

THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision Application No. S – 173 of 2023

[Late Haji Allah Dino (deceased) through L.Rs v. Muhammad Zaffar and 05 others]

Applicant by : M/s Safdar Ali Bhatti and Liaquat Ali Shar,
Advocates

Respondent No.1 by : Mr. Amjad Hussain Laghari, Advocate

Respondents No.2 to 6 by : Mr. Zulfiqar Ali Naich, Assistant A.G Sindh

Date of Hearing : 21.09.2026

Date of Announcement : 02.10.2026

JUDGMENT

ARBAB ALI HAKRO, J. – Through this Civil Revision under section 115 of the Code of Civil Procedure, 1908 (hereinafter referred to as ‘**CPC**’), the applicants, who are the legal heirs of late Haji Allah Dino, have called in question the judgment and decree dated 15.06.2023 (hereinafter referred to as ‘**the impugned judgment**’) passed by the learned Additional District Judge, Mirwah (hereinafter referred to as ‘**the appellate court**’) in Civil Appeal No.97 of 2021, whereby the judgment and decree dated 05.08.2021, passed by the learned Senior Civil Judge, Mirwah (hereinafter referred to as ‘**the trial court**’) in F.C. Suit No.07 of 2015 were set aside. The suit of respondent No.1 was decreed as prayed.

2. Respondent No.1 (the plaintiff) instituted the suit for declaration, possession, cancellation of documents, mesne profits and permanent injunction. His case was that his late father, Muhbat Khan, owned agricultural land measuring 16-17 acres in Survey Nos. 28, 471, 474, 281 and 475 of Deh Muhammad Ashabi, Taluka Thari Mirwah, standing in his name vide entry No. 134 dated 27.10.1985 of VF-VII-A; that Muhbat Khan mortgaged the land with the Agricultural Development Bank of Pakistan (ADBP) in 1983 and had it released in 1994; that after his death in 1998, Survey Nos. 471 (1-08) and 474 (1-31) acres were given to the private defendants on a harap basis, and that in 2010 they stopped paying batai, denied his father’s title and set up entry No. 211 dated 26.01.2000 of VF-VII-B. He challenged that entry

in Revenue Appeal No. 31 of 2010, where the private defendants produced registered sale deed No. 536 dated 30.10.1980, said to have been executed by Muhbat Khan in favour of Haji Allah Dino. On 01.11.2012, the Assistant Commissioner, Thari Mirwah, declined to decide the matter, as a registered instrument was involved, and left the plaintiff to his civil remedy. The plaintiff accordingly sought cancellation of the sale deed, of entry No. 39 dated 23.04.1981 of the Dakhal Kharij (D.K) register and of entry No. 211, and possession of 2-39 acres with mesne profits.¹

3. Defendants Nos. 6(a) to (d), the sons of the late Haji Allah Dino, who was the real brother of Muhbat Khan, contested the suit. They pleaded that Muhbat Khan sold the land to Haji Allah Dino in the year 1980 through the registered sale deed; that they have been in possession since then and pay land revenue; that the other heirs of Muhbat Khan raise no objection; and that the suit is barred by section 42 of the Specific Relief Act, 1877, and by time. The trial court declared the official defendants ex parte.

4. The trial court framed nine issues. The plaintiff examined himself and three revenue officials, while defendant No. 6(a) examined himself and four witnesses. The trial court dismissed the suit as time-barred, holding the sale proved on the strength of the registered deed and the long possession of the defendants, and treating the suit as bad for non-joinder of the daughters of Haji Allah Dino. On appeal, the appellate court framed a single point on misreading of evidence, held the sale deed and both entries to be unproved and forged, observed that no limitation runs against a forged document, and decreed the suit as prayed.

5. Learned counsel for the applicants contended that the suit, instituted more than thirty-four years after the registered sale, was barred under Article 91 of the Limitation Act, 1908 (hereinafter referred to as '**the Limitation Act**'), particularly because the plaintiff admitted that he had challenged the deed in 2010; that Muhbat Khan lived until 1998 and never questioned the sale; that the burden to prove forgery lay on the plaintiff, who produced nothing but a bare denial; that the Tapedar who disowned his signature on

¹ Plaintiff dated 23.12.2014, paras 3 to 13 and prayer clauses (a) to (e).

entry No. 211 was never confronted with the original record; that the attesting witness had died, as deposed by defendant No. 6(a); that the deed, being of 1980, was governed by the Evidence Act, 1872 and not by the Qanun-e-Shahadat Order, 1984 (hereinafter referred to as '**QSO, 1984**'); and that the appellate court decided the appeal in breach of Order XLI Rule 31 CPC. Reliance was placed, among others, on **Atta Muhammad** and **Muhammad Rustam**.²

