

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

C.P NO. S-421 of 2025

[Muhammad Ishaque through LRs & others v. Anwer Ali & others]

Counsel for Petitioners:	Mr. Muhammad Arshad S.Pathan, Advocate
Counsels/ Representatives for Respondents:	Mr. Naveed Hussain Umrani, Advocate Mr. Allah Bachayo Soomro, Additional A.G. Sindh.
Date of Hearing:	02.02.2026
Date of Judgment:	20.04.2026

JUDGMENT

RIAZAT ALI SAHAR, J: - Through the instant Constitutional Petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioners seek the indulgence of this Court for redressal of their grievances arising out of the illegal, unlawful and jurisdiction-less exercise of authority by the Courts below, whereby the suit was entertained and decreed in a matter exclusively falling within the domain of Revenue authorities. The petitioners assail the impugned orders passed by the learned Trial Court as well as the Revisional Court, contending that the same are the result of misreading and non-reading of evidence, non-consideration of statutory provisions of the Land Revenue Act and failure to appreciate the settled principles governing Section 12 (2) C.P.C., thus seeking following reliefs:

“a. To issue writ declaring that the Trial Court has Illegally, unlawfully entertained the suit in a case where the Civil Court having no jurisdiction and jurisdiction lies with Revenue Court. exclusively and the order upon application U/S 12 (2) CPC passed by the Trial Court dated 13.07.2023 as well as Revisional order passed by the Revisional Court dated 28.11.2023 are illegal, unlawful, against the spirit of Section 12 (2) CPC and are liable to be set-aside.

b. To restrain the respondents from sale, alienate, gift, transfer or from converting the status of the agriculture land and from changing the character and Record of Rights, documents basing upon the perverse illegal, unlawful judgments before the Revenue authorities in any manner whatsoever.

c. To suspend the operation of impugned orders and judgment passed by the Trial Court as well as Appellate/ Revisional Court in the Suit, Appeal and Revision and stop the Trial Court from proceeding further and/or call R&P of entire proceedings from the Trial Court.

d. Any other relief which this Honourable Court deems fit and proper.

e. Cost of the Petition.”

2. The brief background of the matter is that the controversy emanates from a civil suit bearing F.C. Suit No.79 of 2020 instituted by respondents No.1 to 6 before the learned 1st Senior Civil Judge, Tando Allahyar, wherein they claimed ownership and possession over agricultural land bearing Survey Nos.650 and 651, allegedly situated at Piyaro Lund Road, Deh and City Tando Allahyar, on the basis of purported ancestral title supported by documents and a map of doubtful legal sanctity. The present petitioners, being the legal heirs and descendants of late Muhammad Ishaque, assert that they are the lawful owners and possessors of Survey No.23 and adjoining land and that the alleged Survey Nos.650 and 651, as projected by the plaintiffs, do not exist at the stated location and have been fraudulently introduced to usurp the property of the petitioners. It is the case of the petitioners that no lawful demarcation was ever conducted by the competent Revenue authorities from the recognized zero point and despite the absence of such foundational exercise, the plaintiffs bypassed the statutory mechanism under the Land Revenue Act, 1967, and directly approached the Civil Court, which, according to the petitioners, lacked jurisdiction in matters relating to demarcation, measurement and delivery of possession of agricultural land. The petitioners further contend that relevant and necessary parties, including co-sharers and legal heirs, were not impleaded in the suit, and that the proceedings before the Trial Court as well as the Appellate/Revisional forums were conducted in a manner contrary to law, resulting in perverse findings, misreading and non-reading of evidence, and ultimately leading to impugned orders which have caused grave prejudice to the lawful rights of the petitioners.

