

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Civil Revision No.S-41 of 2025

Applicants : 1. Ghulam Ali s/o Roshan Ali Channa.
2. Muhib Ali s/o Ghulam Ali Channa.
3. Sikander Ali s/o Chibhar Khan Magsi,
through Mr. Ghulam Muhammad Barijo,
Advocate.

Respondents : Waheed Ali Lashari & others
through Mr. Zeb Hussain Pathan,
Advocate

Date of Hearing : 07.08.2025.
Date of judgment : 07.08.2025.

J U D G M E N T

Ali Haider 'Ada':J.- Through this Civil Revision, the applicants have assailed the decree and judgment passed by the learned Senior Civil Judge, Shahdadkot, in F.C. Suit No. 88/2018, which was instituted against them by respondent No.1 and others. The said judgment was earlier challenged by the applicants through Civil Appeal No. 10/2025 before the learned Additional Sessions Judge-II, Shahdadkot, who upheld the findings of the learned trial Court. Being aggrieved by the concurrent findings of both the courts below, the applicants have filed the present Civil Revision against the impugned decisions.

2. The crux of the matter is that the respondents filed Civil Suit No. 88/2018, wherein they prayed for a declaration that Nazar Muhammad @ Naar Hussain Lashari was the owner of agricultural land bearing Survey Nos. 131 and 314, to the extent of a 50 paisa share, and that after his demise, they are entitled to inherit his share as his legal heirs. They further sought cancellation of the sale agreement as well as the registered sale deed dated 25.06.2000, which was executed in favour of the present applicants, who were cited as defendants before the trial Court. The said sale deed was allegedly executed between Nazar Muhammad @ Nazar Hussain and applicant No.2. Additionally, the respondents prayed for the eviction of the defendants from the suit property and sought a decree for permanent injunction. In response, the applicants appeared before the trial Court and filed their written statement, specifically pleading that they had lawfully purchased the property from Nazar Muhammad @ Nazar Hussain through

a registered sale deed, and denied any illegality in their ownership. Upon completion of initial proceedings, the learned trial Court framed the issues for determination. The issues are as follows.

1. *Whether predecessor in the interest of plaintiffs namely Nazar Muhammad @ Nazar Hussain was legal owner of agricultural land mentioned in the para No.1 of the plaint?*
2. *Whether said Nazar Muhammad @ Nazar Hussain gave the suit property to the defendant No.2 on the contract for the period of 08 years for an amount of Rs.80,000/-?*
3. *Whether predecessor in the interest of plaintiffs had sold out the suit land to the defendant No.2 under RSD bearing Jariyan.No.508 dated 25.06.2000 and same was followed in the record of right?*
4. *Whether defendant No.2 by virtue of impugned RSD is in possession of suit land?*
5. *Whether impugned RSD bearing Jariyan No.508 dated 25.06.2000 and revenue entry No.41 dated 06.01.2001 are false, fabricated and liable to be cancelled?*
6. *Whether on 20.02.2015 defendant No.2 sold out the land to one Sikander Ali Magsi in the sum of Rs.1600000/- by receiving advanced amount Rs.1300000/- and under sale agreement and possession was handed over to the Sikander Ali Magsi?*
7. *Whether the defendant No.1 and 2 was legally competent to sell out the suit property to defendant No.09 through sale agreement dated 20.02.2015?*
8. *Whether suit of plaintiffs is not maintainable according to law and time barred?*
9. *Whether the plaintiffs is entitled for the relief claimed?*
10. *What should the decree be?*

3. Thereafter, the evidence of the plaintiffs (respondents herein) was recorded, during which respondent No.1 appeared as a witness and produced/exhibited several documents, including an application to the DSP regarding the alleged illegal sale, reports from the Mukhtiarkar and the concerned SHO, a copy of a complaint filed under Sections 3 and 4 of the Illegal Dispossession Act, as well as statements of witnesses recorded by the police. After completion of the plaintiff's evidence, the matter proceeded further; however, the impugned judgment was passed without affording an opportunity to the defendants/applicants to lead their evidence.

4. Learned counsel for the applicants contends that the learned trial Court committed a serious error by not affording any opportunity to the applicants to record their evidence, a fact which is even acknowledged in the impugned judgment. He submits that the learned appellate Court also overlooked this procedural lapse and merely endorsed the findings of the trial Court. He further argues that proper procedure requires that the applicants be given a fair opportunity to adduce their evidence in order to determine the genuineness of the registered sale deed. Additionally, he submits that no valid cause of action has arisen, as there is a contradiction between the pleadings in the civil suit and those in the complaint filed under the Illegal Dispossession Act.

5. On the other hand, learned counsel for the respondents submits that a forged registered sale deed was made by the applicants, and that they have no lawful title or legal character over the disputed property. Therefore, according to him, the applicants are not entitled to retain possession of the said property.

6. Heard arguments and perused the material available on record.

7. Under the Civil Procedure Code, 1908 (CPC), Order XVIII lays down the mandate for the hearing of the suit and the examination of witnesses. In particular, Order XVIII Rule 2 provides the statutory mechanism for the production of evidence by the parties. For ready reference, **Order XVIII Rule 2** reads as follows:

Statement and production of evidence.- (1) On the day fixed for the hearing of the suit or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.

