

THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision Application No. S – 31 of 2016

[Muhammad Ishaque v. Muhammad Ameen and others]

Applicant by : Mr. Muhammad Tarique Panhwar, Advocate

Respondents No.1 to 4 by : Nemo.

Respondents No.5 to 9 by : M/s Zulfiqar Ali Naich and Ghulam Abbas
Kubar, Assistant Advocates General, Sindh

Dates of Hearing : **07.09.2026, 18.09.2026 & 28.09.2026**

Date of Announcement : **08.10.2026**

J U D G M E N T

ARBAB ALI HAKRO, J. – Through this Civil Revision Application under section 115 of the Code of Civil Procedure, 1908 (hereinafter referred to as '**the Code**'), the applicant assails the judgment and decree dated 27.02.2016 passed by the learned Additional District Judge, Ubauro (hereinafter referred to as '**the appellate court**') in Civil Appeal No.19 of 2013, whereby the judgment dated 15.01.2013 and decree dated 19.01.2013 of the learned Senior Civil Judge, Ubauro (hereinafter referred to as '**the trial court**') in F.C. Suit No.61 of 2007 were set aside and the suit of respondents No.1 to 4 was decreed; the order dated 10.07.2007 of the Executive District Officer (Revenue), Ghotki at Mirpur Mathelo (hereinafter referred to as '**the EDO**') was declared illegal and the entry made on its strength in favour of the applicant was cancelled.

2. The subject matter is agricultural land measuring 35-35 acres, comprised in Survey Nos. 450, 587, 588, 589, 590, 591, 592 and 593 of Deh Keenjhur, Taluka Ubauro, District Ghotki (hereinafter referred to as '**the suit land**'). It was put up for open auction by the Colonization Officer, Guddu Barrage, on 06.07.1966 and was knocked down to Muhammad Yousif, son of Sharafuddin, the father of respondents No. 1 to 4. Form-A was prepared in his sole name from Kharif 1966-67. He died in 1968. Thereafter, the instalments were paid by his sons, and on full payment of malkana T.O.,

Form No. 2937 was issued in his name in 1995. His name was entered in the Village Form VII-B through Entry No. 270, dated 25.02.1999. None of this is disputed by the applicant; every one of these facts is recited in the EDO's order upon which his claim rests.

3. On 28.04.2007, one Amir Hussain, a son of the applicant, moved a miscellaneous application before the EDO, asserting that his father had been a co-sharer to the extent of 0.50 paise in the auction lot and that his name had been omitted from Form-A due to a clerical mistake. The application was directed against Muhammad Yousif, who had by then been dead for thirty-nine years. Notices were issued in his name and returned unserved, with the endorsement that he was not residing on the spot. No notice was issued to his heirs. Acting on a report of the Mukhtiarkar (Estate) that the bid sheet showed a half share in the applicant's favour, the EDO, by order dated 10.07.2007 (hereinafter referred to as 'the **impugned order**'), directed the District Officer (Revenue) to include the applicant's name in the entire estate and revenue record. Entry No.491, dated 11.08.2007, followed. The bid sheet itself has never been produced before any court.

4. Respondents No. 1 to 4 instituted F.C. Suit No. 61 of 2007 before the trial court on 29.11.2007, seeking a declaration that the impugned order and the consequential entry were void and without lawful authority, the restoration of Entry No. 270, and a permanent injunction. The applicant alone contested. His written statement, filed on 05.09.2009, met the material paragraphs of the plaint with the formula "not admitted for want of knowledge". It did not plead that he had bid at the auction, that he had paid any part of the price or the instalments, or that any document in the colonization record bore his name. It asserted possession and ownership "by the record of rights" and raised four bare pleas: limitation, non-maintainability, section 56(d) of the Specific Relief Act, 1877, and want of cause of action.

