IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Constitutional Petition No. S-66 of 2026

'Dr. Shaheed Hussain and others vs. Amir Ali @ Mohammad Amir and others'

Petitioner	:	Mr. Zain A. Soomro, Advocate along with M/s. Muhammad Naeem & Tahir Ali Soomro Advocates
Respondents No.1 & 2	:	Not Present
Respondent No.3 to 9	:	Through Mr. Mohsin Ali Khan, Assistant Advocate General
Date of Hearing	:	14.05.2026
Date of Announcement	:	22.06.2026

J U D G M E N T

MUHAMMAD HASAN (AKBER), J.- The Order dated 02-12-2020 passed by the learned III[rd] Additional District Judge (MCAC), Larkana in Civil Revision Application No.32 of 2020 has been assailed in this petition whereby the Order dated 09-09-2020 passed by the learned 1[st] Senior Civil Judge, Larkana was set aside and application under Order VII rule 10 CPC. filed by Respondent No.1 was allowed, and the trial court was directed to return the petitioner's plaint in respect of ninety-four survey numbers situated in Taluka Ratodero for presentation before the Court having proper territorial jurisdiction, while being permitted to proceed with the matter relating to the one survey number situated within Taluka Larkana.

2. Heard the learned counsels for the parties, learned Assistant Advocate General and have gone through the record. To avoid repetition, the respective contention of the parties will be discussed at the relevant portions in this Order, for brevity's sake.

3. Succinct facts leading to this petition are that the petitioners/ plaintiffs filed First Class Suit No. 223 of 2016 before the learned 1[st] Senior Civil Judge, Larkana, seeking Declaration, Partition, Separate Possession, Mesne Profits, Compensation and Permanent Injunction against the respondents in respect of inherited properties left by the deceased late Sardar Peer Bux Khan Bhutto. The suit properties consisted of agricultural land and other immovable assets situated partly in Taluka Ratodero and partly in Taluka Larkana, all forming part of the estate of the deceased.

4. After service of notices on the defendants, Respondent No.1 filed his written statement on 19-12-2016 without raising any objection whatsoever regarding the territorial jurisdiction of the learned trial court.

5. The suit was allowed to proceed, and issues were framed on 13-02-2018. The evidence of the plaintiffs, as well as official witnesses, was fully recorded before the learned trial court. The matter was then fixed for the recording of evidence of the defendants. Respondent No. 1 was, on more than one occasion, debarred from conducting cross-examination of the plaintiff side and official witnesses on account of his repeated failure to proceed despite specific directions of the court. The respondent filed two separate transfer applications before the learned District Judge, Larkana, which were dismissed vide orders dated 27-08-2019 and 02-05-2020, respectively.

6. At such a belated stage of the proceedings, Respondent No.1 filed an application under Order VII Rule 10 read with Section 16 CPC, seeking return of the plaint on the ground that the learned trial court had no territorial jurisdiction to entertain the suit in respect of the properties situated in Taluka Ratodero. The learned 1st Senior Civil Judge, Larkana, after hearing both sides, dismissed this application vide order dated 09-09-2020, holding that the trial court was fully competent and had territorial jurisdiction to entertain and adjudicate upon the entire suit. Respondent No. 1 then challenged this order by filing Civil Revision Application No. 32 of 2020 before the learned IIIrd Additional District Judge (MCAC), Larkana. The learned IIIrd Additional District Judge allowed the revision vide the impugned order dated 02-12-2020 and directed the return of the plaint with respect to the ninety-four survey numbers situated in Taluka Ratodero. The petitioners have assailed this order before this Court under Article 199 of the Constitution.

7. Firstly, section 16 CPC. is not to be read in isolation and the supplementary provisions, including Sections 17 to 20 CPC. form part of the same legislative scheme governing the institution of suits. Where issues concerning immovable properties are involved, then Section 17 CPC. is of direct and decisive relevance, whereas sections 18, 19 and 20 will also have to be kept in consideration.

8. Secondly, it was held by the Honourable Supreme Court in the case of ***'Abdul Habib and others v. Mst. Noor Bibi and others'*** (2022 SCMR 1846) at paragraph 4 that:

> "Sections 16 and 17 of the C.P.C. are part of the one statutory scheme. Section 16 contains general principle that suits are to be instituted where subject-matter is situate whereas section 17 engrafts an exception to the general rule as occurring in section 16. From the foregoing discussions, we arrive at following conclusions with regard to ambit and, scope of section 17 of C.P.C.
> (i) The word 'property' occurring in section 17 although has been used in 'singular' but by virtue of section 13 of the General Clauses Act it may also be read as 'plural', i.e., "properties".
> (ii) The expression any portion of the property can be read as portion of one or more properties situated in jurisdiction of different courts and can be also read as portion of several properties situated in jurisdiction of different courts.

> (iii) A suit in respect to immovable property or properties situate in jurisdiction of different courts may be instituted in any court within whose local limits of jurisdiction, any portion of the property or one or more properties may be situated.
> (iv) A suit in respect to more than one property situated in jurisdiction of different courts can be instituted in a court within local limits of jurisdiction where one or more properties are situated provided suit is based on same cause of action with respect to the properties situated in jurisdiction of different courts.
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> The purpose of section 17 of the C.P.C. is to avoid conflicting decisions, multiplicity of litigation and to give option to the parties to choose the court for adjudication of their disputes according to their convenience, in order to facilitate them."