3. Learned counsel for the petitioners, while addressing this Court, fairly conceded that ordinarily the Constitutional jurisdiction

under Article 199 of the Constitution is not to be invoked as a substitute for statutory remedies, particularly where concurrent findings have been recorded by the Courts below; however, he emphatically submitted that the instant matter falls within the well-recognized exceptions warranting interference by this Honourable Court. It was contended that both the learned Trial Court as well as the Appellate/Revisional Court have exercised jurisdiction which was not vested in them under the law, as the entire controversy pertains to demarcation, measurement and consequential possession of agricultural land, which squarely falls within the exclusive domain of Revenue authorities under the Land Revenue Act, 1967. Learned counsel further conceded that questions of title and possession are ordinarily to be resolved after full-fledged trial, yet maintained that where the very assumption of jurisdiction is void ab initio and the proceedings are tainted with patent illegality, misreading and non-reading of material evidence, as well as failure to consider mandatory statutory provisions, such findings lose their sanctity. He candidly acknowledged that the scope of Section 12 (2) C.P.C. is limited; nonetheless, he urged that the case of the petitioners clearly attracted all three ingredients i.e. fraud, misrepresentation and want of jurisdiction, which were neither properly appreciated nor adjudicated upon by the Courts below. In such circumstances, learned counsel submitted that this is a fit case for constitutional interference to prevent miscarriage of justice, to correct jurisdictional defects, and to set aside orders which are ex facie perverse and without lawful authority.

4. Notices were issued to the respondents, whereupon the private respondents entered appearance through learned counsel and filed their detailed objections by way of counter affidavit, vehemently opposing the instant Constitutional Petition. It was contended that the petition is wholly misconceived, *mala fide* and not maintainable, having been filed merely to delay the execution of a lawful decree passed by the competent Court. The private respondents asserted that the petitioners, particularly petitioner Nos.20 to 22, having already exhausted their remedies before the Trial Court as well as the Appellate forum and having failed therein,

have now set up other alleged legal heirs (petitioners No.1 to 19) to initiate fresh litigation on the same cause, thereby abusing the process of law. It was further contended that the respondents/plaintiffs are the lawful owners of the suit land bearing Survey Nos.650 and 651, which is their ancestral property, duly supported by mutation entries and revenue record, and that the petitioners have no right, title or interest therein. Learned counsel for the private respondents maintained that prior to instituting the civil suit, recourse was duly taken before the Revenue authorities, however, upon their advice and issuance of Roobkari, the respondents were constrained to approach the Civil Court, which rightly assumed jurisdiction and decreed the suit after proper appreciation of evidence. It was also alleged that the petitioners had produced fake and fabricated documents before the Courts below, which were exposed through official reports, and that even criminal proceedings in respect thereof are pending adjudication. The private respondents emphatically denied all allegations of fraud, misrepresentation and lack of jurisdiction, contending that the findings recorded by the Courts below are based on proper evaluation of oral and documentary evidence and do not suffer from any illegality or perversity warranting interference by this Court. It was lastly prayed that the instant petition, being an attempt to prolong litigation and avoid the consequences of a valid decree, be dismissed with costs.

5. Respondent No.12, i.e. Mukhtiarkar Tando Allahyar, also submitted his para-wise comments/written statement, wherein while denying the allegations of the petitioners, he supported the case of the private respondents on the basis of official revenue record. It was contended that as per the record verified through the concerned Tapedar and Supervising Tapedar, the land bearing Survey Nos.650, 651 and 22, admeasuring in total 7-05 acres, stands duly recorded in the name of respondents No.1 to 6 through valid entries in the relevant record of rights. The Mukhtiarkar further submitted that upon application of the respondents/plaintiffs, demarcation proceedings were initiated by the Revenue authorities in accordance with law, notices were issued

to all concerned parties and after completing codal formalities, a detailed demarcation report was submitted, wherein it was found that petitioner Nos.20 and 21 were in illegal possession of an area measuring 1-03 acres out of Survey Nos.650 and 651. It was further stated that pursuant to such demarcation, Roobkari was issued in favour of respondent No.1 and possession of the said land was delivered through execution proceedings in compliance with the orders of the competent Civil Court. The Mukhtiarkar, however, acknowledged that the petitioners are owners of adjoining land bearing Survey No.23, but maintained that both lands are adjacent and the disputed portion lawfully belongs to the private respondents. It was lastly submitted that the matter is already subject to execution proceedings including claim of mesne profits against the petitioners, and therefore the present petition is devoid of merit, the official record being in favour of the respondents and requiring no interference by this Court.

