IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Civil Revision Application No.212 of 2016
'Selectcon Private Limited Vs. Pakistan State Oil Company'

Civil Revision Application No. 213 of 2016
'Megadon Private Limited Vs. Pakistan State Oil Company'

Applicants:	Through M/s. Zaheer ul Hasan Minhas and Ms. Saadia S. Bajwa Advocates
Respondents:	Through Mr. Muhammad Humayun Khan Advocate.
Dates of hearing:	07.11.2025 and 20.11.2025
Date of Decision:	24.12.2025.

JUDGMENT

MUHAMMAD HASAN (AKBER), J.- This consolidated Judgment will decide both the subject Civil Revision Applications, being on the common questions of law and facts. Both these Revision Applications assail, the Judgment and decree dated 20.11.2010 passed by the learned District Jamshoro Kotri whereby the Applicants' Civil Appeals No.05 of 2011 and 06 of 2011 were dismissed, upholding the Judgment and Decree dated 16.04.2016 passed by the learned Senior Civil Judge Kotri, whereby consolidated F.C. Suit Nos.37 of 2005 and 38 of 2005, filed by the Plaintiffs/ Applicants were dismissed.

2. Mr. Zaheer-ul-Hasan Minhas and Ms. Saadia S. Bajwa, learned Advocates for Applicants mainly contended that the applicants are owners of their respective lands as detailed in the plaint; that some portions of the subject lands of the Plaintiffs were taken over by the Respondent based upon some purported acquisition proceedings; that the suits of the applicants were dismissed on two grounds i.e. that the attorney of the plaintiffs was not duly authorised; and that no proof was produced by the Plaintiffs. Further pleaded that the Judgment was premised upon non-reading and misreading of the Plaintiff's evidence. Further referred to the Cancellation of the subject Acquisition Proceedings by the Commissioner Hyderabad, which has attained finality to the extent of the Respondent; and also referred to the Suit filed by the Respondent against the Government of Sindh, its dismissal by the learned trial Court and also by the learned appellate Court.

3. Conversely, Mr. Humayun Khan learned counsel for the Respondent argued that the suits were rightly dismissed; that the Plaintiffs' witness was not

authorised by the Plaintiffs; that no demarcation of the suit land was conducted; that these Revisions are against concurrent findings; that the suit filed by the Respondent against Government of Sindh was dismissed, against which the appeal was also dismissed; that the Commissioner cancelled the acquisition proceedings; and that the reliefs were not sought within time. Lastly, he prayed for dismissal of the revision applications and placed reliance upon 2017 CLC 1090, PLD 2002 SC 84, 2005 CLC 1937, SBLR 2021 Sindh 372.

4. Heard learned counsel for the parties and, with their able assistance, scanned through the evidence and the Judgments, which give rise to the following points for determination:

1. Whether Mr. Chand Baboo (PW-1) was authorised by the Plaintiffs/ companies?
2. While analysing the evidence of the parties, whether the rule of 'balance of probabilities' and 'preponderance of evidence', or the 'burden of proof' would be applicable?
3. What evidence was produced by the parties?
4. What would be the effect of the Commissioner's Order dated 14.10.1996; the Judgment and Decree in F.C.Suit No.43 of 2008 *'PSO Vs. Government of Sindh';* and the Judgment and Decree in its Civil Appeal 12 of 2013?
5. Whether a case for interference under Revisional jurisdiction is made out?

5. Attending to Point No.1 for determination regarding the issue of authority of the Plaintiffs' witness (PW-1) Chand Baboo, who produced Certificate of Incorporation issued by the Joint Registrar of Companies of both companies/ Plaintiffs and Memorandum and Articles of Association of the Companies dated 07.01.1990 (**Exhibits 38**); and the Extract of Resolution of Board of Directors dated 27.12.2004 along with Form-29 dated 07.11.2003 issued by S.E.C.P. (**Exhibits 39**). While rejecting his authority, the reasoning recorded by the learned Court was that the PW-1 was not authorised by the earlier two Directors whose names were mentioned in the Articles and Memorandum of Association of the Companies at the time of incorporation of the company on 07.01.1990. Perusal of the above Exhibits reflects that at the time of incorporation of the two companies in 1990, there were two Directors, namely (1) Mr. Asadullah Khan and (2) Mrs. Arshia Khatoon. However, Form-29 dated 07.11.2023 issued by SECP confirms change in the names of Directors of the Companies as (1) Mr. Islam Ahmed Siddiqui and (2) Mrs. Hassen Fatima. Both these subject suits (Suit No.36/2005 and Suit No.37/2005) were filed in the year 2005, whereas evidence of the witness PW-1 was recorded on 01.11.2006. The Resolution of the Board of Directors dated 27.12.2004 authorises Mr. Chand

Baboo to represent both Companies in legal proceedings. The Resolution is supported by the latest Form-29, wherein Mrs. Hassen Fatima is expressly shown as a director of the company at the relevant time. It is also pertinent to note that neither at the time of their production, nor at any later stage, nor before the appellate Court, nor before even this Court, was there any objection raised by the Defendant side upon production of these documents, nor any material could be pointed out to suggest any deficiency in the said documents. The conclusion for declaring such a witness as unauthorised due to the absence of the names of the earlier two Directors of 1990, was therefore completely misconceived and unjustified, and it appears to be a result of misreading and non-reading of relevant evidence/ the Form-29. The learned Courts also failed to consider that Form-29 is a crucial statutory document issued by the Regulator (SECP) under section 197 of the Companies Act 2017 (formerly Companies Ordinance 1984) to report changes or appointments of key company officers, including directors, CEOs, company secretaries, CFOs, auditors and legal advisors. Such a document issued by the regulatory authority (SECP) is *prima facie* evidence of the names of the existing Directors of the Companies, and the same would be presumed to reflect the correct position about the status of the Directors at the relevant time. Besides, His Lordship Justice Muneeb Akhter, while deciding the case of ***'Rahat and Company through Syed Naveed Hussain Shah v. Trading Corporation of Pakistan Statutory Corporation, Finance and Trade Centre through Secretary/Chief Executive Officer'*** (2020 CLD 872) held that:

> **"The principles relating to authorisation for filing suit laid down in the judgment reported as Muhammad Siddiq Muhammad Umar and another v. Australasia Bank Ltd. PLD 1966 SC 685 ("Australasia Bank"), could be regarded as the general rule, applicable where the defendant in the suit (or other legal proceedings) was a third party, to whom or in relation to whom the rule of indoor management would apply. Where the rule of indoor management applied, even production of the board resolution itself was, strictly speaking, not necessary. All that was required was to see whether, as a matter of form, the Articles of Association had been complied with, and that was all, for which purpose it was only an examination of the Articles that was required. Once it was proved that the power of attorney had been executed and the relevant articles under which the Directors could delegate their respective powers to institute and prosecute suits on their behalf had been proved, it was not necessary to prove the resolution by which the directors had resolved to grant such a power of attorney to the attorney."**

6. Applying the above principles to the facts of the present case, I have no hesitation in holding that PW-1 Mr. Chand Baboo, was duly authorised to depose on behalf of the Plaintiffs/ Companies. Hence, the findings of both the Courts below on this point call for interference under revisional jurisdiction, and the same are, therefore, set aside.