5. Out of the pleadings, the trial court framed eight issues. The plaintiffs examined their attorney, Farooque Ahmed (Ex.18), who produced the power of attorney, the death certificate of Muhammad Yousif, copies of Entry No.270, Form-A, and two instalment receipts, a certified copy of the impugned order (Ex.18/G), and the notice of the District Officer (Revenue) (Ex.18/H), together with two witnesses of the locality, Illahi Bux (Ex.19) and

Gulab (Ex.20). Their evidence was recorded on 11.02.2009, when the defendants stood ex parte; the witnesses were recalled and re-affirmed on 21.04.2010, when only the court put questions to them. The applicant cross-examined none of them and objected to no document. For the applicant, his son and attorney, Sadiq Mudassar (Ex.51), deposed that Muhammad Yousif and the applicant were co-sharers in equal shares. In cross-examination, he admitted that he had produced no receipt of payment of price and no revenue receipt; that he did not know the price paid, the watercourse, the description of the suit land, the names of the adjoining owners, or the union council in which it lies; that he had produced no document of possession; that the suit land stood in the name of Muhammad Yousif since 25.02.1999; and that the family knew that Muhammad Yousif had died in 1968 and that the application before the EDO was made by his brother, not by the applicant himself.

6. The trial court first dismissed the suit on 29.06.2010 on the single ground that it was barred by section 11 of the Sindh Revenue Jurisdiction Act, 1876 (hereinafter referred to as '**the Act of 1876**') and section 172 of the Sindh Land Revenue Act, 1967 (hereinafter referred to as '**the Act of 1967**'). In Civil Appeal No.56 of 2010, the appellate court, by judgment dated 16.10.2012, held the suit maintainable, set aside that judgment and remanded the suit for decision on the merits (hereinafter referred to as '**the remand order**'). The remand order was not challenged by the applicant. On remand, the trial court dismissed the suit a second time on 15.01.2013, holding that the photocopies were inadmissible, that the attorney lacked personal knowledge, that the impugned order was a lawful correction of a clerical error, and, once again, that the suit was not maintainable for want of exhaustion of the revenue remedy. The appellate court reversed that judgment on 27.02.2016 (hereinafter referred to as '**the impugned judgment**') and decreed the suit as prayed.

7. Two subsequent developments emerge from the comments filed in this Court on 15.11.2021 by respondents No.6 and 7. By Entry No.495 dated 26.11.2007, the foti khata badal of Muhammad Yousif was effected, and the 0.50 paisa share left in his name passed to respondents No.1 to 4. By Entry No.02 dated 14.04.2008, respondents No.1 to 4 sold that share, through a registered sale deed, to Farooque Ahmed, their attorney. The same

comments admit that the half share was entered in the applicant's name solely under the impugned order.

8. Learned counsel for the applicant contended that the plaintiffs ought to have challenged the impugned order within the revenue hierarchy, and that having bypassed that remedy, their suit was barred by section 11 of the Act of 1876 and section 172 of the Act of 1967; that the applicant is a co-sharer in possession whose name appears in the record of rights; that the plaintiffs produced only photocopies and did not themselves enter the witness box, and that the appellate court reversed the trial court without adverting to the record. He relied on the case of **Mobeen Raza**¹ to urge that a suit for a bare negative declaration is incompetent under section 42 of the Specific Relief Act.

9. Respondents No. 1 to 4 remained unrepresented despite service. The Learned Assistant Advocate General, appearing for the official respondents, placed on record the comments of respondents No. 6 and 7 and a copy of **Wahab Gul**,² and left the matter to the Court. That decision, so far as it goes, holds that a dispute touching ownership and the cancellation of a revenue entry falls within the civil court's jurisdiction under section 53 and is not caught by the bar of section 172 of the Act of 1967; it does not assist the applicant.

