

JUDGMENT SHEET
THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Civil Revision No. S-150 of 2024
[Originally Civil Revision No. 184 of 2015; transferred from Hyderabad]

Applicants : Province of Sindh and others through Mr. Muhammad Sharif Solangi, Assistant Advocate General Sindh

Respondents : Muhammad Imran and others not represented

Date of Hearing : 18.08.2026

Date of Judgment : 21.08.2026

JUDGMENT

Muhammad Humayon Khan, J.: The Applicants are aggrieved by an Order dated 30.09.2015 passed by the learned Ist Additional District Judge, Sanghar, in Civil Appeal No. 23 of 2012 dismissing their application for production of additional evidence under Order XLI Rule 27 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter the “CPC”).

2. It would appear that, originally, the Respondents Nos. 1 to 4 filed F.C. Suit No. 18 of 2009 as against the Applicants and the Respondents Nos. 5 to 19 for declaration and injunction before the learned Senior Civil Judge, Khipro. Their case arose out of the fact that the Applicants had purchased/acquired an area of land (described in the plaint) inherited and owned by them when they were minors and which according to them was illegal and void and they therefore challenged the said acquisition/purchase on various grounds. As against the suit, multiple written statements were filed and, after framing of issues followed by evidence of the parties, the learned Senior Civil Judge decreed the suit by Judgment dated 07.03.2012 and Decree dated 08.03.2012.

3. The Applicants challenged the Judgment and Decree of the learned Senior Civil Judge before the learned Ist Additional District Judge, Sanghar, in Civil Appeal No. 23 of 2012. During the proceedings of the said civil appeal, they filed

the aforementioned application seeking to produce the following witnesses and documents in additional evidence:

- i) Manager, National Bank of Pakistan, Khipro Branch, to produce bank drafts relating to payment of Rs. 39,000/- to Mst. Taj Bano for the purchase/acquisition of the land in question;
- ii) Concerned Assistant of the Office of the Deputy Commissioner, Sanghar, to produce the order of acquisition of the suit land;
- iii) Assistant Commissioner, Khipro, to produce Letter No. SGAS/203 dated 10.03.1988 showing bank drafts sent to him for onward delivery to the Respondents Nos. 1 to 4 being the costs of acquisition;
- iv) Mukhtiarkar (Revenue), Khipro, to produce another Letter No. SGAS/203 of 1988 dated 10.03.1988 addressed by the Deputy Commissioner, Sanghar, to the Assistant Commissioner, Khipro relating to the said payment.

4. The said application was opposed by the Respondents through a counter-affidavit, and by Order dated 30.09.2015, the learned Additional District Judge dismissed the said application observing that the Applicants had every opportunity to produce the said record at the time of filing their pleadings and before trial, but they failed to do so at the relevant time and were making a belated and afterthought application in appeal. That order has now been challenged by the Applicants under Section 115 of the CPC.

5. Mr. Muhammad Sharif Solangi, the learned Assistant Advocate General Sindh, after taking me through the facts and chronology of the proceedings and reiterating the grounds of the revision, stated that the documents sought to be produced are essential to the determination of the main dispute and the non-

production thereof would cause serious prejudice to the Applicants. While relying on *Sher Muhammad (deceased) through LRs and others v Mst. Sameeri Bibi* PLD 2021 Lahore 287 and *Messrs Naseem & Company and others v Capital Development Authority and others* 2022 MLD 1426, he contended that additional documentary evidence can be produced at a later stage by showing good cause and that liberal approach is to be followed regarding production of record of public parties. He contended that the additional evidence sought to be recorded by the Applicants was not to fill any lacuna. Finally, Mr. Muhammad Sharif Solangi stated that this was a fit case for exercise of revision jurisdiction and prayed for the grant of the application.

6. No one appeared on behalf of the Respondents. This remained the position on 18.08.2026, 17.08.2026, 30.04.2026, 07.04.2026, 23.02.2026, 06.02.2025, 22.03.2021, 07.08.2020 and 02.03.2018, although it appears that, on 07.03.2016, Mr. Sadiq Laghari, Advocate, had filed Vakalatnama for the Respondents Nos. 1 to 4. Accordingly, the matter was heard in their absence and reserved for order by me on 18.08.2026.

7. The case of the Applicants turns on the powers of an appellate court to take additional evidence and on which the law is well-settled. These powers arise under Section 107(d) of the CPC and the conditions and limitations on this power are provided in Order XLI Rule 27, according to which the following points become clear:

- i) The general rule is that there is no evidence at appellate stage, and the appeal is to be decided on the existent evidence produced by the parties at trial. A party is not entitled to produce additional evidence at the stage of appeal, and so the jurisdiction to take additional evidence is in fact discretionary in nature with the said discretion having to be exercised judiciously and not mechanically.

- ii) There are two exceptions to the general rule as per Order XLI Rule 27, and which are (a) the trial court's refusal to admit evidence which it ought to have admitted, or (b) the appellate court's requirement for any document or witness to be produced to enable it to pronounce judgment, or for any other substantial cause.

