

IN THE HIGH COURT OF SINDH AT CIRCUIT COURT MIRPURKHAS

IInd Appeal No. S-133 of 2025

Appellants	Shamsdin Hingorjo (since deceased) through legal heirs, through Mr. Parkash Kumar, Advocate
Respondents	Kamaluddin and others, through Mr. Afzal Karim Virk, Advocate
State	through Mr. Muhammad Shareef Solangi, Assistant Advocate General
Date of hearing	18.03.2026
Date of announcement	15.04.2026

J U D G M E N T

MUHAMMAD HASAN (AKBER), J. This Second Appeal under Section 100 CPC. is directed against the Judgment and Decree dated 25.11.2025 (impugned Judgment and Decree) passed by the learned Additional District Judge, Khipro in Civil Appeal No. 31 of 2023, upholding the 2nd Judgment and Decree dated 15.11.2023 passed by the learned Senior Civil Judge, Khipro in F.C. Suit No. 50 of 2019, which had partly decreed the suit of the Respondents/ plaintiffs.

2. The Plaintiffs/ Respondents filed a suit for declaration, partition, cancellation of entries, rendition of accounts, and injunction regarding the estate of (late) Jamaluddin son of Muhammad Umar Hingorjo [**the deceased**], who passed away in 1992. The Plaintiffs claimed themselves to be heirs of the deceased, as his son (Kamaluddin), daughter (Mst. Sakina), and widow (Mst. Maryam). The deceased already had other heirs, including his wife (since deceased) and another son, Shams Din Hingorjo (defendant/ present appellant). The Plaintiffs asserted that the deceased owned extensive agricultural, residential, and movable properties across Taluka Khipro and after his demise, Shams Din/ defendant allegedly took exclusive control of the entire estate, transferred properties, and denied the Plaintiffs of their

lawful shares under Islamic law of inheritance. They categorically alleged forcible expulsion from their village and snatching of their valuables in the year 1999 when they demanded partition. Plaintiffs further alleged revenue entries (*foti khata*) in favour of Shams Din and his mother, by excluding Plaintiffs.

3. The Defendant No.1 (Shams Din Hingorjo), through his attorney, categorically denied all the averments and contended that the deceased contracted only one marriage with Mst. Hajani Saeeda; that from such wedlock only one son, namely Shams Din was born; Mst. Hajani Saeeda (since deceased) was his sole widow; the claims of Plaintiffs were denied; that all properties of Jamaluddin had been transferred through gift declarations during his lifetime to Defendant No.1 and his mother; such mutation entries had been duly recorded; that the plaintiffs were residents of District Umkerkot, whose CNICs were issued from Umkerkot, having no nexus with the pedigree/ family tree of deceased Jamaluddin; that the plaintiffs fraudulently inserted their names in the family tree of the deceased on the basis of false, fabricated documents through misrepresentation and fraud. Dismissal of the suit was prayed accordingly. Defendants 2 to 6 and 7 were proceeded *ex parte* vide Order dated 30.11.2019.

4. Heard learned counsel and perused the record.

5. The core controversy in this case is whether the plaintiffs/respondents are the legal heirs of the deceased Jamaluddin. The Plaintiffs claimed that Jamaluddin contracted two marriages, the first with Mst. Hajani Saeeda (from whom Shams Din/defendant No.1 was born) and the second with Mst. Maryam (respondent No.3), from whom Kamaluddin (respondent No.1) and Mst. Sakina (respondent No.2) were born. The appellants, on the other hand, categorically deny any second marriage or any relationship between the respondents and the late Jamaluddin. In the 1st round of litigation, five issues were framed by the trial Court on which evidence of the parties was recorded.

6. In his cross-examination, Kamaluddin admitted that:

“It is correct to suggest that as per the NADRA record produced in Court my father name is written as Jamal son of Luqman. It is correct to suggest that as per NADRA record Mst. Bhagan is shown as my stepmother. Mst. Sakina plaintiff No.2 is my real sister and she obtained her CNIC from Umerkot. My Sakina is elder than me. It is correct to suggest that as per NADRA record my sister’s father name is Jamal son of Luqman. It is correct to

suggest that the CNIC number of my father is not written on my computerised database form. It is correct to suggest that permanent and present address of my sister in database form are same. My sister is married lady and her husband name is Doulat.”

