

Judgment Sheet

HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Civil Revision Application No. 336 of 2024

[Muhammad Tayyab v. Province of Sindh and 04 others]

Applicant : Muhammad Tayyab s/o Muhammad Talib
Through Mr.Pirbhulal-U-Goaklani, Advocate

Respondents No.1 to 3 : 1) Province of Sindh
2) Assistant Commissioner, Khipro
3) Mukhtiarkar (Rev.) Khipro
Through Mr.Ayaz Ali Rajper, Assistant
Advocate General, Sindh

Respondent No.4 : Deen Muhammad s/o Muhammad Talib
Respondent No.5 : Allah Rakhyo s/o Muhammad Talib
Through Mr.Farhan Ali Bozdar, Advocate

Date of hearing : 15.04.2026

Date of decision : 22.04.2026

JUDGMENT

ARBAB ALI HAKRO, J.- The present Civil Revision Application calls in question the legality, propriety and regularity of the concurrent findings recorded by the Courts below, whereby the suit instituted by the applicant for possession, mesne profits and permanent injunction came to be dismissed on the ground of maintainability, and such dismissal was subsequently affirmed in appeal.

2. The factual matrix, as emerging from the plaint of F.C. Suit No.34 of 2022, reflects that the applicant and respondents No.4 and 5 are real brothers and co-sharers in the estate of their deceased father, Talib Khaskheli. The applicant pleaded that out of the ancestral holding, he had gifted certain lands to respondents No.4 and 5, but had retained one acre from Survey No.461/1 and one-and-a-half acres from Survey No.462/2, which, according to him, remained in his exclusive possession. It was asserted that the respondents, who were occupying excess land on the western side of the village, had acknowledged the applicant's entitlement through a private settlement,

subsequently reduced into writing on 05.07.2017. The applicant further averred that he continued cultivating the suit land until July 2020, when respondents No.4 and 5 allegedly dispossessed him, removed his standing crops, and thereafter continued cultivating the land in defiance of his rights. It was further pleaded that the applicant had earlier instituted a suit for cancellation of the gift deed executed in favour of respondents No.4 and 5, which was dismissed, and the matter is presently sub judice before this Court in Civil Revision No.84 of 2021. The applicant maintained that the present suit was confined to the remaining land, which, according to him, had never been the subject matter of the earlier litigation. He also asserted that he had approached the Assistant Commissioner, Khipro, for redress, but no action was taken, compelling him to seek possession, mesne profits and permanent injunction through the instant suit.

3. Respondents No.4 and 5 filed their written statement, wherein they admitted the relationship inter se but denied the applicant's claim of exclusive possession or entitlement. They asserted that the applicant had already filed F.C. Suit No.36 of 2020 regarding the same survey numbers, which was rejected under Order VII Rule 11 CPC on 27.08.2020, and that the appellate and revisional forums had also declined to interfere. They contended that the present suit was barred by res judicata, that the applicant had not sought a declaration of title, and that the land claimed by him was either not in his name or was in the possession of third parties. They further pleaded that the suit was not maintainable in the absence of partition proceedings before the revenue authorities.

4. Upon completion of pleadings, the trial Court framed seven issues, encompassing the maintainability of the suit, the alleged gift, the applicant's possession, entitlement to possession, claim of mesne profits and the reliefs sought. The applicant examined five witnesses, including the Supervising Tapedar, an Assistant from the office of the Assistant Commissioner, two private witnesses and himself. He produced revenue entries, the alleged private

settlement dated 05.07.2017 and the application submitted to the revenue authorities. The respondents examined the Tapedar, a court clerk who produced the record of F.C. Suit No.36 of 2020, and respondent No.4 himself, who produced certified copies of the earlier orders and revenue entries.

5. After hearing arguments, the trial Court, learned Senior Civil Judge, Khipro, through judgment and decree dated 24.10.2023, dismissed the suit solely on the ground of maintainability. The trial Court held that the parties were co-sharers in unpartitioned land, that the applicant had not sought a declaration of title, that the suit was barred under section 42 of the Specific Relief Act, and that the applicant ought to have approached the revenue forum for partition.

6. Aggrieved, the applicant preferred Civil Appeal No.30 of 2023 before the learned Additional District Judge, Khipro. The appellate Court concurred with the findings of the trial Court and dismissed the appeal. The appellate Court observed that the applicant had admittedly gifted the land, including the suit property, to respondents No.4 and 5, and that the question of title was already sub judice in Civil Revision No.84 of 2021. It further held that the applicant could not seek possession without first establishing his title by way of declaratory relief, and that the suit was barred by law.

