

HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS

Civil Revision Application No.S-403 of 2024

Before

Mr. Justice Dr. Syed Fiaz ul Hasan Shah.

Applicants: 1. Allah Bachayo son of Gul Muhammad,
Since dead through his legal heirs,
a. Gul Mohammad S/o Allah Bachayo,
b. Mst. Amnat D/o Allah Bachayo,
Since dead through her legal heirs
i. Mst. Fatima d/o Ameer Bux w/o Noor Hassan.
ii. Mst. Azeeman d/o Ameer Bux w/o Ali Akber
Through their special attorney Gul Muhammad
s/o Allah Bachayo.
Through Mr. Kanjimal Meghwar advocate.

Respondents: 1 Shafi Muhammad S/o Rajab Palli,
2 Ahmed S/o Rajab Palli
Since dead through his legal heir,
Shafi Mohammad son of Rajab Palli,
Since dead through his legal heirs:
a. Rajab Ali s/o Shafi Mohammad.
b. Mst. Zainab wd/o Shafi Mohammad
c. Moharam s/o Shafi Mohammad
d. Janib s/o Shafi Mohammad
e. Mst. Inayat d/o Shafi Mohammad
f. Mst. Latifan d/o Shafi Mohammad
g. Mst. Meena d/o Shafi Mohammad
h. Mst. Hajani d/o Shafi Mohammad
3 Usman s/o Ghulam Mohammad
4 Hameed s/o Ghulam Mohammad
5 Khamoon @ Khamiso S/o Arab,
6 Akram s/o Arab
7 Meenhal S/o Noor Mohammad, .
8 Mataro s/o Meenhal
Since dead through his legal heirs.
a. Mst. Mariyat widow.
b. Hanif, son.
c. Manthar , son.
d. Moni, daughter.
9 Noor Mohammad S/o Meenhal.
Private respondents through Mr. Gulab Khan
Kaimkhani assisted by Mr. Nasir Ahmed Khan
advocate and Mr. Muhammad Ather Ali Khan
advocate and Mr. Faisal Nadeem Abro advocates.
10 The Mukhtiarkar Revenue Samaro,
11 Deputy District Officer Revenue Samaro
12 Sub Registrar Samaro,
13 The Province of Sindh, though Secretary Revenue
Government of Sindh.
Official respondents through Mr. Muhammad Sharif
Solangi, Assistant A.G.

Civil Revision Application No.S-404 of 2024

- Applicants:
1. Gul Mohammad S/o late Allah Bachayo,
 2. Mst. Amnat D/o late Allah Bachayo,
Through Mr. Kanjimal Meghwar, advocate.
Since dead through her legal heirs
 - i. Mst. Fatima d/o Ameer Bux w/o Noor Hassan.
 - ii. Mst. Azeeman d/o Ameer Bux w/o Ali Akber
Through their special attorney Gul Muhammad s/o Allah Bachayo.
Through Mr. Kanjimal Meghwar, Advocate.
- Respondents:
1. Shafi Mohammad S/o Rajab Ali Palli,
 - 2 Ahmed S/o Rajab Palli
Since dead through his legal heir
Shafi Mohammad son of Rajab Palli,
Since dead through his legal heirs:
 - a. Rajab Ali s/o Shafi Mohammad.
 - b. Mst. Zainab wd/o Shafi Mohammad
 - c. Moharam s/o Shafi Mohammad
 - d. Janib s/o Shafi Mohammad
 - e. Mst. Inayat d/o Shafi Mohammad
 - f. Mst. Latifan d/o Shafi Mohammad
 - g. Mst. Meena d/o Shafi Mohammad
 - h. Mst. Hajani d/o Shafi Mohammad
Private respondents through Mr. Gulab Khan Kaimkhani advocate assisted by Mr. Nasir Ahmed Khan advocate and Mr. Muhammad Ather Ali Khan advocate.
 - 3 The Mukhtiarkar Revenue Samaro,
 - 4 The Sub Registrar Samaro,
 - 5 The Province of Sindh, through its Secretary Revenue/ Senior Member Board of Revenue Government of Sindh.
Official respondents through Mr. Muhammad Sharif Solangi, Assistant A.G.

Civil Revision Application No.S-416 of 2024

- Applicants:
1. Mataro S/o Meenhal
Since expired on 04-04-2021 and left following legal heirs:
 - a. Mst. Mariat, Widow.
 - b. Hanif, son.
 - c. Manthar, son.
 - d. Moni, daughter.
 - 2 Usman s/o Ghulam Mohammad
 - 3 Hameed s/o Ghulam Mohammad
 - 4 Khamoon @ Khamiso S/o Arab
 - 5 Akram s/o Arab
 - 6 Ghulam Mohammad s/o Arab
 - 7 Meenhal S/o Noor Mohammad

- 8 Noor Mohammad S/o Meenhal
Through Mr. Faisal Nadeem Abro, advocate.

- Respondents:
1. Province of Sindh, through Revenue Secretary, Sindh Secretariat Karachi.
 2. Mukhtiarkar Revenue Taluka Samaro, District Umerkot.
 3. Assistant Commissioner Taluka Samaro, District Umerkot.
 4. Sub Registrar Samaro, District Umerkot.
 5. District Registrar Mirpurkhas.
 6. Registrar Micro Filming Mirpurkhas.
- Official respondents through Mr. Muhammad Sharif Solangi, Assistant A.G.
7. Shafi Mohammad S/o Rajab Ali Palli,
 8. Ahmed S/o Rajab Palli
- Since dead through his legal heirs:
Shafi Mohammad son of Rajab Palli,
- a. Rajab Ali s/o Shafi Mohammad.
 - b. Mst. Zainab wd/o Shafi Mohammad
 - c. Moharam s/o Shafi Mohammad
 - d. Janib s/o Shafi Mohammad
 - e. Mst. Inayat d/o Shafi Mohammad
 - f. Mst. Latifan d/o Shafi Mohammad
 - g. Mst. Meena d/o Shafi Mohammad
 - h. Mst. Hajani d/o Shafi Mohammad
- Private respondents through Mr. Gulab Khan Kaimkhani advocate assisted by Mr. Nasir Ahmed Khan advocate and Mr. Muhammad Ather Ali Khan advocate.

Date of hearing : 12.03.2025

Date of Order : 19.05.2025.

ORDER

Dr. Syed Fiaz ul Hasan Shah, J: These three Civil Revision Applications are directed against the impugned Judgment dated 15-02-2017 and decree dated 18-02-2017 passed by the learned 1st Additional District Judge, Umerkot in Civil Appeals No.15, 16 and 17 of 2016 affirming the Judgment and Decree dated 31-05-2016 passed by the learned 1st Senior Civil Judge, Umerkot, in consolidated three suits i.e. F.C. Suits No.60/2015 (old No.35/2011), 94/ 2015 and 95/ 2015 whereby suit i.e. No.60/2015 (old No.35/2011) was decreed while F.C.Suit No.94/ 2015 and F.C.Suit No.95/ 2015 were dismissed, were

maintained and all Civil Appeals were dismissed, have preferred instant Revision applications.

2. The brief facts giving rise to Civil Revision Application No.S-403/2024 are that Respondents No.1 and 2 (Shafi Muhammad and Ahmed) being plaintiffs had filed F.C. Suit No. 35/2011 for declaration, possession, permanent injunction and mense profits in respect of their ancestral agricultural land measuring 220 Acres situated in Deh Bhurgari and land measuring 104 Acres situated in Deh Sohnari, Taluka (Tehsil) Samaro, District Umerkot which land is a joint shareholding amongst legal heirs. The land measuring 104 Acres situated in deh Sanhro description is as under:-

133/AB, 134, 135/ABC, 136/AB, 162/AB, 163, 168/B,
181/AB, 182/B, 183/AB, 184/BC, 185, 187, 188, 190,
191, 192/B, 193/B, 203, 413, 414, 415 = 104-28 acres.