6. Heard and record perused. The controversy in hand, though projected by the petitioners as one of pure demarcation simpliciter falling exclusively within the domain of Revenue authorities, on a closer scrutiny does not remain confined to a mere ministerial exercise of measurement of land.

7. The pleadings reproduced in the petition itself show that the contest between the parties travelled beyond boundary identification and squarely involved competing claims of ownership, possession, validity of revenue entries, legality of the alleged ancestral title set up by the private respondents and the plea of fraud levelled by the petitioners against the very foundation of the respondents' claim. The petitioners themselves pleaded that Survey Nos.650 and 651 were non-existent at the site, had been fraudulently introduced, and were being used to deprive them of their own land bearing Survey No.23. Once such a challenge is laid to the existence, identity and legal efficacy of the revenue entries and the rival parties assert better title and possession inter se, the matter cannot be treated as a mechanical question of measurement alone; rather, it assumes the character of a civil dispute requiring

adjudication upon rights claimed by one side and denied by the other.

8. The record placed before this Court further shows that the private respondents asserted ancestral ownership, relied upon mutation entries and revenue record and the Mukhtiarkar also supported their stance by stating that the land bearing Survey Nos.650, 651 and 22 stood recorded in their names and that upon demarcation petitioner Nos.20 and 21 were found in unlawful occupation of 1-03 acres. These facts, as emerging from the record, unmistakably demonstrate that the lis was never a bare request for survey measurement, but a contentious dispute touching upon civil rights, title and possession.

9. The statutory scheme of the Sindh Land Revenue Act, 1967 also does not support the sweeping proposition advanced by the petitioners that the Civil Court was wholly denuded of jurisdiction. While the Act provides an elaborate framework for preparation and maintenance of record-of-rights, mutation entries and demarcation through Revenue officers, it simultaneously recognizes that civil remedies remain available where a person considers himself aggrieved in respect of an entry in the record-of-rights. Section 52 gives a presumption of truth to an entry in the record-of-rights unless the contrary is proved or a new entry is lawfully substituted and Section 53 expressly provides that a person aggrieved by an entry in a record-of-rights as to any right of which he is in possession may institute a suit for declaration of his right. Thus, the statute itself preserves the jurisdiction of the Civil Court in an appropriate case where the dispute transcends administrative correction and requires authoritative adjudication of rights. Equally significant is Rule 67-B of the Sindh Land Revenue Rules, 1968, which, while dealing with eviction following demarcation proceedings, specifically lays down through its proviso that where an intricate question of law or title is involved, the Collector shall not pass an order and shall leave the matter to be decided by the Civil Court of competent jurisdiction. This legislative design is sufficient to repel the contention that every dispute having some nexus with

agricultural land or demarcation must invariably and exclusively remain within the closed chamber of revenue hierarchy.

10. It is also necessary to observe that the demarcation mechanism under Rule 67-A is itself a procedural device meant to facilitate identification of land after an application containing full particulars, supported by the latest relevant entries and map, followed by notice to concerned persons, measurement under the personal supervision of the Revenue Officer, preparation of a report, and recording of objections, if any. Such demarcation proceedings undoubtedly have evidentiary value and may furnish a relevant basis for subsequent action, yet they do not by themselves extinguish or conclusively adjudicate complicated civil claims of rival title where each side impeaches the source of the other's right. In the present matter, the petitioners did not merely allege irregularity in measurement; they challenged the legal existence and authenticity of the very survey numbers claimed by the plaintiffs and attacked the proceedings on the grounds of fraud, non-impleadment and want of jurisdiction. In that backdrop, once the Civil Court assumed seisin of the matter and adjudicated after appraisal of the material placed before it, the resultant decree could not be brushed aside simply by re-labelling the dispute as one of exclusive revenue jurisdiction. On the contrary, the statutory framework suggests that when title becomes clouded and the dispute is not amenable to a summary administrative resolution, recourse to Civil Court is not forbidden but contemplated.