7. Turning to Point No.2 for determination, viz. applicability of "*preponderance of evidence*" and "*balance of probabilities*" or "burden of proof", the Honourable Supreme Court in the case of ***'Mst. Zainab v. Majeed Ali'*** (1993 SCMR 356) held that while evaluating evidence in civil matters, the rule of ***preponderance of evidence*** is to be applied, which means that the Court is to consider the entire evidence on record of all the parties, in order to arrive at the correct conclusion; and once the evidence is brought on record, the question of burden of proof loses its significance. The same principle was followed by a Division Bench of this Court, in the case of ***'Dr. Abdul Rahman and two others Vs. Mrs. Neelofer Khalid and 10 others'*** (2020 YLR 1783); so also, in the cases of ***'Mrs Bilkees Mohsin Bhatti'*** (2019 CLC 1227); and ***'Muhammad Luqman'*** (PLD Karachi 492). In ***'Bashir Ahmad v. Muhammad Buksh'*** (PLD 2016 Lahore 130), it was further held that Courts in civil cases have to see the cumulative effect of all material placed on record, and preponderance of probability is sufficient as a basis for a decision; and that a party having preponderance of probability must win the case. Accordingly, in the present case also, once the evidence was led, the matter is to be decided on the rule of preponderance of evidence and balance of probabilities.

8. Since Points No.3 and 4 for determination are interconnected, the same are being discussed collectively. Brief facts, as claimed by the Plaintiffs, are that both Plaintiffs are juristic persons and corporate entities, as Private Limited Companies, registered under the erstwhile Companies Ordinance 1984 (presently Companies Act 2017) vide Registration Certificate No.K-1050 of 1989-1990 dated 05.04.1990. The Plaintiff/ Applicant, **M/s. Meagadon Pvt. Ltd.** (in Revision Application No.213 of 2016), purchased 79-05 acres of agricultural land in Deh Petaro Jagir, Taluka Kotri vide registered sale deed dated 11.03.1991 vide registry No.101 dated 11.03.1991, registered with the Sub-Registrar Kotri. The land was mutated in the company's name under Entries 26, 28, 31, 32, 33 dated 31.12.1991 and includes survey numbers 524 to 541 and 546 to 554 of Deh Petaro Jagir. Likewise, the other Plaintiff/ Applicant, **M/s. Selectcon Pvt. Ltd.** (in Revision Application No.212 of 2016) purchased 328-16 acres of agricultural land in Deh Petaro Jagir, Taluka Kotri vide registered sale deed dated 11.03.1991 bearing registered No.100, duly registered with the Sub-Registrar Kotri. The lands of both the Plaintiffs were mutated in their respective names under Entries No.08 to 22 dated 31.12.1991 and include survey numbers 555 to 557, 580 to 585, 591 to 596, 605 to 610 and 617 to 622 of Deh Petaro Jagir. Out of the above total holdings bought by the plaintiffs, the present controversy pertains only to the extent of the parcels of land measuring 64.06 acres for M/s. Selectcon Pvt. Ltd., and 79.05 acres for M/s. Megadon Pvt. Ltd., situated along the eastern boundary of their total estates (henceforth jointly referred to as the '**Suit lands**'). The case of the Plaintiffs is that upon knowledge of the above occupation of their land by the Respondent, they filed

the subject two suits (F.C Suit Nos.36/2005 and 37/2005) with the prayers for declaration, possession, Injunction and other reliefs.

9. On the other hand, the Respondent's claim on possession of the Suit lands is on the strength of a Notification dated 16.04.1995, whereby proceedings for acquiring 200 acres of land were initiated by the then Deputy Commissioner, Jamshoro and based whereon, possession of the Suit lands was occupied by the Respondent. However, vide Order dated 14.10.1996, the Commissioner Hyderabad cancelled such acquisition proceedings as illegal and fraudulent, under sections 164 and 25 of the Land Acquisition Act 1894. As informed by the learned Advocates from both sides, such Order of the Commissioner was not challenged by the Respondent before any revenue appellate forum, and therefore the same has attained finality to the extent of the Respondent. Two years later, the Respondent filed F.C. Suit No.43 of 2008, '*Pakistan State Oil Vs. Government of Sindh*, as the sole Defendant, before the learned Senior Civil Judge Kotri for recovery of money paid by the Respondent for the said acquisition proceedings, with an alternate relief for title. The suit was dismissed after a full trial vide Judgement dated 24.12.2012 and Decree dated 04.01.2013. The said Decree was also upheld in Civil Appeal No.12/2013 by the learned District Judge Jamshoro at Kotri vide Judgment and Decree dated 16.04.2016.

10. Record reflects that after admission of both the present Suits, the Respondent filed its written statements, whereafter both the suits were consolidated by consent of the parties, and consolidated Issues were framed by the learned trial Court. To prove their cases, the Plaintiffs produced four witnesses i.e. one being their authorised officer (PW-1), whereas three concerned officials were called on court notices, who produced various documents and records. Only PWs-1 and 2 were cross-examined by the Defendant side, whereas PWs-3 and 4 were not cross-examined at all. Upon closure of the Plaintiff's evidence, the matter was fixed for Defendant's evidence; however, no witness appeared in the witness box on behalf of the defendant, nor a single document was produced by the Defendant's side. Finally, vide the impugned Judgment and decree, the learned trial Court dismissed the Suits on two counts: **(a)** that PW-1 witness for the plaintiffs was not duly authorised; and **(b)** that no proof of ownership was produced by the Plaintiffs. The first ground for dismissal has already been discussed and set aside as at paragraphs 5 and 6 *supra*.

11. Turning to the second ground for dismissal, my analysis will include the cumulative effect of the following aspects: **(a)** the evidence produced by the Plaintiffs*;* production of documents by PWs*; and* failure to cross-examine PWs on their specific pleas and documents **(b)** the Defendant's evidence; and **(c)** the effect of the Commissioner's Order dated 14.10.1996; the Judgment and Decree in F.C.Suit No.43/2008 *'PSO Vs. Government of Sindh';* and the Judgment and Decree in Civil Appeal 12/2013.

12. To establish their claims, both the Plaintiffs/ Private Limited Companies called their witness Chand Baboo as PW-1, who produced Certificate of Incorporation issued by the Joint Registrar of Companies of both companies/ Plaintiffs and Memorandum and Articles of Association of the Companies dated 07.01.1990 **Exhibits 38**; and the Extract of Resolution of Board of Directors dated 27.12.2004 along with Form-29 dated 07.11.2003 issued by S.E.C.P. **Exhibits 39**; the attested copies of registered sale deeds dated 11.03.1991 as **Exhibit 40**; Entry No.8 to 22 dated 31.12.1991 as **Exhibit 41**; map issued by land record Hyderabad with regards to Deh Petaro as **Exhibit-42** and demarcation of land, sketch and *tafseel* as **Exhibit-43**. These documents were produced and duly exhibited without any objection being raised by the Defendant's side. In his Examination-in-Chief, PW-1 he asserted all the claims of the Plaintiffs, and was duly cross-examined by the Defendant side, wherefrom the following relevant replies are reproduced below:

> "It is correct to suggest that the suit land was purchased by Plaintiff in the sum of Rs.197,040/- in the year 1991….. I had purchased suit land in this case. It has not been mentioned that possession was not handed over to the plaintiff's company……. It is incorrect to suggest that I have not mentioned in my entire plaint that possession of land was never handed over to the plaintiff. Possession of Suit land was handed over to the plaintiff in the year 1991 at the time of executing sale deed in presence of Tapedar (patwari). I am not remember the name of Patwari at present.. It is not correct to suggest that I have not cited seller as witness in the present suit. It is correct to suggest that defendant has not possessed over the land with my consent. It is correct to suggest that I had not leased out suit land to defendant. It is correct to suggest that in my plaint I have stated that suit land was given by revenue authority to the plaintiff. It is correct to suggest that I have not made complaint to police department regarding illegal possession over the land by defendant. I had gone to Suit land along with Patwari. It is correct that no one else had gone to visit suit land. In the year 1995 at day time at about between 12 noon to 3 brought the patwari on my personal request. I had also visited the Suit land along with Patwari prior to the end of year 1995 back about 1993……. It is correct to suggest that after registration of sale deed I have visited the Suit land along with patwari or mukhtiarkar. I take to the Suit land for taking advising cultivation or other work. I came to know about raising construction on the suit land on the day in the year 1995. It is correct to suggest that when I visited suit plan construction was going on suit land at about 11:30. Sameer Ahmed and Islam Ahmed were with me at the time of construction of the Suit land. It is correct to suggest that defendant was not present at the time of construction. It is correct to suggest that I did not restrain the labour from construction over suit land……. It is correct to suggest that I have not produced any witness showing defendant had admitted their mistake. It is correct to suggest that I have not mentioned in my plaint that the defendant had stated that they will not handover as there was litigation going on between the revenue authority. The suit land was cancelled by Commissioner earlier granted by the land acquisition officer to the defendant."

