provision in question "proceed to decide the suit forthwith" do not mean "to decide the suit forthwith" or "dismiss the suit*

*forthwith". The said rule simply lays down that the Court may proceed with the suit notwithstanding either, party fails to produce evidence etc. meaning thereby that in case of default to do a specific act by any party to the suit, the next step required to be taken in the suit should be taken. Though the word "forthwith" means without any further adjournment yet, it cannot be equated with the words "at once pronounce judgment, as used in Order XV, Rule 4, C.P.C. where, on issuance of summons for final disposal of the suit either party fails, without sufficient cause, to produce the evidence on which he relies". "*

15. As further elaborated by the Hon'ble Supreme Court in the case of **Hasham Khan and others v. Haroon-ur-Rashid and others (2022 SCMR 1793)**, the Apex Court highlighted that:

*5. The perusal of the above said provision of the C.P.C. would reveal that "to decide the suit forthwith" does not mean to decide or dismiss the suit there and then. The law on the subject has become established and explained time and again by this Court but we have noted that its application and appreciation by the Courts below still goes with a bit of confusion. The Court, while going to implement the provisions of Rule 3 ibid can take time to go through the available record and then decide the matter. Even, in case of failure of a party to comply with the Order within the contemplation of above said provision of law, the Court can ask the failing party to record its statement and then to proceed with the matter. In such like situation, if the failing party is Plaintiff, who records its own statement, then Court can ask the other party/ Defendant for defence/rebuttal evidence.*

*6. We in the given circumstances, are left with no alternate but to convert this Petition into Appeal, allow the same subject to payment of costs of Rs.20,000/- (twenty thousand rupees) on the Petitioners, payable to the other side, and remand the case to the Trial Court to decide the case within a period of three months positively by proceeding even on day to day basis as the matter pertains to the year 2003.*

16. In view of the foregoing reasons and discussions, this Second Civil Appeal is partly allowed. Consequently, the impugned judgment and decree passed by the learned trial Court as well as the learned Appellate Court are hereby set aside. The matter is remanded to the learned trial Court with direction to proceed with the matter from its original footing after providing a fair opportunity to all concerned, strictly in accordance with law, and to conclude the proceedings within a period of three (03) months, without being influenced by the earlier findings. The parties are directed not to seek unnecessary adjournments, except in rare and exceptional circumstances, so as to ensure expeditious disposal of the matter. This Second Civil Appeal stands disposed of accordingly, with no order as to costs, however, with a note of caution that the proceedings shall be diligently pursued by both parties, particularly by the appellants, without any further delay.

**JUDGE**