6. Learned counsel for respondent No.1 supported the impugned judgment. He argued that the cause of action arose on the denial of title in 2010 and on the order of the revenue forum, so the suit was within time; that a claim founded on inheritance is not defeated by limitation; that defendant No.6(a) conceded material facts in cross-examination, including that the deed was not mutated at the relevant time and that it came on the record in 2000; that the person described as the attesting witness was in fact the scribe; that the Tapedar disowned entry No.211; and that the pass book shows the suit land mortgaged with ADBP in 1983, after the alleged sale. He also referred to the reports submitted by the Mukhtiarkar in these proceedings.

7. Learned Assistant Advocate General supported the impugned judgment and noted that the defendants did not examine the Mukhtiarkar to prove entry No. 39.

8. The questions that arise are: (i) whether the impugned judgment suffers from an illegality or material irregularity in the exercise of jurisdiction within the meaning of section 115 CPC, and (ii) if so, whether the decree of the trial court can be restored or what order the law requires.

9. Section 115 CPC permits interference where the subordinate court has exercised jurisdiction not vested in it, has failed to exercise jurisdiction so vested, or has acted illegally or with material irregularity in the exercise of its jurisdiction. Where the findings of the trial court and the appellate court are at variance, those of the appellate court ordinarily prevail.³ That deference is owed only to findings reached lawfully, on a correct view of the law and after

² *Atta Muhammad v Maula Bakhsh* 2007 SCMR 1446; *Muhammad Rustam v Mst. Makhan Jan* 2013 SCMR 299.

³ *Muhammad Azam v Muhammad Aijaz* PLD 2025 SC 567.

considering the material evidence. A reversing judgment that misapplies the law on burden and presumption or ignores material evidence is open to correction in revision.⁴ The appellate court placed the entire burden on the applicants as beneficiaries and held the deed unproved because neither the Sub-Registrar nor an attesting witness was examined. In doing so, it overlooked the settled position that a document duly registered carries a presumption of genuineness and correctness under Articles 85(5) and 129(e) of QSO, 1984; that mere denial by the executant or his successor does not shift the burden to the beneficiary and that the evidential burden shifts only when the challenger produces some evidence, direct or circumstantial, beyond his denial.⁵ The appellate court also did not advert to Article 100 of QSO, 1984, under which the court may presume the due execution of a document purporting to be thirty years old and produced from proper custody. The presumption is stronger where such a document is also registered,⁶ but it is discretionary and rebuttable, and once its genuineness is seriously questioned, the court must decide that question on the whole of the evidence.⁷

10. The correct approach, therefore, was to ask first whether the plaintiff had brought on record material sufficient to rebut these presumptions, and only then whether the applicants had discharged the burden that shifted to them. The record contains material on both sides of that question. On the plaintiff's side, the pass book (Exh.22/B) carries the entry of mortgage in favour of ADBP of 1983, covering Survey Nos.471 and 474 among others, three years after the alleged sale, and the bank released the land to Muhbat Khan in 1994. Entry No.134, dated 27.10.1985, in VF-VII-A, prepared when the record of rights was rewritten, still shows Muhbat Khan as owner of the entire 16-17 acres. In cross-examination, defendant No.6(a) conceded that the deed was not mutated at the time, that it was brought on the record in the year 2000, that the stamp papers bear no stamp-vendor endorsement, that no attesting witness or official was examined, and that his father's pass book

⁴ *Mst. Nazeeran v Ali Bux* 2024 SCMR 1271, para 19.

⁵ *Mst. Nazeeran* (n.4 above), paras 12 to 14.

⁶ *Mst. Hameeda Begum v Mst. Irshad Begum* 2007 SCMR 996.

⁷ *Muhammad Israr v Jehanzeb* 2025 SCMR 841.

was prepared in the year 2007.⁸ In Mst.Nazeeran, which arose from this Bench, a prior ADBP mortgage reflected in the revenue record, together with the absence of any attesting witness, scribe or stamp vendor, was held sufficient to rebut the presumption and to shift the burden to the vendee.⁹ The applicants, on their side, had the benefit of a registered deed more than thirty years old, produced from their own custody; their long possession, supported by dhal receipts and a water share list. The impugned judgment weighs none of this. It neither applies the presumptions nor examines whether they stood rebutted. Its conclusion, whatever its ultimate merit, was reached without the inquiry the law requires.