11. Coming to the challenge laid to the orders passed on the application under Section 12 (2), C.P.C., it is by now trite that the said provision is not an appellate or revisional substitute enabling a dissatisfied litigant to reopen the entire case on merits merely because the earlier adjudication has gone against him. Relief under Section 12 (2), C.P.C. is available only where a judgment, decree or order is shown to have been obtained by fraud, misrepresentation or want of jurisdiction of a nature striking at the root of the proceedings. The burden in this behalf squarely lies upon the applicant, who must plead the alleged fraud with specificity and

establish that the challenged decree was procured through deception practised upon the Court, or that the Court lacked inherent competence to entertain the matter. A mere reiteration of the defence taken in the original proceedings, or a re-characterisation of disputed questions of fact as fraud, does not satisfy the statutory threshold. In the case in hand, the petitioners, as reflected from the pleadings before this Court, primarily rest their case on the same factual controversy regarding identity of land, validity of survey numbers, propriety of demarcation, and alleged non-consideration of evidence. These are matters relating to appreciation of evidence and adjudicatory conclusions, which may form subject of regular remedies, but by themselves do not establish fraud in the strict legal sense. Nor has anything been shown from the available record to demonstrate that the Civil Court lacked inherent jurisdiction in view of the civil nature of the contest. Once that foundation collapses, the application under Section 12 (2), C.P.C. could not have succeeded merely on the basis of dissatisfaction with the findings already recorded.

12. The petitioners have also placed considerable emphasis on the plea that necessary parties, including certain legal heirs and co-sharers, were not impleaded in the suit. This argument too does not materially advance their case in constitutional jurisdiction. Whether a particular party was necessary or proper, whether any non-joinder was fatal, and whether such omission caused failure of justice, are matters that depend upon the frame of the suit, the nature of relief claimed, the evidence produced, and the findings recorded by the Court seized of the lis. Such matters ordinarily fall within the adjudicatory domain of the Court trying the suit and the forum examining the matter thereafter. They do not automatically render the decree non est, nor do they convert every grievance about the frame of proceedings into a jurisdictional defect of the kind that can attract constitutional correction. More importantly, the private respondents specifically objected that petitioner Nos.20 to 22 had already pursued remedies before the Courts below and, having failed, other alleged heirs had now been set up to re-agitate the same controversy through a fresh constitutional round. This

objection cannot be lightly brushed aside, for writ jurisdiction is equitable and is not designed to facilitate repetitive or collateral challenges after parties have exhausted ordinary remedies and failed to dislodge concurrent conclusions.

13. The stance taken by respondent No.12, namely the Mukhtiarkar, also carries significance, not because his comments are by themselves conclusive, but because they show that according to the official revenue record verified through the concerned field hierarchy, the relevant survey numbers stand entered in the names of respondents No.1 to 6 and demarcation proceedings were carried out after issuance of notices and completion of codal formalities. Under the Act, the record-of-rights enjoys a presumption of correctness until rebutted, and the law provides a mechanism for challenge where a person is aggrieved by such entry. The petitioners' case, however, is not that there exists no remedy in law; rather, their grievance is that the findings went against them. Constitutional jurisdiction under Article 199 is not meant to reassess disputed revenue and civil facts as though this Court were sitting as yet another court of appeal over every factual conclusion reached by the fora below. Unless the petitioners demonstrate patent lack of jurisdiction, procedural illegality of a glaring nature, or perversity so grave that no reasonable forum could have recorded such findings, interference is not warranted. From the material brought on record in the present petition, such threshold has not been crossed.

