

THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S – 186 of 2011

[Muhammad Ramzan and others v. Chandarbhan and others]

Applicants by : M/s Abdul Qadir Shaikh and Abdul Basit Shaikh, Advocates

Respondents by : Nemo

Date of Hearing : 28.09.2026 & 02.10.2026

Date of Announcement : 08.10.2026

ORDER

ARBAB ALI HAKRO, J. – This revision under Section 115 of the Code of Civil Procedure, 1908 (hereinafter referred to as '**CPC**') calls in question the judgment dated 31.10.2011 and decree dated 05.11.2011 passed by the learned Additional District Judge, Gambat (hereinafter referred to as '**the appellate court**') in Civil Appeal No.5 of 2010 (**the impugned judgment**). By that judgment, the consolidated judgment dated 16.11.2010 and decree dated 23.11.2010 of the learned Senior Civil Judge, Gambat (hereinafter referred to as '**the trial court**') were maintained in F.C. Suit No. 101 of 2007 (**the leading suit**) and set aside in F.C. Suit No. 104 of 2007 (**the subsequent suit**), which was dismissed.

2. Respondent No. 1, Chandarbhan, owned 09-23 acres in Survey Nos. 320, 323, 324, 325 and 332 to 338 of Deh Ranipur, Taluka Sobhoderi, which he plotted as Shahbaz Colony, Ranipur. Out of that land, Khair Muhammad and Payas Ali, the plaintiffs in the leading suit, purchased 4329 square feet by a registered sale deed dated 21.03.2003, and the applicants Muhammad Ramzan and Abdul Hameed purchased 4092 square feet by a sale deed executed on 22.11.2005 and registered on 26.11.2005, on the strength of which entry No. 163 dated 19.05.2006 was recorded in Form VII-B.¹ Neither deed gives a plot number or fixed boundaries. Each describes the land by the survey numbers of the colony and by area, the deed of 2003 adding streets to the north and south and open plots to the east and west. One plot, in the

¹ Sale deed dated 21.03.2003, Ex. 56/A; sale deed dated 26.11.2005, Ex. 69/A and Ex. 73/A; entry No. 163, Ex. 69/B and Ex. 77/A.

occupation of Khair Muhammad, is claimed by both sides as the plot conveyed by their own deed; it is referred to hereinafter as '**the disputed plot**'.

3. The applicants first sued in Civil Suit No. 20 of 2007 before the learned Civil Judge-I, Gambat, and withdrew the suit when an objection to pecuniary jurisdiction was raised.² Khair Muhammad and Payas Ali then instituted the leading suit on 26.09.2007 for declaration, cancellation of the sale deed of 2005 and a permanent injunction, pleading possession since 2003 and the construction of a room and a landhi on the disputed plot. Two days later, the applicants instituted the subsequent suit for declaration, possession, a permanent injunction, and mesne profits, pleading that they were put in possession upon registration and were forcibly dispossessed on 26.08.2007. By amendment, they impleaded Sajid and Naushad, the purchasers of the adjoining plots, averring that the physical position of the plots had been altered by those two parting with portions of their plots in favour of Khair Muhammad.³

4. Identity of the plot was thus put in issue by both sides. Khair Muhammad pleaded that the boundaries of the plot described in the deed of 2005 "were not clear" and that the deed "depicted a different picture".⁴ The applicants answered that the plot purchased by the plaintiffs in the leading suit was not the one in their possession, and relied upon a sketch of the plot prepared by the Mukhtiarkar, Sobhoderi, at the instance of the police.⁵ The suits were consolidated, and on 23.09.2008, ten issues were framed. Issue 3 asked whether the plaintiffs in the leading suit were occupying the property purchased by the applicants under the deed of 2005; issue 4, whether that deed was forged and liable to cancellation; issue 5, whether the plaintiffs in the leading suit were in lawful possession since the date of purchase; issues 8 and 9, whether the plaintiffs in either suit were entitled to relief; and issue 10, what the decree should be.⁶

5. Khair Muhammad and Payas Ali examined themselves and Muhammad Raza, an attesting witness of the deed of 2003. The applicants examined their attorney, Mohkumuddin, son of Muhammad Ramzan, who

² Amended plaint in the subsequent suit, para 1 (Record, p. 37); written statement of Muhammad Ramzan and Abdul Hameed in the leading suit, para 13 (Record, p. 33). The impugned judgment records that the plaint "was rejected under order 7 R 11 CPC" (Record, p. 259), which the record does not bear out.

³ Amended plaint, paras 4 to 7 (Record, pp. 37 to 41).

⁴ Plaint in the leading suit, para 14 (Record, p. 19).

