

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

Civil Revision No. S-264 of 2025
[Disposed of as a second appeal under s. 100 of the CPC]

Appellant	:	Mehmood Ali Wassan through Mr. Maisum Hussain Sahar, Advocate
Respondents	:	Lakha Dino through LRs and others through Mr. Faisal Farooq Thaheem, Advocate Mr. Muhammad Sharif Solangi, Assistant Advocate General Sindh for the official Respondents
Date of Hearing	:	15.09.2026
Date of Order	:	15.09.2026
Date of Reasons	:	21.09.2026

JUDGMENT

Muhammad Humayon Khan, J.: The Appellant and the Respondents Nos. 1 to 5 are in contention as to the ownership of an area of 20-37 acres of land (described in the plaint) in Deh Kangpatee, Tapo Landi, Taluka Tando Adam, Sanghar (which is hereinafter referred to as the “suit land”). The Appellant instituted F.C. Suit No. 25 of 2020 before the learned Senior Civil Judge, Tando Adam, for declaration, possession, mesne profit and permanent injunction against the Respondents and in which he pleaded that:

- i) He is the lawful owner of the suit land. He purchased it from Mir Muhammad son of Faqeer Muhammad by way of Registered Sale Deed No. 1076 dated 16.08.2007 bearing Microfilming Roll No. 432/14513 dated 25.08.2007 (hereinafter the “registered sale deed”).
- ii) The Respondents Nos. 1 to 3 were the *haarees* (peasant workers) of the Appellant after purchasing the suit land. The Appellant regularly paid the *abyana* and land revenue to the concerned departments as owner of the suit land.
- iii) In December 2017, the Appellant asked the Respondents Nos. 1 to 3 to vacate the suit land, and they agreed so to do after the wheat crop of 2018. He thereafter began to cultivate on the suit land through his servants.

- iv) On 22.07.2018, at about 11:00 am, the Respondents Nos. 1 to 5 occupied the suit land and took away the cotton crop growing for the year 2018 conniving with unknown persons armed with weapons. The Appellant approached the Respondents Nos. 1 to 5 to claim possession but they threatened him with dire consequences. He also approached them through *nek mards* of the community but to no avail. He again approached the Respondents Nos. 1 to 5 in January 2020 but, again, to no avail.
- v) The Respondents Nos. 1 to 5 have been holding the possession of the suit land since 22.07.2018 unlawfully and are liable to pay Rs. 20,000/- per acre as mesne profits from the date of possession until delivery of the possession of the land back to him.

2. As against the suit, the Respondents Nos. 1 to 5 (the Respondent No. 1 having died was represented by his legal heirs) filed their written statement and denied the case of the Appellant completely. They pleaded their own title on the suit land and this they did on the following pleadings:

- i) The suit land was originally the property of the Central Government and was allotted to one Muhammad Moin-ul-Haq son of Abdul Hameed under the Permanent Settlement Scheme in satisfaction of his verified claim No. 001510 by Certificate dated 17.02.1973 issued by the Assistant Rehabilitation Mukhtiarkar and A.S.C. (L), Sanghar.
- ii) Thereafter, an Entry No. 34 in Deh Form XV-B was placed in the name of Muhammad Moin-ul-Haq and who then sold the suit land to the father of the Respondents Nos. 2 and 3, namely Bhooro, in 1989 and a registered general power of attorney was executed in his favour by the said Muhammad Moin-ul-Haq on 25.05.1989.
- iii) The possession of the suit land was with the father of the Respondents Nos. 2 and 3 since 1989 and, after his death, it has remained with them. They have paid land revenue and *abyana* of the said land. The Respondents Nos. 1 to 5 are in the lawful possession of the suit land and have never been approached by the Appellant.

- iv) Before filing of the suit, the Appellant had instituted Criminal Complaint No. 56 of 2018 under the Illegal Dispossession Act, 2005, which was dismissed by Order dated 05.11.2018.
- v) Statedly, Mir Muhammad purchased the suit land from Farooq Ahmed who purchased it from Asghar Ali and who received it from his father, Niaz Ali. The claim of Niaz Ali was *bogus* and was managed on 02.07.1996. The nephew of the said Asghar Ali filed an application before the Executive District Officer (Revenue), Sanghar, for cancellation of the registered sale deed, who then cancelled Asghar Ali's claim.