3. The Respondents/plaintiffs have got 25-15½ share in the above said land as Ghulam Mohammad (now deceased), Meenhal S/o Abdul Rehman and Mst. Marfat widow of Ishaque and respondents/ plaintiffs were surviving legal heirs of Mohammad Ishaque Palli and accordingly they got 25-15½ land each in deh Sanhro as their share and in this way Ghulam Mohammad, Meenhal, Mst. Marfat and respondents have got equal share in the land admeasuring 220 acres situated in deh Bhurghari taluka Samaro. The aforesaid land is also situated on Water Course No.B-4 and Water Course No B-2 respectively. However Ghulam Mohammad has died and he left legal heirs namely Usman, Ameen and Arab from which Arab also died having left son Ghulam Mohammad, who also left his son Khamoo @ Khamiso, Ghulam Mohammad and Akram; Meenhal is father of Mataro, Noor Mohammad, who are share-holders in the land through their father as

Meenhal has given some land to his son by way of gift in deh Sanhro. Similarly in deh Bhurgari taluka Samaro there is total land 573-30 acres from which an area 220-00 acres is in the share of respondents and respondents No.3 to 9, thus the respondents/ plaintiffs and respondents No.3 to 7/ defendants No.2 to 5 being legal heirs of late Ghulam Mohammad and Arab Palli so also Meenhal, Mataro and Noor Mohammad and respondents as legal heirs of great grandfather Mohammad Ishaque s/o Khair Mohammad Palli and by said way they become share holder in the land left by Mohammad Ishaque Palli in deh Sanhro and deh Bhurghari as under:

Block Nos. 133/AB, 134, 135/ABC, 136/AB, 162/AB, 163, 180/B, 181/AB 182/B, 183/AB, 184/BC, 185, 187, 188, 190, 191, 192/B, 193/B, 203, 413, 414, 415

4. The common Ancestor of Respondents namely Ghulam Mohammad since died, Meenhal, Rajab s/o Shafi Mohammad since died. Mst. Marfat widow of Ishaque since died; hence the legal heirs of Ghulam Mohammad have been joined as party. Meenhal is alive and he has given certain land from his share to his son Mataro and Noor Mohammad hence they are also necessary and proper party. It is case of the respondents/plaintiffs that they were in physical possession and occupation of land admeasuring 13 acres from S.No.185 and 192-B situated in deh Sanhro by way of private partition and other land of their share 12-15 ½ from share 25-15½ each in joint possession of respondents/ defendants No.2 to 8. Even the applicant/ defendant No.1 is by caste Rind and allegedly he has got no share in the land left by Muhammad Ishaque Palli in deh Sanhro, however applicant/ defendant No.1 claims ownership of land admeasuring 14-35 acres situated in deh Bhurgari alleging therein that his brother purchased a

land in deh Sanhro and deh Bhurgari from one Shamsuddin Bhurghari by way of sale deed in 1965 or 1966 although the sale deed is fictitious and forged document prepared by the applicant/ defendant No.1 and his brother Haji Haroon as Shamsuddin Bhurghari was principal of college and was literate person who died in 1961 and he was not alive in 1965 although Shamsuddin was not owner of land in deh Bhurghari and deh Sanhro as mentioned in fictitious sale deed. Similarly alleged sale deed was neither acted upon and nor accepted by concerned authority, hence mutation was not effected in record of rights nor applicant/ defendant No.1 made any effort or asserted any ownership on the basis of alleged sale deed since 1966.

5. The Applicant of R.A. No.403/2024 had filed F.C. Suit No. 54/2009 for declaration, cancellation of entries and permanent injunction on 15-6-2009 wherein applicant/defendant filed written statement, issues were framed and matter came up for evidence, but applicant Allah Bachayo withdrawn same suit on 26-3-2011 thus applicant/ defendant No.1 and his brother Haji Haroon (since died) by way of fraud prepared fictitious and forged document on stamp paper of Rs.10 bearing 1155 dated 04-11-1979 wherein Applicant/ defendant No.1 falsely mentioned that Ghulam Mohammad (since died) father of respondents No.3 and 4/ defendants No.2, 3, and Arab have given land admeasuring 66-15 acres situated in deh Sanhro to the applicant/ defendant No.1 and his brother Haji Haroon consisting of block Nos. 133/ABC, 134, 135/ABC, 136/ABC, 162/AB, 163, 203, 413, 414, 415, 420, 421. It is further case of respondents No.1&2/ plaintiffs that Ghulam Mohammad was not the exclusive owner of the above land nor he could alienate the same in favour of applicant/ defendant No.1

and his brother leaving beside other share-holder i.e respondents/ plaintiffs and others as Ghulam Mohammad had never signed said document as neither he was legal heir nor other share-holders having any knowledge nor any share holder given any power of attorney, however applicant/ defendant No.1 withdrawn his suit No. 54/2009 (New No.70/2010) with permission to file fresh on the ground that there are formal defects in the suit and there is a compromise, but respondents/ defendants Meenhal, Mataro, Noor Mohammad due to misrepresentation compromised with the applicant/ defendant No.1 in respect of share in suit land by showing relinquishment deed of their rights. However, the respondents/ plaintiffs filed objections as the compromise was illegal, thus the land in share of respondents/ plaintiff is 12 acres in deh Sanhro is in illegal possession of applicant/ defendant No.1 and his son Gul Mohammad since last 30 years, although same is owned by respondents/plaintiffs under inheritance. Hence law of limitation is not applicable as applicant/ defendant No.1 is encroacher and in collusion with respondents/ defendants Meenhal, Mataro and Noor Mohammad intend to usurp the share of respondent/ plaintiff Muhammad Shafi i.e 12-15½ as the land in question has not been officially partitioned as entire land is in joint khata of Respondents / plaintiffs and respondents/ defendants No.2 to 8 whereas Respondents No.10 and 11/defendants No.9 and 10 are legally bound to make a partition of land according to share. Hence, the Respondents/ plaintiffs filed suit with prayer as under:

- a. Declare that out of suit land the plaintiffs are only in possession of 13-0 acres by way of private partition consisting of S.No. 185 and 192/B while the balance land measuring 12-15 ½ are in illegal possession of defendant No.1 and others

- b. Declare that the plaintiffs are entitled to the land of 12-15 ½ acres as their share in land in deh Sanhro Taluka Samaro.
- c. Declare that the compromise made between defendant No.1 and defendants No.6 to 8 in respect of the land situated in deh Sanhro and deh Bhurgari is illegal, void against the law as the property is joint property and the same has not been officially partitioned.
- d. Direct the defendant No.1 and other defendants to hand over the possession of the above lands to the plaintiffs with further directions to make payment of mesne profit of the period of last 30 years.
- e. Issue directions to the defendant No.9 and 10 to make partition of the land in suit officially according to share between plaintiff and defendants No.2 to 8
- f. Issue permanent injunction against defendants No.2 to 8 and defendants No.9 to 11 not to alienate the land by way of entering into compromise with defendant no.1 in respect of suit land and also all the defendants may be restrained not to mortgage, gift, exchange by way of compromise or create any third party interest through defendant No.11 till the suit land are partitioned by defendants No.9 and 10 by themselves their agents, attorneys, friends or any means what so ever.
- g. Cost of the suit be borne by defendants.
- h. Any other relief be granted as may deem fit and proper under the circumstances of the case.

6. The Respondents No. 3 to 9/ defendants No.2 to 8 filed their written statement wherein they mostly admitted averments of plaint, but have disputed that Respondents No.1&2 are not in possession of S.No.185 and 192-B in Deh Sanhro and that the same are being cultivated by them and denied that 12-15½ share of respondents No.1&2/ plaintiffs from 25-15½ acres is in possession of respondents No.3 to 9/ defendants No.2 to 8 as they are in possession of their respective share. They further stated that they are in possession of S.No.185 and 192-B wherein there is no share of the respondents/ plaintiffs. Although aforesaid respondents No.3 to 9/ defendants No.2 to 8 admitted that land mentioned in para No.1 of the plaint is on joint

khata and is officially un-partition. They lastly stated that under above circumstances suit of respondents/ plaintiffs is liable to be dismissed.

7. The Respondents No.12 and 13/ defendants No.11 and 12 being government officials also filed their written statement vide Ex-24 wherein they stated that gift was made on oral statement before Tapedar as is evident from Photo copy of form VII. They also stated that alleged sale deed was registered in the year 1965-66 whereas office of Sub Registrar Samaro was started functioning w.e.f 01-7-1990. Thus they have no relevancy as forged document was not registered in their office. On the contrary gift was made on oral statement before Tapedar hence suit of the respondents/ plaintiffs is liable to be dismissed.