13. The second witness, Asadullah (PW-2) was called by Plaintiffs on Court summons, who was serving as Mukhtiarkar Thana Bhoola Khan. He, at the

relevant times, was Assistant Mukhtiarkar Kotri and later as Incharge Mukhtiarkar, who duly admitted his signature on letter No.614 dated 19.07.2004 at **Exhibit 43**. He also admitted his signature on the details of the survey numbers attached to the said letter and the map attached to it, which was issued by him, which recorded the following position:

> "OFFICE OF THE MUKHTAR CAR (REVENUE), KOTRI
> No.TM/- 614/2004, Kotri dated, 19.07.2004.
>
> To,
> The Director,
> M/s. Selectoon Private Limited.
> 19 Bangalore Town,
> Block No.7/8 Shahrah-e-Faisal
> Karachi.
>
> Subject: DEMARCATION OF LAND.
> Reference: your application dated 10.01.2004
>
> **In response to your application referred to above, the market has been made with the help of Deh map by the tapedar of the beat, who have reported that the S.No.555, 556, 557 and others of M/s. Megadon Private Ltd. Total area 64.-06 acres fall under the wall of depot of Pak: state oil, the S.No. 524, 525, 526 and other others of M/s. Selectcon private Limited.. total area 79-05 acres falls under the wall of PSO. Further demarcation of S.No 447, 448, 449 and other others has been made, it reveals that the area of 19-13 acres falls under the New Indus Highway. Search entries of above S.Nos. has also been made in favour of various Khatedars in record of rights, which has been verified by the Mukhtiarkar, Kotri.**
> **The details of S.Nos. is enclosed here with along with map.**
>
> Sd/-
> 19.07.2004
> Sd/- MUKHTIARKAR (REV.) KOTRI."

14. During his cross-examination, the second witness Asadullah, also confirmed his signature on letter No.614 dated 19.07.2004 at **Exhibit 43**. He also admitted his signature on the details of the survey numbers attached to the said letter and the map attached to it. During his cross-examination on questions put by the defendant side, he completely denied the rights of the Defendant as:

> **"I do not know whether Mukhtarkar Kotri had allotted the dispute survey numbers to Pakistan State Oil or not……. Plaintiff submitted an application for demarcation and I directed the Tapedar and on the basis of report of Tapedar, I issued letter that disputed land falls within the land of PSO….. I do not know that PSO has paid about Rs.190,00,000/- to the government regarding the cost of disputed land".**

15. The above replies by Asadullah not only established issuance of the said letter, the Survey Numbers and the Map produced by the Plaintiff witness, but also completely denied the claim of the Defendant Respondent about allotment of the suit lands to the Defendant. It is also pertinent to note here that it was never the case of the Respondent that it had purchased the subject land from the government, but

their claim is based upon purported acquisition proceedings, which were subsequently cancelled and declared as fraudulent by the Commissioner Hyderabad, so also by the learned Senior Civil Judge and the learned District Judge.

16. The third witness called by the Plaintiffs on the Court summons was Liyar son of Dhano, serving as Tapedar in the Office of the Director, Settlement Survey and Land Record, Sindh, Hyderabad. He produced the authority letter as **Exhibit-59**; the attested Ghatwadh Form being entry number 11 in four papers maintaining the survey numbers made from U.A. No.69 as **Exhibit-60**; Blue copy of Deh Map of Deh Petaro Jagir, Chak No.1 at **Exhibit-61**. **It is important to note that despite ample opportunities to the defendant, the third witness was not cross-examined.** The legal effect of such failure to cross-examine the witness has been discussed in the latter part of this Judgment.

17. The fourth witness called by Plaintiffs on the Court summons was Mazhar Ali, serving as Tapedar of Tapa Petaro since 2000. He stated that on 27.12.2007, the whole record was burnt by mob in the incident of Shahadat of Mohtarma Benazir Bhutto, and such FIR was lodged at PS Kotri in Criminal No.28 of 2008, attested copy whereof was produced as **Exhibit-63**; he also produced details of the burnt record in four pages as **Exhibits 64 to 67. Again, this witness was also not cross-examined by the Defendant's side despite opportunities allowed by the Court.** The legal effect of such failure to cross-examine the witness has been discussed in the latter part of this Judgment.

18. Firstly, I will analyse the issue of the production of documents by Plaintiffs witnesses and the effect of failure to raise any objection to such production of documents by Defendant side. From the consistent guidance extended by the Honourable Supreme Court of Pakistan and the High Courts in this regard, starting from 1968 till 2025, the following position emerges:

i. In the leading case of ***'Abdullah and 3 Others V. Abdul Karim and others'*** (PLD 1968 SC 140), it was held by the Honourable Supreme Court that Objections as to formal proof of a document must be taken at the "earliest point of time", which cannot be taken subsequently and "certainly not in appeal". It was further held that a document marked as an exhibit becomes admissible in evidence. The relevant portion is reproduced below:

> **"..it is now well settled that if objection to the formal proof of a document has not been taken at the earliest point of time it cannot be taken subsequently and certainly not in appeal. The record of the case did not disclose that any objection was taken by the pre-emptors…… when it was produced in Court by the counsel for the vendees and marked as an exhibit. The document not having been objected to must be deemed to have been admitted and, as such, the trial Court was clearly wrong in excluding it from consideration on the ground that it had not been formally proved. The document having been marked as an exhibit without objection became admissible in evidence and was rightly taken into consideration by the High Court. There could be no doubt as**

> **to the genuineness or admissibility of this document, for, it was not disputed that it formed part of the mutation record and, indeed, was one of the documents upon which the mutation of sale was actually entered….As observed by the Judicial Committee of the Privy Council in the case of *'Gopal Dag v. Shri Trakurii'* (AIR 1943 P C 83) ….it is essential that the objection should be taken at the trial before the document is marked as an exhibit and admitted to the record, A party cannot lie by until the case comes before a Court of appeal and these complain for the first time of the mode of proof."**

(ii). The Honourable Supreme Court in the next case of ***'Malik Din and Another V. Muhammad Aslam'*** (PLD 1969 SC 136) held that an objection, as to the formality of proof, must be taken at the earliest stage, and if it has not been taken, then it cannot be allowed to be taken at the appellate stage.

(iii). In ***'Sadequr Rahman Chowdhury V. Maulvi Abdul Bari and Others'*** (PLD 1971 Dacca 120), it was held that if an objection to the mode of proof of these account books would have been raised at the time the evidence was given, it might be within the power of the party offering the proof, to prove them in a regular manner. Therefore, when no objection was taken to the mode of proof of a relevant fact at the time of evidence, the party neglecting to object or abstaining from objecting to it would not be permitted to object at a later stage in appeal.

(iv). In ***'Muhammad Din (represented by Heirs) v. Bashir Ahmad'*** (PLD 1977 Lahore 267), it was held that:

> "Where a document has been admitted into evidence without any objection in the trial Court such objection cannot be allowed to be raised at the appellate stage**…**. Similar view has been taken in ***'Muhammad Habib and others v. Fazal Karim'*** (PLD 1967 Dacca 638) that objection not taken in the courts below cannot be allowed to be taken at the appellate stage."