10. The following questions arise: (i) the limits of this Court's jurisdiction under section 115 of the Code where the two courts below have differed; (ii) whether the suit was maintainable; (iii) whether the impugned order could lawfully be made; (iv) whether the appellate court's appreciation of the evidence suffers from any misreading, non-reading or error of law; (v) limitation and section 56(d) of the Specific Relief Act; and (vi) the effect of the transfers made during the pendency of the suit.

11. Section 115 of the Code is supervisory. It permits this Court to satisfy itself that the subordinate court has exercised the jurisdiction vested in it, has not failed to exercise it, and has not, in exercising it, acted illegally or with material irregularity. It does not convert this Court into a third forum for reappraisal of evidence, and a finding of fact cannot be disturbed merely because another view is possible.³ The converse is equally settled: a finding

¹ *Mobeen Raza v. Messrs Alloo and Minocher Dinshaw* 2016 CLC Note 10 (Sindh).

² *Wahab Gul v. Sikandar Ali* NLR 2014 Revenue 59 (Peshawar).

³ *Muhammad Sarwar v. Hashmal Khan* PLD 2022 SC 13; *Salamat Ali v. Muhammad Din* PLD 2022 SC 353.

that rests on misreading or non-reading of material evidence, or is perverse, may be corrected.⁴

12. The findings here are not concurrent. That does not enlarge the jurisdiction. The appellate court is the final court of fact⁵, and where it has reversed the trial court, the question in revision is not which of the two views this Court prefers, but whether the appellate court's findings are vitiated by misreading, non-reading, a jurisdictional defect, or an error of law. The enquiry that follows is confined to that question.

13. The plea of non-maintainability fails for three independent reasons.

14. First, the applicant is precluded from raising it. The first judgment of the trial court dated 29.06.2010, decided the suit on the preliminary point of the bar under sections 11 and 172. The appellate court set that judgment aside under Order XLI Rule 23 of the Code and remanded the suit, holding that the civil court had jurisdiction. An order of remand under Order XLI Rule 23 is appealable under Order XLIII Rule 1(u). The applicant did not appeal. Section 105(2) of the Code provides that where a party aggrieved by an order of remand from which an appeal lies does not appeal therefrom, he shall thereafter be precluded from disputing its correctness. The Supreme Court has applied the sub-section to precisely this situation: an unchallenged remand made on a preliminary point attains finality, and the objection decided by it cannot be re-agitated at a later stage of the same *lis*.⁶ The trial court, on remand, was therefore not free to hold the suit not maintainable, and the applicant cannot be heard to contend otherwise here.

15. Secondly, Section 172 of the Act of 1967 does not apply to this suit. The exclusion of the civil court's jurisdiction relates to the correction of entries made by a Revenue Officer in the performance of his duty, without affecting the rights of persons in the land; where an entry interferes with the rights of a person recorded in the record of rights, the remedy of the aggrieved person is a suit for declaration under Section 53 of the Act of 1967, which provides the same relief as Section 42 of the Specific Relief Act.⁷ The Supreme Court has recently restated this principle in an appeal arising from this Court:

⁴ *Nazim-ud-Din v. Sheikh Zia-ul-Qamar* 2016 SCMR 24.

⁵ *Haji Wajdad v. Provincial Government* 2020 SCMR 2046.

⁶ *Abdul Hakim v. Saadullah Khan* PLD 1970 SC 63.

⁷ *Rasta Mal Khan v. Nabi Sarwar Khan* 1996 SCMR 78.

the revenue hierarchy, being a *quasi-judicial* forum, has a limited jurisdiction to rectify the record; its decisions are tentative and do not determine title; when the title or the validity of a record or mutation is challenged, the civil court has the ultimate jurisdiction under Section 9 of the Code, and the bar of Section 172 is confined to the matters specifically enumerated in it.⁸ Whether a stranger to the colonization record was a co-purchaser at an auction held forty-one years earlier is a dispute of title and nothing else. The plaintiffs were the recorded owners in possession, and the entry in the applicant's favour cut their holding in half. Section 53 provides them with the right of suit.