3. From the pleadings of the parties, the learned Senior Civil Judge, framed six issues on 07.04.2021 which were amended on 11.01.2024. The issues were as to the rival contentions and titles of both the parties and on which they recorded detailed evidence. By Judgment and Decree dated 31.05.2024, the learned Senior Civil Judge decreed the suit of the Appellant as prayed. Against the Judgment and Decree dated 31.05.2024, the Respondents Nos. 1 to 5 filed Civil Appeal No. 135 of 2024 which came up before the learned Additional District Judge-I, Tando Adam, and was allowed by Judgment dated 18.09.2024 and Decree dated 20.09.2024. As such the suit of the Appellant was dismissed.

4. The Appellant now came before this Court. I may mention that he had originally instituted this case as a civil revision under s. 115 of the Civil Procedure Code, 1908 (hereinafter the "CPC"), however, on account of the circumstances of the case, I have converted it into a second appeal under s. 100 of the CPC and disposed of it as such. I did so because the matter is against a judgment and decree in first appeal, it was filed within the limitation period for a second appeal (along with the maximum court-fee), and which remedy appropriately lies. The case went through many hearings and was lastly taken up in the current roster on 15.09.2026 when I heard the able arguments of both Mr. Maisum Hussain Sahar for the Appellant and Mr. Faisal Farooque Thaheem for the Respondents Nos. 1 to 5 both of whom also filed written synopses of their respective arguments.

5. Mr. Maisum Hussain Sahar for the Appellant read through all the pleadings and evidence of the parties and took the Court through the divergent chains of title of the parties. He contended, inter alia, that the entire case of the Appellant was established through documentary evidence including genuine allotment under the rehabilitation laws and subsequent registered sale deeds that have not been cancelled and continue to have effect. He then contended that the title of the Respondents Nos. 1 to 5 is traced through Muhammad Moin-ul-Haq who was purportedly allotted the suit land from the Central Government, however, according to the evidence the said allotment has been cancelled. He stated that the subsequent transaction in favour of the predecessor-in-interest of the Respondents Nos. 1 to 5 is based upon an agreement of sale which does not create title and a power of attorney which does not vest any proprietary interest under ss. 201 and 202 of the Contract Act, 1872 and admittedly the Respondents Nos. 1 to 5 do not have a conveyance document in their favour. He submitted that the language of the power of attorney has to be construed strictly. He then contended that the registered sale deeds in favour of the Appellant enjoy the presumption of regularity and correctness which was not rebutted by the Respondents during the trial. He finally prayed for allowing the revision application (as it then was) and to restore the findings of the learned Senior Civil Judge. In support of his case, he relied on *Rao Abdul Rehman deceased through LRs v Muhammad Afzal deceased through LRs and others* 2023 SCMR 815, *Muhammad Iqbal and others v Nasrullah* 2023 SCMR 273, *Muhammad Yousaf v Munawar Hussain and 5 others* 2000 SCMR 204, *Syed Imran Ahmed v Bilal and another* PLD 2009 SC 546, *Niamatullah Khan and others v Federation of Pakistan and others* 2022 SCMR 785, *Moiz Abbas v Mrs. Latifa* 2019 SCMR 74, *Abdul Aziz v Abdul Hameed deceased through LRs* 2022 SCMR 842, *Muhammad Siddique deceased through LRs and others v Mst Noor Bibi deceased through LRs and others* 2020 SCMR 483, *Abdul Razaq v Abdul Ghaffar and others* 2020 SCMR 202, *Rasool Bukhsh and another v Muhammad Ramzan* 2007 SCMR 85, *Amir Jamal and others v Malik Zahoor-ul-Haq and others* 2011 SCMR 1023, *Haji Muhammad Yunis deceased through LRs and another v Mst Farukh Sultan and others* 2022 SCMR 1282, *Arshad Khan v Mst Resham Jan and*

others 2005 SCMR 1859, *Nasir Ali v Muhammad Asghar* 2022 SCMR 1054, *Shamshad v Arif Ashraf Khan and others* 2010 SCMR 473, *Sultan Muhammad and another v Muhammad Qasim and others* 2010 SCMR 1630, *Muhammad Israr v Jehanzeb and others* 2025 SCMR 841, *Samar Gul and others v Mohabat Khan and others* 2000 SCMR 974 and *Ghulam Muhammad v Ghulam Ali* 2004 SCMR 1001.

