

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

C.P. No.D-1928 of 2023

Before

Mr. Justice Khadim Hussain Tunio

Mr. Justice Muhammad Hasan (Akber)

Petitioner: Shoukat Ali Shaikh s/o Niaz Ahmed Shaikh through  
Mr. Ahmed Murtaza A. Arab Advocate

Respondents 1 to 8: Province of Sindh and others through Mr. Allah  
Bachayo Soomro, Addl. AG Sindh and Mr.  
Shamsuddin Rajpar, Deputy Attorney General for  
Pakistan

Date of hearing: 05.11.2025  
Date of Decision: 05.11.2025

**JUDGMENT**

**MUHAMMAD HASAN (AKBER), J.-** The Judgment dated 30.10.2023 has been assailed in this petition which was passed by the learned Vth Additional District Judge, Hyderabad in Civil Revision No. 150 of 2022, maintaining the Order dated 12.10.2022, passed by learned IInd Senior Civil Judge, Hyderabad on an application U/O XIV, Rule 5 CPC filed in F.C. Suit No.301/2010 '*Shoukat Ali Shaikh Vs. Province of Sindh and others*' whereby the said application was dismissed.

2. Succinct facts of the case are Petitioner/plaintiff filed F.C. Suit No.301/2010 for Declaration, Cancellation, Permanent Injunction and Mense Profits against the Respondents, wherein separate written statements were filed by Respondents 3 to 6 and Respondent No.9. The plaint was rejected under order VII rule 11 CPC, by learned trial Court vide order dated 20-01-2015, which was assailed by the Petitioner/ Plaintiff in civil appeal No.9/2015, which was allowed by the learned 9th Additional District Judge Hyderabad, vide Judgment dated 28.02.2018, and the suit was remanded back to trial Court with directions to record evidence and decide the case on merits. On remand, the learned trial Court framed the following Issues:

- (i) Whether the suit is maintainable and not barred by any law?
- (ii) Whether the document dated 01.08.1998 viz; sub-division of lease plot is void and defective document and the gift on its basis in favor of defendant no.9 by way of fraud?
- (iii) Whether the sale agreement dated 22.02.2005 is void and defective document executed by defendant No.9 in favor of defendant No.10

and the defendant No.9 was not competent to execute the same?

- (iv) Whether the deed of assignment dated 27.12.2005 is void executed by the defendant No.9 in favor of defendant No.10 and the defendant was not competent to execute the same?
- (v) Whether the plaintiff had submitted an application to the defendant No.6 for transfer of half portion of the suit property in favor of defendant No.9?
- (vi) Whether the plaintiff is entitled for relief claimed?
- (vii) What should the decree be?

Thereafter, the plaint was amended, and Respondent No.10 filed his amended written statement (Ex.42), hence, the following Amended Issues were framed by the learned trial Court (Ex.43):

- (i) Whether the suit of the plaintiff is maintainable?
- (ii) Whether the gift deed/sub-division of lease plot dated 01.08.1998 executed by plaintiff in favor of defendant No.9 is void?
- (iii) Whether sub-division of suit plot by SITE on the basis of gift deed/sub-division of lease plot dated 01-08-1998 is void?
- (iv) Whether subsequent agreement to sell executed by defendant No.9 in favor of defendant No.10 and deed of assignment are void and liable to be cancelled?
- (v) Whether the plaintiff is entitled for possession of suit property?
- (vi) Whether the plaintiff is entitled for mesne profits at the rate of Rs.30,000/- per month since 02-06-2007?
- (vii) What should the decree be?

Both parties adduced their respective evidence, based whereon the suit was reserved for Judgment. However, Instead of announcing judgment, the learned trial Court reframed the issue No.3, vide order dated 30-01-2019, and the following amended Issues were framed (Ex.80):

- (i) Whether the suit of the plaintiff is maintainable?
- (ii) Whether the gift deed/sub-division of lease plot dated 01-08-1998 executed by plaintiff in favor of defendant No.9 is void?
- (iii) Whether sub-division of suit plot by SITE on the basis of gift deed/sub-division of lease plot dated 01-08-1998 and subsequent execution of lease deed dated 23-08-1999 (Ex.51/H) in favor of defendant no.9 is void?
- (iv) Whether subsequent agreement to sell executed by defendant No.9 in favor of defendant No.10 and deed of assignment are void and liable to be cancelled?

- (v) Whether the plaintiff is entitle for possession of suit property?
- (vi) Whether the plaintiff is entitle for mesne profits at the rate of Rs.30,000/- per month since 02-06-2007?
- (vii) What should the decree be?

3. After hearing the parties, the learned trial Court dismissed the suit of the petitioner/plaintiff vide Judgment dated 30.01.2019 and Decree dated 31.01.2019, which were challenged in Civil Appeal No.43/2019. The said appeal was allowed by the learned Vth Additional District Judge, Hyderabad vide Judgment dated 18.05.2022 and Decree dated 24.05.2022, and the case was again remanded to the learned trial Court, with directions to provide an opportunity to all parties to lead their evidence on the vital amended Issue No.3, and then pass fresh Judgment after hearing parties with proper findings on each issue separately.

4. At such stage, the petitioner/ plaintiff filed an application U/O XIV, Rule 5 CPC for framing of new issues, which was dismissed by the learned trial Court vide order dated 12.10.2022, against which, Civil Revision No.150 of 2022 was preferred, which too was dismissed vide Judgment dated 30.10.2023, and the same is being assailed in this petition.