7. He further admitted,

“It is correct to suggest that my real mother was belongs to Oad hindu religion and later on she converted and accept Islam religion. I do not know whether my real mother has obtained national identity card.

8. With respect to proof of his mother’s marriage and conversion to Islam, he admitted:

“It is correct to suggest that I have not produced any proof which that the domicile obtained by me with help of Shamsuddin. It is correct to suggest that surname of my father is not written in my domicile. I do not remember the correct date of marriage of my mother. My mother accept Islam religion in the year 1974 or 1975. It is correct to suggest that I have not produced the nikahnama of my mother with Jamaluddin son of Muhammad Umar in my evidence. It is correct to suggest that I have not produced any proof of my mother accept Islam religion. It is correct to suggest that I have not produced any heir ship certificate. It is correct to suggest that I have not examined any witness of marriage of my mother with Jamaluddin. It is correct to suggest that I have not examined any witness from village Jamalabad Taluka Khipro. It is correct to suggest that many people can be with the name of Jamaluddin....”

9. Regarding his in-laws he also admitted:

“I married with Mst. Gulzaran about 10 years ago. The name of my father-in-law is Gulab and the name of my mother-in-law is Mst. Mithan. It is correct to suggest that my father-in-law and mother-in-law were non-Muslims. It is correct to suggest that as per NADRA record I am guardian of my family. My CNIC has been issued from NADRA Omarkot. It is correct to suggest that I put my signature in on the NADRA database Form after read out its contents. It is correct to suggest educational column is shown blank in my database form...”

10. Though he claimed himself to be the son of **Jamaluddin son of Muhammad Umar Hingorjo, resident of District Sanghar,** but the NADRA database produced by him in court showed his parentage as **"Jamal S/o Lugman" and Mst. Bhagan as his step-mother, both resident of District Umerkot.** This fundamental and irreconcilable contradiction between the respondent's own NADRA record produced by his side in Court and his claim in the plaint, goes to the root of the controversy.

11. The two key witnesses of the Plaintiffs' side who spoke about the marriages of Jamaluddin were PW-9 Muhammad Zakir (shopkeeper) and PW-10 Asad Ali Shah (private businessman). Both of them admitted in cross-examination that they were not eyewitnesses to the second marriage of Jamaluddin with Mst. Maryam and were not eyewitnesses to Mst. Maryam's change of religion from Hinduism to Islam. PW-10 Asad Ali Shah specifically admitted that he was not born at the time of the alleged marriage of Mst. Maryam with Jamaluddin. Their evidence is thus entirely hearsay on the most crucial point, the existence of the second marriage, and deserves no evidentiary weight. Thus, PW Muhammad Zakir admitted that:

“it is correct to suggest that I am not the eyewitness of second marriage of Jamaluddin with Mst. Mariam. It is correct that I am not eye witness of change of religion of Mst. Mariam from Hindu to Islam. I do not know when Mst. Mariam change her religion from Hindu to Islam..... It is correct to suggest that I was not present at the time of dispossession of plaintiff from village Jamalabad..... It is correct that plaintiff are resident of Umerkot.”

The Plaintiffs' other witness Asad Ali also admitted these questions in stereotype manner.

12. Admittedly, Jamaluddin son of Muhammad Umer was living with his family, mother, wife, son/ appellant and other relatives, till his death in 1992 in his village. Admittedly, the respondents are living and have obtained their NIC in District Umerkot, while appellant and deceased Jamaluddin s/o Muhammad Umer are living in village Jalalabad Taluka Khairpur District Sanghar. Nowhere in the plaint is it shown when respondent No.3 was married to Jamaluddin. Nikanama of respondent No.3 with Jamaluddin is neither pleaded nor produced. No witnesses to the alleged marriage of Jamaluddin with the mother of Plaintiff No.1 were examined. Neither Respondent No.3 entered in the witness box, nor any NADRA document for Respondent No.3 was produced, nor is there any evidence of the marriage of Respondent No.3 with Jamaluddin.

