

**HIGH COURT OF SINDH CIRCUIT COURT**  
**MIRPURKHAS**

**Civil Revision Application No.S-40 of 2024**

Applicants: 1. Lakho s/o Godho.  
2. Sanbhu s/o Godo.  
Through Mr. Muhammad Zaman Choudhry, Advocate.

Respondents: 1. Ghamoon s/o Timoon  
*Since dead through his L.Rs.*  
a. Mohan s/o Ghamoon.  
b. Veenjho s/o Ghamoon.  
Through Mr. Kanjimal Meghwar, Advocate  
2. Mukhtiarkar, Taluka Mithi.  
3. Deputy District Officer (Revenue), Mithi.  
4. Government of Sindh  
Through District Coordination Officer  
Tharparkar @ Mithi.  
Through Mr. Muhammad Sharif Solangi, A.A.G.

Date of hearing: 27.08.2025

Date of Order: 27.08.2025.

**O R D E R**

**AMJAD ALI SAHITO, J.-** This Civil Revision Application filed by the applicants, whereby they impugned the judgment and decree dated 30-04-2004 passed by learned District Judge, Tharparkar @ Mithi, in Civil Appeal No.20/2005 (Re. *Lakho and another vs. Ghamoon and others*) whereby same was dismissed and judgment and decree dated 28-04-2005 and 30-04-2005, whereby suit No.29/ 2004 filed by the applicants was dismissed, were maintained, hence this Revision application.

2. Precisely the facts are that applicants being plaintiffs filed suit for declaration, cancellation of entry of record of rights and permanent injunction stating therein that the applicants/ plaintiffs have (25) *paisa* share in S.Nos.52/5-00, 64/10-00, B.No.46/4-30 and (13) *paisa* share (Lakho 06 *paisa* and Sanbhu share 0-7 *paisa*) in S.No.56/10-00 acres, 65/0-5 acres and 83/5-00 acres total area 39-30 acres situated in Makan Baparbeh Deh Mithi Taluka Mithi, District Tharparkar. The parties of the suit belong to the same family and suit land is their ancestral property. The respondent/ defendant No.1 has got 0-50 *paisa*

share in the suit property while the applicants/ plaintiffs have equal share in the suit property. The respondent/ defendant No.1 is uncle of the applicants/ plaintiffs, who used to cultivate the land and gives due batai share to the applicants/ plaintiffs, as he lives at Mithi while the applicants/ plaintiffs live at Chelhar since last 10 years. It is further averred that the respondent/ defendant No.1 got foti khata badal of Timoon and his son Godho on 28.10.1982 in violation of section 42 of Land Revenue Act, thus the mutation was not made in common assembly. The entry, if any, was made by the Tapedar Khario Ghulam Shah who resides at a distance of 50 miles from the suit land. The statement of sale speaks that whatever applicants/ plaintiffs inherited from by their grandfather Timoon and father Godho they will sale it for consideration of Rs.2000/-. The applicants/ plaintiffs in fact never sold the suit property or received any consideration of Rs.2000/- and the sale is illegal in the violation of mandatory provisions of section 42 of the Land Revenue Act. It is further averred that the applicants/ plaintiffs filed an appeal before Deputy District Officer (Revenue) Mithi against the said mutation who rejected the same on the ground of limitation and that the Deputy District Officer (Revenue) Mithi also took the plea of adverse possession in his order, hence applicants/ plaintiffs have filed suit with the following prayers:

- i. To declare that the sale document is illegal and void and the plaintiffs are the owners of suit land mentioned in Para No.1.
- ii. To cancel the entry of V. F. XV dated 28-11-1982 being illegal and forged so also the order dated 21-04-2004 passed by D.D.O (Revenue) Mithi.
- iii. To grant permanent injunction against defendant No.1.
- iv. To grant any other suitable relief which this honoruable court may deem fit and proper.

3. After admission of the suit, summons were issued to the respondents/ defendants, out of them the respondent/ defendant No.1 defended the suit by filing written statement while the respondents/ defendants No.2 to 4 remained absent so they were made exparte. The respondent/ defendant No.1 in his written statement has stated that the applicants/ plaintiffs had 25 paisa share in S.No.52 and 0-13 paisa share

in S.Nos.45, 56, 65 and 82. He states that the suit land is ancestral property of the applicants/ plaintiffs and respondent/ defendant No.1 in equal shares. He has denied that applicants/ plaintiffs had not sold their respective share on 28.11.1982 and possession was challenged before any quarter. As regards mutation of *khata* the respondent/ defendant states that it was held in open *Katchery*. He has denied that any forgery has been committed by him stating that the suit land has been sold to him on consideration of Rs.2000/ so no cause of action has accrued for filing the suit.