6. On the other hand, Mr. Faisal Farooq Thaheem for the Respondents No. 1 to 5 vehemently opposed the case. He submitted that the original allotment in favour of Asghar Ali, the Appellant's propositus, was seriously doubtful and in fact illegal and *bogus*. He contended that Asghar Ali had in fact died in India before partition and so his claim could not have been validly granted. He relied upon an enquiry by the Mukhtiarkar concerned. He contended that the material facts of the case, specifically in relation to an illegal dispossession proceeding, were suppressed by the Appellant and so he is disentitled to the relief claimed. He argued that the case of the Respondents Nos. 1 to 5 had in fact been proved through evidence and as such the suit was rightly dismissed by the learned Additional District Judge. A query was put to learned Counsel for the Respondents Nos. 1 to 5 as to the status of Bhuro, the predecessor-in-interest of his clients, to which he replied that he had died. He prayed for the dismissal of this case and for maintaining the impugned Judgment and Decree.

7. Mr. Muhammad Sharif Solangi, the learned Assistant Advocate General Sindh, also appeared for the official Respondents and supported the Judgment and Decree of the learned Senior Civil Judge.

8. In my view, the following points arise for the determination of this appeal:

- i) Whether the Appellant had proved his title in respect of the suit land (through Asghar Ali and subsequent purchasers by registered deeds)?
- ii) Whether the case of the Appellant has been properly rebutted by the Respondents Nos. 1 to 5?

- iii) Whether the chain of title of the Respondents Nos. 1 to 5 (allotment of Muhammad Moin-ul-Haq and subsequent sale agreement and power of attorney in favour of Bhuro) had been proved in evidence and what was the legal value of the power of attorney after the death of the agent under ss. 201 and 202 of the Contract Act, 1872?
- iv) Whether, in view of the answers to the foregoing points, the Additional District Judge's conclusion resulted from misreading and nonreading of evidence and therefore warrants interference in second appeal?

I shall be discussing the first two points together followed by the third point, whereas the fourth point requires to be discussed jointly with all points because it turns on the aspect of misreading and nonreading of evidence in respect whereof the three points have been framed.

9. As to the first and second points, which are interconnected and therefore dealt with together, these pertain to Amended Issues Nos. 1 to 4 and the burden to prove them rested entirely on the Appellant and in relation to which lengthy evidence has been recorded. (It will be seen that evidence of certain witnesses was recorded twice, before and after the framing of the amended issues. The Court shall be considering the evidence recorded after the amended issues were recorded while for the remaining witnesses, who did not record evidence after the amended issues, the earlier evidence is taken as having been adopted post amended issues.) The first witness was the Appellant, Mehmood Ali Wassan, who came in evidence as PW-1 (Exh-28 dated 09-03-2024; pp. 225 to 325 of the Trial R&Ps). He produced the original Clearance Certificate No. 53 dated 10.07.1996 (Exh-28/A; p. 231) and an Order No. 238 dated 29.04.1997 (Exh-28/B) in favour of Asghar Ali. Clause 1 of the Certificate dated 10.07.1996 reads as follows:

“1. That the land was allotted under Permanent Settlement Scheme vide PL-II [xxx] No. 10 in satisfaction of his verified claim No. 212/187. Non-agreed/Agreed areas Agreed Area pertaining to District Karnal.”

It will be seen that the allotment in favour of Asghar Ali is in relation to a rehabilitation scheme against an area in District Karnal. The land rehabilitated in

favour of Asghar Ali is thereafter detailed to be Survey Nos. 9, 12/1, 12/2, 24/1 and 122, measuring 20-37 acres, in Taluka Tando Adam, Deh Kangpatti, i.e. the suit land.