13. The educational certificates of plaintiff No.1 were not annexed to the plaint at the time of filing the suit. Plaintiff No.1 also admitted in cross-examination that the school leaving certificate produced by him bears the stamp of **Union Council Bilawal “Hingorjo”**, whereas the stamp of the headmaster shows **Union Council “Bhit Bhaiti”**, yet he claimed the jurisdiction of the Union Council was changed, without producing any proof thereof. The NADRA Registration Certificate Exhibit 39/B shows the mother’s name of both Sams ul din and Sakina as “Maryam”. On the other hand, the Certificate of Domicile of Jamaluddin son of Muhammad Umar dated 21-03-1991 Exhibit 59/B shows his wife’s name as “Saydeh”.

14. On the other hand, the Defendant also produced witnesses and documents. DW-2 Rehmatullah, Clerk of the Deputy Commissioner's office, produced the domicile certificate of Jamaluddin at Exh.59/B, dated 21.03.1991, which was issued by the District Magistrate Sanghar and showed the legal heirs of Jamaluddin as his wife Saydah (i.e. Mst. Hajani Saeeda) and son Shamsuddin, with no mention of any second wife or any children Kamaluddin and Sakina. This is a contemporary official document issued during the lifetime of Jamaluddin himself and carrying the highest degree of reliability. The trial court and the first appellate court have both failed to properly appreciate the evidentiary value of this document. The domicile, being a government-issued document prepared based on information furnished by Jamaluddin himself in his lifetime, constitutes strong corroborative evidence that he had contracted only one marriage and had only one son, Shamsuddin. The respondents offered no credible explanation for the absence of their names in this domicile.

15. DW-3 Muhammad Umar, cousin of defendant No.1, testified that in his lifetime, Jamaluddin contracted only one marriage with Mst. Syeeda had only one son Shamsuddin, and during his lifetime, Jamaluddin distributed all his properties among his legal heirs. The witnesses DW-4 Muhammad Hussain and DW-5 Muhammad Saleh, both persons having long-standing knowledge of the families of Jamaluddin and Shamsuddin, consistently testified that Jamaluddin solemnised only one marriage and had only one son Shamsuddin. Even DW-1 Sharafuddin (defendant No.1-L), while admitting the relationship of respondents with Jamaluddin in his examination-in-chief on behalf of defendants 1(I) to 1(L), had produced the family registration certificate of Shamsuddin, which showed the family members of Shamsuddin, an admission which the trial court heavily relied upon. However, this

needs to be read in context: the testimony of DW-1 Sharafuddin was confined to admitting the claim of the respondents in the context of defendants 1(l) to 1(L) seeking their own shares as heirs of Shamsuddin's second wife, they had their own interest in joining hands with the respondents against the defendants 1(a) to 1(h). Their admission thus carries limited evidentiary value and cannot be elevated to the status of proof of the respondents' relationship with Jamaluddin.

16. The Plaintiffs' conduct regarding an earlier suit is also a relevant factor. The respondents had filed F.C. Suit No. 03/2018 before the same court seeking information about properties forming part of the estate of Jamaluddin, which was dismissed vide order dated 15.02.2018 on the grounds that alternative remedies were available. In the present suit, respondent No.1 himself admitted in cross-examination that before 2019, he had not claimed the suit properties as belonging to Jamaluddin. These admissions, combined with the suspicious timing of obtaining NADRA documents in 2019-2020 specifically for this litigation, suggest a motivated and orchestrated effort to build a paper trail rather than reflecting genuine long-standing kinship.

17. The NADRA records relied upon by the Plaintiffs were admittedly prepared in 2019-2020, nearly 27 years after the death of Jamaluddin in 1992. Such documents, created close to the legal dispute and without any supporting oral or documentary evidence contemporaneous with the events they purport to record, cannot be accorded the presumption of correctness. The admission of plaintiff No.1 in cross-examination that his own NADRA database shows his father as "Jamal S/o Luqman" of Umerkot, wholly different from "Jamaluddin S/o Muhammad Umar" of Sanghar, destroys the reliability of these NADRA documents as evidence of the claimed relationship. The reliance placed by the trial court on the NADRA family tree and FRC is therefore misplaced.