4. Upon the pleadings of the parties, following issues have been settled by the court.

### ISSUES

1. Whether the plaintiff is owner of suit property?
2. Whether the mutation entry has been made fraudulently?
3. Whether suit is not maintainable?
4. What should the decree be?

5. In support of their suit, the applicant/ plaintiff No.1 Lakho examined himself at Ex.27, he has produced true copy of Mutation register [Ex.28] and true copy of mutation register bearing entry dated 28.11.1982 [Ex.29]. The applicants have also examined P.W Pharso at Ex.30 and thereafter closed the side vide statement Ex.33. The Tapedar of Mithi namely Abdul Rehman Janjih has been examined at Ex.35 as Court witness, he has produced copy of Deh form No.VII-A at Ex.36.

6. The respondent/ defendant Mohan was examined at Ex.37. He has produced true copy of entry of Form-X dated 28.11.1982 [Ex.38], true copy of entry Deh Form No.VII [Ex.39], true copy of entry of Form-X [Ex.40], 16 Land Revenue receipts [Ex.41 to 56], sale agreement [Ex.57], and order of Deputy District Officer (Revenue) Mithi (Ex.58]. The respondent also examined D.W Leelaram [Ex.59] and then learned counsel for the respondent/ defendant has closed the side vide statement [Ex.60].

7. After hearing learned counsel for both parties, learned trial court dismissed the suit of the applicants/ plaintiffs. The applicants preferred Appeal against the judgment and decree of trial Court, which was dismissed by learned lower appellate Court vide impugned judgment.

8. learned counsel for the appellants submits that impugned judgments are illegal, unlawful and opposed to facts on record and law; that the crucial issue in the case was the legality, authenticity and genuineness of the impugned sale statement, but this main aspect of the case was neither considered by the trial court nor the appellate court; that the respondent No.1 only examined one attesting witness of impugned sale statement; hence evidence adduced by the respondent No.1 regarding impugned sale being insufficient was not reliable under *Qanoon-e-Shahadat* Order, 1979 and both the learned below courts have not considered this legal aspect of the case; that fraud has been played in the alienation of suit land in favour of the respondent No.1 in collusion with the revenue officials; that findings of the trial court on the issues are opposed to law; that trial court has wrongly held that jurisdiction of civil court is barred under section 172 of the Sind Land Revenue Act, 1967, whereas section 53 of the Sindh Land Revenue Act, 1967 permits filing of declaratory suit against the mutation entries. He lastly prayed for setting aside impugned judgment(s) and decree(s) passed by learned lower courts and decree of the suit of the applicants.

9. Learned counsel for the respondent No.1 and learned A.A.G supports the impugned judgments and decrees passed by learned lower courts and lastly prayed for dismissal of instant Civil Revision Application.

10. I have heard learned counsel for the parties and have gone through the material available on record.

11. As per claim of the applicants, they and respondent No.1 belong to same family and they have equal share in the suit property i.e. S.Nos.52/5-00, 64/10-00, B.No.46/4-30 and (13) *paisa* share (Lakho 06 *paisa* and Sanbhu share 0-7 *paisa*) in S.No.56/10-00 acres, 65/0-5 acres and 83/5-00 acres total area 39-30 acres situated in Makan

Baparbeh Deh Mithi Taluka Mithi, District Tharparkar; the respondent/defendant No.1 being their uncle used to cultivate the suit land and give due *batai* share to them. They further claimed that the respondent/defendant No.1 got *foti khata badal* of Timoon and his son Godho on 28.10.1982 in violation of section 42 of Land Revenue Act as mutation was not made in common assembly and entry, if any, was made by the *Tapedar* Khario Ghulam Shah who resides at a distance of 50 miles away from the suit land. The applicants/ plaintiffs denied about receiving of sale consideration amount of Rs.2000/- and execution of sale statement.