8. The Applicants/ defendant No.1 (a & b) filed their joint written statement wherein they come forward with certain legal pleas that suit is not maintainable as the respondents No.1&2 /plaintiffs have no cause of action even suit is hopelessly time barred as much as suit is also bad for mis-joinder and non-joinder of necessary parties. They specifically denied the share of the respondents/ plaintiffs to the extent of 25-15 ½ acres in block No. 133-A to C, 134, 135-A to C, 136-A and B, 162/AB, 163, 203, 413, 414, 415, 420, 421 total admeasuring 66-15 acres. On the contrary aforesaid block numbers have been purchased for valuable consideration by ancestors of defendants which are settled on Water Course No.2L of Qabool Shakh whereas the rest block numbers of the respondents/ plaintiffs are settled on Water Course No.4L of Qabool Shakh and both the land of parties are intervened by two separate water courses i.e 3-L and 17-AL. They admitted para No.4 of plaint but further added that block No.133-A to C, 134, 135-A

to C, 136-A and B, 162, 163, 203, 413, 414, 415, 420 and 421 total admeasuring 66-15 acres long ago with other lands block No.199 and total admeasuring 571-11 acres from which an area admeasuring 14-25 acres are situated in deh Bhurgari out of which an area of 66-15 acres is in dispute originally belonging to one Shamsuddin even ancestors of defendants namely Allah Bachayo and his brother Haji Haroon since expired under sale deed dated 07-1-1966 purchased 81-10 acres from Shamsudin including disputed land of deh Sanhro admeasuring 66-15 acres thus suit land admeasuring 66-15 acres of deh Sanhro has not been mutated in the name of ancestors of defendants and his late brother Haji Haroon which was also inherited by ancestors of defendants on the death of Haji Haroon in revenue record as same was under encumbrances inspite of the repeated efforts by ancestors of defendants as much as one Ghulam Mohammad S/o Qasim ancestor of respondents No.3 to 6/ defendants No 2 to 5 was also under joint holding of rest area and on a matter of partition a dispute arisen between ancestors of defendants and late Ghulam Mohammad in the year 1979 and in exchange whereby disputed land admeasuring 66-15 acres was exclusively given to the ancestors of defendants and his brother vide exchange deed dated 04-11-1979 duly attested by Additional District Magistrate Mirpurkhas and since then defendants are in peaceful possession and enjoyment of aforesaid area of their own rights and title.

9. Eventually, in the month of June 2009 the respondents/ plaintiffs with other co-sharers i.e respondents No.3 to 9/ defendants No.2 to 8 tried to obtain clearance certificate on the basis of some tampered mutation under collusion of revenue staff as such ancestors of

defendants filed F.C. Suit No. 54/2009 having old No. 70/2010 before the court for declaration, cancellation of entries, mandatory and permanent injunction, but in the meantime Respondents No. 8 and 9/ defendants No.7 and 8 with their brother Ishaque who is not a party in the suits, reached to record a compromise with the predecessor of the applicants/ defendants in order to relinquish their rights share in respect of suit land, but the same was not effected due to objections from respondents No.1 and 2/ plaintiffs' side, being party in above suit.

10. Consequently, the Applicant on 26-3-2011 withdrawn said suit with permission to file fresh. On the other, the respondents No.1 and 2 filed suit. They also denied that 12-15½ share of the respondents No. 1 & 2/ plaintiffs from 25-15 ½ is in possession of respondents No.3 to 9/ defendants No.2 to 8 under joint holdings as alleged. They have also denied that ancestor of Respondents No.1 to 9 had no concerned with the land left by Ishaque and supported the Applicant by stating that land admeasuring 14-35 acres situated in deh Bhurghari was purchased by the predecessor in interest of Applicant and his brother late Haji Haroon through sale deed in the year 1966 and the same was mutated in the name in revenue record. They further stated that said land admeasuring 66-15 acres purchased by the Applicant and his brother Haji Haroon from block number shown herein above become short in area as such in order to complete the purchased area, an exchange deed was effected on 04-11-1979. They specifically denied that Shamsuddin expired in the year 1961 and that he was not owner of land in deh Sanhro and deh Bhurgari. On the other hand, the said Respondents No.3 to 9 have asserted that sale deed executed in favor of ancestor of Respondents/defendants and his brother Haji Haroon

are managed and fictitious documents. However, they admitted that mutation could not be effected in favour of Applicant's predecessor or his brother Haji Haroon on false hopes and pretext that suit land is under encumbrances. The Seller of alleged Sale Deed namely Shamsuddin was also one of the share-holder but they have denied that Respondents No.6 and 7/ defendants Meenhal and Mataro due to misrepresentation and fraud, compromised with predecessor of the applicants/ defendants. However, they have admitted that Respondent No.1 and 2 have filed objections against the compromise application between applicant and respondents No.3 to 8. Lastly, they also denied that they are encroachers and now in collusion with respondents/ defendants Meenhal, Mataro and Noor Mohammad wants to usurp the share of respondents/ plaintiffs as land in suit already privately partitioned and such partition have already effected since 1979 and is not in joint possession of the respondents/ plaintiffs and respondents No.3 to 9/ defendants Mo.2 to 8 hence there is no question of effecting of partition by respondents No.11 and 12/ defendants No.10 and 11, thus respondent/plaintiff No.1 has no share 17-10 acres in joint khata in the land admeasuring 220 acres situated in deh Bhurgari Taluka Samaro. They too admitted that Meenhal has gifted his share to his son Mataro and Noor Mohammad; hence suit is liable to be dismissed.

11. The brief facts giving rise to Civil Revision Application No.S-404/ 2024 are that applicants/ plaintiffs Gul Muhammad and Mst. Amnat filed F.C. Suit No. 95/ 2015 (old No. 88/ 2012) for declaration, cancellation of entries, mandatory and permanent injunction stating therein that agriculture land comprising of B.No.133/ABC, 134, 135/ABC, 136/AB, 164/AB, 163, 203, 413, 414, 415, 420, 421 total

admeasuring 66-15 acres with other block numbers total admeasuring 104 acres originally belonged to one Shamsuddin and ancestors of applicants/ plaintiffs namely Allah Bachayo and Haji Haroon since expired under sale deed dated 07-1-1966 purchased 88-10 acres from joint holdings from its original owner from which an area 14-35 acres is situated in deh Bhurgari whereas an area 66-15 acres in deh Sanhro and since the said land was under encumbrances hence mutation was not effected in the name of ancestors of applicants/ plaintiffs namely Allah Bachayo and Haji Haroon in revenue record, but an area admeasuring 14-35 acres of deh Bhurgari was mutated in the name of ancestors of applicants/ plaintiffs namely Allah Bachayo and Haji Haroon in revenue record but an area admeasuring 14-35 acres of deh Bhurgari was mutated in the name of ancestor of applicants/ plaintiffs namely Allah Bachayo since expired.

12. It is further case of applicants/ plaintiffs that one Ghulam Muhammad S/o Qasim Palli was also under joint holdings of remaining area of deh Sanhro with the ancestor of the applicants/ plaintiffs as such dispute was arose over the partition of the dispute land with ancestor of applicants/ plaintiffs and said Ghulam Mohammad Pali in the year 1979 which was ended in exchange, whereby suit land was exclusively given to the ancestor of applicants/ plaintiffs namely Allah Bachayo and his brother Haji Haroon under private partition vide exchange deed dated 04-11-1979 duly attested by Additional District Magistrate Mirpurkhas and since year 1979 applicants/ plaintiffs are in physical possession and enjoyment of suit land as its exclusive owner through their ancestor Allah Bachayo and Mohammad Haroon in their own rights. However lateron brother of the ancestor of applicants/

plaintiffs namely Haji Haroon expired, thus ancestor of applicants/ plaintiffs namely Allah Bachayo inherited the whole share in the suit land having become full rupee owner who continuously has been trying to get a mutation of suit land in his name through respondents/ defendants No.4 and 5, but they refused on or other pretext as much as lateron Ghulam Mohammad Palli also expired leaving behind Usman, Khamoon @ Khamiso, Ghulam Mohammad S/o Arab, Akram, Hamid, Meenhal S/o Noor Mohammad as his legal heirs whereby Meenhal gifted his share to his son Mataro, Noor Mohammad and Ishaque. It is further case of applicants/ plaintiffs that all of a sudden in June 2009 the L.Rs of late Ghulam Mohammad with the ancestor of respondents/ defendants No.1 and 2 under collusion of respondents/ defendants No.3 and 4 taken advantage of non-mutation of suit land in the name of the applicants/ plaintiffs, in disregard of exchange deed, executed by late Ghulam Mohammad Palli in favour of ancestor of the applicants/ plaintiffs, succeeded in tampering with revenue record and got mutation of suit land in their favour and clearance certificate to alienate at the land of some strangers by dispossessing the ancestor of applicants/ plaintiffs from the suit land for which an application was moved by ancestor of the applicants/ plaintiffs to the concerned authorities for redressal of their grievance but revenue authorities due to political influence, turned down the request of applicants/ plaintiffs as such applicants/ plaintiffs through their ancestors filed F.C Suit No 54/2009 before the Court and during pendency of suit the L.Rs of defendant No.1 namely Mataro and others sons of Meenhal entered into compromise by moving such application U/O XXIII Rule 3 C.P.C but respondents/ defendants No.1 and 2 objected such compromise hence applicants/ plaintiffs having no other way withdrawn said suit

with permission to file a fresh in respect of same subject matter which permission was granted vide order dated 25-3-2011. They prayed as under:

- a. Declaration that plaintiff is owner of the suit land in view of exchange deed dated 04-11-1979 having him every right to the same mutated in his own name through the defendants No.3 and 4 who are under legal obligation to do the needful.
- b. Declaration that the compromise entered into the legal heirs of Ghulam Mohammad in F.C. Suit No. 54/2009 old No. 90/2009 New, with the ancestor of the plaintiffs was legal, void and was of binding nature on the defendants No.1 and 2.
- c. That the mutation of the suit land in the names of the defendant No.1 and 2 in revenue record being illegal, fraudulent, bogus, managed and collusion is of no legal effect on the rights of the plaintiffs and is liable to be cancelled and delivered up.
- d. That the defendants No.3 and 4 be directed through mandatory injunction to cause the mutation of the suit land in name of the plaintiff at once acting on exchange deed dated 04-11-1979 in between plaintiff and ancestor of the defendants No.1 and 2 under cancellation of the suit land in name of defendants No.1 and 2.
- e. To grant permanent injunction restraining and prohibiting the defendants No.1 and 2 from creating third party interest on basis of bogus, documentation under collusion and connivance of defendants No.3 to 6 or to interfere in peaceful possession and enjoyment of the suit land by plaintiffs themselves through men, agents, servants, etc in any manner whatsoever without due course of law.
- f. Cost of the suit be borne by the defendants.
- g. Any other relief deems fit and proper awarded to the plaintiffs.

13. The Respondents/ defendants were served and respondent/ defendant Shafi Mohammad has filed similar written statement as already filed in F.C Suit No.83/2012; said written statement too has been adopted by respondent/ defendant No.2 through statement which need not to be reproduced here for sake of brevity.

14. The Applicants (Respondents No.3 to 9 in leading R.A. No.403/2024) have raised point in their Civil Revision Application No.S-416 2024 that Applicants had filed F.C. Suit No. 94/ 2015 (old No. 83/ 2012), the facts are similar in all three Revision applications. The said Respondents No. 3 to 9 have sought relief for declaration, cancellation of mutation and permanent injunction against both Respondents No.1&2 who are the plaintiffs in leading suit stating therein that agricultural land situated in deh Sanhro total admeasuring 231-18 acres out of which an area 104-28 acres and 571-11 acres of Bhurgari Taluka Samaro and out of which an area admeasuring about 260 acres being 0-52 paisas share had originally belonged to late Muhammad Ishaque Palli and after his demised, it has been inherited by Mst. Marfat widow, Meenhon alias Meenhal S/o Noor Mohammad, paternal cousin and Ghulam Mohammad son of Mohammad Qasim, paternal uncle whereas ancestor of respondents No.7 and 8/ defendant No.1 and 2 Rajab son of Shafi Muhammad was a paternal cousin of original owner of late Muhammad Ishaque. According to them, under Muhammadan law of inheritance Mst. Marfat being widow of late Muhammad Ishaque was also entitled to inherit 0-25 paisas share whereas paternal cousin namely Meenhoon alias Meenhal and Ghulam Muhammad were entitled to inherit 371-2 share each to the quite exclusion of maternal cousin of deceased Muhammad Ishaque namely said Rajab. However, Ghulam Mohammad had also died leaving behind him Mst. Hamida and Arab as legal heirs who have inherited their share in the suit land to the extent of 0-37½ paisas. Arab also expired having left son Khamoon @ Khamiso, Akram and Ghulam Mohammad, beside his brother Meenhal as L.Rs of late Muhammad Ishaque Palli being defendants No.1 to 8 only to inherit the suit land in

both Dehs. Apart from above, beside the suit land the other landed property shown in schedule A in deh Bhurgari to the extent of 14-35 acres and an area admeasuring 56-15 acres of deh Sanhro was owned by one co-sharer namely Shamsuddin Bhurgari under sale deed dated 07-1-1966 sold his share to one Haji Haroon and his brother Allah Bachayo and such mutation in respect of land shown in deh Bhurgari by co-sharer Shamsudduin was also mutated in village form VII B. However the land sold by late Shamsuddin to aforesaid Haji Haroon and Allah Bachayo of deh Sanhro could not be mutated having a dispute over the partition of block number between co-sharer which dispute was also ended under relinquishment of block Numbers 133, 134/ABC, 135/ABC, 136/AB, 162/AB, 163, 203, 413, 414, 415, 420 and 421 admeasuring 56-15 acres in favour of said Haji Haroon and Allah Bachayo by their ancestor namely Ghulam Mohammad son of Mohammad Qasim during his life time under agreement dated 04-11-1979 duly attested by Assistant District Magistrate Mirpurkhas. However subsequently in the year 1982 the ancestor of applicants/plaintiffs No.,4 and 5 namely Arab filed F.C. Suit No. 323/1992 against Meenhoon @ Meenhal and other claiming the gift of suit survey No. 190 and 91 of deh Sanhro admeasuring 87 acres and said suit was compromised whereby said Arab acquired S.No.190 and 91 being gifted property from Mst. Marfat to him, but inspite of that ancestor of respondents/ defendants No.1 and 2 in the year 1981 under invalid and bogus claim of the inheritance through fraudulent bonafide beliefs with applicant/ plaintiff No.2 succeeded in getting mutation of inheritance of suit land situated in deh Sanhro to the extent of 24½ paisas and 0-3 paisas share in deh Bhurgari in their favour through respondent No.2/defendant No.3 under collusion and political

influence without physical possession, hence they started claiming to be a co-sharer with ancestor of applicants/ plaintiffs in the suit land in both Dehs illegally having no such right of inheritance under the law. It is further case of the applicants/ plaintiffs that in the mean time in the year 2009 Allah Bachayo Rind F.C. Suit No. 54/2009 (New No.70/2010) for cancellation of entry, mandatory and permanent injunction against the applicants/ plaintiffs and respondents No.7 and 8/ defendants No.1 and 2 before this court which was contested by respondents No.7 and 8/defendants No.,1 and 2 wherein during pendency of said suit plaintiffs in leading suit namely Mataro and Noor Muhammad entered into compromise with said Allah Bachayo Rind. However such compromise was objected by the respondents No.7 and 8/ defendants No.1 and 2; consequences thereto Allah Bachayo withdraw said suit with permission to file fresh having accorded said permission vide order dated 26-3-2011. Thus on 10-4-2011 respondents No.7 and 8/ defendants No.1 and 2 filed first time suit for declaration, possession, permanent injunction and mense profit in respect of an area admeasuring 13 acres from S.No.185 and 192/3 wherein applicants/ plaintiffs were also made as defendants No.2 to 8 claiming their share of 12-15 ½ acres, plaint was rejected and appeal was filed which was allowed and case was remanded back to decide afresh.

15. The Respondents No.7 and 8/ defendants No.1 and 2 after remand of suit w.e.f 30-9-2012 started interference into the Respondent No.1&2 /plaintiffs' peaceful possession on the basis of said mutation in the record of rights in both Dehs but could not succeeded. The Applicants/ plaintiffs lastly stated that they have also

obtained a *Fatwa* from Scholar on 08-10-2012 whereby according to inheritance rights of the respondents No.7 and 8/ defendants No.1 and 2 (Shafi Mohammad & Ahmed) through their ancestors Rajab in suit land in both dehs were found to be illegal, void and fraudulent having no legal effect and against the right of applicants/ plaintiffs; hence this suit with prayers as under:

- a Declaration that the plaintiffs are only the living legal heirs of late Muhammad Ishaque son of Khairo Pali to the quite exclusion of the defendants No.1 and 2 or their ancestor Rajab son of Shafi Mohammad and are in peaceful enjoyment of the suit lands in both Dehs Seenhro Bhurgari to the extent of share of late Mohammad Ishaque in their own rights, title and interest.
- b. Declaration that the impugned fictitious mutation of of 24 1/4 share in the suit land of deh Seenharo and 0-3 paisas share in suit land of deh Bhurgari in the name of ancestor of the defendants No.,1 and 2 late Rajab son of Shafi Mohammad coupled with foti khata badal of the same in names of the defendants No.1 and 2 under collusion and connivance of defendants No.3 to 8 are illegal, void, abinitio, fraudulent, result of misrepresentation and as such is of no legal effect on the rights of the plaintiffs and the same is liable to be delivered up and cancelled.
- c. Court to order the cancellation of impugned mutation in village form VII B of both Dehs in which the suit land are situated from the names of the defendants No.1 and 2 being illegal and inexistent in the eyes of law.
- d. Court to grant permanent injunction restraining and prohibiting the defendants No.1 and 2 from interfering into peaceful possession and enjoyment of the plaintiffs over the suit land in deh Seenharo and Bhurgari under claim of its co-sharers on basis of impugned illegal and fraudulent mutation in the record of rights in their names under collusion and connivance of defendants No.3 to 8 themselves through their men, agents, servants, police, agencies etc without due course of law.
- e. Cost of the suit will be borne by the defendants.
- f. Any other relief deems fit and proper awarded to the plaintiffs.

