

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Civil Rev. Application No.S-243 of 2024 (New)
Civil Rev. Application No.17 of 2021 (Old)

Applicants	:	Mohandas & Others Through Mr. Jamshed Ali Laghari, Advocate.
Respondent No.2.	:	Taluka Municipal Officer, Sanghar through Mr. Iqrar Ali Panhwar, Advocate.
Respondent No.1, 4, 5, 6 & 7:	:	Through Mr. Muhammad Sharif Solangi, Assistant A.G. Sindh.
Date of hearing	:	<u>05.08.2025</u>
Date of Decision	:	<u>05.08.2025</u>

J U D G M E N T

Amjad Ali Sahito, J.- Through this Civil Revision Application under Section 115, the Civil Procedure Code 1908 ("C.P.C"), the applicants have impugned judgment and decree dated 26.10.2018, passed by learned 1st Senior Civil Judge, Sanghar ("the trial Court") in F.C Suit No.26 of 2018, and the impugned judgment and decree dated 30.11.2019 passed by learned 2nd Additional District, Sanghar ("the appellate Court"), whereby both the learned lower Courts dismissed the suit and the appeal of the plaintiffs/applicants, hence the applicants prefer this Civil Revision application.

2. The salient facts precipitating the aforementioned Civil Revision Application are that the plaintiffs have instituted the present suit for Declaration, Permanent Injunction, and Mandatory Injunction against the defendants, asserting that they are the lawful and rightful owners of the following plots: City Survey No. 189/1, measuring 66-4 square yards, City Survey No. 190, measuring 26-6 square yards, City Survey No. 191, measuring 48-2 square yards, City Survey No. 192, measuring 44-0 square yards, City Survey No. 193, measuring 7-6 square yards, All situated in Ward No. B, M.A. Jinnah Road, Town

Taluka and District Sanghar. It is further stated that City Survey No. 188, admeasuring 41-6 square yards, is designated as Government open space, reserved for a public path/rasta which passes from City Survey Nos. 166, 182, 182/1, 184 up to 193, all located in the same Ward and Town. The Suit Path/Rasti is the subject matter of this litigation. The plaintiffs have asserted that this path/rasti has existed for the past 45 to 50 years, extending from the northern to southern side, and is reflected in the official Deh Map and Soorat-Hal/Sketch prepared by the concerned Tapedar. They claim that the Suit Path/Rasti is the only access available to them and that a long-standing dispute exists between them and defendants No. 1 and 2. It is alleged that previously defendants No. 1 and 2 attempted to obstruct and dismantle the path, but due to the intervention of local elders (Nek Mards) and area residents, such attempts were prevented. The plaintiffs further submitted a written complaint to defendant No. 6, who forwarded it to defendant No. 5 for site inspection and report. Following the inspection, the City Survey Office Sanghar prepared a sketch confirming that City Survey No. 188 is indeed a public path/rasti and forwarded the report to the Mukhtiarkar (Revenue), Sanghar. On this basis, defendant No. 6 restrained defendants No. 1 and 2 from disturbing the path and directed all parties to maintain the status quo. The Mukhtiarkar then reopened the Suit Path/Rasti for public use, including by the plaintiffs, based on their application. Subsequently, defendant No. 5 directed the Mukhtiarkar to issue a Rubkari for the verification of the existence and measurement of the Suit Path/Rasti and obtain boundary demarcations from the Settlement and Survey Department, Hyderabad. However, on 23.03.2018 at 09:00 AM, defendants No. 2 and 3, along with unidentified persons and using tractors, allegedly forcibly demolished and dismantled the entire Suit Path/Rasti, thereby closing off access for the plaintiffs and the public. It is further claimed that defendants No. 2 and 3 have since altered the position of the path/rasti and have begun illegal construction of a boundary wall on the disputed area, thereby attempting to defeat the easement rights of the plaintiffs. The plaintiffs contend that defendants No. 2 and 3 are influential individuals with political support from the ruling party and have no legal right, title, interest, or character in the Suit Path/Rasti. Their actions are alleged to be illegal, mala fide, and without lawful authority, amounting to usurpation of public land. The Suit Path/Rasti passes through City