5. Learned Counsel for the Petitioner/Plaintiff argued that the impugned judgment is contrary to the facts, law and evidence, and is liable to be set aside; that there is need of framing of additional issues mentioned in the application in order to decide the case on merits and remand order of the learned Appellate Court does not prohibit anywhere that additional issues cannot be framed by the learned trial Court; that Order XLI, Rule 23 CPC clearly provides trial of the suit on all necessary issues and no harm would be caused to the respondents, if additional issues are framed; that petitioner may be allowed, the impugned judgment passed by the learned Revisional Court and the order passed by learned trial Court be set aside and consequently the application seeking framing of additional Issued may be allowed.

6. Conversely, learned AAG Sindh appearing for official Respondents supported the impugned judgment and the order while submitting that no illegality or irregularity has been committed by the courts below in passing the same and lastly prayed for dismissal of the instant revision application.

7. Heard learned counsel and perused the record with their able assistance. The perusal of the record reveals that in the first round of this litigation, the plaint was rejected under Order VII Rule 11 CPC. However, in appeal, the same was

remanded back to the learned trial court. Thereafter, in the second round of litigation, and after recording of complete evidence, the learned Trial Court dismissed the suit on merits vide Judgment dated 30.01.2019 and decree dated 31.01.2019. Again, in appeal, the matter was remanded back to the learned trial Court in Civil Appeal No.43/2019 vide judgment dated 18.05.2022 and decree dated 24.05.2022, with specific directions to record evidence only on the amended Issue No.3 and then pass Judgment on each issue. This is now the third round of litigation which has emanated from the application filed by the petitioner/plaintiff under Order XIV Rule 5 CPC. It is an admitted position that such Judgment and decree dated 18.05.2022 were not challenged by the petitioner/plaintiff, and therefore the same have attained finality. Once the directions passed by the appellate Court have attained finality, the Trial Court is strictly bound to act within the scope of such directions. The Trial Court can neither travel beyond nor sidetrack the command of the learned appellate Court. Framing of new or additional issues In such circumstances would indeed amount to travelling beyond the remand Order, and such an exercise would not be permissible. Order XLI rule 23 CPC. clearly stipulates that the Court trying a suit on remand has to regulate the proceedings and proceed with the case strictly in terms of the order of remand passed by the higher court, as held in the case of **'Jameel Ahmad vs. Saifuddin'** (PLD 1994 SC 501). It was also held by the Honourable Supreme Court in the case of **'Muhammad Tahir vs. Muhammad Latif'** (1990 SCMR 751) that, where remand is confined only to a specific issue, other issues decided by the appellate court earlier cannot be reopened subsequently. In the case of **'Saltanant Khan v. Mst. Fatrani & others'** (2008 CLC 500), it was held that the trial court is strictly bound to follow the directions issued to it by the appellate court while demanding the case and the Trial Court cannot exceed the boundaries of a limited remand Order. The learned Courts below had rightly held concurrently, that framing of new/ additional Issues at this stage, would amount to derailing the directions of remand by the learned Appellate Court. The impugned order dated 12.10.2022, dismissing the petitioner's application under Order XIV Rule 5 C.P.C., is in consonance with the appellate mandate.

8. In addition to the above discussed legal position, we have also perused the prayers sought by the plaintiff/ petitioner in his suit which was filed in the year 2010, wherein he has prayed: declaration for cancellation of gift/donation document dated 01.08.1998; declaration for cancellation of lease deed as fraudulent, fictitious, forged; declaration for cancellation of sale agreement dated 22.02.2005 by defendant No.9 in favour of defendant No.10; declaration for cancellation of deed of assignment dated 27.12.2005; restoration of physical possession of half portion of

the suit property from defendant No.10; Mesne profits against defendant No.10; restraining orders against defendant No.10; and attachment of his properties. We have also perused the application filed by the petitioner at this stage under order XIV rule 5 CPC., where in 8 new issues have been sought to be introduced. From perusal of the proposed issues, it appears that under the garb of such application, at such a belated stage and that too in the third round of litigation, the petitioner/plaintiff is practically trying to shift the burden of proof over to the Defendants, to prove the reliefs sought by him in the suit. Needless to mention that a party challenging the genuineness of multiple documents, the *onus probandi* lay on him to prove the same, as required under Chapter-IX, Articles 117 to 119 of the Qanun-e-Shahdat Order 1984. The suit was filed 15 years ago, in the year 2010, and the plaintiff/petitioner is also in partial possession of the suit property. It therefore appears that by filing such applications, the petitioner/plaintiff is attempting to further drag and delay this 15-year-old matter, which is already in its third round of litigation. Approaching the High Court in its extraordinary jurisdiction under Article 199 of the Constitution, against concurrent findings of two Courts below, with ulterior motives, has been strongly deprecated by this Court, in a large number of cases. The Constitutional Jurisdiction under Article 199 of the Constitution, being supervisory and not appellate in nature, cannot be invoked unless the findings of the subordinate forum are shown to be perverse, arbitrary, or based on no evidence, and the High Court would not reappraise evidence to reach a different conclusion. The petitioner has failed to point out any illegality or jurisdictional defect in the impugned judgment warranting interference by this Court.

9. Based upon the above, the instant Petition was therefore dismissed by our short Order dated 05.11.2025, along with the pending application, and the impugned judgment 30.10.2023 passed by learned Vth Additional District Judge Hyderabad as well as the Order dated 12.10.2022 passed by learned IInd Senior Civil Judge Hyderabad are upheld, with strict direction to the learned Trial Court to decide the Suit within a period of three (3) months in accordance with law on merits under intimation to this Court. These are the reasons for our short Order dated 05.11.2025.

**JUDGE**

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