⁵ Written statement of the applicants in the leading suit, para 11 (Record, p. 31).

⁶ Consolidated issues dated 23.09.2008, Ex. 17 (Record, pp. 53 to 55).

produced the sale deed, the VII-B entry, the Mukhtiarkar's sketch No. 378/07 dated 27.10.2007 with the police correspondence, a boundaries certificate, and the special power of attorney. They also examined a former chowkidar of the colony, a broker, a neighbouring plot-holder, the petition writer, the Sub-Registrar, Gambat, who produced the registered deed from his records, and the Mukhtiarkar (Revenue), Sobhodero, who produced the VII-B entry.⁷ During the trial, the applicants applied for measurement of the plots through a commissioner; the application was opposed and dismissed.⁸

6. On issues 1 and 2, the trial court held that both parties held valid registered deeds for two different plots, each of a different area, under the same survey numbers, and that each was the owner of the plot described in its own deed. On issue 4, the deed of 2005 was held genuine and not liable to cancellation, and both suits were held maintainable. On issues 3 and 5, however, it found that there was "dispute regarding identity of plots" and, without recording a finding, appointed the Mukhtiarkar concerned as commissioner to visit the site and report on identification, location and possession. Both suits were "decreed accordingly", and the decree was styled a preliminary decree.⁹

7. Khair Muhammad and Amanullah appealed. The appellate court framed a single point, namely which of the two suits stood proved, and held that the applicants had failed to prove forcible dispossession, since neither of them entered the witness box, their attorney had neither been dispossessed nor authorised to depose, the chowkidar had left the colony's service in 1985, and the remaining evidence carried no weight. It further held that the trial court had directed measurement "without prayer from any party" and that "there is no dispute on the measurement of the land but there is a dispute over the possession". The decree in the leading suit was maintained, and the subsequent suit was dismissed.¹⁰ The findings on issues 1, 2, 4, 6 and 7 were not disturbed, and the refusal to cancel the deed of 2005 has not been questioned by Khair Muhammad in any proceeding.

⁷ Ex. 56, 57 and 67 for the plaintiffs of the leading suit; Ex. 69 to 74 and Ex. 77 for the applicants (trial court judgment, Record, pp. 235 to 237).

⁸ Deposition of Mohkumuddin, Ex. 69 (Record, p. 111); cross-examination of Khair Muhammad, Ex. 56 (Record, p. 59).

⁹ Trial court judgment (Record, pp. 239 to 245); decree (Record, pp. 247 to 255).

¹⁰ Impugned judgment (Record, pp. 265 to 269).

8. No one has appeared for the respondents at the hearing, and respondent No. 1 has remained *ex parte*. Their case, as pleaded and as it found favour with the appellate court, is that Khair Muhammad has been in possession of the disputed plot since 2003, that the deed of 2005 describes other land, and that the applicants, having stayed out of the witness box, failed to prove their case. Their absence has not relieved this Court of examining the record for itself, which has been done.

9. Learned counsel for the applicants contends that the appellate court misread the record; that the identity of the two plots could be settled only by a site measurement, which the applicants had sought and the respondents had resisted; that Section 75 and Order XXVI CPC permit the court to order a local investigation of its own motion; and that the appeal was decided on a point which did not go to the root of the controversy. He prays that the decree of the trial court in the subsequent suit be restored.

10. Two questions arise: first, whether the impugned judgment suffers from misreading or non-reading of the record, or from material irregularity in the exercise of jurisdiction; and secondly, if it does, what order this Court may lawfully make in its place.

11. Section 115 CPC is not a vehicle for a third appraisal of the evidence. It applies where the subordinate court has exercised a jurisdiction not vested in it, has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity. A finding of fact resting on misreading or non-reading of material evidence, or on an erroneous view of the law, falls within the last category and is open to correction in revision.¹¹ The restraint ordinarily shown towards concurrent findings has limited application here, since the two courts below did not concur: the trial court decreed the subsequent suit and the appellate court dismissed it.

12. The subsequent suit is one under Section 8 of the Specific Relief Act, 1877, for the recovery of specific immovable property on the strength of title, with declaration and injunction as ancillary reliefs. A plaintiff in such a suit succeeds on the strength of his own title and not on the weakness of his adversary's. He had to establish three things: his title to a plot; the defendant's possession of it; and that the plot in the defendant's possession

¹¹ *Nazim-ud-Din v. Sheikh Zia-ul-Qamar* 2016 SCMR 24; *Muhammad Sarwar v. Hashmal Khan* PLD 2022 SC 13.

is the plot to which his title relates. The first is established by the registered deed, proved through the Sub-Registrar from his own record, by the VII-B entry, proved through the Mukhtiarkar, and by the undisturbed findings on issues 2 and 4. The second was never in dispute, Khair Muhammad's own case being that he holds the disputed plot. The case therefore turned entirely on the third. The manner in which possession changed hands is not an ingredient of relief under Section 8. A failure to prove forcible dispossession on a given date may bear on mesne profits and on the credibility of the rival versions, but it does not by itself disentitle an owner from recovering his own property from one who has no title to it.