(v). In **'*Wajid Ali V. United Bank Ltd*'** (PLD 1986 Lahore 145) it was held that:

> "7. …..Petitioner admittedly did not raise this objection when the documents were produced and exhibited on the record. This objection cannot, therefore, be permitted to be raised at this stage. Law is very well settled that if an objection to the formal proof of a document has not been taken at the earliest point of time, it cannot be taken subsequently and certainly not in appeal. Refer to *'Abdullah v. Abdul Karim*' (PLD1968SC 140). View taken in the precedent case applies with greater force when objection is taken for the first time in revision."

(vi). Justice Ajmal Mian in ***'Abdul Rashid and others v. Mehmood Elahi Farooqi'*** (1985 CLC 968) held that an Objection regarding proof of a document could not be raised at the appellate stage, if a document has been admitted in evidence without any objection in the trial Court.

(vii). Justice Tanzil-ur-Rehman in the case of ***'Messrs United Bank Ltd. v. Messers Mujahid Transport And 5 Others'*** (PLD 1986 Karachi 107), concluded that an

unchallenged document would bind the debtor to the extent of liability shown under such document.

(viii). In ***'Wajid Ali vs. United Bank Limited'*** (PLD 1986 Lahore 148) it was held that Objection to proof of a document not taken at the time and document was produced and exhibited, no objection to the same can be taken subsequently for first time in revision.

(ix). Justice Wajihuddin Ahmad in ***'Qamrul Hasan and Another V. United Bank Ltd. and another'*** (1990 MLD 276), it was held by, that where a document was not duly proved by the person signing the same, but circumstances proved its execution, reliance could be placed on such a document. While applying the rule of preponderance, it was further held that where evidence produced in a case was not as effective and as detailed as it could have been, but was adequate and satisfactory, the rule of *preponderance* having been satisfied, the burden stood shifted to the opposite party.

(x). Justice Haziqul Khairi in the case of ***'Muhammad Din V. Liaqat Ali***' (1991 MLD 1070) concluded that where a document produced by the Plaintiff remained unchallenged, the party affected by such documents would be bound by its contents, and the Plaintiff's claim on the basis of such documents was deemed to be established.

(xi). In another case of ***'Muhammad Farooq V. Abdul Waheed Siddiqui and others'*** (2014 SCMR 630), it was held that **"…**Once a document was exhibited without objection from the side of the petitioner, it cannot be termed as inadmissible evidence."

(xii). In the case of ***'Muhammad Iqbal v. Mehboob Alam'*** (2015 SCMR 21) it was concluded that:

> "….since no objection as to its proof was raised by the appellant at the relevant time when it was taken in evidence by the court, therefore, it validly formed part of the respondent's evidence; and thus in law the appellant shall be considered to have waived his right to resist the mechanics of the proof thereof….."

(xiii). In ***'Khurshid Ali and 6 others v. Shah Nazar'*** (PLD 1992 SC 822) it was held that "mere failure to exhibit a document formally, would not make any difference and if it was necessary for just decision of the case, to summon the material relied upon by the party it should be summoned and treated as evidence in the matter without any formalities".

(xiv) The principles followed in ***'Shahin Shah v. Government of Khyber Pakhtunkhwa through Secretary Irrigation Department Peshawar and others'*** (2022 SCMR 1810) were that when no objection was raised when a document was produced in evidence and exhibited before the trial court, such an objection loses its significance.

(xv). The latest view on the subject by the Honourable Supreme Court has been expressed in ***'Ali Madad Jattak V. Mir Muhammad Usman Pirkani and others'*** (2025 SCMR 466), where it was objected that the documents produced were not properly exhibited; therefore, the same were not admissible and could not be relied upon. Reliance with the following excerpts was also placed on the case of ***'Sudir Engineering Company v. Nitco Roadways Ltd.'*** [1995 (34) DRJ 86], ***'R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami and V.P. Temple'*** (Appeal (civil) 10585 of 1996):

> "(14) When the Court is called upon to examine the admissibility of a document it concentrates only on the document. When called upon to form a judicial opinion whether a document has been proved, disproved or not proved, the Court would look not at the document alone or only at the statement of the witness standing in the box; it would take into consideration probabilities of the case as emerging from the whole record. It could not have been intendment of any law, rule or practice direction to expect the Court applying its judicial mind to the entire record of the case, each time a document was placed before it for being exhibited and form an opinion if it was proved before marking it as an exhibit."

19. Applying the above principles to the present case, the record confirms that when the documents were produced by plaintiffs' witnesses, not a single objection whatsoever was raised, neither at the time of their production, nor even at any later stage before the learned trial Court, nor even before the learned appellate Court. Secondly, even during the cross-examination of the Plaintiffs' witnesses, not a single question was put to them to challenge the admissibility or genuineness of the said documents, nor even a single suggestion was made to the witnesses that the said documents/ Exhibits were forged or fabricated or manufactured, or invented. The consistent view expressed by the Honourable Supreme Court in *Malik Din, Sadequr Rahman Chowdhury, Muhammad Din, Wajid Ali, Abdul Rashid and Wajid Ali supra*, is that an objection to the production of a document loses its significance when it is raised for the first time at the stage of appeal or revision. In the instant case, no such objection was raised before the trial Court nor before the learned appellate Court. The Respondent side had no explanation to justify the same, even when inquired during the course of the hearing of these Revisions. Hence, applying the principles settled in the fifteen (15) Judgments discussed above and also applying the rule of *preponderance* to the documents exhibited by the plaintiff witness (as held by the Honourable Supreme Court in the latest case of *Ali Madad Jattak supra*), I am therefore, convinced that the said documents produced by the plaintiffs' witnesses stood duly proved in evidence.

20. The second aspect for consideration is the Defendant's failure to cross-examine the Plaintiffs' witness on the specific pleas and documents/ exhibits, the consistent guidance provided by the Honourable Supreme Court and the High Courts reflects the following position:

(i). In the case of ***'Qamruddin through his Legal Heirs v. Hakim Mahmood Khan'*** (1988 SCMR 819), a Three-Member Bench of the Honourable Supreme Court held that:

> "The appellant was not cross-examined on this point at all. If it was the case of the respondent that the appellant did not have any capital or that he was not in a position to arrange for sufficient capital to start the business of a general store in the shop in question, the appellant should have been cross-examined. In the absence of any cross-examination on this point, it cannot be presumed that the appellant was not in a position to arrange for the requisite funds…… This statement has not been challenged in cross-examination. This also has not been rebutted by any evidence produced by the respondent. The upshot of the above discussion is that we allow this appeal; set aside the judgments/orders of the 1st Appellate Court and that of the High Court in Second Appeal impugned before us."

(ii). Justice Saleem Akhter in ***'Mst. Nur Jehan Begum through Legal Representatives v. Syed Mujtaba Ali Naqvi'*** (1991 SCMR 2300), it was recorded that:

> "……he was not cross-examined on this plea, the same should be treated to have been accepted… Monir's Law of Evidence 1969 Edition page 494 being commentary on section 137 of the Evidence Act, Halsbury's Law of England, III Edition, Vol. 15, para. 801 and C.B. Field's Law of Evidence Vol. 5, 11th Edition para. 10 page 4773…. The principle enunciated in the commentaries and rulings is that where on a material part of his evidence a witness is not cross-examined it may be inferred that the truth of such statement has been accepted. Statement of a witness which is material to the controversy of the case particularly when it states his case and the same is not challenged by the other side directly or indirectly, then such unchallenged statement should be given full credit and usually accepted as true unless displaced by reliable, cogent and clear evidence."

(iii). The same principles were followed in ***'Walayat Khan v. Muhammad Yousaf'*** (PLD 1995 SC (AJ&K) 41), by the Honourable Supreme Court AJ&K, that when a statement of a witness is not challenged in cross-examination, it would be legally proved to have been accepted by the opposite party.

(iv). In ***'Muhammad Ibrahim V. Haji Raza Hussain'*** (1987 MLD 515), the case was decided by Justice Saleem Akhtar in favour of the appellant on the premise that his statement of joblessness of his son was not challenged in his cross-examination and such statement was accepted as unrebutted.