14. It is equally important to distinguish between the jurisdiction of Revenue authorities to carry out demarcation and related field action, and the jurisdiction of Civil Court to adjudicate civil rights where such demarcation is disputed or its legal effect becomes contentious. The Act defines record-of-rights, survey numbers, land-owners and Revenue officers, and entrusts revenue administration to the statutory hierarchy. The Rules regulate how proceedings are to be conducted before Revenue officers, including the recording of reasons, maintenance and inspection of record, and the procedure for demarcation. Yet, none of these provisions can be read in isolation so as to obliterate the jurisdiction of Civil Court in

matters where declaration of right, challenge to entries, or adjudication of serious title controversy is involved. Rather, the statutory architecture points to a complementary arrangement: revenue authorities maintain, measure and administer; civil courts conclusively adjudicate when rights are seriously disputed. Therefore, the petitioners' attempt to treat the jurisdictional issue as an absolute bar against the original suit is misconceived.

15. The argument of fraud has likewise remained more rhetorical than demonstrable. Fraud, in law, is not to be presumed; it must be specifically pleaded and strictly proved. A party alleging that survey numbers were fabricated, maps were doubtful, or documents were manipulated, must show from the record, through cogent material, that the decree was obtained by playing fraud upon the Court itself and not merely that the opposite side relied upon documents whose correctness is disputed. Every contested document does not amount to fraud, and every adverse finding does not become void by being labelled as such. In the present matter, the respondents not only denied the allegation of fraud but also asserted that the petitioners themselves had produced fake and fabricated documents before the Courts below and that official reports exposed the same. Once such rival accusations exist, the matter essentially remains one of appreciation of evidence and adjudication upon disputed facts. In constitutional jurisdiction, particularly after dismissal of a Section 12 (2), C.P.C. application and affirmance in revision, this Court cannot transform itself into a trial forum to conduct a de novo inquiry into factual controversies.

16. Another aspect that weighs with this Court is that the impugned challenge is directed not against the original decree alone, but against the dismissal of proceedings under Section 12 (2), C.P.C. and the revisional order maintaining the same. Thus, the scope of scrutiny becomes even narrower. The Court is not required to decide afresh whether one party had a better title than the other; rather, the question is whether the Courts below committed such jurisdictional error or legal perversity in declining to reopen the decree under Section 12 (2), C.P.C. as would justify constitutional

interference. In view of what has been discussed above, the answer has to be in the negative. The petitioners have failed to show that the decree was a nullity on account of inherent lack of jurisdiction, or that the Section 12 (2), C.P.C. application disclosed such established fraud as required by law, or that the Revisional Court ignored any mandatory provision going to the root of the case. At best, the petitioners seek re-appraisal of disputed facts and a fresh determination of the same controversy in writ jurisdiction, which is legally impermissible.

17. For the foregoing reasons, I am of the considered view that no case for interference under Article 199 of the Constitution is made out. The dispute raised by the petitioners was not a mere question of administrative demarcation but a contested civil matter involving rival claims of title and possession; the statutory framework does not exclude civil jurisdiction in such matters; the record-of-rights enjoys legal presumption unless displaced in accordance with law; and the remedy under Section 12 (2), C.P.C. could not be invoked as a disguised appeal against concurrent findings. The impugned order dated 13.07.2023 passed by the learned Trial Court on the application under Section 12 (2), C.P.C. and the revisional order dated 28.11.2023 do not suffer from any jurisdictional defect, material illegality or perversity warranting interference by this Court in its constitutional jurisdiction.

18. Consequently, the instant Constitutional Petition is **dismissed**, along with all pending applications, if any. In the circumstances of the case, there shall be no order as to costs.

JUDGE

Approved for reporting

A.C