Survey Nos. 166, 182, 182/1, 184 to 193, and the plaintiffs apprehend that the defendants may completely dismantle or obstruct the path at any time, which serves as the sole means of access for the plaintiffs and other area residents. The defendants, according to the plaintiffs, are falsely claiming ownership without any proper demarcation and are wrongfully denying public access, hence violating rights of public interest. Therefore, the plaintiffs have filed this suit, seeking the following reliefs:

- a) That, this Honourable Court may be pleased to declare that there was City Survey Number 188 area 41-6 Square Yards, which is Government Path /Rasti from City Survey Plot Nos. 166, 182, 182/1, 184 to 193 situated in Ward No.B, M.A Jinnah Road Sanghar Town Taluka & District Sanghar being a public Path/Rasti used by the plaintiffs and other public and the Defendants have no right title, interest of character for dismantle of the Suit Path/Rasti.
- b) That, this Honourable Court further be pleased to issue permanent Injunction against the defendants restraining them, not to interfere and dismantle the path/Rasti passing from City Survey Plot No166, 182, 182/1, 184 to 193 situated in Ward No.B, M.A Jinnah, Road Sanghar Town Taluka and District Sanghar, which is being used by the plaintiffs and other public, through themselves, their agents, associates, servants, helpers, friends, attorneys in any manner, whatsoever.
- c) That, this Honourable Court may be pleased to mandatory injunction may be issued against the defendants, whereby thy may be directed to vacate the Suit Path/Rasti passing from City Survey Plot No.166, 182, 182/1, 184 to 193 situated in Ward No.B, M.A Jinnah Road anghar Town Taluka & District Sanghar in width for the public use including the Mohallah of Plaintiffs and restore the Path/Rasti as it was.
- d) Cost of the suit be borne by the defendants jointly and severally.
- e) Any other relief which this Honourable court deems fit and proper in favour of the plaintiffs.

3. The defendant's in-spite of service neither attended the court, nor filed their written statement, therefore, the defendant Nos. 1 to 3 debarred from filing of their written statement, while the defendant Nos. 4 to 7 were made ex-parte. Plaintiff filed his affidavit in ex-parte proof in which he reiterated the same facts of the plaint. After hearing the learned counsel for the appellants/plaintiffs the learned trial Court dismissed the

suit of appellants/plaintiffs. The said judgment & decree of the suit was challenged by the appellants in a Civil Appeal, however, the judgment and decree of trial Court was maintained and appeal was dismissed.

4. The learned counsel appearing on behalf of the appellants/plaintiff has contended that the impugned judgments and decrees passed by the Learned lower courts are against the Law, facts, equity and justice and are not maintainable. He further argued that the findings of the learned lower courts that the prayer of the plaintiffs reflects and surrounded near public nuisance and easement for which proper legal procedure is provided under the law and that the plaintiffs have filed incompetent suit are sustainable under the law as the suit of the plaintiff was competently filed. The learned trial court has relied on the case law reported in 2002 SCMR 338 titled as S.M Sham Ahmad Zaidi through his L.Rs Versus Malik Hassan Ali Khan (Moin) through his L.Rs, which is totally against the facts of the case, which seems that the learned trial court has not applied its prudent/judicial mind while going through the facts/material on record and has based its findings on erroneous conclusion. The learned lower appellate court has relied upon 02 case laws viz (1) case law reported in 1991 PLD Peshawar 29 titled as Amirullah through his L.Rs Versus Surat Ali & 17 Others" and (2) Case reported in 2019 PLD 317 Sindh titled as "Abdul Ghani & Others Versus Province of Sindh through which are Secretary Revenue, Board of Revenue & Others" totally against the facts of the case, which seems that the learned lower appellate court has not applied its prudent/judicial mind while going through the facts/material on record. The Learned Lower Courts have not considered that the valuable rights of the plaintiffs are involved in the matter, while dismissing the suit and the appeal of the plaintiffs/applicants. However, the trial Court has not considered the very aspect of the case. He prayed for reversal of the findings of both the Courts below. In support of his contentions he relied upon case laws reported in 2004 PLD 633 Supreme Court, 2017 CLC 635 Islamabad, 2021 MLD 416 Sindh, 2014 PTD 1963 Sindh, 2013 PLD 60 Sindh and 2022 PLD 92 Lahore.