18. No nikahnaama of the alleged second marriage was produced. No proof was produced to establish the fact of the conversion of Mst. Maryam to Islam. No witness to the marriage was examined. No heirship certificate was produced. The school register entries bear marks of interpolation. The NADRA documents are recent creations contradicted by the respondents' own admissions. The domicile of Jamaluddin issued in his lifetime shows only one wife and one son. The respondents admitted to living in District Umerkot with CNICs issued from there. They admitted that before 2019 they had never asserted any claim to the

properties. The plaintiff No.1's own NADRA record shows him as the son of "Jamal S/o Luqman" of Umerkot. Two of the defendants' own group (defendants 1-k and 1-l), whose testimony was seized upon by the trial court, had their own self-interest in supporting the respondents' claim. The evidence of witnesses of respondents on the most crucial question of the second marriage is entirely hearsay.

19. There is another crucial aspect of this case i.e. the **DNA Test**. In the 1st round of litigation, the trial Court framed five Issues, whereon evidence was recorded, and the learned trial Court dismissed the suit vide Judgment and Decree dated 10.02.2021. The plaintiffs preferred Civil Appeal No.19 of 2021 before the Additional District Judge, Khipro. During the pendency of appeal, the plaintiffs filed an application under Article 64 read with Article 164 of Qanun-e-Shahdat Order 1984 for conducting DNA Test between Kamaluddin Plaintiff No.1 and Sharafdin, the person claiming to be the nephew of the deceased (Defendant No.1(L)). The learned appellate Court vide Judgment dated 22.10.2022, remanded the case to the trial court specifically for conducting DNA Test with the following specific directions:

“case is remanded back to the learned trial court with directions to pass fresh Judgment and decree **after holding DNA test between plaintiffs/ appellants and so-called nephew Sharafdin.** The learned trial court is also authorized to frame fresh **additional issue if possible on this point** and examine both the parties on this issue and after hearing both parties pass fresh Judgment accordingly.”

[emphasis added]

Although the Defendants assailed the remand order in Civil Revision No.01 of 2023, the same was subsequently withdrawn vide statement dated 13.05.2023. This concludes the **1st round of litigation.**

20. In the **2nd round of litigation**, the learned appellate Court vide order, and letter No.495 dated 19.11.2022, directed the plaintiff and defendant No.1(L) to appear before the District Health Officer, District Sangar, for DNA test sample, as directed by the learned appellate Court. That instead of complying with such direction, the Plaintiffs filed an application under section 151 CPC that DNA test may not be conducted by the DHO Sanghar, but the same be conducted through Aga Khan Hospital/ Laboratory. The Defendants specifically objected that the Plaintiffs are delaying the matter with *mala fide* intentions; however, such

application of the plaintiff was decided vide Order dated 14.01.2023 with the following directions:

“I therefore, in order to facilitate and accommodate plaintiffs party in the interest of justice, hereby allow this application with direction to parties to directly appear before the Incharge Forensic and Molecular Laboratory LUMHS, Jamshoro for their DNA samples for testing report. The Incharge Forensic and Molecular Laboratory LUMHS, Jamshoro is directed to collect the samples of both the parties and conduct the DNA test and submit such report before this court as earlier as possible.”

21. Surprisingly, neither the said order was assailed by the Plaintiffs, nor did the Plaintiffs conduct the DNA test for which purpose the matter was remanded by the appellate Court. On the contrary, the Plaintiffs withdrew their application for DNA test vide Statement dated 15.07.2023 filed on behalf of the Plaintiffs in F.C. Suit No.50 of 2019 that, **“I, the undersigned do hereby state on behalf of plaintiff that plaintiff do not want and willing to get DNA test being conducted by any authority, hence the matter maybe proceeded accordingly”** (available at page 567 of the Court file) the same request was also made by plaintiffs through statement dated 16.09.2023.

22. From the above, it appears that after remand of the case to the trial Court, practically, neither any evidence was conducted, nor DNA Test was conducted, nor the Court framed any additional issue on the said aspect in the 2nd round of litigation, which though was the sole purpose for remand of the case to the trial Court. However, based upon the same evidence on which the suit was dismissed in the 1st round of litigation, the learned trial Court decreed the suit in the 2nd round. The learned appellate Court vide the impugned judgment and decree dated 25.11.2025 in Civil Appeal No. 31 of 2023 maintained the Judgment, against which this Second Appeal has been preferred. Importantly, the Plaintiffs' withdrawal was not merely a procedural step; rather, it carried profound evidentiary consequences and became a crucial circumstance.

