THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Civil Revision Application No. S-01 of 2020

[Muzamil Kartio & another Vs. Abdul Qadir Kartio & others]

Applicants	**:**	Through Mr. Vinod Kumar G. Jessrani, Advocate
Private Respondents	**:**	Nemo
Official Respondents	**:**	Through Mr. Saeed Akbar Siyal, Assistant Advocate General, Sindh
Date of Hearing	**:**	**02-11-2026**
Date of Judgment	**:**	**13-11-2026**

J U D G M E N T

ARBAB ALI HAKRO, J.- Through this Civil Revision Application under Section 115 of the Code of Civil Procedure, 1908 ("**C.P.C.**"), the applicants have impugned the judgment dated 02.10.2019 and decree dated 05.10.2019 ("**the impugned judgment and decree**") passed by the learned II-Additional District Judge, Mehar ("**the appellate court**") in Civil Appeal No.71 of 2018, whereby the judgment dated 08.10.2018 and decree dated 11.10.2018 of the learned Senior Civil Judge, Mehar ("**the trial court**"), decreeing F.C. Suit No.48 of 2007 filed by the applicants, were set aside and the suit was dismissed.

2. The applicants were minors when the suit was filed. They sued through their mothers as next friends, who acted through an attorney, Illahi Bux, son of Haji Lakhidino. Their case was that S.Nos.256, 259, 271, 279 and 17/2 of Deh Kothi Sodhari, Taluka Mehar, to the extent of 25 paisa share, and S.No.258 to the extent of 37½ paisa share ("**the suit land**") originally belonged to one Illahi Bux as old khatedar; that on his death it devolved on his son Lakhidino and thereafter on the heirs of Lakhidino, namely Illahi Bux, Ghulam Abbas, Mst. Khairan and Mst. Haleeman; and that these heirs sold it to the applicants, who are the sons of Ghulam Abbas and Illahi Bux, through a registered sale deed dated 02.08.2005, followed by

entry No.270 dated 08.09.2005 in V.F.VII-B. The remaining share in these survey numbers was shown as the property of the private respondents. It was pleaded that respondent No. 1, Abdul Qadir, who managed the entire land, used to pay the zamindari share to the applicants as co-sharers but later stopped doing so and refused to hand over possession. It was further pleaded that in an earlier suit, F.C. Suit No.67 of 2006, which was withdrawn with permission to sue afresh, the private respondents produced three registered sale deeds, No.219 dated 22.03.1934, No.507 dated 21.06.1934 and No.725 dated 04.09.1936, showing the sale of different survey numbers by Illahi Bux and others to Sidhu Mal, Haji, son of Gul Muhammad, and Haji Pandhi, and that these deeds, along with a "Maqata" (lease) deed dated 01.04.1954 set up by Abdul Qadir in his own F.C. Suit No.18 of 2005, were forged. The applicants prayed for a declaration that the withholding of produce was illegal, cancellation of the three sale deeds, the Maqata deed and the entries based on them, possession, mesne profits and injunction.

3. The suit was contested by defendants Nos. 2 to 4 and 7. They denied the applicants' title and pleaded that the land belonged to their elders; that entry No. 22 of the record of rights for 1954-55 had been tampered with by changing the name of Allah Bux to Illahi Bux; that whatever the applicants' ancestors held had been sold in the nineteen-thirties, as reflected in the old record of rights; that neither the applicants nor their elders ever remained in possession or received any produce, and that the suit was barred by time.