10. On the basis of the said Certificate, an Order dated 29.04.1997 (Exh-28/B) which was issued by the Mukhtiarkar, Tando Adam, and which is reproduced below by necessity (emphasis in original):

“Read.

Letter No. EPB/SGR/53 dated 10.7.96 from Additional Deputy Commissioner Sanghar in respect of keeping entry of S. Nos. 9, 12/1, 12/2, 24/1 and 122 for 20-37 acres of deh Kangpati Taluka Tando Adam.

2/- Letter No. EPB/SGR/96 dated 12.12.96

3/- Entry No. 34 of V.F. VII of deh Kangpati.

4/- Entry No. 56 of V.F. VII new of deh Kang Pati Taluka T. Adam.

ORDER OF MUKHTIARKAR TANDO ADAM

On 3.12.96 a letter No. EPB/SGR/53 dated 10.7.96 was received in this office for keeping entry in the name of Asghar Ali S/o Niaz Ali in respect of [the suit land]. The undersigned sent a letter No. 908 dated 5.12.96 to Deputy Commissioner Sanghar for clearance certificate whether [originally written “weather”] the above letter is genuine [originally written “guiniun”] or not. The Additional Deputy Commissioner Sanghar under his Letter No. EPB/SGR/96 dated 12.12.96 has made clearance certificate of Letter No. EPB/SGR/53 dated 10.7.96 in the name of Asghar Ali S/O Niaz Ali in respect of above S. Nos.

Accordingly the Tapedar of deh Kang Pati has been called and the record has been perused. According to entry No. 34 the said S.Nos. were transferred from Central Govt: to Mohd Muinul-Haqu S/O Abdul Majeed but there is note of Assistant Commissioner Shahdadpur that the entry made on forged vouchers hence the same is cancelled. Latter [should be “later”] on it is not known how [originally written “who”] the entry No. 56 was kept and the same has been got attested from unknown officer as there is only signature is indicated [should be “indicated”] and no designation is shown on it. Since the entry was already cancelled by the Assistant Commissioner hence the Mukhtiarkar was not [inserted by pen] competent to kept fresh

entry in respect of said S.Nos, hence entry No. 56 is bogus one and it is order that the same entry be treated as bogus and cancelled.

After the reception [should be “receipt”] of clearance certificate from kind Additional Deputy Commissioner Sanghar in respect of above S.Nos., it is hereby ordered that necessary entry in the record of rights be kept in the name of Asghar Ali S/O Niaz Ali in respect of [the suit land] by the Tapedar of Tapa Langhi and the same be got attested by the undersigned.

S/d-
(NAZAR MOHD SHAHANI)
Mukhtiarkar Tando Adam

Copy to Tapedar of Tapa Langhi for immediate compliance (Photo state copies of Clearance Certificate of A.D.M. Sanghar are enclosed)”

11. Thus, after acknowledging the purported allotment in favour of the propositus of the Respondents Nos. 1 to 5 namely Muhammad Moin-ul-Haq, declaring it to be bogus on the basis of an order by the Assistant Commissioner concerned, and ordering it to be treated as such, the Mukhtiarkar, Tando Adam, ordered for an entry to be placed in favour of Asghar Ali, and which was accordingly placed in his favour. The original Clearance Certificate dated 10.07.1996 was also produced through the official channel, i.e. Deputy Commissioner, Sanghar, by his authorised officer, at Exh-14 (pp. 171 to 175 of Trial R&Ps).

12. It may be noted that the Respondents Nos. 1 to 5 sought to rely on a Letter No. Reader/928 of 2006 dated 19.07.2006 issued by the District Officer (Revenue), Sanghar, by which the said officer had declared the suit land to be vested in the Central Government. However, reliance on the said Letter is misconceived for the reason that Abdul Khaliq, Assistant, Deputy Commissioner Office, Sanghar, appeared at Exh-10 dated 27.10.2022 (pp. 205 to 217 of the Trial R&Ps) and he gave complete evidence to reflect that the said Letter was cancelled/withdrawn. It would appear that the Deputy District Officer (Revenue), Shahdadpur, had thereafter conducted enquiry into the matter and by Order No. 706 of 2006 dated 30.10.2006 ratified/authenticated Asghar Ali’s claim and ownership while reiterating the same of Muhammad Moin-ul-Haq to be cancelled (Exh-10/B; pp.

