

THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Civil Revision Application No.145 of 2026

[Kando and others v. Province of Sindh and others]

Applicants by : Mr. Farhad Ali Abro, Advocate.

Respondents by: Nemo.

Date of Hearing : **21.10.2026**

Date of Decision : **28.10.2026**

O R D E R

MUHAMMAD HUMAYON KHAN, J: - This Civil Revision Application under Section 115 of the Code of Civil Procedure, 1908 (CPC), is directed against the judgment and decree dated 23.04.2026 passed by the learned IX-Additional District Judge/Model Civil Appellate Court, Hyderabad, in Civil Appeal No.197 of 2025. By the impugned judgment, the appeal was dismissed and the judgment and decree dated 23.07.2025 passed by the learned V-Senior Civil Judge, Hyderabad, in F.C. Suit No.51 of 2021 were maintained. The revision, therefore, assails concurrent findings of the Courts below.

2. The suit concerns a 50 paisa share measuring 10-06 acres in Survey Nos.69/1, 69/2, 70 and 71, Deh Khunjeani, Taluka and District Hyderabad (**the suit land**). Mst. Maryam was recorded as owner of that share. Entry No.71 dated 29.09.1966 in VF-VII-B recorded its transfer in favour of her son Ameen on the basis of an oral gift.

3. The applicants, who claim through Mst. Maryam's other three sons, brought F.C. Suit No.51 of 2021 seeking declaration, cancellation of Entry No.71 and injunction. Their case was that Mst.Maryam had died on 01.06.1965 and could not have made the gift recorded thereafter. They alleged that the entry was fraudulent and stated that they learned of it in 2018. The heirs of Ameen contested the suit. They pleaded that Mst. Maryam died on 01.06.1970, after making the oral gift and that Ameen and his heirs had remained in possession of the suit land.

4. From the pleadings, the learned trial Court framed issues, including Issue No.3, which called upon it to determine whether Mst.Maryam had made the gift during her lifetime. The issues and material controversy may be stated in question form as follows:

- I.** Whether Mst. Maryam had made the oral gift in favour of Ameen during her lifetime, as raised in Issue No.3?
- II.** Whether Mst. Maryam died on 01.06.1965, as pleaded by the applicants, or on 01.06.1970, as pleaded by the contesting defendants?
- III.** Whether the oral gift stood proved, and what was the evidentiary effect of Entry No.71 dated 29.09.1966?
- IV.** Whether the suit was barred by limitation?

5. After recording evidence, the learned trial Court held that the gift was proved and that the suit was barred by limitation. It dismissed the suit by judgment and decree dated 23.07.2025. The applicants' appeal was dismissed by the learned appellate Court on 23.04.2026, which maintained the findings and decree of the trial Court.

6. The material evidence discussed in the judgment of the learned trial Court may be set out under the following separate questions:

- I.** What oral evidence was recorded?

PW-1 testified at Exh.19. Mst. Khairan and Dilawar appeared as witnesses at Exhs.20 and 21.

- II.** What revenue record was produced?

The Tapedar produced the relevant revenue record at Exhs.37/B to 37/L.

- III.** What evidence was considered concerning the date of Mst. Maryam's death?

7. The record relating to the death entries and the inquiry by the Union Council, Tando Fazal, was considered at Exhs.38/B to 38/F and 38/I. The trial Court noticed that no valid death certificate establishing the pleaded date of 01.06.1965 had been proved. A

certificate indicating that date had been obtained on Rano's application dated 31.08.2020 and was subsequently cancelled after inquiry; the Union Council record reflected the date of death as 01.06.1970.

8. Learned counsel for the applicants submits that a person who had already died could not make a gift; that no separate issue was framed on the date of Mst. Maryam's death and that a mutation entry neither confers title nor, by itself, proves a gift. He argues that the burden to prove the gift lay upon its beneficiary. He further submits that the applicants discovered the alleged fraud in 2018 and that a claim to inheritance is not defeated by limitation. He accordingly seeks setting aside of the concurrent judgments.

9. Heard learned counsel for the applicants. I have examined the judgments of both Courts below and the material placed with the revision application.

10. The following points arise for determination:

- i.** Whether the finding that Mst. Maryam made the gift during her lifetime suffers from misreading or non-reading of material evidence or a material procedural irregularity?
- ii.** Whether the concurrent finding on limitation is contrary to law or the record?
- iii.** Whether either Court below committed an error falling within the scope of Section 115 CPC?