(v). Justice Haider Ali Pirzada in ***'Fida Hussain v. Mst. Anwari Khatoon'*** (1985 MLD 110) declared that:

> "It is pertinent to note that no question was put to him in cross-examination, nor any suggestion was made to him in cross-examination. It is a settled position in law that if some fact is deposed to in examination-in-chief which is not questioned in cross-examination, the presumption is that that part t of the evidence is deemed to have been accepted by the party against whom that evidence has been given.

(vi). In ***'Karimuddin Shad v. Mst. Fatima Mian Ahmed'*** (1989 CLC 545), Justice Qaiser Ahmed Hamidi held that:

> "7. This evidence has not been challenged by the appellant in cross-examination. Where the facts deposed to examination chief are not questioned in cross-examination, the presumption will be that such evidence is deemed to have been accepted by the party against whom it was given. The cases of ***'Qasim and others v. The State***' reported in PLD 1967 Kar. 233 and ***'Qamaruddin v. Hakim Mahmood Khan'*** reported in 1988 SCMR 819 are relevant in this regard."

(vii). In the case of ***'Muhammad Yasin v. Shabbir Ahmad'*** (1985 CLC 2111) Justice Sajad Ali Shah concluded that:

> "Under sections 137 and 138 of the Evidence Act if there is no cross-examination on the fact deposed in the Examination-in-Chief, the presumption is that evidence is deemed to have been accepted by the party against whom it was given. The reliance is also placed on another case ***'Muhammad Mujibur Rehman Siddiqui v. Abdul Bari and 3 others***' PLD 1981 Kar. 537 in which the principle stated in the above-mentioned case is reiterated. This being the correct legal position, I find no reason to interfere with the impugned order of ejectment and in consequence the appeal is dismissed with no order as to costs."

(viii). In the case of ***'Messrs Habib Bank Ltd. v. Messrs Publix Industries Ltd.'*** (1991 CLC 1907), it was declared by Justice Mukhtar Ahmad Junejo, that where the witness was not cross-examined with respect to the claim of tremendous increase of business of the bank, the presumption would be that such part of the statement of the witness in his examination in chief would be deemed to have been admitted.

(ix). In ***'Qalandar V. Muhammad Zarin and Another'*** (1980 CLC 1417), it was recorded that:

> "..On this point, they were not at all cross-examined by the vendee or his counsel and indeed, not a single question was put to them on this particular point. It is well settled that failure to cross-examine a witness tantamounts to admitting his statement. If any authority is needed in support of this view, one could refer to ***'Karnidan Sarda and another v. Sailaja Kanta Mitra and another***' (AIR 1940 Pat. 683) and ***'Mst. Zar Jan v. Mst. Najmun Nisa and others'*** (PLD 1969 Pesh. 118). In the first of these cases, there were certain matters which could only be explained by the plaintiff or his witnesses. Although the plaintiff was cross-examined at considerable length, the defendants/ appellants consistently avoided asking questions on those particular matters."

(x). In the case of ***'Mst. Sahib Bibi and others v. Lal'*** (1992 CLC 807), it was declared that a specific statement not challenged in cross-examination, having material bearing upon the merits of the case, would be presumed to be correct.

(xi). In ***'M/s. Habib Bank Ltd. vs. Thal Jute Mills Ltd.'*** (1988 CLC 2310), Justice Haider Ali Pirzada held that a fact deposed, not questioned in the cross-examination, the presumption is that that part of the evidence is deemed to have been accepted by the party against whom that evidence has been given.

(xii). ***'Jan Muhammad v. Mulla Abdul Rehman and 4 others'*** (1999 CLC 266) was the case wherein it was concluded that when a portion of the statement of a witness goes unchallenged, the same has to be accepted in evidence as admitted.

(xiii). In ***'Abdul Sattar and others v. Mst. Sardar Begum'*** (2003 CLC 1294), it was concluded that failure to cross-examine on a specific statement implies that the testimony of the witness, to the extent of his such statement, stood admitted.

(xiv). ***'Muhammad Anwar v. Haji Muhammad Ismail and others'*** (1992 MLD 860) was the case wherein it was declared that when the specific assertion that Respondent No.1 had signed the deed was not even challenged in cross-examination, it would amount to admission of the said statement.

(xv). In ***'Muhammad Akram V. Muhammad Rauf'*** (2001 MLD 1277), it was concluded as a well-settled principle that a fact deposed in examination-in-chief, if not cross-examined, would be deemed to be admitted as correct by the other party.

(xvi). In ***'Zafar Iqbal v. Imtiaz Hussain Phulpoto'*** (1986 MLD 2001), it was observed that:

> "In the present case, the petitioner stated in his affidavit that the respondent No.2 was a convict which was too well-known and of sufficient notoriety. This statement was not denied by the respondent No.2. It is well-settled position in law that if some fact is deposed to in examination-in-chief which is not questioned in cross-examination the presumption is that part of the evidence is deemed to have been accepted by the party against whom that evidence has been given. Acting on this principle, I accept the evidence of the petitioner. His evidence in respect of the respondent No.2 was that he was a convict was too well-known and of sufficient notoriety having not been questioned."

(xvii). In ***'Anwar and others v. Sher Bahadur and others'*** (1990 CLC 274), it was observed that where a fact given in examination-in-chief was not subjected to cross-examination, such fact would be deemed to have been admitted.

(xviii). The same ratio was followed in PLD 1969 Peshawar 118 and PLD 1980 Peshawar 265.

(xix). Lastly, Justice Wajihuddin Ahmad in ***'Qamrul Hasan and another V. United Bank Ltd. and another'*** (1990 MLD 276) concluded that even where a document was not duly proved by the person signing the same, but circumstances proved its execution, reliance could be placed on such a document. While applying the ***rule of preponderance***, it was further held that where evidence produced in a case was not as effective and as detailed as it could have been, but was adequate and satisfactory, the rule of *preponderance* having been satisfied, the burden stood shifted to the opposite party.

(xx). In addition to the above, regarding mutation entries, it was held in ***'Muhammad Sadiq and 2 others v. Barkat Ali and 4 others'*** (1990 CLC 533) that,

> "Pursuant to the report, mutation No.237 was entered and sanctioned on 2-5-1980 by the Revenue Officer. It is a public document. Forgery or fabrication ought not to be presumed. All official acts are presumed

> to have been properly and regularly performed. There is no evidence to cast doubts upon correctness of the sanctioned mutation."

(xxi). In ***'Abdul Ahad and Others v. Roshan Din And 36 Others'*** (PLD 1979 SC 890), the Honourable Supreme Court held that the Mutation getting incorporated in Jamabandi carries a presumption of truth. It was observed that:

> "Attention is invited to Secretary of State for India v. Maharaja Birendra Kishore Manikya and others (AIR1916PC141) where it was laid down that just weight has to be given to the accuracy of survey maps and that they are not conclusive but in the absence of any evidence to the contrary they will be presumed to be correct. I the instant case, nothing has been brought on record to rebut the evidential value of the pedigree made or statements contained in Surat dehi or in the above-mentioned mutation and, therefore, its evidentiary value was in no way diminished."

(xxii). In ***'Ikhtiar Muhammad and another v. Haji Abdullah Jan and 4 others'*** (PLD 2008 Quetta 7), it was held that:

> "mutation incorporated in Jamabandi carries, a presumption of truth and could not lightly ignore until and unless strong evidence is produced by the party challenging such mutation entries. The Hon'ble Supreme Court in the judgment reported in PLD 1979 SC 890 observed as under:
> "When a mutation gets incorporated in Jamabandi (i.e. annual record) then as held in Bhagwan Das v. Mangal Said (AIR 1929 Lah. 93), Jamabandi carries a presumption of truth and the learned District Judge in the circumstances was not justified to ignore the said jamabandi and its corresponding supporting mutation".