209 to 213). The said Letter was signed by the Mukhtiarkar (Land Revenue), Khipro, and Deputy District Officer (Revenue), Shahdadpur. Thereafter, a Letter No. EP/46 of 2006 dated 26.12.2006 was issued by the District Officer (Revenue), Sanghar (Exh-10/C; p. 215 of Trial R&Ps) in the following terms:

“OFFICE OF THE DISTRICT OFFICER (REVENUE), SANGHAR
 No. EP/46/OF 2006 Sanghar, Dated: - 26-12-06

To,

The Mukhtiarkar (land Revenue),
 Tando Adam.

**SUBJECT: FOTI KHATA BADAL OF DECEASED ASGHAR ALI
S/O NIAZ ALI, APPLICATION FROM FUKHAR &
GHULAM YASEEN S/O GULSHER R/O RASHEED
COLONY TANDO ADAM.**

With refer to this office letter No: Reader/928 of 2006 Sanghar, Dated: 19-07-2006.

In the above referred letter, the undersigned had declared the disputed land as land belonging to Central Government and for restoration the possession of the land to the Government, but no action seems to have been taken by you in this matter.

In the meanwhile the enquiry was ordered by Zila Nazim, Sanghar and a Committee consisting of Deputy District Officer (Revenue), Shahdadpur & Mukhtiarkar (Land Revenue), Khipro was constituted and the Committee after conducting detail enquiry has furnished its report (Copy enclosed).

The report of the Committee points out that the claim of Claimant namely Asghar Ali is correct.

In view of the report of the Committee, the letter issued by this office is hereby cancelled, and position of the record is also restored. Such correction be made in the record and further necessary action as per law should be taken at your end.

S/d-
 District Officer (Revenue)
 Sanghar”

I may note that the enquiry so mentioned was ordered by the Zila Nazim under ss. 17 and 18 read with the First Schedule to the Sindh Local Governments Ordinance, 2001. The said Ordinance was repealed in 2011. The Court was inclined to examine these provisions to see whether the Zila Nazim could have ordered such an enquiry, and it is clear that he did have the jurisdiction to do so.

13. I am not unmindful that questions were put to Mehmood Ali Wassan, Appellant (Exh-28 dated 09.03.2024; pp. 225 to 229), confronting him about the said chain of title of the Appellant through Asghar Ali. However, in my view, confronting him about the said matters was a futile exercise for the reason that, according to the record, no proceedings were instituted by the predecessors of the Respondents Nos. 1 to 5 or anyone having an interest to challenge the aforementioned proceedings and record establishing the claim and ownership of Asghar Ali. Consequently, upon the failure of the concerned parties to challenge the claim and ownership of the Asghar Ali in due time before the concerned legal forums, the said documents have attained a degree of legal and evidentiary value having never been set-aside, and this failure cannot be cured by questioning a subsequent purchaser/owner.

14. On the basis of the aforementioned title, the suit land passed on from Asghar Ali to Faqir Muhammad and from him to Mir Muhammad. Mir Muhammad then sold the suit land to the Appellant by virtue of the registered sale deed mentioned above and which, according to the record, continues to hold field and has not been challenged at any forum. The original registered sale deed and previous registered deeds until the Appellant were produced in evidence in different exhibits and the originals were brought on the record. It is important to note that the relevant defence in this regard is at para 7 of the Written Statement of the Respondents Nos. 1 to 5 (pp. 119 to 127) which reads as follows (emphasis in original):