16. The written statement filed in R.A. No.416/2024 by the Official Respondent No.2/ defendant No.3 for himself as well as on behalf of

Respondents No. 1 and 3 vide Ex-12, who are Government officials have admitted that late Mohammad Ishaque was originally owner of land as far as remaining contents of plaint, they stated that entry No.37 of VF and XV of deh Sanhro, foti Khata Badal of late Ishaque son of Khair Mohammad Palli and that in the year 1981 showing the Legal heirs of Ghulam Mohammad son of Mohammad Qasim having a share $24\frac{1}{4}$ paisas, Rajab S/o Shafi Mohammad holding share $24\frac{1}{4}$ paisa, Meenhal son of Noor Mohammad holding share of $24\frac{1}{4}$ paisas, Mst. Marfat wife of Mohammad Ishaque share $24\frac{1}{4}$ paisas and remaining share have denied by the Official Respondents. Therefore, after change of foti Khata Badal of Mohammad Ishaque, four legal heirs were declared vide entry No.37 of VF XV in deh Sanhro even the father of Respondent No.7&8 namely Rajab Ali son of Shafi Mohammad was also declared as legal heir, hence the suit of Applicants/ plaintiffs is liable to be dismissed.

17. The written statement filed by respondent No.7/ defendant No. 1 Shafi Mohammad was adopted by respondent No.8/ defendant No.2 and the same is also mostly repetition of main leading suit which need not to be reproduced here.

18. The trial court framed consolidated issues as under:

1. Whether the property in suit situated in deh Sanhro admeasuring 104-28 acres and property admeasuring 220 acres situated in deh Bhurghari are the joint properties of plaintiff and defendant No.2 to 8 in F.C Suit No.81/2012 (Old), 69/2013 (New) Shafi Mohammad and others versus Allah Bachayo and others and F.C. Suit No.198/2012 (110/2012) having adequate share according to law being legal heirs of Muhammad Ishaque son of Khairo Palli?
2. Whether the plaintiff in F.C. Suit No.81/2012 (69/2013) having got share of 25-15½ acres in the joint property

situated in deh Sanhro and the plaintiffs are entitled for separate possession and such mutation was effected ?

3. Whether the plaintiff in F.C Suit No.81/2012 (69/2013) alongwith the defendants No.2 to 8 admittedly have equal share in land admeasuring 220-00 acres situated in deh Bhurgari taluka Samaro being surviving legal heirs of Muhammad Ishaque Palli as mentioned in para No.2 of the plaint and admitted in written statement.
4. Whether by way of private partition the plaintiff in F.C Suit No.81/2012 (69/2013) was in possession of 13-00 acres out of survey No.185 and 192-B situated in deh Sanhro Tapa Araro Bhurgari out of their share 25.15 ½ acres, when the suit No. 35/2011 (New81/2012) (69/2013) was filed on and whether subsequently the defendant No.1 in collusion with defendants Mataro and Noor Mohammad forcibly dispossessed the plaintiff from the land of survey No. 185 and 192-B admeasuring 13-00 acres. Such contempt application was moved on 05-5-2011?
5. Whether F.C Suit No.54/2009 filed by plaintiff No.1 and 2 in F.C Suit No 88/2012 (New 203/2012, 110/2013) who is defendant No.1 in F.C Suit No.81/2012 (69/2013) was withdrawn when the matter fixed for evidence and thereafter the plaintiff in F.C Suit No.203/2012 (115/2013) filed fresh suit which is time barred?
6. Whether exchange deed dated 04-11-1979 is a manipulated document and the same is forged?
7. Whether prayer clause 12(B) cannot be considered under the law when the same was withdrawn as shown in F.C Suit No.203/2012 (115/2013) ?
8. Whether the mutation effected in the record of rights in respect of share of plaintiff and defendant in F.C Suit No.81/2012 (69/2013) and 198/2012 (110/2013) is correct and is according to law?
9. Whether the lands admeasuring 13-00 acres of plaintiff in F.C Suit No. 81/2012 (69/2013) situated in deh Sanhro Taluka Samaro is in illegal possession of defendant No.1 in F.C Suit No. 81/2012 (69/2013)
10. Whether plaintiff in F.C Suit No. 81/2012 (69/2013) and the plaintiff in F.C Suit No.198/2012 (110/2013) are entitled for separate possession by way of partition?
11. Whether the defendant No.1 in F.C Suit No. 81/2012 (69/2013) and plaintiff in F.C Suit No.203/2012 (115/2013) made compromise with defendants No.6 to 8 in F.C Suit No. 81/2012 (69/2013) was illegal, void, and against the law?

12. Whether the plaintiff in F.C Suit No. 81/2012 (69/2013) are entitled to recover means profit from defendant No.1 and other defendant in F.C Suit No. 81/2012 (69/2013)?
13. Whether the defendant No.9 and 10 in F.C Suit No. 81/2012 (69/2013) may be directed to make partition of the suit in suit according to share under the law and give separate possession?
14. Whether the suit bearing F.C Suit No.203/2012 (115/2013) and F.C Suit No.198/2012 (110/2013) are barred under limitation and Specific Relief Act and insufficiently stamped having no cause of action. The suits are not maintainable under the law?
15. Whether the block Nos. shown in para 1 of the plaint of F.C. Suit No.115/2013 New, are not correct, and the answering defendants have no concern with the same? If so its effects.
16. Whether the ancestor of the plaintiff in F.C Suit No. New 115/2013 namely Allah Bachayo and Haji Haroon purchased an area of 81-10 acres out of the joint holdings of about 104 acres from one Shamsuddin original owner under registered sale deed dated 07-01-1966?. If so its effect.
17. Whether one of purchased lands by ancestors of plaintiffs in F.C Suit New No.115/2013 admeasuring area 14-15 acres is situated in deh Bhurghari and remaining area 66-15 acres situated in deh Sinharo?
18. Whether the suit land situated in deh Sinharo could not mutated in revenue record due to encumbrances, whereas purchased land of deh Bhurghari admeasuring 14-15 acres belonging to plaintiffs of F.C Suit New No.115/2013 was duly mutated? If so its effect?
19. Whether exchange deed dated 04-11-1979 in between co-sharer Ghulam Mohammad and ancestors of plaintiffs of F.C Suit New No. 115/2013 is inexistent bogus and forged document?
20. Whether one demise of ancestor of plaintiff in F.C Suit New No. 115/2013 namely Haji Haroon late Allah Bachayo become full owner of suit land ? If so its effect.
21. Whether registered sale deed of suit land dated 07-1-1966 in between Shamsuddin and ancestor of plaintiff in F.C Suit New No. 115/2013 is fraudulent document?