(xxiii). In ***'Hakim Khan v. Nazeer Ahmad Lughmani'*** (1992 SCMR 1832) the Hon'ble Supreme Court held that the mutation by itself does not create title and the person claiming title thereunder has to prove that the transferor did part with the ownership of the property in favour of the transferee and that the mutation was totally entered and attested. It was also held that the presumption of truth is attached to entries made under section 42 and the mutation incorporated in subsequent Jamabandi therefore, if any person considered himself aggrieved by any entry in a record of right, he has to institute a suit for declaration within the statutory period for disputing genuineness of the transaction or collusion and fraud in the attestation of the mutation.

21. Considering the above legal position, in the present case, it appears from perusal of the cross-examination of PW-1 that his following statements went completely unrebutted, and no material question was put to him by the defendant side to controvert or object to the same. Hence, no suggestion was put to PW-1 to even suggest that the sale deeds were forged or fabricated or not genuine or were not executed. No question with respect to challenging the registration of the sale deed was put to PW-1. No question with respect to the payment of sale consideration by the plaintiff/companies to the sellers/vendors was put to PW-1. No question was put

to dispute the area of the land mentioned in such sale deeds. No question was put to challenge the survey numbers, the area and the location of the land mentioned in the said sale deeds. No question was put to PW-1 to dispute or challenge the right of these vendors/sellers to sell the subject properties. No question was put to PW-1 to challenge the ownership of the vendors/sellers. The registration of the sale deeds or its registration number etc. were also not challenged. No question was put to PW-1 to confront his statement in his examination-in-chief that *"the suit land consisting of 64 acres out of the said 328 acres which is in the possession of Pakistan State Oil bearing Nos.555, 556, 557 and others suit land is situated in Deh Petaro Jagir Taluka Kotri."* No question was put to PW-1 to controvert or challenge his statement that *"plaintiff is entitled to recover the amount of Rs.3,20,000/- and something for one year and in this way from 1995 till filing of the suit he is entitled to Rs.43,55,617.12 as well as 10% increase of lease money along with 15% markup for nonpayment of lease."* No question was put to PW-1 to controvert his statement that the *"plaintiff has also issued legal notice to the defendant in the month of February 2004 but the defendant did not reply satisfactorily."* In addition to the above, PW-2 also fully asserted his statement during his cross-examination and no material was put to him. On the other hand, PW-3 and PW-4 were not cross-examined at all. No question was put to these witnesses (PW-3 and 4) on the documents and record produced by them, and therefore the statements made and documents produced by such witnesses stood fully proved. Applying the guidelines provided by the Honourable Supreme Court and the High Courts as discussed above, those statements and documents of the Plaintiffs' witnesses, which were not confronted, controverted or cross-examined by way of any question or suggestion, the same are deemed to have been admitted.

22. Turning to the Defendant's evidence, the record reflects that after the closure of Plaintiffs' evidence, opportunities to produce evidence were extended to the defendant side by the learned trial Court; however, neither any witness appeared, nor any document was produced from the defendant's side. In this regard, Illustration (g) to Article 129 of the Qannun-e-Shahdat Order 1984 provides that, **"the Court may presume, (g) that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it."**

(i). On this principle, in the case of ***'Muhammad Naeem Khan and another v. Muqadas Khan (decd.) through L.Rs.and another'*** (PLD 2022 SC 99), it was declared that:

> "Where a party keeps hold of the witnesses, the presumption would be that if such witnesses were produced, their testimony must be against him, therefore adverse inference of withholding evidence goes against the party who failed to call the concerned person engaged in the transaction who was in a better position to give first and straight narrative of the matter in controversy….."
> "Presumption would be drawn against party failing to produce evidence to establish effect which is required to be proved. PLD 1986 journal. 146."

(ii). In ***'Bank of Punjab v. Messrs Anmol Textile Mills Limited and others'*** (2017 CLD 631), it was held that:

> "DW-1 produced affidavits of defendants Nos.2 and 3 but they chose not to appear in the witness box to undergo the test of cross-examination. Their affidavits, therefore, have no value. The defendants have failed to lead any credible evidence to rebut the plaintiff's evidence. The plaintiff bank, on the other hand, has proved all these issues, which are accordingly decided in its favour."

(iii). In ***'Muhammad Ali and others v. Sher Muhammad and others'*** (1989 MLD 135), it was concluded that:

> "fact remains that **if the document was in possession of the petitioners, it was incumbent upon them to have produced it at proper stage and on account of failure to do so, an adverse presumption arises against them**….. Though this witness was generally asked about the execution of the deed but strangely enough the deed was not produced nor was he shown his signatures or the thumb-impression of Gahna on it. When asked as to why it was not done, the learned counsel for the petitioners was not able to give any answer. **I agree with the learned Additional District Judge that on account of failure of the petitioners to produce the document, a strong presumption is to be drawn against the petitioners under Article 129 of Qanun-e-Shahadat Order, 1984.**"

(iv). In ***'Mst. Zareedah Begum and 2 others v. Abdul Rasheed and 4 others'*** (2013 YLR 831), it was recorded that:

> "Mst. Naheed Kausar is not plaintiff nor she was examined by plaintiffs to substantiate their plea thus needless to refer the provision of Article 129(g) of the Qanun-e-Shahadat Order, 1984, which allows to draw an adverse inference against a party claiming and relying on a material document or specific plea but not adducing the evidence to shift the onus, without any legal justification."

(v). In ***'Overseas Pakistanis Foundation and others v. Sqn. Ldr. (Retd.) Syed Mukhtar Ali Shah and another'*** (2007 SCMR 569), it was held as a settled law that mere statements made in the written statement cannot be treated as evidence in the case.

(vi) In ***'Habibullah and 8 others v. Mir Manzoor Hussain and another'*** (2014 MLD 303), it was declared that pleadings of the parties are not a substitute for evidence, nor can it be termed as substantive evidence. The averments made in the pleadings would carry no weight unless proved from the evidence in the Court. It is also a settled law that statements made in a written statement cannot be treated as evidence in the case. The same ratio was adopted in ***'Khair-un-Nisa v. Muhammad Ishaque***' (PLD 1972 SC 25), ***'Abdul Majid v. Muhammad Ali Shamim'*** (2000 SCMR 1391), ***'Abdul Majid v. Syed Muhammad Ali Shamim and 10 others'*** (2000 SCMR 1391).

23. Assessing the Defendant's evidence on the above parameters, in the written statement filed by the Respondent, the only substantial plea taken was that the

Defendant has purchased the suit property; it is in possession of the suit property; and the name of the defendant is mutated in the record of rights. Secondly and most conspicuously, the written statement was filed on 17.12.2005, but the Order dated 14.10.1996 passed by the Commissioner Hyderabad, cancelling the entire purported acquisition proceedings, was not even mentioned; nor was the fact mentioned in the written statement that such Order was not challenged by the Respondent, and it has attained finality to the extent of the Respondent. The written statement, therefore, did not contain complete and true facts. Thirdly, no witness was produced by the Defendant's side at all to prove the case of the Defendant. No document was exhibited by the Defendant at all. Even the documents based whereon the defendant was claiming its title were also not produced in evidence. Even the purported acquisition proceedings, its notification, etc., based whereon the defendant was claiming title, were also not produced in evidence. No proof of the payments was produced. The Commissioner's Order was not filed or produced. No effort was made to disprove the contentions of the Plaintiffs, nor any effort to establish the contentions of the Defendant. Neither before the learned trial court, nor before the appellate Court stage, nor even before this Court in Revision, any effort was made to allow the Defendant to produce its witness or documents, nor any such application was made at any stage. Hence, in these circumstances and in light of Article 129 (g) and in the light of decisions of the Honourable Supreme Court in the cases of *Muhammad Naeem Khan, Muhammad Ali, Anmol Textile, Kahirunnisa, Zareeda Begum* and six (6) other Judgments of the Supreme Court discussed *ibid*, I have no hesitationin holding that due to Defendant's failure to produce any witness or document in evidence, the adverse presumption of withholding of evidence is drawn against the Defendant; and the Defendant also failed to establish a single word of its own contentions.