“07. That the contents of Para No. 7 of the plaint are denied being false, mala fide, incorrect, baseless and after thought. As a matter of fact the plaintiff purchased the Suit property from one Mir Muhammad, who purchased the suit land from Farooq Ahmed and Farooq Ahmed purchased from one Asghar Ali S/o Niaz Ali and the Niaz Ali received the Suit land through bogus claim. It is necessary to mention here that the Asghar Ali inclusion with the revenue and settlement authorities managed the bogus claim on 02-07-1996. Thereafter the nephew of the above said Asghar Ali filed miscellaneous application before the executive district officer (Revenue) Sanghar for cancellation of registered sale deed, who called the report and recorded the statement of Tapedar of beat thereafter the claim of claimant Asghar Ali was cancelled. **(PS Copies of Entries bearing No. 156, 323 and 324 of Deh Form VII-B, letter bearing No. 928 of 2006 dated 19-07-2006 and statement of Tapedar of beat are enclosed herewith as annexure ‘H (1 to 3), ‘I’ and ‘J’).**”

15. As such, it is clear that the Respondents Nos. 1 to 5 have never substantially challenged the subsequent transactions leading from Asghar Ali to the Appellant. They challenged only the original allottee's claim and ownership on the basis of the Letter dated 19.07.2006, however, the record is quite clear in showing that the said letter has been withdrawn and cancelled by the subsequent Enquiry dated 30.10.2006 and Letter dated 26.12.2006 (Exh-10/B and 10/C). Consequently, the entire contest of the Respondents Nos. 1 to 5 depended upon one letter, and it must necessarily fail since it has been cancelled and withdrawn and therefore no longer exists. In these circumstances, I agree (subject to any inconsistency with this judgment) with the reasoning that prevailed with the learned Senior Civil Judge and for the above reasons I would hold that the claim and ownership of Asghar Ali and through him of all subsequent owners including the Appellant were properly established by official record.

16. As against the aforementioned perspective on the evidence of the parties, the learned Additional District Judge's observations can be summarised as follows: (i) that the registered sale deed is silent in relation to how Mir Muhammad became the owner of the suit land; (ii) that the registered sale deed says that the title of Mir Muhammad is based upon an Entry No. 32 which has not been produced; (iii) that Entry No. 324 has been produced; and (iv) that the Appellant cannot go beyond his pleadings and as such the allotment documents leading to the ownership of the Appellant cannot be produced because they were produced in transgression of the pleadings raised in the plaint.

17. In my respectful view, none of these findings are correct in law or in fact. The first and foremost aspect is the observation on Entry No. 32. The said number has been mentioned in the body of registered sale deed as follows (emphasis added):

“And Whereas the ‘Vendor’ of the one part, has not purchased the said property from any Non Muslim on or after 1st March 1947 and the same is entered in the name of ‘Vendor’ in *Revenue Record of Rights in VF Form VII-B vide entry No: 32 of Deh Kangpatee Tapa Landhi Taluka Tando Adam District Sanghar, and the requisite copy of it is along with Sale Certificate...attached herewith.*”

18. The attached Entry to the registered sale deed is in fact Entry No. 324 dated 30.05.2007 in favour of Mir Muhammad. It is therefore clear that there is a discrepancy between the recital made in the body of the deed and the actual entry attached. However, in view of the document attached, it appears to me that the recital in the sale deed is in fact an omission of the number “4” and not necessarily the deliberate mention of an entry bearing No. 32. In my view, once the entry had been attached to the registered sale deed, the annexure became a part thereof and had to be read compositely and not in isolation. Once the same is correctly read, it will be understood without difficulty that the reference in the sale deed is in fact to Entry No. 324 and which was duly produced on the record, and not really to Entry No. 32. It was at best a clerical mistake or accidental slip and did not bear so much on the case as the learned Additional District Judge made it to. It is well-established that accidental omissions, clerical errors or misdescriptions in registered sale deeds are unmeaning in nature and do not have any material consequence where the actual description is quite clear from the evidence. To my mind, and I say so with all due respect, the finding of the learned Additional District Judge is of a most pedantic nature and rather based upon an isolated and incomplete reading of the registered sale deed.

19. As far as the view that the allotment documents were beyond the pleadings is concerned, it is clear that the said documents were not the main thrust of the Appellant’s case which was based upon the registered sale deed being the immediate source of his title. The said documents had been introduced in rebuttal of the defence set-up by the Respondents Nos. 1 to 5 in their written statement and which is fully permissible in law. The rule that evidence beyond pleadings is inadmissible has arisen out of r. 18 of O. VII of the CPC which reads as follows (bold in original; emphasis supplied by italicisation):

“O. VII r. 18, CPC

Inadmissibility of document not produced when plaint filed. – (1) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint, and which is not produced, or entered accordingly, shall not, without

the leave of the Court, be received in evidence on his behalf at hearing of the suit.