16. Thirdly, Section 11 of the Act of 1876 is not attracted. The section bars a civil court from entertaining a suit "against the Government on account of any act or omission of any Revenue officer" unless the plaintiff first proves that he has presented all such appeals as were allowed by law. The present suit is, in substance, not a suit against the Government: the Province and its officers are pro forma parties, and the contest is with a private claimant to title. More fundamentally, the Supreme Court has held that, under Section 9 of the Code, civil courts retain ultimate jurisdiction to examine whether the act or order of a special tribunal was in accordance with the law under which it purported to act, and that an act done otherwise than in accordance with that law does not fall within the exclusionary provisions at all.⁹ An order made without jurisdiction, against a dead man and without hearing the persons whose recorded rights it took away, is such an act. The requirement of Section 11 is, in any event, addressed to a plaintiff who was a party to the revenue proceeding and could have appealed within it. The plaintiffs were never noticed and learnt of the impugned order only on receipt of the notice dated 30.10.2007 issued by the District Officer (Revenue).

17. The reliance on **Mobeen Raza** (n.1 above) is misplaced. The plaintiffs did not seek a bare negative declaration against a stranger. They sued as the recorded heirs of the auction purchaser, asserting their own legal character and right to property within the meaning of Section 42, and sought the cancellation of the order and entry that diminished that right. That is the paradigm of a suit under Section 42 read with Section 53 of the Act of 1967.

⁸ *Abdullah v. Waryam* 2026 SCMR 1042.

⁹ *Nausher v. Province of Punjab* PLD 2022 SC 699, approving *Hamid Husain v. Government of West Pakistan* 1974 SCMR 356.

18. The Supreme Court has identified the grounds on which a civil court tests the legality of an order of the revenue hierarchy: whether the matter fell within the power conferred on the authority; whether the order could have been made under the statute; whether it states its reasons; whether a fair and meaningful opportunity of hearing was afforded to the person affected; and whether the finding on a disputed fact rests on some evidence.¹⁰ The impugned order fails on the first, second and fourth of these grounds, and each failure goes to jurisdiction.

19. What the EDO did was not to correct a clerical slip. In the summary report of a Mukhtiarkar, he adjudicated that a person whose name appears nowhere in Form-A, the instalment receipts, the T.O. Form, or the record of rights had been a co-purchaser at an auction held in 1966, and he carved out a half share in land in which proprietary rights had been conferred on another twelve years earlier. Proceedings before a Revenue Officer are summary; complicated questions of law and disputed questions of fact lie within the exclusive domain of the civil court, and a Revenue Officer who decides such a question transgresses his limits.¹¹ The determination of a stranger's title under the guise of "correction" of the record is exactly the kind of act which Section 172 does not protect. It is also to be noted that the applicant himself never applied; the application was his son's, and the person against whom it was directed had died in 1968.

20. A proceeding instituted against a deceased sole person is a nullity in law; it is still-born and cannot be revived by any subsequent step, and conclusions recorded in it on the merits are of no legal consequence.¹² The impugned order was passed in the name of, and purportedly served on, a man who had been dead for thirty-nine years. The EDO's own order records that the notices came back unserved because the addressee "is not residing on site". No step was taken to locate or hear his heirs, whose names stood in the record through the ordinary process of foti khata. The applicant's son admitted that the family knew of the death and that the attorney for the plaintiffs lives at the corner of the suit land. The appellate court's conclusion that a deliberate attempt was made to procure an *ex parte* order behind the back of

¹⁰ *Nausher v. Province of Punjab* (n.9 above).

¹¹ *Sardar Muhammad v. Imam Bakhsh* 2021 SCMR 391.

¹² *Muhammad Yar v. Muhammad Amin* 2013 SCMR 464.

the plaintiffs is borne out by the order itself and by the admissions of the applicant's own witness.