22. Whether mutation of suit land of deh Sinharo was refused by defendants No.9 and 10 on the pretext that the suit land is under encumbrance through original owner.
23. Whether Suit No. 35/2011 (69/2013 New) the defendants Usman, Hameed, Khamoo, Meenhal, Akram, Mataro and Noor Mohammad have admitted the inheritance of plaintiffs Shafi Mohammad and Ahmed, if so on what basis ?
24. Whether the plaintiffs F.C Suit New No. 115/2013 re in peaceful possession and enjoyment of an area admeasuring 81-10 acres purchased by their ancestors in both Dehs in capacity of its owner since the year 1966? If so effects.
25. Whether the suit lands shown in para No.1 of the plaint, of F.C Suit New No. 115/2013 Mataro and others versus Shafi Muhammad is absolutely ancestral property of those plaintiffs ? If so effects.
26. Whether the plaintiffs No.1 and 2 are maternal cousins of late Muhammad Ishaque Palli ? If so effect.
27. Whether F.C Suit No.323/1992 filed by Arab against Meenhoon and Meenhal and others ancestors of defendants No.2 to 8 (Mataro and others) in respect of gift of S.No.190 and 191 of deh Sinharo which was ended in compromise decree dated 09-12-1992? If so its effect.
28. Whether the mutation in name of plaintiffs No.1 and 2 pertaining in respect of their share in suit land to the extent of 24 ½ acres in deh Sinharo and 0-3 paisas in deh Bhurghari is bogus and fraudulent ? If so its effect.
29. Whether the plaintiffs have no cause of action for the present suit ?
30. Whether the suit is not maintainable and hit under provisions of law of adverse possession?
31. Whether the plaintiffs are not entitled for the relief claimed ?
32. What should the decree be ?

19. The parties led their evidence and after closing their evidence side, the trial court heard the arguments and by a consolidated judgment dated 31-05-2016 decreed F.C.Suit No.60/2015 (old No.35/2011) while F.C.Suit No.94/ 2015 and F.C.Suit No.95/ 2015

were dismissed. The applicants preferred three Civil Appeals against said consolidated judgment and decree, which were dismissed. I have heard the learned counsel for the parties and perused the material with their assistance.

20. The common ancestor of the Respondents No.1 to 9 namely Mohammed Ishaq Palli was the owner of agriculture lands measuring 104 acres situated in the Sanhro and Land measuring 220 acres situated in the Deh Bhurgari, Taluka Samaro, District Umerkot. The said common ancestor Mohammad Ishaq Palli died in 1961 and he was issueless. Therefore, the land was devolved under Islamic law of Revisioner upon his brother/widow who have also died leaving behind following legal heirs:

| MOHAMMAD ISHAQ PALLI son of Khairo Palli (issueless) | | | |
|---|-------------------------------|-------------------------------|--------|
| Gulam Muhammad (Son) | Rajab | Meenhoon@Meehal | Marfat |
| 1. Hameed (son) 2. Usman (son) 3. Arab (son) i. Khamoon ii. Akram | 1. Shafi Mohammad 2. Ahmed | 1. Mataro 2. Noor Mohammad | |

21. The predecessor of Respondent No.1 namely Rajab got 25-20 Acres land in Deh Sanhro while 55 Acres land in Deh Bhurgari by way of inheritance. Similarly, the Respondents No.3 to 9 being legal heirs have also got land by way of inheritance duly incorporated in the record of rights.

22. On the other hand, the Applicant Allah Bachyo Rind, Gul Mohammad, and Haroon had claimed to purchase land in both dehs Sanhro and Bhurgari by way of registered Sale Deed from one Shamsuddin. These persons / Applicants have no relationship with the common Ancestor of the Respondents.

23. Initially, the Applicant Allah Bachyo had filed a Suit No.54/2009 in the year 2009 which was withdrawn with permission. Thereafter, in the year 2012 he has again filed a suit No. 88 of 2012 with considerable delay about 03 years layering his case on the basis of registered Sale Deed and Deed of Exchange (un-registered).

24. The Applicant claimed to be the owner of land measuring 66.15 acres situated in deh Sanhro, and land measuring 14.35 acres situated in deh Bhurgari. The applicant claims that the said land has been purchased from Shamsuddin son of Haji Jio through registered Sale Deed dated 07.01.1966 Exhibit 101-A with further claims that his predecessor-in-interest (Shamsuddin) and predecessor-in-interest of the Respondents (Muhammad Ishaq) were the joint shareholder /owners of agriculture land and due to the objection raised by Muhammad Ishaq, the parties arrived at an Exchange deed dated 04.11.1979 Exhibit 101-B. By virtue of such Exchange Deed, the Applicant has claimed agriculture land in question and that is the bone of contention between the parties in all three suits and now impugned before me in R.A. No.403 (filed by Allah Bachayo), R.A. No.404/2024 (filed by Gul Mohammad) and R.A. No.416/2024 (filed by Mataro)

25. The official witnesses produced Exhibit 74-A, 74-B and 75 which clearly established that mutation by way of inheritance has firstly been made in the year 1981 in respect of the inheritance of deceased Mohammad Ishaq Palli. The applicant has not controverted such official record as has failed to demonstrate that the said revenue entries was illegal or void. Furthermore, no plausible evidence has been led by the Applicant with regard to withholding Sale Deed Exhibit 101-A executed in the year 1966 and the deed of Exchange executed

in the year 1979 exhibit 101-B. This considerable delay at the part of the applicant for about more than 40 years has created insurmountable obstacles for the Applicant and reasonable doubts about the veracity of the documents of sale deed and deed of exchange (Exhibit 101-A and 101-B) as once the applicant has accrued substantial right by way of these documents since more than four decades, but the applicant has failed to timely produce these documents before any forum especially Revenue Authorities for the purposes of Dhal (annual fees) or possession of land or mutation into their names. Therefore, this Court draws an adverse inference that these documents were not existing previously otherwise it ought to be produced before the revenue authorities in order to justify the ownership or recovery of possession or implementation of Exchange Deed by way of Partition or Exchange. The reason for these findings are further backed and more elaborately recorded in the following paragraphs.

26. I have carefully examined the Sale Deed Exhibit 101-A produced by the applicant. I have noticed that the applicant has not called any marginal witness or the official of the Sub-Registrar Office where the document has been registered and cross record has preserved. The applicant has not produced the sale consideration record or prove of mode or any document that may substantiate that payment was paid by the Applicant to his predecessor-in-interest Shamsuddin. Even the applicant has failed to produce the chain of ownership documents of his predecessor-in-interest (Shamsuddin) from whom the Applicant has allegedly purchased the said land by way of Sale Deed with regard to the ownership of 60 Acres land situated in Deh burglary and 14 Acres land situated in deh Sanhro. Therefore, the sale deed has also not

been proved as rightly been held by the trial court as well as the appellate court concurrently.

27. The deed of exchanged Exhibit 101-B is an unregistered document attested by the Additional District Magistrate Mirpurkhas. However, neither the marginal witnesses have been appeared in support of the said document nor the scribe or Additional District Magistrate, who has attested the document, has appeared to substantiate the said Deed of Exchange purportedly executed in the year 1979. Therefore, the Exchange Deed has not been proved before the trial court. Additionally, the deed of Exchange being unregistered document stands in violation of section 17 of the Registration Act, 1908.

28. The Applicant has failed to make compliance of Article 79 of the Qanun-e-Shahadat Order, 1984. Surprisingly, the deed of exchange was purportedly executed in the year 1979. In the cases of **“Noor Muhammad v. Nazar Muhammad”, (2002 SCMR 1301)** and **“Muhammad Rafique v. Ashraf Din”, (2006 SCMR 340)**, it has been held that the document executed prior to Qanun-e-Shahadat Order is to be proved in the light of provisions of Section 68 of the erstwhile Evidence Act, 1872. It is somehow *pari materia* to Article 79 of Qanun-e-Shahadat Order, 1984.

29. The Section 68 of the Evidence Act, 1872 relates to the proof of execution of documents required by law to be attested and is reproduced as under:

“68. If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and

subject to the process of the Court and capable of giving evidence:

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Registration Act 1908, unless its execution by the person by whom it purports to have been executed is specifically denied”.

30. It is clear that as per the mandate of section 68 of the Evidence Act, 1872 if a document is required by law to be attested, it can be used in evidence if one attesting witness has been called for the purpose of proving its execution. However, not a marginal witness of Exhibit 101-A and 101-B have appeared or supported the Applicant and both the documents have not been proved as held by both the Courts below.