7. It is against these concurrent findings that the applicant has instituted the present Civil Revision Application.

8. Learned counsel for the applicant submitted that both the Courts below have committed a manifest illegality in dismissing the suit on the solitary issue of maintainability, despite the fact that issues of fact had already been framed and the parties had led their full evidence. It was argued that once the Trial Court had embarked upon the recording of evidence, it was thereafter precluded from resorting to the provisions of Order VII Rule 11 or Order XIV Rule 2, C.P.C., as the law does not permit the non-suiting of a party midway through trial on a technical plea. He relied upon the case law reported as 2007 SCMR 1126. Learned counsel further contended that the Appellate Court too fell in error by affirming the dismissal without framing proper points for determination as

mandated by Order XLI Rule 31, C.P.C, thereby rendering the appellate judgment coram non iudice. It was urged that the Appellate Court had earlier, in Revision No.6 of 2022, directed the Trial Court to decide the matter on merits after recording evidence, yet in the impugned judgment, it ignored its own binding directions. It was argued that the suit was competently filed under section 8 of the Specific Relief Act, 1877 and that the relief of declaration is inherent in a suit for possession. Reliance was placed upon PLD 2014 SC 380 and 2019 SCMR 84. Learned counsel submitted that the plea of res judicata was misconceived, as the earlier suit (F.C. Suit No.36/2020) did not pertain to the present suit land, which fact stood admitted in the evidence of the private respondents. It was further argued that the respondents themselves admitted the applicant's possession of the suit land prior to July 2020, and also admitted the private faisla and the written agreement acknowledging the applicant's entitlement to 1½ acres from Survey No.462/2. Learned counsel lastly relied upon 2020 MLD 1693, 2023 MLD 659 and 2007 SCMR 1126 to submit that where issues have been framed and evidence recorded, the Courts below are bound to render findings on all issues, and failure to do so vitiates the entire proceedings.

9. Conversely, learned counsel for respondents No.4 and 5 supported the concurrent findings of the Courts below and submitted that the suit was barred by law, as the applicant had admittedly gifted the entire land, including the suit land, to the private respondents through a registered gift deed and the validity of that gift is already sub iudice before this Court in Civil Revision No.84 of 2021. It was argued that the applicant cannot, during the pendency of the said revision, institute a fresh suit seeking possession of the very land which he himself had gifted away. Learned counsel further contended that the applicant had not sought any declaration regarding his title and in the absence of such declaration, a suit for possession was not maintainable. Reliance was placed upon 2005 SCMR 1872, PLD 2001 SC 213 and 2022 CLC 1374. It was argued that the suit was also barred by res judicata, as the applicant had earlier filed

F.C. Suit No.36/2020 regarding the same survey numbers, which was dismissed under Order VII Rule 11 C.P.C and the dismissal was upheld in appeal. The pendency of Civil Revision No.84 of 2021, arising out of the same controversy, was said to constitute a complete bar to the institution of the present suit. Learned counsel submitted that the revenue record does not support the applicant's claim, as Survey No.461/1 stands in the name of one Haji Sadiq and Survey No.462/2 is not recorded in the applicant's name. It was argued that the alleged faisla relied upon by the applicant is a fabricated document, and the applicant has failed to produce any cogent evidence of exclusive possession. Learned counsel lastly submitted that the findings of both Courts below are based on proper appreciation of law and evidence, and no case for interference in revisional jurisdiction is made out.

10. Learned Assistant A.G. Sindh adopted the arguments advanced on behalf of respondents No.4 and 5 and submitted that the suit was rightly dismissed as not maintainable. It was argued that the applicant had failed to establish any title or legal character in respect of the suit land, and without seeking a declaration, no decree for possession could be granted. It was argued that the findings of the Courts below do not suffer from any jurisdictional defect, illegality, or material irregularity warranting interference under section 115 C.P.C, and the revision is liable to be dismissed.

11. Heard and perused.

12. The record reveals that the Trial Court had framed issues of both law and fact, permitted the parties to lead evidence and thereafter proceeded to dismiss the suit solely on the ground that it was barred under section 42 of the Specific Relief Act. The Appellate Court, instead of rectifying this jurisdictional impropriety, affirmed the dismissal on the same premise. This approach is manifestly inconsistent with the statutory scheme and the pronouncements of the Supreme Court.