11. The appellate court also inferred forgery of the sale deed of 1980 largely from the denial of the Tapedar that he signed entry No.211 of 2000. An irregularity in a revenue entry made twenty years after a registered instrument does not, by itself, prove that the instrument is forged. The court also failed to consider that the Tapedar was shown only a photocopy, and that he conceded the entry was brought forward from the D.K. register. It may be added that the question whether Articles 17 and 79 of QSO, 1984 govern the proof of a deed executed in 1980, before QSO, 1984 came into force, was specifically raised before this Court and was not considered by either court below.

12. The appellate court disposed of the limitation in one sentence, holding that no limitation runs against a forged document. That view cannot be sustained. Section 39 of the Specific Relief Act, 1877 enables a person against whom a written instrument is void or voidable to sue for it to be so adjudicated, and Article 91 of the First Schedule to the Limitation Act prescribes:

“91. To cancel or set aside an instrument not otherwise provided for. Three years-When the facts entitling the plaintiff to have the instrument cancelled or set aside became known to him.”

The Supreme Court has held that an instrument alleged to have been procured by fraud or forgery is not void on its face; it must be adjudicated by

⁸ Deposition of defendant No.6(a) (Exh.28), cross-examination.

⁹ Mst. Nazeeran (n.4 above), para 17.

a court under section 39 *ibid*. Article 91 governs such a suit, and a prayer for possession that depends on the cancellation of the instrument falls with it.¹⁰ For the same reason, the argument of respondent No.1 that a claim founded on inheritance is immune from limitation is no answer by itself, since his claim to the suit land cannot succeed unless the registered deed is first set aside. The plaintiff admitted that he had challenged the deed in the revenue appeal of 2010 and brought the suit about four years later.¹¹ The record, however, does not show when the deed was first produced before the revenue forum. Section 14 of the Limitation Act excludes the time spent in prosecuting, in good faith, a proceeding before a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it, but the benefit has to be pleaded with the relevant dates and is confined to proceedings before a court.¹² Whether the suit was within time was thus a mixed question of law and fact calling for a specific finding. The appellate court recorded none. The trial court, for its part, treated the silence of Muhsbat Khan as fatal, relying on **Atta Muhammad** and **Muhammad Rustam**.¹³ That reasoning assumes the genuineness of the very deed in dispute. If he executed the deed, he had nothing to challenge; if he did not, his silence proves nothing unless it is shown that he knew of it. Neither court determined when the facts entitling the plaintiff to cancellation became known to him, which is the only test Article 91 lays down.

13. Order XLI Rule 31 CPC requires the appellate court to state in its judgment the points for determination, its decision on each with reasons, and, where the decree appealed from is reversed or varied, the relief to which the appellant is entitled. The appellate court is required to rehear the controversy on facts and law.¹⁴ Issue-wise findings are not invariably necessary, but their absence is fatal where it results in a serious violation of law or a miscarriage of justice.¹⁵ Here, the appellate court decreed the suit as prayed, including possession of 2-39 acres and mesne profits, without any finding on issue No.3 (the harap arrangement and payment of batai up to

¹⁰ *Dr. Muhammad Javaid Shafi v Syed Rashid Arshad* PLD 2015 SC 212, para 6 (majority view).

¹¹ Deposition of the plaintiff (Exh.22), cross-examination.

¹² *Mst. Anwar Bibi v Abdul Hameed* 2002 SCMR 144; *Dr. Muhammad Javaid Shafi* (n.11 above), para 6.

¹³ *Atta Muhammad* (n.2 above); *Muhammad Rustam* (n.2 above).

¹⁴ *Mushtaq ul Aarifin v Mumtaz Muhammad* 2022 SCMR 55.

¹⁵ *Muhammad Iftikhar v Nazakat Ali* 2010 SCMR 1868.

2010), issue No.6 (illegal possession), or issue No.7 (mesne profits). This was despite the plaintiff's admissions that he produced no record of possession or dhal receipt and that, in his revenue appeal, he had claimed possession of the whole land.¹⁶ A decree for possession and mesne profits, unsupported by any finding, cannot stand.