31. The application and encouragement of subsequent active and enforced statute and its provision of Articles 17 and 79 of the Qanun-e-Shahadat Order, 1984, has subsequently been permitted with reference to various rules held in Indian and Pakistani jurisdiction and fundamentally following dictum laid down by the Supreme Court of Pakistan in Abdul Wali Khan’s case. Reliance can be placed on the case **“Riazur Rahman and others vs. Muhammad Urs”, (2005 MLD 1954)**, wherein the retrospective effect of the Qanun-e-Shahadat Order, 1984 was elucidated and relevant portion is reproduced hereunder:

“32. A question arose whether the amended definition of the word attested was retrospective. The Allahabad High Court in the case of Girjanandan v. Hanumandas 1927 A.I. (F.B) and the Calcutta High Court in the case of Nepra v. Saier Pramanik AIR 1927 Calcutta 763, held that the amendment was not retrospective in effect and the validity of the instrument executed, before the amending Act came into force had still to be decided in accordance with the rule laid down by the Privy Council

in the case of Shamu Patter v. Abdul Qadir 16 LC. 250 (P.C.) Madras High Court, however, took a contrary view and held the amendment to be retrospective in the case of Balaji Singh v. Chakr Gongamma AIR 1927 Madras 85. The Legislature had again to step in and by Act X of 1927 and Act XII of 1927 it was clarified that the definition of the word attested in section 2 of Act XXVII of 1926 was retrospective. A Full Bench of the Madras High Court in the case of Veerappa Chettiar v. Subbrahmnya Ayyar AIR 1929 Madras 1, held that the amendment was retrospective. The Sindh Chief Court also held in the case of Thakurdas v. Topandas AIR 1929 Sindh 217 that the amendment was retrospective. In the light of above discussion and keeping in view the fact that the law of evidence is a procedural/adjective law and every procedural law has the retrospective effect until and unless specified otherwise, it is held that the provisions contained in Articles 17 and 79 of the Qanun-e-Shahadat Order 1984 are retrospective in effect. At this stage I would like to clarify that in cases where documents have been executed prior to the promulgation of Qanun-e-Shahadat Order, 1984 and evidence to prove such documents has also been recorded prior to the enforcement of Qanun-e-Shahadat Order, 1984, the provisions contained in Articles 17 and 79 of the Qanun-e-Shahadat Order, 1984 shall not be applicable. Such documents shall be governed by the provisions contained in sections 67 and 68 of the Evidence Act, 1872. As held by the Honourable Supreme Court in the case of Abdul Wali Khan (supra). I would further like to clarify that if a document referred to in sub-Article (2)(a) of Article 17 of the Qanun-e-Shahadat Order, 1984 is executed before the enforcement of Qanun-e-Shahadat Order, 1984 and the execution thereof is not denied, such document shall not be rendered invalid. However, if a document is executed prior to the enforcement of Qanun-e-Shahadat Order, 1984 in the matter pertaining to financial or future obligations including a sale agreement and there are two or more marginal witnesses, the execution whereof is denied, and the document is sought to be produced in evidence after the enforcement of Qanun-e-Shahadat, 1984, the provision contained in Article 79 of the Qanun-e-Shahadat, 1984 shall be applicable, and no such document shall be used as evidence until two attesting witnesses at least have been called for the purpose of proving its execution, if there be two attesting witnesses alive and subject to the process of the Court and capable of giving evidence."

Line supplied.

32. The Applicant has miserably failed to prove both documents Exhibit 101-A and 101-B by producing marginal witnesses and therefore the Revision Application is barred under Article 79 of the *ibid* Order. Article 79 of the Qanun-e-Shahadat Order, 1984 is reproduced as follows:

“79. Proof of execution of document required by law to be attested: If a document is required by law to be attested, it shall not be used as evidence until two attesting witnesses at least have been called for the purpose of proving its execution, if there be two attesting witnesses alive, and subject to the process of the Court and capable of given Evidence.

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Registration Act, 1908 (XVI of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.”

33. The Honorable Supreme Court in case ***“Farzand Ali and another v. KHuda Bakhsh and others” (PLD 2015 SC 187)***, it has been held:

“10. it is settled law that an agreement to sell an immovable property squarely falls within the purview of the provisions of Article 17(2) of the Qanun-eShahadat Order, 1984 and has to be compulsorily attested by the two witnesses and this is sine qua non for the validity of the agreement. For the purposes of proof of such agreement it is mandatory that two attesting witnesses must be examined by the party to the lis as per Article 79 of the Order *ibid*.”

34. Similar view has formed in another case ***“Farid Bakhsh v. Jind Wadda and others” (2015 SCMR 1044)***, held:

“7. The deed witnessing the agreement appears to have been signed by two attesting witnesses but appellant examined only one. He to cover up the lapse, in the first instance, sought to construe the requirements of Article 79 as being procedural rather than substantive, and then sought to equate the

testimony of the Scribe with that of an attesting witness. But we cannot appreciate any of these arguments unless we know the nature of the document and requirements of law for proving it.”

35. The idea to insert Section 68 in the Evidence Act or Articles 17 and 79 of the Qanun-e-Shahadat Order, 1984 is to make available foolproof arrangement of contracts, documents of financial transactions and other related documents relating to substantial rights of the legal and natural persons. The primary function of a document attested by witnesses and proved through them is to prevent fraud and fabrication of evidence, with the legislature establishing certain classes of documents requiring this method of verification. This requirement helps ensure the authenticity and validity of legal documents. This may include:

i. Focusing on prevention:

"Attestation of documents by witnesses, followed by their testimony, serves to deter fraud and the creation of false evidence, with the legislature designating specific document types that must adhere to this process."

ii. Emphasizing authenticity:

"The purpose of witness attestation and proof is to establish the legitimacy and authenticity of documents, with legislative requirements dictating which documents necessitate this procedure."

iii. Highlighting reliability:

"Legislative safeguards, including witness attestation and proof, are designed to enhance the reliability of documents and prevent the introduction of fabricated evidence, with certain document classes requiring this level of verification."

iv. Concise version:

"Attestation by witnesses and their proof are intended to prevent fraud and fabrication of evidence, with the legislature specifying the relevant document types."

36. Reliance can be placed on cases reported as ***“Rafaqat Ali v. Muhammad Farid and others” (2007 SCMR 1083)***, ***“Hafiz Tassaduq Hussain v. Muhammad Din through Legal Heirs and others” (PLD 2011 Supreme Court 241)***, ***“Farzand Ali and another v. Khuda Bakhsh and others”***, ***(PLD 2015 Supreme Court 187)***, ***“Farid Bakhsh v. Jind Wadda and others”***, ***(2015 SCMR 1044)***, ***“Sheikh Muhammad Muneer v. Mst. Feezan”***, ***(PLD 2021 Supreme Court 538)*** and ***“Muhammad Ghaffar (Deceased) through LRs and others v. Arif Muhammad”***, ***(2023 SCMR 344)***.

37. In view of the settled principle of law that in case of variance and dissension in the findings of the two courts below, the High Court in its appellate jurisdiction has to give preference intention to the findings of the lower appellate court unless it suffers from grave irregularity or the same are perverse or reasons given by the appellate court are contrary to record or not sustainable. ***“Amjad Ikram v. Mst. Asiya Kausar and 2 others”***, ***(2015 SCMR 1)***

38. Furthermore, the perusal of pleadings, it has revealed that the predecessor of interest of Appellant Shamsuddin was died in 1961 and sale deed allegedly executed and registered in 1965 by and between Shamsuddin as Vendor/Seller and the original Applicant as Vendee/Purchaser. Another fact being fact of facts is relevant that the Sale Deed allegedly registered in the year 1965-66 with the Sub-Registrar, Sanhro when the office of Sub-Registrar, Sanhro was not established and was later notified in the year 1990. No evidence has led by the parties on these two points, however, the Applicant has

failed to controvert or rebut such portion of pleadings of the Respondents and evidence of official witnesses and an adverse inference can be drawn against the Applicant that the Sub-Registrar, Sanhro was not produced by the Applicant /Plaintiff nor he was called as Court witness in order to prove Exhibits 101-A and 101-B (Sale Deed or Exchange Deed) purposely and if he has produced or called in Court, he would give evidence against the Applicant.

39. I am in agreement with the Counsel for the Applicant that departure is not permissible from mandatory provision i.e. Order 41 Rule 31 CPC and the Appellate Court is required to follow the requirement of law and legal maximum that ***“Accumni observentia non-est recedendum”*** (if a thing is required to be done in a particular manner, it has to be done in that manner, if not, would be unwarranted under the law). For the convenience, the Rule 31 of Order XLI CPC is reproduced here as under:

40. The judgment of the Appellate Court shall be in writing and shall state:

- a) the points for determination;
- b) the decision thereon;
- c) the reasons for the decision; and
- d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled; and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.

41. The provision of Order XLI Rule 31 C.P.C. is mandatory in its nature. It's not possible for a court to simply ignore or evade mandatory provisions of a law. Courts are bound by the law, and mandatory provisions, which typically used words like “shall”, create obligations that must be followed. If a court interprets a provision as

mandatory, it must be applied and any attempt to circumvent it would likely be considered as an error or breach of judicial duty. Contrary to mandatory provisions, any divergent view on erroneous surmises and conjectural presumptions would frustrate the whole scheme of legislature, which cannot be countenanced.