5. On the other the learned counsel for respondent No.2 and learned A.A.G have supported the judgment and decree passed by the courts below and submitted that the suit of appellants/plaintiffs is not maintainable U/S 42 of Specific Relief Act as appellants/plaintiffs

admitted in Para No.2 of the plaint that the Government space lying vacant for Rasti at M.A Jinnah Road Sanghar, hence appellants/plaintiffs has no right over the Government property, hence the judgment and decree passed by the courts below is legal, proper and in accordance with law. They lastly prayed that the appeal of the appellants/plaintiffs may be dismissed.

6. I have heard the learned counsel for the parties, learned Assistant Advocate General and perused material available on record. From the perusal of record the appellants/plaintiffs filed a suit for Declaration, Permanent, and Mandatory Injunction, claiming they were deprived of access to a government path passing through specific plots in Ward B, M.A. Jinnah Road, Sanghar. They alleged that Respondents/Defendants 2 & 3 illegally closed this path by constructing a boundary wall, violating their easement rights. However, official records, including Ruled Cards produced by a Junior Clerk from the Mukhtiarkar's Office, confirmed that the disputed path is government land. The respondents, with sanctioned quotations and work orders supported by local associations, constructed public bathrooms on the land to facilitate outsider citizens and serve public interest.

7. According to the Commissioner's report, a narrow street exists between the appellants' houses and public toilets, measuring 33 feet 11 inches in length and narrowing from 7 feet 4 inches to 3 feet 8 inches. A sugarcane juice machine blocks the street's end, making the passage too narrow, even for a funeral cot. The appellants claim easement rights, as they use this street for access to their homes. However, the toilets were constructed by Respondents 2 & 3 to serve the public of Sanghar. There is no evidence that the general public is facing hardship due to these constructions. The appellants filed for Declaration and Injunction without lawful title to the land and failed to prove their case on merits. The court noted that ex-parte proceedings do not amount to admission and cited case law (PLD 1991 Peshawar 29) emphasizing that a party must succeed on the strength of its own case. The suit was also found to be barred under Sections 42 and 56(d) of the Specific Relief Act, as no substantial injury or legal right was proven, referencing PLD 2019 Karachi 317.

8. The Court held that under Section 56(d) of the Specific Relief Act, injunctions cannot be granted to interfere with public duties of government departments. Since there is no compelling reason or valid ground to justify such interference in this case, the Court found no basis to issue an injunction. The case law relied upon by the Trial Court was found to be appropriate and relevant. Both the lower courts have judiciously evaluated the evidence on record, and their concurrent findings on the factual questions do not warrant any interference in the exercise of revisional jurisdiction. No trace of illegality or irregularity has been committed in the proceedings. The impugned judgments and decrees have been passed in accordance with the principles of natural justice and the established tenets of law. Therefore, there exists no ground for interference in the impugned judgments and decree, and the case does not present any compelling circumstances that justify the exercise of revisional jurisdiction. The judgments and decree under challenge stand on a firm legal footing and do not call for any interference. Consequently, the instant revision application being devoid of merit is **dismissed** with no order as to costs. These are the reasons of short order dated 05.08.2025.

J U D G E

**Adnan Ashraf Nizamani*