11. Section 115 CPC empowers this Court to interfere where a subordinate Court has exercised a jurisdiction not vested in it by law, failed to exercise jurisdiction so vested, or acted illegally or with material irregularity in the exercise of its jurisdiction. The provision does not confer a second appellate jurisdiction for a fresh appraisal of evidence. Concurrent findings may be disturbed where they are shown to rest on material misreading or non-reading of evidence, perversity, or an illegality or material irregularity affecting the result. The Honourable Supreme Court explained this limited supervisory jurisdiction in **Haji Wajdad v. Provincial Government through Secretary, Board of Revenue, Government of Balochistan, Quetta and others (2020 SCMR 2046)**.

12. The applicants' principal assertion is that Mst. Maryam died in 1965, before Entry No.71 was recorded. The material summarized above did not establish that date. The certificate said to indicate a death in 1965 had been procured on Rano's own application dated 31.08.2020 and was cancelled after inquiry. The Union Council record thereafter showed the date of death as 01.06.1970. The trial Court also noticed that PW-1 stated in his examination-in-chief that Mst. Maryam had died in 1995. Further, the applicants traced her title through Entries Nos.69 and 70, which the plaint described as dated 29.09.1966, the same date as the impugned Entry No.71. These matters were considered by the Courts below. No specific evidence has been identified which they overlooked or misread so as to render their conclusion perverse.

13. The objection regarding the framing of issues does not call for interference. Issue No.3 directly raised whether Mst. Maryam made the gift during her lifetime. Determination of that issue necessarily required consideration of whether she was alive when the gift was made. Both sides led evidence on the question. The applicants have not shown what evidence they were unable to produce or how the wording of the issue caused prejudice affecting the decision.

14. The submission that a mutation entry alone does not prove a gift is correct as a general proposition. The Courts below, however, did not rest their finding on the entry alone. Mst. Khairan and Dilawar, the applicants' own witnesses, acknowledged the exclusive possession of Ameen and his heirs and stated that they had not claimed the land. PW-1 admitted that neither his father nor his uncles had challenged the gift during their lifetimes. The revenue record produced by the Tapedar was not effectively challenged. On this oral and documentary evidence, the trial Court found the gift, including delivery of possession, proved; the appellate Court affirmed that finding. The applicants' argument seeks a fresh assessment of the same evidence, without identifying a revisional defect in the concurrent conclusion.

15. The plea of limitation was also considered by the Courts below. Entry No.71 was recorded in 1966 and was followed by the open possession of Ameen and his heirs. Kando, Mitho and Muhammad Ilyas, through whom the applicants claim, lived for approximately twenty-seven, forty-four and fifty-two years, respectively, after the entry, but did not challenge it during their lifetimes. The entry and the

possession following it constituted an overt denial of the rights now asserted. A claim described as one of inheritance is not, for that reason alone, exempt from limitation. Article 120 of the Limitation Act, 1908, applies to a declaratory claim from the time the right to sue accrues. Section 18 postpones limitation where fraud has kept the person entitled to sue from knowledge of the right or title, or where a necessary document has been fraudulently concealed. The applicants have not established a revisable error in the finding that the alleged discovery in 2018 did not save the suit from limitation. The principles stated in **Mst. Rabia Gula and others v. Muhammad Janan and others (2022 SCMR 1009)** and **Saadat Khan and others v. Shahid-ur-Rehman and others (PLD 2023 SC 362)** likewise recognize that a claim founded on inheritance may be barred where the right was openly denied and the pleaded basis for postponing limitation is not established.

16. The learned appellate Court considered the challenge to the trial Court's findings and maintained them. The grounds urged in revision do not show that either Court assumed a jurisdiction not vested in it, failed to exercise jurisdiction or acted illegally or with material irregularity. In substance, the applicants seek another appraisal of the evidence on the date of death, the proof of gift and limitation. That request, without a demonstrated defect of the kind contemplated by Section 115 CPC, does not warrant interference with concurrent findings.

17. For the forgoing reasons, the revision application is **dismissed** in ***limine***. Pending application(s), if any, stand disposed of. There shall be no order as to costs.

JUDGE

AHSAN K. ABRO

APPROVED FOR REPORTING