4. The plaint was rejected under Order VII Rule 11 C.P.C. on 09.03.2010, and that order was maintained on appeal on 06.11.2013. This Court, in Civil Revision Application No. S-01 of 2014, set aside both orders on 08.09.2017 and directed that the suit be decided on the merits after framing of issues and recording of evidence. The trial court then framed eleven issues. The applicants examined only their attorney, Illahi Bux (PW-1), who produced a rubkari dated 25.01.2005 of the Sub-Registrar, Dadu, certain revenue entries, and the sale deed of 2005. The contesting respondents examined their attorney, Buxial (DW-1), and the Tapedar of the beat (DW-2). The trial court decreed the suit as prayed. On appeal, the appellate court summoned the Sub-Registrar and the Tapedar with the original record, examined them, and, through the impugned judgment, dismissed the suit. It held, in substance, that forgery of the old sale deeds was not proved, that

the purchasers under those deeds were not joined, that the applicants had not established their title, and that separate possession could not be given to a co-sharer without partition.

5. Learned counsel for the applicants contended that the appellate court misread the evidence and ignored the rubkari of the Sub-Registrar, which shows that no document regarding the sale of the suit land was registered between 1925 and 1956; that the plea of Abdul Qadir in F.C. Suit No.18 of 2005, that he held S.Nos.258 and 281 under a sixty-year lease from Lakhidino, cannot stand with the sale deeds of 1934 and 1936 and shows that those deeds are fabricated; and that the issue-wise findings of the trial court were upset without sound reasons. He relied upon ***Muhammad Ayub***[1], ***Nasir Ali***[2] and ***Mohammad Sajid***[3] and placed on record, with a statement dated 02.11.2026, certified copies of the plaint and the order dated 05.04.2010 in F.C. Suit No.18 of 2005.

6. The private respondents were served through all modes, including publication, but chose to remain absent.

7. Learned Assistant Advocate General submitted that, as stated in the comments of the official respondents, no government interest is involved and the matter may be decided on merits.

8. I have heard learned counsel and gone through the record.

9. Section 115 C.P.C. permits this Court to interfere where the subordinate court appears to have exercised a jurisdiction not vested in it by law, to have failed to exercise a jurisdiction so vested, or to have acted illegally or with material irregularity in the exercise of its jurisdiction. A revision is not a second appeal on facts. However, where the trial and appellate courts have reached opposite conclusions on the same evidence, this Court is entitled to look at the evidence to see which conclusion the record supports, as held in ***Muhammad Din***.[4] In such a case, the finding of the appellate court ordinarily prevails, provided it is borne out by the evidence and by reasons, as laid down in ***Madan Gopal***.[5] The impugned

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[1] *Muhammad Ayub, Shop Manager Bata Pak. Ltd and another v. Muhammad Rahman and others* 2026 SCMR 31.
[2] *Nasir Ali v. Muhammad Asghar* 2022 SCMR 1054.
[3] *Mohammad Sajid v. Additional District Judge and others* 2020 CLC 1178.
[4] *Muhammad Din and others v. Mst. Naimat Bibi and others* 2006 SCMR 586.
[5] *Madan Gopal and 4 others v. Maran Bepari and 3 others* PLD 1969 SC 617.

judgment is brief and proceeds on a single point for determination. I have, therefore, examined the pleadings and the evidence myself.

10. The title claimed by the applicants is derivative. They could acquire only what their vendors owned under the sale deed of 2005. Once the contesting respondents denied the vendors' title and alleged tampering in the revenue record, it was for the applicants to prove it. Under Article 117 of the Qanun-e-Shahadat Order, 1984 ("**QSO, 1984**"), the burden lies on the party who asks the Court to give judgment on the existence of facts he asserts. The trial court framed issue No.5 in the negative, placed the burden on the respondents, and answered it against them on the ground that they had not challenged the sale deed of 2005. That approach was not correct. The respondents were strangers to that deed and had no occasion to challenge it; their case was that the vendors had nothing to sell. A registered deed executed by a father and an uncle in favour of their own minor sons proves the conveyance; it does not prove the title of the vendors. In ***Muhammad Din***[6], the Supreme Court held that a plaintiff who claims through a predecessor must establish the title of that predecessor as a positive fact, and that the negative form of an issue is not decisive.