13. Order XIV Rule 2 C.P.C embodies a carefully calibrated exception to the general Rule that all issues, both factual and legal, must be adjudicated upon

after trial. The Rule permits the Court to try a pure question of law as a preliminary issue only where the Court, at the outset, forms a conscious judicial opinion that the suit or any part thereof may be disposed of on such legal issue alone, and only after postponing the settlement of factual issues. The Rule does not permit a Court, having already framed factual issues and recorded evidence, to revert belatedly to a preliminary legal objection and dispose of the suit on that basis. The Supreme Court, in a case of Hafiz Muhammad Siddique Anwar,¹ has categorically held that once the Court has consumed time in recording evidence, it is under a legal obligation to decide the case on all issues, both factual and legal, so that no party is deprived of its right of appeal on merits. The Trial Court's departure from this principle constitutes a material irregularity.

14. Order XV C.P.C, further reinforces this position. The Rule contemplates disposal at the first hearing only where the parties are not at issue, or where the issues can be decided without further evidence. In the present case, the parties were sharply at variance on material propositions of fact, issues were framed, and evidence was recorded. The Trial Court, therefore, could not have invoked the logic of maintainability at such an advanced stage of proceedings. The dismissal of the suit on maintainability after full trial is antithetical to the procedural architecture of Order XV.

15. Order XX Rule 5 C.P.C. mandates that where issues have been framed, the Court must state its finding on each issue, with reasons, unless the finding on one issue is sufficient for the decision of the suit. The phrase "sufficient for the decision" has been judicially interpreted to mean a finding that conclusively disposes of the entire lis without requiring adjudication of factual controversies. A finding on maintainability, reached after evidence has been recorded, cannot be treated as such a conclusive finding, because the factual issues, particularly those relating to entitlement to possession, are inseparably intertwined with the

¹ Hafiz Muhammad Siddique Anwar v. F.D.A. (2007 SCMR 1126)

legal objections. The failure of both Courts below to render findings on all issues constitutes a jurisdictional defect.

16. Turning to the substantive law, the suit was instituted under section 8 of the Specific Relief Act, 1877. The Supreme Court, in the case of Hazratullah² and Taj Wali Shah³, has settled beyond cavil that a suit under section 8 is a title-based remedy for recovery of specific immovable property and that the declaration of entitlement is an inbuilt component of such a suit. The plaintiff is not required to seek a separate declaration under section 42 where the relief of possession inherently requires adjudication of title. The Trial Court's view that the suit was barred under section 42 is therefore legally untenable.

17. The reliance of respondents' counsel on 2005 SCMR 1872 and PLD 2001 SC 213 is misplaced. Those authorities apply only where the plaintiff seeks possession without asserting or proving any title, or where the suit is framed purely as one for injunction without the foundational claim of ownership. In the present case, the pleadings and issues unmistakably show that the applicant asserted title through registered instruments and the respondents set up a rival claim. The dispute was therefore quintessentially one of entitlement to possession under section 8, not a simpliciter injunction suit.

18. The revisional jurisdiction under Section 115 C.P.C is supervisory in nature and is attracted where the subordinate Court has exercised jurisdiction illegally or with material irregularity. The failure to decide all issues after a full trial, the misapplication of section 42 of the Specific Relief Act and the disregard of binding precedent constitute material irregularities warranting interference. The impugned judgments cannot be sustained.

19. The cumulative effect of the above discussion is that both Courts below abdicated their statutory duty to adjudicate the factual controversies, misapplied the law governing suits under section 8 and rendered judgments contrary to the procedural mandates of Orders XIV, XV and XX C.P.C. The applicant has been

² Hazratullah and others v. Rahim Gul and others (PLD 2014 S.C 380)

³ Taj Wali Shah v. Bakhtizaman (2019 SCMR 84)

deprived of a decision on the merits despite having led evidence. Such a miscarriage of justice cannot be allowed to stand.

20. For the reasons recorded above, the Civil Revision Application is allowed. The judgments and decrees of both the Courts below are set aside. The matter is remanded to the Trial Court with the direction to decide the suit afresh on all issues, strictly in accordance with law, after appraising the evidence already on record, without treating the question of maintainability as a preliminary issue. The Trial Court shall endeavour to conclude the proceedings expeditiously. There shall be no order as to costs.

JUDGE

Adnan Ashraf Nizamani