23. Illustration (g) to Article 129 of the Qanun-e-Shahadat Order 1984 provides that, **“the Court may presume that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it.”** The learned trial court also in its Judgment dated 15.11.2023, while noting such withdrawal of application, correctly referred to the Honourable Supreme Court's ruling in the case of **Muhammad Nawaz** wherein it was held that in a civil case

where a party who bears the burden of proving genetic relationship withholds consent for DNA testing, the Court may draw an adverse inference against such party under Article 129(g) of the Qanun-e-Shahdat Order 1984. For further guidance in this regard, reliance can be sought from the guidelines enunciated by the Supreme Court in the cases¹ of **Muhammad Nawaz**, **Muhammad Naeem**, **Anmol Textile Mills**, **Muhammad Ali**, **Mst. Zareedah Begum**, **Mst. Hameeda Bibi**, **Munir Ahmad**, **Ghulam Sher**. The learned Courts below failed to consider this aspect of the matter, and such an approach is fundamentally flawed and reveals a failure to apply the law properly.

24. The law enunciated by the Supreme Court in the above case is that the inference under Article 129(g) is discretionary in nature, which has to be exercised judiciously. In the present case, the circumstances were unusual: the respondents themselves had initially sought DNA Test as the primary means to prove their biological relationship, which was accepted by the learned appellate Court. Subsequently, Plaintiffs themselves refused to submit to the very test they had sought. This sequence of plaintiffs' conduct manifests a classic case where a party withholds best available evidence precisely because it fears it will be unfavourable. Non-applicability of Article 129(g) of the Qanun-e-Shahdat against the respondents is a serious error of law, which warrants interference by this Court.

25. As far as the duty of the trial Court upon remand of the case, the direction of the appellate Court was clear and specific i.e. the trial court was required to decide the case, only in the light of the DNA test. The appellate Court only permitted the parties to produce evidence with respect to DNA test. The remand order did not reopen the entire dispute, nor did it give a free hand to either side to introduce anything new. The remand order was confined to a narrow compass so that the dispute would be completed without unnecessary delay. Remand of this nature does not wipe out earlier proceedings; it only permits the trial Court to fill in the gaps identified by the appellate forum. When the appellate Court restricts the

1. *'Muhammad Nawaz vs. Additional District and Sessions Judge (2023 PLD SC 461), 'Muhammad Naeem Khan and another v. Muqadas Khan (decd.) through L.Rs. and another' (PLD 2022 SC 99), 'Bank of Punjab v. Messrs Anmol Textile Mills Limited and others' (2017 CLD 631), 'Muhammad Ali and others v. Sher Muhammad and others' (1989 MLD 135), 'Mst. Zareedah Begum and 2 others v. Abdul Rasheed and 4 others' (2013 YLR 831), Mst. Hameeda Bibi and 3 others v. Khan Muhammad alias Khan Ahmad and 3 others (2021 MLD 2046), 'Munir Ahmad and 6 others v. Muhammad Saddique' (2005 MLD 364), 'Ghulam Sher and 6 others v. Mst. Bibi Shan and 21 others' (PLD 2017 Peshawar 88)*

remand, the trial court has a duty to remain within those limits, and it cannot assume that the entire matter stands reopened. Once an appellate forum has given a clear and specific direction, the learned trial court must carry out such direction as mandated. The law permits remand only for the purpose for which it is made, and the limited nature of the order makes it clear that the appellate court intended only a limited adjudication. Reliance in this regard is placed upon the case of **Shree Champalal Kothari Trust**.² The trial court cannot sit in appeal over the earlier Judgment on the same evidence. The only reasons for which the case was remanded was for conducting DNA test and recording evidence thereon, which was never conducted in this case. Once, based upon the same evidence, a Judgment and decree was passed whereby the suit was dismissed, and no fresh evidence was recorded, as was directed by the learned appellate Court. It was not open for the learned trial Court to reopen the matter and decide the case in complete contrast to the earlier Judgment and decree based on the same evidence. The learned trial court was not sitting in appeal against the Judgment and decree passed in the first round of litigation. It was confined only to the extent of the directions issued in the remand order by the appellate court and not beyond that. The exercise, which was required to be conducted in terms of the remand order, was never carried out and therefore, the trial Court could not have reversed the earlier on the same evidence.