11. The vendors' title rested solely on revenue entries alone. Entries in the record of rights carry a presumption of correctness under Section 52 of the Sindh Land Revenue Act, 1967, but that presumption is rebuttable, and such entries do not, by themselves, create title. The Tapedar stated that there was overwriting in entry No.22, affecting the name and the shares, and that he could not say whether the name was Allah Bux or Illahi Bux. He also stated that entry No.270 in favour of the applicants was written with two different pens on a page where an earlier entry had been kept and cancelled. The chain of title set up by the applicants begins with entry No.22. When that entry itself is open to doubt, the later entries which flow from it cannot be taken as proof of ownership. In ***Nasir Ali***[7], it was held that a party claiming through a disputed mutation must prove the transaction behind it; that a plaintiff must succeed on the strength of his own case; and that where the matter is left in doubt, the decision goes in favour of the defendant.

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[6] *Muhammad Din* (n.4 above).
[7] *Nasir Ali* (n.2 above).

12. The oral evidence does not improve matters. PW-1 is the only witness. He is one of the vendors, the father of applicant No.2, and the attorney through whom the suit has been conducted. Ghulam Abbas, the other male vendor, who, according to PW-1, is alive, was not examined; nor was any attesting witness of the sale deed or any independent person of the locality. The claim that the zamindari share was being paid until the year 2006 rests on the bare word of PW-1, which DW-1 denied. PW-1 admitted that he has neither dhal receipts nor any possession certificate. The absence of the private respondents from this Court does not relieve the applicants of their burden. In ***Muhammad Ayub***[8], relied upon by learned counsel himself, the Supreme Court held that a want of rebuttal does not, by itself, make a claim succeed, and that failure to produce the best available evidence operates against the party who withholds it. Article 129(g) of QSO, 1984 is to the same effect.

13. Under Section 39 of the Specific Relief Act, 1877, a person against whom a written instrument is void or voidable, and who has a reasonable apprehension that it may cause serious injury if left outstanding, may sue to have it so adjudicated, and the Court may, in its discretion, order it to be delivered up and cancelled. The relief is discretionary. It also presupposes that the instrument is before the Court and that those who take under it are heard. Neither condition was met. None of the three sale deeds was exhibited in evidence by the applicants, as the appellate court has noted, nor was the Maqata deed. PW-1 admitted that he had not produced it. The trial court itself recorded in issue No.3 that no copy of the Maqata deed had been produced at the trial, yet it decreed the cancellation of all four documents by decreeing the suit as prayed. A Court cannot cancel instruments it has not seen. The first proviso to Article 161 of the QSO, 1984 requires that a judgment be based on facts that are relevant and duly proved, a requirement emphasised in ***Mst. Akhtar Sultana***.[9]

14. The sale deeds of 1934 and 1936 stand in favour of Sidhu Mal, Haji, son of Gul Muhammad and Haji Pandhi. They or their successors are the persons whose title would be extinguished by a decree of cancellation, and none of them was impleaded. Order I Rule 9 C.P.C. provides that no suit

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[8] *Muhammad Ayub* (n.1 above).
[9] *Mst. Akhtar Sultana v. Major Retd. Muzaffar Khan Malik through his legal heirs and others* PLD 2021 SC 715.

shall be defeated by reason of misjoinder or non-joinder of parties, but the rule does not help where the person left out is a necessary party in whose absence no effective decree can be passed. The objection was pressed before the appellate court. No application under Order I Rule 10 C.P.C. was made there or in this Court. The Supreme Court held in ***Muhammad Iqbal Rafi***[10] that failure to implead those who would be affected by the relief is fatal.