21. The maxim *audi alteram partem* is read into every proceeding, judicial or administrative, in which the rights or property of a person may be affected, whether or not the statute says so.¹³ The Supreme Court has very recently held that an order of a revenue authority extinguishing proprietary rights in land without hearing the person affected was illegal on that score alone and offended Article 10-A of the Constitution.¹⁴ The plaintiffs' recorded rights were halved without a word being heard from them. That by itself was enough to invalidate the impugned order.

22. Even in the last of the tests, the impugned order rests on a Mukhtiarkar's reading of a bid sheet that has never been produced before any court. The same order records that every other document of the grant, from Form-A to the T.O. Form, stands in the sole name of Muhammad Yousif, and that every instalment was paid against his lot. An order creating a half share in favour of a stranger on the strength of a document that contradicts the entire chain of record and that no court has been permitted to see cannot be said to rest on evidence that any reasonable authority could act upon.

23. Under Article 117 of the Qanun-e-Shahadat Order, 1984 (hereinafter referred to as '**QSO, 1984**'), the party who asserts a fact on which he seeks judgment must prove it, and where no evidence is led by the party on whom the burden lies, the issue must be found against him. A revenue entry neither confers nor extinguishes title; a person who claims through an entry must prove the transaction behind it, and when the entry is disputed, the onus of proving the genuineness of the underlying transaction lies on the party relying on it.¹⁵ The applicant's title to a half share rests on nothing but Entry No. 491, which rests on nothing but the impugned order. He had to prove the transaction behind it: a joint bid and joint payment in 1966. He produced no bid sheet, no receipt, no colonization record, and no witness to the auction; his attorney admitted that he had none of these and did not even know what

¹³ *University of Dacca v. Zakir Ahmed* PLD 1965 SC 90.

¹⁴ *Senior Member, Board of Revenue, Punjab v. Abdul Shakoor* 2026 SCMR 605.

¹⁵ *Nasir Ali v. Muhammad Asghar* 2022 SCMR 1054, applying *Hakim Khan v. Nazeer Ahmed Lughmani* 1992 SCMR 1832.

price had been paid. The appellate court was right in law to hold that no one becomes a co-sharer by saying so.

24. The written statement met the plaint with denials “for want of knowledge”. An evasive denial of this kind is no denial within the meaning of Order VIII Rules 3 to 5 of the Code and may be treated as an admission.¹⁶ The applicant did not plead the one fact on which his entire case depends, namely that he bid and paid at the auction. The appellate court was entitled to treat the written statement as it did.

25. The trial court discarded Ex.18/C to Ex.18/F because they were photocopies. An objection to the mode of proof of a document is procedural and may be waived; if not taken when the document is tendered and the document is exhibited and acted upon, the objection cannot be raised later on appeal or in revision.¹⁷ The applicant neither cross-examined the witnesses nor objected to a single exhibit. In any event, the outcome does not turn on those copies. The grant to Muhammad Yousif, the payment of the instalments, the issuance of T.O. Form No.2937 and Entry No.270 are recited in the certified copy of the impugned order (Ex.18/G), a public document produced without objection; they are confirmed by the comments of the official respondents in this Court and were never disputed by the applicant, whose claim presupposes the grant and seeks only a share in it. Facts admitted on the pleadings need not be proved (Article 113, QSO, 1984).

26. It was urged that the plaintiffs did not enter the witness box themselves and that an attorney cannot depose to facts outside his personal knowledge. The facts in issue here are matters of public record, admitted by the other side. The plaintiffs are heirs of the recorded owner, attacking an order a few months old. The applicant, for his part, also stayed out of the witness box and sent his son. Whatever inference may be drawn from the choice of witnesses cuts both ways, and it cannot supply the applicant with the proof of the auction which the law required of him and which he never led.