(2) The other party shall then state his case and produce his evidence (if any) and may then address the Court generally on the whole case.

(3) The party beginning may then reply generally on the whole case.

8. According to the mandate of Order XVIII Rule 2 CPC, both parties have the right to lead their respective evidence. However, upon perusal of the judgment of the learned trial Court, it is evident that this aspect is

completely missing, or in other words, the judgment is silent regarding any effort made to record the version of the applicants/defendants. The record clearly shows that the evidence of the applicants, who were cited as defendants in the trial Court, was never recorded. The judgment contains no observation or reasoning on any step taken for recording the defendants' evidence. It is the prime duty of the Court to ensure that both parties are afforded a fair and equal opportunity to adduce their evidence, particularly where the defendants claim to possess relevant documentary material in support of their case. Any findings must, therefore, be recorded only after providing such fair opportunity, in consonance with the principles of natural justice and the procedure prescribed under the CPC.

9. The settled mandate of law is that no person shall be condemned unheard, and every litigant must be afforded a fair opportunity to plead and defend their case. In the present matter, issues No. 2 and 3 framed by the learned trial Court directly pertain to the sale deed allegedly executed between the applicants and the elder of the respondents. Therefore, all necessary measures ought to have been taken to enable the applicants to adduce their evidence in this regard, and such exercise must be undertaken only after affording them a fair and reasonable opportunity. The principle of *audi alteram partem*, that no party should suffer without being heard is one of the foundational pillars of the administration of justice, and any departure from it undermines the fairness and legality of judicial proceedings. Reliance is placed upon the case of *Hashim Khan and another vs Mst. Musarat Begum and others* (2025SCMR 564).

10. Furthermore, Article 10-A of the Constitution of the Islamic Republic of Pakistan mandates that every person is entitled to a fair trial and due process, which inherently includes the fundamental right to be heard. For ready reference, Article 10-A is reproduced as under:

10-A. Right to fair trial. *For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process.*

11. The combined reading of Order XVIII Rules 1 and 2 of the Code of Civil Procedure, 1908, and Article 10-A of the Constitution makes it

abundantly clear that the trial court was under a legal and Constitutional obligation to ensure that both sides were allowed to produce their respective evidence before rendering a decision. Failure to do so offends both procedural law and the fundamental right to fair trial. Reliance is placed upon the case of *Federal Government Employees Housing Authority through Director General Islamabad vs Ednan Syed and Others* (PLD 2025 SC 11).

12. On a material proposition of fact, once an issue has been duly framed, the determination of such issue can only be made upon the evidence adduced by both sides, if, available. In the present case, the omission to record the evidence of the defendant side constitutes a clear procedural error, as it deprives the Court of the necessary factual foundation to adjudicate the matter in accordance with law.

13. Furthermore, it is the case of the applicants that they purchased the property in question from one Nazar Muhammad @ Nazar Hussain, who was the elder of the respondent/plaintiff side, and whose ownership has not been disputed. The applicants assert that they acquired the said property from Nazar Muhammad through a registered sale deed dated 25-06-2000. On such a material aspect, it was incumbent upon the Court to record the evidence of the applicant side and to examine and discuss the same in its judgment.

14. The power to remand a case is a judicial discretion which ought not to be exercised lightly or as a matter of routine. It is incumbent upon the Court to exercise due care and circumspection while invoking such jurisdiction. The Court must first examine the evidence already available on record, and if, upon such examination, it arrives at the considered conclusion that the available material is insufficient to enable it to pronounce a judgment or to conclusively determine the issues framed between the parties, it may, in the interest of justice, remit the matter for remand. Reliance is placed upon the case of *Rehman Shah and others Versus Sher Afzal and others* (2009 SCMR 462).

15. In the instant case, for a just, fair, and proper adjudication of the

controversy, when the rights of the parties are directly involved and substantially affected, and particularly in view of the fact that the evidence of the defendants has not been recorded, it would be in the fitness of things and in the interest of justice that the matter be remanded to the learned trial court for recording such evidence and deciding the matter afresh in accordance with law. Reliance in this regard is placed upon the judgments of the Hon'ble Supreme Court in the cases of *Ashfaq Hussain and another v. Ghulam Nabi and another* (2024 SCMR 1560), *Umer Bukhsh v. Nikku and others* (2004 SCMR 1555), and *Z.Z. Ahmed (Retd.) Deputy Inspector General v. National Bank of Pakistan* (PLD 1991 SC 363).

16. In view thereof, the instant Civil Revision is partly allowed. Consequently, the matter is remanded to the learned trial Court with the direction to record the evidence of the applicant side/defendants and thereafter proceed in accordance with the prescribed procedure under the Civil Procedure Code for completion of the trial. The learned trial Court shall, after recording such evidence, hear both parties and decide the matter on merits, strictly in accordance with law, preferably within a period of three months from the date of receipt of this order. The opportunity to adduce evidence is granted to the applicant/defendant side and if they fail to avail the same without sufficient cause, the trial court shall record detailed reasons for such failure in the proceedings and thereafter proceed further in accordance with the procedural law as provided under the Civil Procedure Code.

17. For the foregoing reasons, the instant Civil Revision stands disposed of in the above terms, with no order as to costs.

JUDGE