24. While analysing the evidence, I was constantly bothered by the question, **Why did the Defendant not produce any witness or document to protect its title**? Once I sifted through the entire evidence, I realised that such withholding of material documents and witnesses was not by chance or mere omission, but was calculated and deliberate. The answer to such query was found in **F.C. Suit No.43 of 2008, *Pakistan State Oil Vs. Government of Sindh***'. This suit was filed by the Respondent against the Government of Sindh as the sole Defendant, before the learned Senior Civil Judge Kotri, wherein the Respondent sought the following prayers:

> **"a) that the defendants be ordered to refund the amount of Rs.19,000,000/- to the plaintiff for having resumed the acquired land;**
>
> **b) That the defendants pay the cost of construction of brick wall around 200 acres of suit land amounting to Rs.7,440,000/-;**
>
> **c) That defendant be ordered to pay Rs.1,900,000/- as mutation charges;**

d) The defendant pay Rs.13,680,000/- as interest;

e) That the honourable Court may be pleased to order payment of Rs.13,680,000/- interest at 6% from 25.07.1995 under section 34 CPC. till date of filing of this suit, plus future interest;

f) Defendants pay the costs of the suit;

g) Any other relief that this honourable court may deem fit to grant;

h) That alternatively, if the relief prayed for cannot be granted for any reason, the order of commissioner/DCO Hyderabad dated 14.10.1996 and any order based on the side order be set aside and cancelled as illegal, void, coram non judice, without jurisdiction and reality in the eyes of law and the plaintiff be declared to be the lawful owner of the suit land."

25. As is evident from the above prayers, the primary reliefs sought in prayer clauses (a) to (g) were for return of money and, only as an alternative remedy, for title. This suit was filed twelve years after the Commissioner's Order dated 14.10.1996, whereby the entire purported Acquisition proceedings conducted by the then Deputy Commissioner were cancelled and declared as illegal and fraudulent. The Commissioner's Order was not challenged by the Respondent, and therefore it has attained finality to the extent of the Respondent. The said Suit was dismissed after a complete trial vide Judgement dated 24.12.2012 and Decree dated 04.01.2013, which was assailed in Civil Appeal No.12/2013 before the learned District Judge Jamshoro at Kotri. Vide Judgment and decree dated 16.04.2016, the said appeal was also dismissed. The following observations by the learned appellate Court are most relevant:

"the Officers of PSO issued letter to the Deputy Commissioner, Dadu about acquiring the land and according to the provisions of Land Acquisition Act, the appellant PSO should have applied to the Government of Sindh for acquiring the land in their favour as consent of Provincial Government was necessary under section 39 of the Land Acquisition Act and they were required to execute agreement with the provincial government as required by section 41 of Land Acquisition Act. PSO only applied to the Deputy Commissioner and in collusion with lower revenue staff they have got the land acquired illegally and unlawfully…."

"As such the process of acquisition of land was illegal and it has no legal effect, hence, the appellant/plaintiff cannot claim for refund of amount through filing suit, though it was already been ordered in Civil Appeal No.04/2011 re: PSO v. Province of Sindh and others including Bharat that the officers of PSO and revenue officers managed illegal and unlawful process in order to cheat PSO and huge amount had been paid by them. As such, all of them have committed criminal act, hence the Government is required to get the matter investigated from the competent forum and recovery of the said amount as well. Therefore, point No.1 is answered in Affirmative, while point No.2 in Negative.

Point No.3.

In view of my findings on points No.1 & 2, the process of acquiring land by the appellant PSO is illegal and unlawful and they have not executed agreement with the provincial government as required by section 41 of Land Acquisition Act. Therefore, there is no infirmity has been found in the impugned Judgment and Decree. Therefore, the same are sustainable under the law."

26. As already noted, it is interesting to note that in its written statements, the factum of the Commissioner's Order dated 14.10.1996 was not even disclosed. Likewise, in the appeals arising out of the dismissal of these two suits, this fact was not disclosed by the Respondent. Even before this Court in Revision applications, neither the Commissioner's Order dated 14.10.1996 was filed, nor the fact of Judgment and Decree and dismissal of the Respondent's Suit No.43/2008 was filed, nor was the Judgment and Decree passed by the Appellate Court in Appeal No.12/2013 was filed, whereby the claim of the Respondent was dismissed with certain important observations, as already reproduced above. It was only during the course of hearing that the applicant side filed the same along with their Statement/ Note of Arguments. The cumulative effect of the above-referred Commissioner's Order; the dismissal of the Respondent's Suit; and the dismissal of their Appeal with strong and adverse observations is that the very purported proceedings of acquisition based whereon the respondent was claiming its title, were concurrently declared as illegal and fraudulent and an attempt to usurp public money. The observations made in the Judgment in Appeal, as reproduced above, speak volumes about the reasons why the Commissioner's Order dated 14.10.1996 (of cancelling the acquisition proceedings) was valid. The said Order was not only relevant and in the field at that time when the written statements were filed, but the same had attained finality as far as the Respondent is concerned. The learned Appellate Court clearly observed that fraud was perpetuated upon PSO by its officers and the lower Revenue staff to defraud PSO and to usurp public money, and also ordered for initiation of criminal proceedings for action against delinquents and recovery of the usurped public money. In the present Revision applications, these Judgments, decrees, orders and proceedings ought to have been disclosed and placed on record by the respondent side before this Court (and the earlier Courts, as and when applicable). From the above, it appears that in the present proceedings, complete and true facts, Orders, Judgments and proceedings were not placed by the Respondent side, to enable the Court to reach to a fair and correct conclusion. Such an active concealment did not benefit the Respondent, and the only presumption under Qanun-e-Shahadat Order, which could be drawn in these circumstances, would be that material evidence was deliberately withheld and concealed by the Respondent side, which, if disclosed, would have adversely affected the Respondent side.

27. Hence, considering all the above discussed guidelines provided by the superior courts of Pakistan; the evidence produced by the parties; and by applying the

rule of preponderance, a brief conclusion of the evidence produced by the Plaintiff's side is that, Firstly, the incorporation of the Plaintiff Companies; the Articles and Memorandum of Association and the Certificate of Incorporation of the Companies; the Resolution of Board of Directors; the Form 29; and the authority in favour of PW-1 were fully established. Secondly, the purchase of the suit land by the Plaintiffs/ companies; the registered sale deeds dated 11 March 1991; the existence of the said registered deeds; the payment of sale consideration; the transfer of the suit lands in favour of Plaintiffs/ companies and the Entries in the Mutation Record; the Deh Map; the Demarcation; the letter dated 19.07.2004 and the List of Survey Numbers; the attested Ghatwadh Form; Entry No.11 in four papers maintaining the subject Survey Numbers; the location of the land; the burning of the revenue record; and occupation of the subject lands by Respondent etc. also stood established through Exhibits 38 to 67; and the same were reconfirmed by the witnesses PWs 1 to 4. Thirdly, two out of four witnesses from the Plaintiffs' side were not even cross-examined and therefore, their statements stood proved. The first two witnesses (PW-1 and 2) fully supported the Plaintiffs' case even in their cross-examination. Fourthly, some of the most material and specific pleas raised by the Plaintiffs' witnesses were not even confronted in the cross-examinations. Fifthly, the Defendant also failed to produce a single witness or a single document in evidence despite opportunities and its effect has already been discussed above. Sixthly, not a single objection was raised on any document produced by the Plaintiffs' witnesses, nor any attempt was made before the learned trial Court or the appellate Court or before this Court to seek permission to allow production of any evidence to the defendant. Failure to produce any evidence or a witness to establish its claim on the subject land further confirms the above position. Hence, on one hand, the plaintiff's claim on the subject land is therefore fully established through documents, duly supported by confidences inspiring evidence, whereas on the other hand, the defendant's lack of right on the subject land is further confirmed by cancellation of the purported acquisition proceedings by the Commissioner Hyderabad; it's finality to the extent of Respondent; the dismissal of the Respondent's suit; and the dismissal of the Respondent's appeal against the Government of Sindh. Seventhly, the Order dated 14.10.1996 passed by the Commissioner and the Judgements and Decrees passed by the learned trial Court and the appellate Court in Respondent's suit against Government of Sindh clearly establishes that the Defendant has no right, title or interest in the suit land and that the Defendant cannot raise any claim on the subject land, based upon proceedings, which have already been concurrently declared as fraudulent and illegal. The Defendant's possession of the subject land is therefore unlawful and without any legal justification. Lastly, the Respondent actively concealed material facts, Orders, Decrees and proceedings from this Court, and the earlier Courts in these proceedings. Considering all the above circumstances and by applying the rule of preponderance of