27. The admissions of the applicant’s witness that he knew nothing of the suit land, and the testimony of the two witnesses of the locality that the applicant had never visited it, were before the appellate court and were

¹⁶ *Ghulam Rasool v. Muhammad Hussain* PLD 2011 SC 119.

¹⁷ *Gulzar Hussain v. Abdul Rahman* 1985 SCMR 301; *Muhammad Aslam v. Mst. Gulraj Begum* 1989 SCMR 1.

weighed. The trial court's observation that the plaintiffs' witnesses had not said that the applicant was not a co-sharer was, as the appellate court found, a misreading: every witness deposed that the applicant had no concern with the suit land, and the attorney's deposition was explicit. There is no misreading or non-reading in the impugned judgment; the misreading, such as it was, lay in the judgment it reversed.

28. A suit to set aside an act or order of a Government officer in his official capacity is governed by Article 14 of the First Schedule to the Limitation Act, 1908, which prescribes a period of one year from the date of the act or order.¹⁸ The impugned order is dated 10.07.2007, and the suit was presented on 29.11.2007. It was within time on any view. The plea of limitation was neither supported by evidence nor developed by argument, and was rightly rejected.

29. Section 56(d) of the Specific Relief Act bars an injunction from interfering with the public duties of a Government department. It has no application where the act complained of was done without jurisdiction and in breach of natural justice, and the relief actually granted restrains the private respondent from interfering with the plaintiffs' possession on the strength of a void entry. The trial court's finding on this issue was a corollary of its erroneous view that the impugned order was lawful and falls with it.

30. The foti khata badal of 26.11.2007 and the sale of 14.04.2008 by respondents Nos. 1 to 4 to their attorney were effected during the pendency of the suit. Under Section 52 of the Transfer of Property Act, 1882, a transfer made during the pendency of a suit in which a right to immovable property is directly in question cannot affect the rights of any other party under the decree, and the transferee takes subject to its result. The transfer neither abates the suit nor divests the plaintiffs of the right to prosecute it. That the plaintiffs could sell only a half share, the half left to them by the impugned order, is a consequence of that order and not an acceptance of it. These events furnish no ground for interference.

31. It remains to note that a civil court examining the legality of a revenue order may ordinarily confine itself to the record of the tribunal and need not

¹⁸ *Muhammad Din v. Deputy Settlement Commissioner* 2022 SCMR 1481.

re-try disputed facts.¹⁹ The grounds on which the impugned order falls, namely want of power, a proceeding against a dead man, and denial of hearing, are apparent from the face of the order and the record of the EDO. That a fuller trial took place is not an illegality that vitiates the decree, least of all at the instance of the party who contested the trial and led evidence of his own. The suit is of 2007, and the dispute concerns an auction of 1966; the appellate court decided every issue on a complete record after hearing both sides; this revision has itself been pending for a decade.

32. On the questions framed, therefore: the revisional jurisdiction permits interference only for misreading, non-reading, jurisdictional error or illegality, none of which has been shown; the suit was maintainable, and the applicant is, in any case, precluded by section 105(2) of the Code from contending otherwise; the impugned order was passed without jurisdiction, against a person long dead, and without hearing his recorded heirs, and is a nullity; the appellate court placed the burden where the law places it and appreciated the evidence without misreading; the suit was within time, Section 56(d) is not attracted, and the transfers made *pendente lite* are subject to the decree and do not affect it. The impugned judgment is a reasoned decision of the final court of fact, in accord with the law, and discloses no defect of the kind that Section 115 of the Code contemplates.

33. The Civil Revision Application is accordingly **dismissed**, and the judgment and decree dated 27.02.2016 of the appellate court are maintained. The costs of the courts below having been awarded by the appellate court in the exercise of its discretion, and no reason existing to interfere, the parties shall bear their own costs of this revision.

J U D G E

Abdul Basit

¹⁹ *Nausher v. Province of Punjab* (n.9 above); *Province of Punjab v. Zulfiqar* PLD 2026 SC 269.