26. On the importance of conducting DNA Test to ascertain paternity, the Honourable Supreme Court in the case of **Ali Haider**³ and while relying upon the case of **Salman Akram Raja**⁴ emphasised that:

“For the law to serve people in today's technologically complex society, courts needed to understand and be open to science and its principles, tools and techniques. Legal decisions of the courts must fall within the boundaries of scientifically sound knowledge. A judge and more so a trial judge, acted as a gatekeeper of the scientific evidence and must, therefore, enjoy a good sense and understanding of science. As science grows so will the forensic techniques, tools and devices; therefore, courts must be open to developments in forensic science and embrace new techniques and devices to resolve a dispute, provided the said technique and device was well

2. Judgment dated 10.11.2025 by the High Court of Bombay in W.P. 2210 of 2021 in '*Shree Champalal Kothari Trust and others vs. The State of Maharashtra and others.*'

3. '*Ali Haider alias Papu v. Jameel Hussain and others*' (PLD 2021 SC 362)

4. '*Salman Akram Raja v. Government of Punjab*' (2013 SCMR 203); '*United States v. Yee*' (134 F.R.D 161).

established and widely accepted in the scientific community as a credible and reliable technique or device....”

(Third Edition, Federal Judicial Centre, National Research Council of the National Academies, Washington, DC ref.)

“Article 164 of the Qanun-e-Shahadat, 1984 was the gateway allowing modern forensic science to come into courtrooms. Article 164 provided that courts may allow to be produced any evidence that may have become available because of modern devices and techniques. Proviso to Article 164, provided that conviction on the basis of modern devices and techniques may be lawful. Article 164 read with Article 59, inter alia, allowed modern forensic science to enter courts through the credible and valued scientific opinions of experts as evidence, in order to arrive at the truth...

The most significant advancement in criminal investigation since the advent of fingerprint identification is the use of DNA technology to help convict criminals or eliminate persons as suspects. Deoxyribonucleic acid (DNA) technology was widely used in many jurisdictions by police, prosecutors, defense counsel, and courts. This scientific evidence was much speedier, specific, accurate and conclusive than any other human evidence and could stand the scrutiny of the court to determine the guilt or innocence of an accused. In criminal cases, like rape, murder, etc., timely medical examination and proper sampling of body fluids followed by quality forensic analysis could offer irrefutable evidence. Through the use of DNA evidence, prosecutors could establish the guilt of accused and at the same time, DNA aided the search for truth by exonerating the innocent.”¹

“DNA report like any other opinion of an expert under Article 59 of the Qanun-e-Shahadat, 1984 ('QSO') was relevant and thus admissible. Article 164 of the QSO further underlined the admissibility, reliability and weightage of modern scientific forensic evidence, including the DNA test, as the said Article provided that convictions may be based on modern techniques and devices.”²

“DNA evidence was considered as a gold standard to establish the identity of an accused. DNA test due to its accuracy and conclusiveness was one of the strongest corroborative pieces of evidence. DNA test with scientific certainty and clarity pointed towards the perpetrator and was, therefore, considered one of the strongest corroborative evidence, especially in cases of rape. Supreme Court observed that usefulness of DNA analysis, however, depended mostly on the skill, ability and integrity shown by the investigating officers, who were the first to arrive at the scene of the crime; that unless the evidence was properly documented, collected, packaged and preserved, it would not meet the legal and scientific requirements for admissibility into a court of law.”

(Modi. A Textbook of Medical Jurisprudence and Toxicology, 26th Edition, LexisNexis. Pp 430-453 and Studies in the Use of DNA Evidence to Establish Innocence After Trial by Edward Connors, Thomas Lundregan, Neal Miller, Tom McEwen, June 1996, U.S. Department of Justice, Office of Justice Programs, National Institute of Justice)

27. In **Muhammad Shahid Sahid**⁵ the Federal Shariat Court also considered DNA Test as the best possible evidence to find out the truth or falsity of the allegation, without loss of time. The Court further emphasised that the superior judiciary had repeatedly emphasised the need for scientific verification through blood/ semen grouping. In the said case, the Court also drew an adverse inference against the party who refused to conduct DNA test to ascertain paternity despite a direction by the trial Court, accepting the application of the complainant, to appear before the Chemical Examiner, CAME (Centre for Applied Molecular Biology) Laboratories, for DNA test, to ascertain the paternity of the child by conclusive evidence. The Honourable Federal Shariat Court observed that “Law did not favour a person who had evaded execution of a judicial order and thereby obstructed the course of justice.