9. In the same Judgment, it was further held at paragraph 5 that:

> "5. In the case in hand, the subject matter of both the suits is respecting the left-over properties of the predecessor of the parties, situated within the jurisdiction of two courts. Their claim includes the relief of partition amongst them as well. Under such circumstances, the cause of action of both the suits is one and the same, therefore, both the Courts at Quetta and Chaman had the jurisdiction to adjudicate the suits in respect of the left-over properties of the predecessor of the parties…"

10. In the instant case, the suit properties included survey numbers in both Taluka Ratodero and Taluka Larkana. It is an admitted position that at least one survey number is situated within the territorial jurisdiction of the learned 1st Senior Civil Judge, Larkana. The plain and unambiguous terms of Section 17 CPC conferred full and lawful jurisdiction upon the learned trial court to entertain the entire suit and to adjudicate upon all the suit properties, including those situated in Taluka Ratodero. Nonetheless, section 17 was not considered while passing the impugned Order.

11. Thirdly, under section 21 CPC., an objection to jurisdiction must be raised at the earliest possible stage before the Trial Court and pursued diligently, and in the absence of such persistent agitation, a party cannot later challenge the jurisdiction of the court after having willingly participated in the proceedings, as held in ***'Mrs. Anjum Malik and others v. Mst. Neelofer Malik through L.Rs and others'*** (2025 CLC 1490). In the instant case, record reflects that Respondent No.1 filed his written statement on 19-12-2016 without taking a single word of objection regarding the territorial jurisdiction of the learned trial court. He permitted the case to proceed for about four to five years. Issues were framed, the entire evidence of the plaintiff side, including official witnesses, was recorded, and the matter had reached the stage of defendants' evidence before this objection was raised. Respondent No. 1 did not raise this objection at the first opportunity or at any stage during the prolonged course of the proceedings. He raised it only at the most belated stage possible, that is to say, after he had been repeatedly debarred from conducting cross-examination of the plaintiff side on account of his own misconduct and failure to proceed. The raising of a jurisdictional objection in these circumstances is a device to delay and defeat the legitimate claim of the petitioners rather than a genuine assertion of any legal right. The learned IIIrd Additional District Judge did not examine or address the question of waiver under Section 21 CPC at all. This failure to consider a relevant and material provision of law further renders the

impugned order unsustainable.

12. Fourthly, the instant proceedings are amongst the heirs of a deceased and the scheme of law provides an expeditious mechanism for their disposal. However, despite the passing of 10 long years, the same has not progressed any further, causing grave prejudice to all the heirs. The suit was instituted in the year 2016; Issues were framed on 13-02-2018; The entire evidence of the plaintiff side along with official witnesses was recorded over the course of years at considerable expense of time, effort and resources; The matter had reached the stage of recording the defendants' evidence; defendant persistently avoided to appear in evidence and his side was closed on multiple occasions; defendant then filed transfer applications which were disallosed; lastly he resorted to application uner Order VII rule 10 CPC, which was also disallowed by the learnbed trial court. All these factors ought to have been considered by the learned appellate Court while passing the impugned Order. Permitting the return of the plaint at this advanced stage would render the entire previous litigation completely futile and would compel the petitioners to initiate fresh proceedings before a new court, thereby multiplying the burden of litigation that the petitioners have already borne for years. Such a course would amount to an abuse of the process of law and would cause irreparable harm to the petitioners. It is a settled principle that courts are to prevent the use of procedural devices as instruments of delay and that a defendant cannot be permitted, through belated procedural objections, to deprive the plaintiff of the fruits of years of diligent and costly litigation. The conduct of Respondent No.1 throughout the proceedings, including his filing of multiple frivolous applications, his two transfer applications that were dismissed, and his deliberate failures to conduct cross-examination despite specific directions, all point consistently to an intention to linger on the matter and frustrate the petitioners rather than to participate in the proceedings in good faith.

13. The Judgment relied upon by the respondent side does not apply to the facts of the present case since the question involved in that case was filed based on an agreement between the parties and part of the course of action under Section 20 CPC. was claimed, and therefore it was held that, *"Suit for the purposes of determining the rights or interest in the property being different to that of the suit in which the relief claimed does not relate to the rights in immovable property, can be filed at the place at which the cause of action fully or partially arose".* The facts in the present case are distinct from the case of claim of rights based on an agreement, since it is an admitted position in this case that the 95 immovable properties involved in the suit form the estate of the deceased, and the suit has been filed by the heirs of the deceased for the distribution of inherited properties in accordance with law.

14. In view of all the foregoing reasons, a case for exercise of writ jurisdciiton is made out, therefore this petition is allowed; the impugned order dated 02-12-2020 passed by the learned IIIrd Additional District Judge (MCAC), Larkana in Civil Revision Application No. 32 of 2020 is hereby set aside; the application filed by Respondent No.1 under Order VII Rule 10 CPC stands dismissed; and the learned 1st Senior Civil Judge,

Larkana, is directed to expeditiously proceed with First Class Suit No. 223 of 2016 in accordance with law from the stage it had reached before the passing of the impugned order. Considering the fact, that 10 long years have already been spent in the instant proceedings without any conclusion in sight, the learning trial court is therefore directed to conclude the trial and pass Judgment based on evidence and material produced by the parties, positively within a period of 60 days from the date of receipt of this Judgment, without allowing any unnecessary adjournment to either side, and submit a copy of the judgement with the MIT of this Court. The instant petition is allowed in the above terms with no order as to costs.

J U D G E