13. Order XLI Rule 31 CPC obliges the first appellate court to state the points for determination, its decision on each, and the reasons for it. The impugned judgment frames one omnibus point and answers it solely on the question of dispossession. It records no point and no finding on issue 3, on which the result of both suits depended. It does not notice the Mukhtiarkar's sketch of 27.10.2007, which shows the area in Khair Muhammad's occupation as about 4100 square feet, against the 4329 square feet in his deed; the admission of Khair Muhammad that the disputed plot lies to the west of Sajid's plot and that the registered deeds of Sajid of 2004 and of Naushad of 2005 show the western side as an open plot; the statement of Muhammad Raza, his own witness, that he could not say whether the plot in Khair Muhammad's possession is the one purchased; and the evidence of the Mukhtiarkar and the Sub-Registrar.¹² What that evidence ultimately establishes is not for this Court to say in revision. It is enough that it bore directly on the only question that mattered and was left unread. That is non-reading of material evidence in the settled sense.

14. The view that the trial court directed measurement "without prayer from any party" is contrary to the record. The applicants had applied for a commission during the trial and were refused on the respondents' opposition; issue 3 had been framed on the very question of identity, and each side had pleaded that the plot on the ground did not correspond to the other's deed. The further observation that there was no dispute on measurement but only on

¹² Ex. 69/C (Record, pp. 141 to 151); cross-examination of Khair Muhammad, Ex. 56 (Record, p. 59); cross-examination of Payas Ali, Ex. 57 (Record, p. 103); evidence of Muhammad Raza, Ex. 67 (Record, pp. 105 to 107).

possession misstates the controversy, which was never about how much land each deed conveys but about where on the ground each conveyed plot lies.

15. The proposition of law underlying that view is equally unsound. Section 75, read with Order XXVI Rule 9 CPC, empowers the court, in any suit in which it deems a local investigation requisite or proper for elucidating any matter in dispute, to issue a commission for that purpose. An application by a party is not a condition of that power. The Supreme Court in **Sarhad Development Authority**¹³ has explained that the object of such an investigation is to obtain evidence which, from its peculiar nature, can best be obtained from the spot, so that the court may understand and assess the evidence already on record, and that even an appellate court may appoint a commission to clear up a matter left doubtful. The trial court, having found that the identity of two plots carved out of the same survey numbers could not be settled on the paper record, was within its jurisdiction in resorting to a local investigation. The dismissal of the subsequent suit, so far as it rests on the contrary view, proceeds on a misreading of the pleadings and a misdirection in law, and amounts to a material irregularity in the exercise of jurisdiction.

16. The rule applied by the appellate court to the attorney's evidence is stated too absolutely. In **Mrs. Zakia Hussain**¹⁴, the Supreme Court held that an attorney may depose to facts within his personal knowledge or where he has acted for the principal throughout the transaction, and that where a party withholds himself from the witness box to avoid cross-examination, the court may draw an adverse presumption under Article 129(g) of the Qanun-e-Shahadat Order, 1984. Mohkumuddin deposed that he was present at the registration of the deed of 2005, a fact independently proved by the Sub-Registrar, and that the power of attorney authorises him to conduct the suit and produce evidence.¹⁵ The absence of the applicants from the witness box was a legitimate consideration in weighing the oral account of dispossession, and the appellate court was entitled to hold that the events of 26.08.2007 were not proved by direct evidence. It was not entitled to treat that gap as disposing of a suit whose decisive question did not turn on the attorney's personal knowledge at all, but on the deeds, the revenue record, the admissions of the other side and a measurement at site.

¹³ *Sarhad Development Authority v. Land Acquisition Collector, Abbottabad* 1998 SCMR 730.

¹⁴ *Mrs. Zakia Hussain v. Syed Farooq Hussain* PLD 2020 SC 401.

¹⁵ Ex. 69 (Record, p. 113); Ex. 69/G and Ex. 69/H (Record, pp. 155 to 163).

17. The appellate court also treated the applicants' pleading that Khair Muhammad holds the disputed plot as a "direct admission" in his favour. An admission of possession is not an admission of the right to possess; the applicants' case throughout was that the plot is theirs and that he entered it on 26.08.2007. The two have been conflated.