(2) Nothing in this rule applies to documents produced for cross-examination of the defendant's witnesses, *or in answer to any case set up by the defendant* or handed to a witness merely to refresh his memory.”

20. It will therefore be seen that the rule as discussed is not applicable on documents intended to rebut the case of the defendant but rather applies only in relation to the documents constituting the affirmative cause of action of the plaintiff. Consequently, in a similar matter, *Rajasthan Spinning and Weaving Mills v Rajasthan Textile Industries* AIR 1987 Rajasthan 60, it was observed as follows with references to *Gappa Mal v Piaralal* AIR 1916 Lahore 262 and *Mahbodh Missir v Bhoiro Missir* AIR 1922 Pat 569 (paras 10 and 11; emphasis added):

“10. Sub-rule (2) of Rule 18 of Order 7, C.P.C. lays down in explicit terms that the provisions of Order 7, Rule 14 or Order 7, Rule 18(1), C.P.C., which have been discussed above, do not apply to documents produced in answer to any case set-up by the defendant. In other words, Sub-rule (2) of Rule 18 of Order 7 acts as a proviso or exception to the provisions of Order 7, Rule 14 or Order 7, Rule 18(1) or Order 13, Rule 1, CPC. Thus, where documents are produced in answer to any case set-up by the defendant, the aforesaid provisions do not apply and the parties are entitled to file the documents as of right. ...

11. ...There was thus no need for the plaintiff to file the copy of the notice before the settlement of the issues. I am of the view that the provisions of sub-rule (2) of Rule 18 of Order 7, C.P.C. act as a proviso and exception to the provisions of Order 7, Rule 14, Order 7, Rule 18(1), Order 13, Rule 1 and Order 13, Rule 2 of the Code of Civil Procedure. *When a document is filed in answer to any case setup by the defendants, the plaintiff has a right to do so and no leave of the Court is required. He has the right to produce such a document under the provisions of Order 7, Rule 18(2), C.P.C.*”

21. In my view, the finding that the original allotment documents were not produced with the plaint, and therefore could not be produced in evidence, is based upon an assumption, *sub silentio*, that the Appellant should have anticipated the defence to be raised by the Respondents Nos. 1 to 5, which is not the correct view of the law. In *Umatullah and another v Maqbool Hussain and 4 others* 1993 MLD 247, the Lahore High Court quite aptly observed that:

“...In case of several issues and divided onus, Order XVIII, Rule 3, Civil Procedure Code applied. In such a case, party beginning may at his option produce his evidence on those issues which the other party is required to prove or reserve it by way of answer to the evidence produced by the other party. Where the evidence is so reserved, the first party beginning may after

the other party has produced was closed his evidence, then produce his rebutting evidence.”

It can thus be readily said that courts must not expect or require of a party to anticipate or conjecture upon the evidence or defence of the other party before it is brought. The Appellant was perfectly correct in producing the evidence relating to rebuttal of the defence of the Respondents Nos. 1 to 5 upon his opportunity in evidence, and, in my view, the learned Additional District Judge erred in law in ignoring r. 18(2) of O. VII of the CPC which is quite clear on the matter.

22. I now turn to the third point. As to this point, I will not be reverting to the foundation of the title of the Respondents Nos. 1 to 5 as to which I have already observed that it is based upon the claim of Muhammad Moin-ul-Haq and which, having been cancelled, is no longer in field. It is also pertinent that the certificate in favour of Muhammad Moin-ul-Haq was found to be untraceable in evidence. However, even if the Court was to allow the Respondents Nos. 1 to 5 their best case and assume for the sake of argument that Muhammad Moin-ul-Haq had a perfect title (though, for the above reasons, he did not), their own title is not established at all. Their title is based upon two documents: a Sale Agreement dated 22.05.1989 (Exh-36/C; p. 489 of Trial R&Ps) and a Registered General Power of Attorney dated 23.05.1989 (Exh-36/D; p 491 of Trial R&Ps). I shall be proceeding with an assumption (only for argument’s sake and without admitting) that the said two documents are correct to see whether they created any subsisting right in the parties presently before the Court and, specifically as to the General Power of Attorney, whether it was for a heritable proprietary interest under s. 202 of the Contract Act, 1872.