42. The rationale behind requiring judges to explain their decisions (or “write reasons”) is multifaceted. It ensures fairness, transparency, and allows for effective review of the case by both the losing party and any higher court should an appeal be filed. Essentially, it forces judges to articulate their reasoning and identify the key elements of the case that influenced their decision-making process. Reliance can be placed on the cases “Minhaj-ul-Islam Sabri through General Attorney v. Mrs. Soofia Munir and 7 others” (2006 CLC 1352), “Mst. Sikandar Jahan and 4 others v. Mst. Ghulam Zainab and 10 others” (2013 CLC 228), “Syed Ayoob Ali Shah v. Mst. Rabia Begum”, (2013 CLC 419), **“Saeed Ullah Khan v. Muhammad Khalid and 3 others” (2018 CLC 648), “Muhammad Yousuf through Legal Heirs and 6 others v. Abdul Jabbar Qureshi through Legal heirs and 18 others”, (2019 YLR 1558), “Ali Muhammad and 4 others v. Learned Additional District Judge-III, Dadu and 14 others” (2020 CLC 365), “Jamil Akhtar and others v. Las Baba and others”, (PLD 2003 Supreme Court 494), “Province of the Punjab through Collector District Khushab, Jauharabad and others v. Haji Yaqoob Khan and others”, (2007 SCMR 554), “Muhammad Iftikhar v. Nazakat Ali”, (2010 SCMR 1868), “Pakistan Refinery Ltd., Karachi v. Barrett Hodgson Pakistan (Pvt.) Ltd. And others” (2019 SCMR 1726) & “Muzafar Iqbal v. Mst. Riffat Parveen and others” (2023 SCMR 1652).**

43. At the same time, when the primary point of determination was specific and limited to the validity of an agreement, it is not necessary for the Appellate Court to give findings on each issue separately. The applicant's case is currently subject to the stringent requirements and obligations dedicated by the legal process of Articles 17 and 79 of the Qanun-e-Shahadat Order, 1984. The Applicant's situation is characterized by a complex web of legal necessities that must be addressed before agitating the objections of non-compliance of Order XLI Rule 31 CPC. Reliance can be placed on ***“Abdul Karim v. Haji Noor Badshah (2012 SCMR 212).***

44. Due to said complexity of the evidence and legal necessities of agreement in question (an unregistered Deed of Exchange which is an agreement in its very nature and it is not registered deed), the learned Appellate Court has rightly dismissed the case of applicant. The Judgment passed by the Appellate Court is clearly a speaking order and self-explanatory. The Applicant in fact, has failed make compliance of mandatory provisions of law to establish his both documents Exhibit 101-A and 101-B.

45. Although, the Applicant has initially filed second appeal under Section 100 CPC, however, during pendency of said second appeal, the applicant has filed an application CMA No.448/ 2017 with the request that the present second appeal may be treated as a Revision Application under section 115 CPC for the reason enumerated at paragraph 3 of the affidavit filed in support of the said application for conversion of second appeal into civil revision application which was allowed vide Order dated 20.03.2018.

46. The third R.A No.416/2024 filed by the legal heirs of Meenhon (Mataro & others) out of the eight Applicants, only the Applicant No.1 was stepped into witness box and rest have not examined themselves on oath. This Revision Application has become infructuous, therefore, the same is also dismissed. It may be observed that the Applicants of this Revision Application No.416/2024 are relative of Respondents No.7&8 and their dispute was already resolved in a private vide Exh. 84-A to 84-E. Another important aspect is the admission of the Applicant in their Written statement which was filed by them in F.C. Suit No.35/2011 (New Suit No.69/2013) about the shares of Respondents No.7&8. Therefore, subsequent contra stance by filing Suit No.83/2012 (New No.110/2013) against the Respondents No.7&8 and departures from earlier pleadings is not permissible under the law. The negotiation for compromise between the Applicant with the Applicant of R.A. No. 403/2024 held in Suit No.54/2009, had not accepted by the trial Court due to objections of Respondent No.7&8 (Shafi Mohammad and Ahmed). Later, the Applicant has withdrawn the said suit No.54/2009 with permission. Henceforth, the parties are at liberty to negotiate or may create rights to the extent of their respective shares through normal course of contract but no grievance can be entertained or permissible to be agitated in the present Revision Application.

47. After a careful examination of the present Revision Application as well as material record, so also the judgment impugned before me, I have reached to the conclusion that only a second appeal can lie against the judgment passed by the learned Ist Additional District judge in terms of Civil Appeal preferred before him under section 96 CPC and no revision can lie in the present circumstances of the case.

Therefore, I convert this Revision Application again as a Second Appeal under section 100 CPC.

48. A right of Second Appeal is not a right created by a statute or inherent right or built in right of a statute. Understandingly, it a substantive statutory right and apply and utilize within defined sphere of law encircled around substantive questions of law or error of law with restricted condition upon a High Court to not interfere with findings of fact or re-appraise the facts or finding of facts of Appellate Court no matter how erroneous they are on facts. Reliance can be placed on **“Zafar Iqbal and others Versus Naseer Ahmed and others”, (2022 SCMR 2006)**. The relevant portion is re-produced:

“8. At the very outset, we observe that the High Court hearing a second appeal, in the present case, has re-read and re appraised the evidence of the parties in the way a first appellate court does, without realizing the distinction between the scope of the first appeal and the second appeal. Under section 100 of the Code of Civil Procedure, 1908 ("C.P.C."), a second appeal to the High Court lies only on any of the following grounds: (a) the decision being contrary to law or usage having the force of law; (b) the decision having failed to determine some material issue of law or usage having the force of law; and (c) a substantial error or defect in the procedure provided by C.P.C. or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon merits. The scope of second appeal is thus restricted and limited to these grounds, as section 101 expressly mandates that no second appeal shall lie except on the grounds mentioned in section 100. But we have noticed that notwithstanding such clear provisions on the scope of second appeal, sometimes the High Courts deal with and decide second appeals as if those were first appeals; they thus assume and exercise a jurisdiction which the High Courts do not possess, and thereby also contribute for unjustified prolongation of litigation process which is already choked with high pendency of cases. 9. No doubt, the expression "law" used in the phrase "the decision being contrary to law" in the ground (a) mentioned in section 100 of the C.P.C. is not confined to "statutory law" only, but also includes the "principles of law" enunciated by the constitutional courts, which have the binding force of law under Articles 189 and 201 of the Constitution of the Islamic Republic of Pakistan 1973. And, it is an elementary principle

of law that a court is to make a decision on an issue of fact on the basis of legally relevant and admissible evidence available on record of the case, which principle is also incorporated in the statutory law, that is, the first proviso to Article 161 of the Qanun-e-Shahadat Order 1984. The said proviso states in unequivocal terms that a judgment must be based upon facts declared by the Qanun-e- Shahadat Order to be relevant and duly proved. 10. The decision of a court is, therefore, considered "contrary to law" when it is made by ignoring the relevant and duly proved facts, or by considering the irrelevant or not duly proved facts. The expressions "relevant evidence" and "admissible evidence" are often used interchangeably, in legal parlance, with "relevant facts" and "duly proved facts" respectively, and a decision is said to be "contrary to law" and is open to examination by the High Courts in second appeal when: (i) it is based no evidence, or (ii) it is based on irrelevant or inadmissible evidence, or (iii) it is based on non-reading or misreading of the relevant and admissible evidence. A decision on an issue of fact that is based on correct reading of relevant and admissible evidence cannot be termed to be "contrary to law"; therefore, it is immune from scrutiny in second appeal. A High Court cannot, in such case, enter into the exercise of re-reading and re-appraisal of evidence, in second appeal, and reverse the findings of facts of the first appellate court, much less the concurrent findings of facts reached by the trial court as well as the first appellate court. It has, in second appeal, no jurisdiction to go into the question relating to weightage to be attached to the statements of witnesses, or believing or disbelieving their testimony, or reversing the findings of the courts below just because the other view can also be formed on the basis of evidence available on record of the case."

49. No question of substantive law is involved in the present appeal and the Appellants have failed to point out any error of law in the Judgment impugned before me. Consequently, I hereby dismissed the Second Appeals (R.A. No.403/2024 & R.A. No.404/2024) while maintaining the Judgment dated 15.02.2017 passed by the First Additional District Judge, Umerkot in Civil Appeal No. 15 of 2016.

50. All Revision Applications are dismissed with cost. Office will consign case as per directions contained in paragraph-47 above.

Judge