18. It follows that the impugned judgment cannot stand. However, the prayer for restoration of the trial court's decree in the subsequent suit cannot be granted either. A decree for immovable property must describe the property sufficiently to identify it, as Order XX Rule 9 CPC requires; a decree for possession of a plot whose identity is left undetermined is not an executable decree, and the defect cannot be cured in execution, where the court cannot go behind the decree. The report of a commissioner under Order XXVI Rule 10 CPC is evidence in the suit, to be received, objected to and weighed before judgment; it is not a means of deciding an issue after the suit has been decreed. Nor can the label of a preliminary decree save the order, a suit for possession of this kind not being one in which the Code contemplates further proceedings before final disposal. Having found that identity could not be determined without a measurement, the trial court ought to have issued the commission, received the report and the objections to it, and then decided issues 3 and 5. It decreed both suits instead and left the only contested question for later.

19. Section 115 CPC empowers this Court, once a ground of interference is made out, to "make such order in the case as it thinks fit". The words are wide enough to include remand with directions, and the Supreme Court in **Hayat Muhammad**¹⁶ declined to interfere where the High Court, in revision, remanded the suit to the trial court for decision of issues left undecided. The power is not to be exercised lightly. As laid down in **Muhammad Dervaish Al-Gilani**¹⁷, the court must examine the evidence and remand only where it is insufficient to pronounce upon the issues, and must decide the matter itself where the record permits; nor may remand be used to enable a party to fill gaps in its evidence.

20. This case meets that test. The identity on the ground of two plots carved out of the same survey numbers by deeds which fix no boundaries is

¹⁶ *Hayat Muhammad v. Mazhar Hussain* 2006 SCMR 1410.

¹⁷ *Muhammad Dervaish Al-Gilani v. Muhammad Sharif* 1997 SCMR 524.

a question of fact which this Court cannot decide in revision on the paper record and which neither court below has decided. The trial court held in terms that it could not be decided without a measurement at site; the applicants sought that measurement and were refused, and the respondents, having successfully resisted it, cannot be heard to say that the applicants must be non-suited for its absence. The remand will not open a gap-filling exercise; it requires the trial court to do, within the issues already framed and under powers it already possesses, what it ought to have done before passing a decree. Since the deficiency arose at the trial stage and the exercise required is a trial function, the remand is properly to the trial court. As the question of possession in both consolidated suits hangs on the same determination, both must be dealt with together so that inconsistent decrees do not result. The findings which have attained finality are not to be reopened.

21. For the foregoing reasons, this revision is partly **allowed** in the following terms:

- i. The impugned judgment dated 31.10.2011 and decree dated 05.11.2011 passed by the appellate court in Civil Appeal No. 5 of 2010 are set aside.
- ii. The consolidated judgment dated 16.11.2010 and the decree dated 23.11.2010 of the trial court are set aside to the extent of issues 3, 5, 8, 9 and 10, the reliefs of possession, permanent injunction and mesne profits in either suit, and the direction appointing a commissioner after judgment. The findings on issues 1, 2, 4, 6 and 7, including the declaration of each side's title to the plot described in its own registered deed and the refusal to cancel the sale deed of 2005, are maintained and shall not be reopened.
- iii. F.C. Suits Nos. 101 and 104 of 2007 are remanded to the trial court for a fresh decision on issues 3, 5, 8, 9 and 10. For that purpose, the trial court shall issue a commission under Section 75 r/w Order XXVI Rule 9 CPC to the Mukhtiarkar (Revenue), Sobhoderi, who shall be assisted by the Tapedar of the Deh and, if required, by the Survey Superintendent, to demarcate on site, after notice to and in the presence of the parties, the plots conveyed by the registered sale deeds dated 21.03.2003 and

26.11.2005, with reference to the survey numbers, the layout of Shahbaz Colony, the registered deeds of the adjoining plots of Sajid and Naushad, and the entries in Form VII-B, and to report whether the plot in the occupation of Khair Muhammad and Payas Ali corresponds to one deed or the other.

- iv. The parties shall be entitled to file objections to the report, to examine the commissioner and to lead evidence confined to the report. The trial court shall thereafter decide the said issues on the whole record and pass fresh decrees in both suits.
- v. As the litigation commenced in 2007, the trial court shall conclude the exercise and decide the suits within four months of receipt of the record and proceedings, without granting unnecessary adjournments.
- vi. Nothing in this order shall be taken as an expression of opinion on the identity of the disputed plot, which is for the trial court to determine on the evidence. There shall be no order as to costs.

22. The office shall forthwith transmit the record and proceedings to the trial court, together with a copy of this order.

J U D G E

Abdul Basit