8. The provisions of Order XLI Rule 27 have been interpreted at great length in our jurisprudence, but for the Court's present purposes, the following principles are relevant:

- i) The power to be exercised under Order XLI Rule 27 is not intended to fill-up *lacunae* in the evidence, to make up a deficiency in a case or to provide an opportunity to unnecessarily re-open a party's case where it has originally failed to discharge its burden of proof at trial. This power is to be exercised cautiously and sparingly and without wrongly or unjustly facilitating parties. See *Shamshad Bibi and others v Riasat Ali and others* PLD 2023 SC 643.
- ii) Therefore, the essential consideration for the Court is not whether any additional evidence sought to be produced will improve a party's case, but whether the Appellate Court requested to take additional evidence finds that the evidence is necessary for a satisfactory and complete disposal of the case. The additional evidence should have direct and important bearing upon the main issue in the case and cannot introduce a new case. See *Mad Ajab and others v Awal Badshah* 1984 SCMR 440 which in turn relies on *Parsotim Thakur and others v Lal Mohar Thakur and others* AIR 1931 PC 143.
- iii) The power to take additional evidence may be exercised where the Court comes to the conclusion that the admission of the additional evidence was required to do complete justice being a "substantial

cause” within the meaning of sub-rule (b) of Rule 27, and for these purposes the power is exercisable even *suo motu*. However, the Court has to see substantial cause along with the conduct of the parties concerned. See *Mst. Fazal Jan v Roshan Din and 2 others* PLD 1992 SC 811 and *Ghulam Zohra and 8 others v Nazar Hussain through Legal Heirs* 2007 SCMR 1117.

- iv) Ordinarily, the power may be exercised where a necessary piece of additional evidence was not available for reasons beyond the control of the party seeking it to be produced, but not where the evidence is within the party’s control and despite that it is not produced at the lawful opportunity of trial.
- v) Even where public or official record is sought to be produced, the non-production of the same at trial stage must be fully explained. The same would not be admitted into additional evidence simply because they are official or public documents. Even where the Court admits additional evidence *suo motu*, the same criterion of it being bound to act judiciously and to produce sound reasons applies.

9. With the above principles in mind, I now turn to the present set of facts and as to which it appears that the documents sought to be produced pertain to the acquisition of the land and payment of amounts made to the mother of the Respondents Nos. 1 to 3 for the said acquisition. The said documents are mainly public documents and in fact pertain to the correspondence made by the Deputy Commissioner, Sanghar, Assistant Commissioner, Khipro, and Mukhtiarkar (Revenue), Khipro, who have been parties to the litigation from the very inception. The documents according to their own admission pertain to the year 1988 and were necessarily in the possession of the official parties from the beginning but were for unexplained reasons not produced or filed before the learned Senior Civil Judge. Similarly, the bank drafts were maintained by the National Bank of Pakistan,

Khipro, and could have been produced before the learned Senior Civil Judge. They were for the first time introduced at the instance of the Applicants in the first appeal and not during trial despite existing since 1988, and there is only a vague ground that they are essential to decide the controversy but not how.

10. In any event, the documents to my mind do not add anything important as to the merits of the case to have enabled the learned Additional District Judge to dispose of the case completely. They pertain to the acquisition and the payments being made against the acquisition of the land to Mst. Taj Bano, the Respondent No. 4, for herself and on behalf of the Respondents Nos. 1 to 3. The acquisition and payments in themselves are admitted as having taken place but they are challenged on other grounds mentioned in the plaint and the learned Senior Civil Judge has already decided with respect to the same. In fact, the letters sought to be produced were actually annexed with the plaint by the Respondents Nos. 1 to 4 which is to say that the Applicants ought to have been in complete knowledge of the proposed additional evidence, and, even if hypothetically they were not attached with the plaint, I am in no manner of doubt that they could have been easily filed and produced by the Applicants at their own instance during the original proceedings before the learned Senior Civil Judge. The same goes for the acquisition order. The failure of the Applicants in producing them at their first opportunity and their further failure in explaining why the said documents were not produced flies in the face of their claim and the Court is not inclined to indulge the Applicants in exercise of its revisional jurisdiction when the learned Additional District Judge has lawfully and correctly exercised the jurisdiction vested in him by law.

11. Learned Mr. Muhammad Sharif Solangi cited two judgments to support the Applicants' case. The first is *Sher Muhammad*, which was an inter-party dispute relating to land. The documents in the said case were public documents which the Court found to be necessary for the just and fair disposal of the case. The documents were filed by the plaintiff with their suit, but for some reason omitted at the time of evidence. The Lahore High Court took the following view:

“The paramount consideration to do substantive justice must take precedence over technical reasons and for that purpose the courts of law ought not to overlook the documents submitted by the parties along with pleadings, as such practice may end up with gross miscarriage of justice.” [Emphasis added]

I am therefore clear in my mind that what prevailed over the learned High Court in *Sher Muhammad* was that the documents sought to be produced were filed with the plaint (pleadings) but later on omitted at the stage of evidence. That is not to ignore that in the said case, the parties were private individuals with no access to public record and so they necessarily depended upon summoning of evidence through Court. The circumstances in the present matter are, however, different as I have already stated. The second and final case is *Messrs Naseem & Company* which was decided by the learned Islamabad High Court. However, the said case pertained to Order XIII Rule 2 of the CPC which is with regard to production of additional evidence during trial and the considerations for which are to show “good cause” for the non-production of the evidence and which are altogether different from those under Order XLI Rule 27 of the CPC as I have discussed above. As such, in my view the cases of both *Sher Muhammad* and *Messrs Naseem & Company* do not support the Applicants’ case and are distinguishable.

12. I am not unmindful that the contesting respondents have remained absent from the proceedings, but to my mind that does not remove the obligation of the Applicants to establish their case on merits and of this Court to decide the case after applying its judicial mind.

13. I would therefore dismiss this revision application alongwith pending application(s) while making no order as to costs.

JUDGE

APPROVED FOR REPORTING

Faisal