15. Even on the merits, the only material against the old deeds is the rubkari dated 25.01.2005. It is a certificate of a negative fact, and its author was not examined. When the Sub-Registrar, Dadu, appeared before the appellate court with his registers, learned counsel for the applicants put no questions to him about the rubkari; the cross-examination was nil. The date of the rubkari also does not fit the applicants' case, for they pleaded that they first came to know of the deeds when these were produced in F.C. Suit No.67 of 2006, whereas the rubkari was obtained more than a year earlier. Against it stands entry No.83, dated 22.08.1934, of the old record of rights, produced by the Tapedar from official custody, which, as read out by the Tapedar, records the sale of S.No.271 to a Hindu purchaser on the 21st of June. This corresponds with sale deed No.507, dated 21.06.1934, in favour of Sidhu Mal, and the applicants themselves pleaded that this entry was made on the basis of the sale deeds. An entry made more than eighty years ago by a public servant in the discharge of his duty is relevant under Article 49 of QSO, 1984, and cannot be brushed aside on the strength of a certificate whose author never entered the witness box. The trial court relied on the rubkari and did not notice this entry at all. That was a failure to read material evidence. The burden of proving fraud lay on the applicants who alleged it, and it was not discharged.

16. On their own pleadings, the applicants are co-sharers in unpartitioned survey numbers. A co-sharer has an interest in every inch of the joint property and cannot claim any specific portion until partition, as held in ***Abdul Ghani***.[11] Partition of an agricultural holding is the function of the Revenue Officer under Section 135, and the provisions following it in the Sindh Land Revenue Act, 1967, and Section 172 of that Act exclude the

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[10] *Muhammad Iqbal Rafi and 2 others v. The Province of Punjab, Lahore and others* 1986 SCMR 680.
[11] *Abdul Ghani v. Abrar Hussain* 1999 SCMR 348.

jurisdiction of the civil court in that field. The appellate court went somewhat further than necessary in treating the suit itself as barred under Section 172. A co-sharer who is kept out is not without remedy before the civil court for declaration and joint possession. But a decree directing the respondents to hand over "vacant possession" of an undivided share could not have been passed in any case. With title not proved, the question of joint possession does not arise, and the claim for mesne profits falls with it.

17. Learned counsel placed considerable emphasis on the plea in Abdul Qadir's own suit that he held S.Nos. 258 and 281 under a lease from Lakhidino. The plaint of that suit was not exhibited at the trial; PW-1 conceded that he had produced neither the Maqata deed nor any order passed in that suit. Copies filed with a statement at the bar are not evidence, and a revision is to be decided on the record as it stood before the courts below. Even if the plea is taken at its face value, it was made by one of the defendants, now deceased, and concerns S.Nos. 258 and 281, the latter not being part of the suit land. An admission is not conclusive proof of the matter admitted (**Article 45 of QSO, 1984**). At best, the plea shows an inconsistency in Abdul Qadir's stand. It does not prove the applicants' title to the suit land nor that the deeds standing in the names of third parties are forged. The applicants had to succeed on the strength of their own case.

18. ***Muhammad Ayub*** and ***Nasir Ali***, cited by learned counsel, support the view taken above. In ***Mohammad Sajid***, a nikahnama was relied on despite being denied by its purported executant, and the party relying on the document had to prove it. That principle does not apply here; the contesting respondents do not derive their title from the deeds of 1934 and 1936, and the persons in whose favour those deeds stand are not before the Court.

19. Two matters need to be clarified. First, the appellate court observed that the sale deed of 2005 in favour of the applicants seems to be bogus and forged. No issue was framed on the genuineness of that deed, and no one sought its cancellation. The observation was unnecessary to the decision and shall not be read as a finding on the genuineness of that deed. All that is held is that the applicants failed to prove the title of their vendors. Second, the appellate court recorded no finding on issue No. 7 relating to limitation. In view of the conclusion reached on the merits, it is not necessary to go

into that question.

20. For these reasons, the decree of the trial court cannot be sustained. It placed the burden on the wrong party, overlooked material evidence, and ordered the cancellation of documents not on its record, in the absence of those who held them. The conclusion of the appellate court, though briefly reasoned, is the one supported by the evidence. No illegality or material irregularity within the meaning of Section 115 C.P.C. has been shown. The Civil Revision Application is, therefore, **dismissed,** with no order as to costs.

JUDGE

Zulfiqar