evidence and balance of probabilities, so also applying the wisdom consistently propounded by the Honourable Supreme Court and the High Courts in the plethora of decisions discussed earlier, my conclusion with respect to Points 3 and 4 for determination is that the statements of the Plaintiffs' witness and the documents/ Exhibits produced by them stand established and proved; that the plaintiffs fully established their claims on the subject lands; therefore, the evidence which was not read or considered by both the Courts below and their findings call for interference under the revisional jurisdiction, which are accordingly set aside.

28. Lastly, with due reverence, the Judgments relied upon by learned counsel for the Respondent do not apply to the facts of the present case. The facts in PLD 2002 SC 84 were that the document was taken on record subject to its admissibility and later on no steps were taken by the party to prove the contents of the said document, whereas, in the present case, no objection was raised at all at the time of production of the documents nor any question was put to the witness to contradict the existence of the documents exhibited. Moreover, these exhibits were fully established through further evidence and records. Reliance in this regard is also placed upon 15 Judgments, as referred to in para 18 *ibid*. The next Judgment relied on by the learned counsel 2017 CLC 1090 was also on a different footing, wherein the sale deed produced did not show the description of the suit property, nor did it show its sale consideration, nor any independent witness or any official witness examined. On the contrary, in the present case, there was no such allegation that the description of the property was not available in the sale deed, nor was there any allegation that the sale consideration was absent in the sale deed; whereas four witnesses were produced, which included one private witness and three official witnesses, who were duly cross-examined as well. Not a single suggestion was put to any of these witnesses to raise any such objections as discussed above as regards description of property, sale consideration, payments, the right of the Seller, nor even a bald challenge to the existence of these registered documents and entries was made. Reliance in this regard is also placed upon 23 Judgments, as referred to in para 20 *ibid*. The rest of the Judgments relied on with respect to the record of rights and mutation entries (2005 CLC 1937 and SBLR 2021 Sindh 372) are also inapplicable and distinguishable, in view of the ratio settled by the Honourable Supreme Court in the already discussed Judgments viz. ***'Abdul Ahad and Others v. Roshan Din And 36 Others'*** (PLD 1979 SC 890), ***'Hakim Khan v. Nazeer Ahmad Lughmani'*** (1992 SCMR 1832), ***'Muhammad Sadiq and 2 others v. Barkat Ali and 4 others'*** (1990 CLC 533), ***'Ikhtiar Muhammad and another v. Haji Abdullah Jan and 4 others'*** (PLD 2008 Quetta 7). Needless to mention that the instant Revision application is not being decided merely relying upon mutation entries, but the same is being decided based upon the preponderance of the entire evidence produced by the parties. As to the issue of delay, suffice it to say that the limitation for claiming possession of

immovable property is 12 years; and the same was a recurring cause of action for the Plaintiffs. As held in the case of ***'Haji Abdul Sattar and others vs. Farooq Inayat and others'*** (2013 SCMR 1493) limitation being a mixed question of fact and law requires recording of evidence, however as discussed above, in the instant case neither such point was raised, nor the defendant put any question to the Plaintiffs witnesses on this, nor even cross examined witnesses, nor produced any witness/ document or evidence. Furthermore, as held in ***'AMIR JAN and others v. GUL NAWAZ'*** (1992 MLD 2531), where the cause of action for relief of possession accrued to the Plaintiff in the year 1975, when he was dispossessed, provisions of Article 142 of the Limitation Act would be applicable, and the suit brought in 1982, being within twelve years, was within time. In ***'Dhani Bux v. Ali Sher and others'*** (2007 YLR 2134), it was held that a period of 12 years has been prescribed for possession of immovable property and the time to be counted from the date of dispossession. It was further held that "Such suit cannot be barred by limitation so long as plaintiff's right is a subsisting right and has not been extinguished, as this gives a right to a continuing cause of action since every invasion thereof is a fresh cause of action." Suffice it to say that limitation, being a mixed question of law and fact, ought to have been agitated by the Defendants in the first instance; however, neither was it agitated before the learned trial Court; nor any issue was framed; nor even a single question was put in evidence; nor any application at any stage was made; nor agitated before the learned appellate Court.

29. Turning to the last aspect of the matter, I am mindful that the instant Revision application has been filed against concurrent findings by two Courts below, for which the basic rule is, that the scope of revisional jurisdiction is limited to the extent of jurisdictional error or an illegality of the nature in the judgment which may have material effect on the result of the case, or if the conclusion drawn therein is perverse or conflicting to the law. But at the same time, the Court could interfere where the concurrent findings of fact recorded are based on erroneous assumptions of fact or patent errors of law or reveal arbitrary exercise of power or abuse of jurisdiction or where the view taken is demonstrably unreasonable. In this regard, the cases of ***"Asmatullah v. Amanat Ullah through Legal Representatives"*** (PLD 2008 SC 155) ***"Abdul Sattar v. Mst. Anar Bibi and others'*** (PLD 2007 SC 609), and ***"Mst. Naziran Begum through Legal Heirs v. Mst. Khurshid Begum through Legal Heirs'*** (1999 SCMR 1171) can be referred to support this.

30. Hence, on the basis *inter alia* of production of positive evidence by the plaintiffs through four witnesses and multiple documents; the failure to cross examine the plaintiff witness on most material points; the failure of defendant to produce any witness/ document/ evidence; the failure to object to production of documents; the deliberate concealment of material Orders, decrees and proceedings by the Defendant; and by applying the correct judicial wisdom in light of the plethora of

judgements discussed above; this appears to be a fit case for exercise of Revisional Jurisdiction under section 115 CPC. Hence, my answer to Point No.5 for determination is 'Affirmative'.

31. Upshot of the foregoing legal and factual analysis is that the F.C. Suit No.36/2005 and 37/2005 were wrongly dismissed by the learned trial Court and the learned Appellate Court in Appeals. Consequently, the instant Revision Applications are allowed; the impugned Judgments and Decrees dated 16.04.2016 in F.C. Suit Nos.37/2005 and 38/2005 and in Civil Appeals 05/2011 and 06/2011 and are hereby set-aside; and the F.C. Suit Nos.36/2005 and 37/2005 are hereby decreed, only to the extent of prayer clauses (a) and (b); whereas for the reason that no evidence was produced to prove the relief sought in prayer clause (c), the same is therefore, disallowed. The Office is directed to draw a Decree, accordingly. These Revision Applications are therefore partly allowed in the above terms, with no order as to costs in the circumstances. Let R&P be returned to the learned trial Court.

Before parting with this Judgment, the able assistance provided by learned senior counsel Mr. Humayun Khan Advocate, Mr. Zaheerul Hasan Minhas Advocate and Ms. Saadia S. Bajwa Advocate is appreciated.

J U D G E