23. As to the Sale Agreement, the said document is not a source of title or ownership by way of settled law. It could have at best created a right to seek specific performance. However, it has been shown through evidence that no such specific performance was ever sought by the purchaser who has since expired nor by his legal heirs. Anyhow, the said Sale Agreement, in its relevant part, provides as follows:

“That the VENDEE may at any time get the sale deed registered in his favour or in favour of any person, for this purpose a General Power of Attorney has been executed in his favour.”

The Sale Agreement, hence, contemplated a positive act of execution of a sale deed in favour of the predecessor-in-interest of the Respondents Nos. 1 to 5, Bhuro son of Allah Rakhio. It did not by automatic effect confer title upon the purchaser.

24. Thereafter, in the General Power of Attorney, the seller, Muhammad Moin-ul-Haq, is shown to have conveyed power to Bhuro, the purchaser, “in respect of my above said land.” On the language of the Power of Attorney, it is clear that the power was to perform acts on behalf of the principal and not by Bhuro himself as owner. When this is read with the Sale Agreement, it is clear that this Power of Attorney too could at most be exercised to execute a sale deed. However, the Power of Attorney on its own language does not admit of conveying a specific proprietary interest directly to Bhuro. Hence, as I have already discussed, the power of attorney, on its most liberal construction, could have allowed Bhuro to execute a sale deed by virtue of the Agreement, but it does not mention any specific consideration nor does it provide for any acts to be performed by the purchaser, Bhuro, in his own name and as someone interested or having independent proprietary interest in the suit land. In holding this view, I am fortified by the settled principle of law that a power of attorney is to be construed strictly. Reference may be made to *Mst. Shahnaz Akhtar and another v Syed Ehsan-ur-Rehman and others* 2022 SCMR 1398 and *Moiz Abbas v Mrs. Latifa and others* 2019 SCMR 74.

25. In my view, therefore, firstly the sale agreement did not create any title in favour of Bhuro and, secondly, the power of attorney in his favour was not covered by s. 202 of the Contract Act, 1872. It was in fact covered by s. 201 of the 1872 Act which clearly provides that a power of attorney is revoked by the death of the principal or agent, and it is not in contention that Bhuro has died. In these circumstances, upon the language of the Sale Agreement and the Power of Attorney, I am of the view that no heritable title vested in the alleged purchaser, Bhuro, and as such nothing devolved upon his legal heirs who are presently before

the Court. That being so, nothing remains to be said about the remaining private Respondents who do not have any independent right. I therefore agree with the view taken by the learned Senior Civil Judge and for the same reasons I would hold that the conclusion of the learned Additional District Judge is based on errors of law and misreading of evidence and cannot be sustained. Insofar as the aspect of possession is concerned, the learned Senior Civil Judge has appropriately discussed it in his findings on Issue No. 3 and the findings and observations of the learned Senior Civil Judge may, *mutatis mutandis*, be read as the observations of this Court.

26. For these reasons, after hearing the learned Counsel, it was announced by a short-order at the end of the hearing on 15.09.2026 that this matter, originally filed as a civil revision, was being converted into an appeal under s. 100 of the CPC and allowed as prayed. Consequently, the impugned Judgment and Decree of the learned Additional District Judge were set-aside and those of the learned Senior Civil Judge were restored and maintained. The office, as directed vide the short-order, is to make necessary corrections in the title of the case in red ink.

27. Office is directed to prepare a decree in these terms. The R&Ps may be returned to the respective Courts (who, for future reference, are directed to maintain the record consistent with the page numbering of the file that has been discussed in this judgment). Since the matter has been in litigation since 2020, it is directed that, when and if any execution proceedings are initiated, the Executing Court shall expeditiously proceed and dispose of it within sixty (60) days through all modes and powers at its disposal.

JUDGE

APPROVED FOR REPORTING
FAISAL