28. Attending to the next objection raised by the appellants against maintainability of the suit on the ground of limitation, it is not disputed by either party that the deceased Jamaluddin son of Muhammad Umer expired on 11.05.1992. At para 5 of the plaint, the Plaintiffs claim that: **“5.The Plaintiffs were initially left to live in their village Jamalabad till 1999, however when they started demanding their share, the same were expelled by their son/brother, the Defendant No. 1 from the village, in the year 1999.”** However the suit, seeking declaration of relationship with the deceased and other consequential reliefs, was filed on 09.08.2019 i.e. 30 years after the demise of (late) Jamaluddin, and 20 years after the admitted refusal of their right and expulsion from village. Section 3 of the Limitation Act 1908 imposes a duty upon the Court to determine the question of limitation, even if it is not pleaded by a party. The suit of the Plaintiff was therefore barred under articles 91,120 & even 142 of the Limitation Act.

29. Considering the totality of the evidence on record, it is manifest that the respondents have miserably failed to prove their claim through positive, credible, reliable and confidence-inspiring evidence that they are the legal heirs of the late Jamaluddin Hingorjo. The judgments and decrees passed by the learned lower courts proceed on misreading, non-reading, and misconstruction of evidence, suffer from perversity of finding, and disclose substantial questions of law, including the correct application of the burden of proof, the failure to draw the mandatory adverse inference under Article 129(g) of Qanun-e-Shahdat, the misapplication of the legal

principle from Mst. Laila Qayyum case (supra), and the failure of the first appellate court to comply with Order 41 Rule 31 CPC. The impugned appellate Judgment is also conspicuously silent on the critical admissions made by plaintiff No.1 in cross-examination, the inconsistencies between the NADRA records produced by the plaintiffs and their pleaded case, the adverse inference arising from the respondents' withdrawal from the DNA test, and the defendants' documentary evidence including the domicile of Jamaluddin showing only one wife and one son. Such an unreasoned Judgment is contrary to the mandate of Order 41 Rule 31 CPC and is liable to be reversed on that ground alone, as held in numerous authoritative pronouncements of superior courts.

30. Lastly, the impugned Judgments and decrees, being a result of misreading and non-reading of evidence, are neither sacrosanct to interference, nor immune to exercise of jurisdiction under section 100 CPC., and therefore fully attract the parameters prescribed in the cases of Asmatullah, Anar Bibi and Mst. Naziran Begum.⁶

31. The cumulative effect of, (a) the evidence produced by the parties; (b) the deliberate avoidance of the Plaintiffs to conduct DNA Test; (c) the inference drawn under Article 129(g) QSO-1984; (d) the effect of the remand Order and exercise of jurisdiction by the learned trial Court; (e) the Judgment in the 1st round of litigation; (f) Articles 91 and 120 of the Limitation Act; (g) the earlier suit filed by the Plaintiffs; and (h) the principles laid down by the Honourable Supreme Court in the judgments discussed *ibid*, is that the Plaintiffs have failed to prove their claims. Hence, this Second Appeal is allowed; the impugned Judgment and decree dated 25.11.2025 passed by the learned Additional District Judge, Khipro, in Civil Appeal No. 31 of 2023; and the Judgment and decree dated 15.11.2023 passed by the learned Senior Civil Judge, Khipro in F.C. Suit No. 50 of 2019 are set aside; and the suit of the respondents/ Plaintiffs is dismissed.

The instant appeal is therefore allowed, with no order as to costs.

J U D G E

5. *Muhammad Shahid Sahil v. The State and another* (PLD 2010 Federal Shariat Court 215)

6. *Asmatullah v. Amantullah through legal representatives* (PLD 2008 SC 155), *Abdul Sattar v. Mst. Anar Bibi and others* (PLD 2007 SC 609) and *Mst. Naziran Begum through legal heirs v. Mst. Khursheed Begum through legal heirs* (1999 SCMR 1171).