14. The plaintiff admitted that the daughters of the late Haji Allah Dino are not parties to the suit.¹⁷ Haji Allah Dino died before the suit was filed. His estate, including any interest passing under the sale deed, devolved on all his heirs. A decree cancelling that deed and directing possession operates directly on the share of each heir. A necessary party is one in whose absence no effective decree can be passed.¹⁸ The appellate court brushed the objection aside on the ground that the daughters must have known of the litigation. Knowledge of a suit is not a substitute for being made a party to it, and a decree passed behind the back of a co-heir does not bind her. The trial court, on the other hand, found them necessary and counted their absence against the plaintiff. Order I Rule 9 CPC provides that no suit shall be defeated by reason of non-joinder, while Order I Rule 10(2) CPC empowers the court, at any stage of the proceedings, to add any person who ought to have been joined. Non-joinder therefore calls for impleadment, not dismissal, although the failure to implead a necessary party may, in the end, lead to failure to prove the case.¹⁹ In a suit concerning the estate of a deceased co-owner in which his daughters and widow had not been impleaded, the Supreme Court remanded the matter to the trial court with directions to implead them, receive their written statements and frame fresh issues.²⁰ The applicants seek restoration of the trial court's decree. That relief cannot be granted. The trial court held that the plaintiff produced no evidence of his father's title or possession after 1980, but it did not refer to the pass-book, the mortgage of 1983, its release in 1994, the entry of 1985 or the admissions of defendant No.6(a) noticed above. Each of these bore directly on whether the presumptions attached to the deed stood rebutted. Its view

¹⁶ Deposition of the plaintiff (Exh.22), cross-examination.

¹⁷ Deposition of the plaintiff (Exh.22), cross-examination; defendant No.6(a) deposed that his father left four sons and four daughters (Exh.28).

¹⁸ *Muhammad Shakeel v Additional District Judge, Faisalabad* PLD 2025 SC 572.

¹⁹ *Nasrullah Khan v Mst. Khairunnisa* 2020 SCMR 2101.

²⁰ *Mian Zafar Ali v Mian Khursheed Ali* 2020 SCMR 291.

on limitation, as already observed, rests on an assumption and not on a finding under Article 91. Where the evidence has not been properly appreciated at any stage, the Supreme Court has set aside the judgments of all the courts below and remanded the suit to the trial court for decision afresh.²¹

15. Pursuant to the orders of this Court, the Mukhtiarkar (Revenue), Thari Mirwah, submitted reports, the last of which records that verification of entry No. 39 from the microfilmed record is still awaited.²² This material was not produced at the trial and has not been tested by cross-examination. Additional evidence may be received in revision only in exceptional cases²³, and this Court is not inclined to decide disputed questions of fact on reports that are incomplete and untested. Any party wishing to rely on this record may do so before the trial court, where it must be proved in accordance with law.

16. For the reasons stated, the impugned judgment suffers from material illegality and irregularity. It misapplies the law on burden and presumption governing registered documents, ignores material evidence, decides the limitation issue on an erroneous premise, grants possession and mesne profits without any finding, and passes a decree that affects persons who were never made parties. The judgment of the trial court is also vitiated by non-reading of material evidence and an erroneous approach to limitation. Since the necessary parties must be impleaded and afforded an opportunity to file written statements and lead evidence, the trial court can only resolve the matter. Consequently, this Civil Revision is **allowed**. The impugned judgment and decree dated 15.06.2023, and the judgment and decree of the trial court dated 05.08.2021, are set aside, and F.C. Suit No. 07 of 2015 is remanded to the trial court with the following directions:

- a. the plaintiff shall, within fifteen days of receipt of this judgment, file an amended title impleading all surviving legal heirs of the late Haji Allah Dino, including his daughters; upon which the trial court shall issue notice to them;

²¹ *Rehmatullah Khan v Ghulam Farid* 2009 SCMR 371.

²² Statement of respondent No.4 dated 11.05.2026 and the comments/detailed report of respondents No.4 and 5 filed on 24.08.2026.

²³ *Shamshad Bibi v Riasat Ali* PLD 2023 SC 643.

- b. The newly impleaded defendants shall be at liberty to file their written statements.
 - c. the trial court shall thereafter amend and recast the issues under Order XIV Rule 5 CPC, including a specific issue on limitation;
 - d. The evidence already recorded shall remain part of the record, and the parties may adduce evidence on the recast issues;
 - e. The trial court may, if it considers it necessary for a just decision, summon the original D.K, VF-VII-A and VF-VII-B registers under Order XVI Rule 14 CPC, and any record so summoned shall be proved in accordance with law, with an opportunity of cross-examination to the parties; and
 - f. The trial court shall decide the suit afresh by a speaking judgment, recording findings on every issue on the basis of the entire evidence, within six months of receipt of this judgment.
17. Respondents No. 4 and 5 shall ensure that the original revenue record relating to the suit land is preserved. Until the decision in the suit, the parties shall not alienate the suit land or create any third-party interest therein. It is clarified that the observations made herein are tentative and confined to the disposal of this revision. The trial court shall decide the suit on its own merits, without being influenced by them. There shall be no order as to costs. R&Ps of F.C. Suit No.07/2015 be remitted to the trial Court.

J U D G E

Abdul Basit