12. The applicants have challenged the *foti khata badal* of Timo s/o Godho Menghwar and Godho s/o Timo dated 28-10-1982 by alleging that same was not done in accordance with law. The note about the sale statement in respect of suit land by the applicants in favour of respondent No.1 is also mentioned in the said entry. The applicants have not mentioned the date when they came to know about such *foti khata badal* and sale statement. In examination incheif applicant Lakho deposed that “*we were not informed about the foti khata*”. It is very astonishing that on one hand applicants claim that they being 50% share holders in the suit land were receiving *Batai* share from the respondent No.1 and on other hand applicant No.1 in his evidence has deposed that they were not informed about the *foti khata badal*. Moreso, the applicants remained silent till filing of Appeal before Deputy District Officer (Revenue) Mithi. Furthermore, learned counsel for the applicants put much stress that learned trial court did not frame issue of fraud. Perusal of plaint shows that nowhere word of “*fraud*” is mentioned either in the pleadings or evidence of the applicant No.1.

13. Admittedly, the respondent No.1 was/is in possession of the suit land, but applicants have not sought any relief for possession. As per section 42 of the Specific Relief Act, 1877, where the plaintiff is not in possession of the suit property, a suit for a mere declaration of his title would be barred under section 42 of the Specific Relief Act, 1877 unless the plaintiff sues for consequential relief of possession also. For the sake of convenience section 42 of the Specific Relief Act, 1877 is re-produced as under:

#### 42. Discretion of Court as to declaration of status or right.—

- (1) Any person entitled to any character, or any right to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled and the plaintiff need not in such suit ask for any further relief:

Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

- (2) Notwithstanding anything contained in any other law for the time being in force, a suit filed under sub-section (1) shall be decided by the Court within six months and the appellate court shall decide the appeal not later than ninety days, as the case may be

14. The applicants filed Appeal before the Deputy District Officer (Revenue) Mithi, which was rejected in *limini* vide order dated 21-04-2004, but the applicants have not assailed said order before the Revenue forum and, as such, the suit filed by the applicants before the Civil Court without exhausting remedies available to them was not competent. The Honourable Supreme Court in case of *Muhammad Siddique (Deceased) through LR's and others v. Mst. Noor Bibi (Deceased) through LR's and others* (2020 SCMR 483) in para No. 6 and 7 of the Judgment held that:

*“6. There are concurrent findings of fact of the two learned Courts below. We have observed that there are further defects in the Suit whereby the orders of the revenue hierarchy i.e. the Assistant Commissioner and the Additional Commissioner were challenged in the Suit. In our view, orders of the Assistant Commissioner as well as the Additional Commissioner were liable to be challenged before the Board of Revenue, Punjab; therefore, a Suit before the Civil Court was not competent before exhausting the available remedy under the law. It is a settled principle of law that where a special remedy is provided for under the law, it may not be bypassed and the Civil Courts should not be approached directly without exhausting the highest forum in the authority. Reference may be made to the judgment reported as *Hakam and others v. Tassadaq Hussain Shah* (PLD 2007 Lahore 261), *Zahid Hussain and 10 others v. Shamasuddin and 9 others* (2014 CLC 1334) and *Muhammad Jalat Khan v. Faisal Hayat Khan and 4 others* (2003 CLC 837). Furthermore, the*

*jurisdiction of Civil Courts is also impliedly barred where an alternate remedy has been provided under the law, provided that the authority was not exercised in excess of the jurisdiction conferred upon the authority. Reference in this regard may be made upon the judgment of this Court reported as Bashir Ahmed v. Messrs Muhammad Saleem, Muhammad Siddique & CO. (REGD) and others (2008 SCMR 1272). 7. Hence, we are fortified in our view that when an order first to review the mutation or the order sanctioning of mutation was challenged by the Plaintiffs/Petitioners, they were required to avail the remedy available to them under Chapter XIII of the West Pakistan Land Revenue Act, 1967. After having availed said remedy, if the Plaintiffs/Petitioners were dissatisfied with the result and could show that the said hierarchy had failed to exercise jurisdiction vested in them by law or had exercised the jurisdiction illegally, only then a Suit before the Civil Court would have been competent. The Petitioners have admittedly not availed the remedy available to them to challenge the orders passed by the Revenue Officer before the revenue hierarchy. Instead, the Plaintiffs/Petitioners opted to file the Suit before the Civil Court, which was not competent in the light of judgments discussed herein above.”*

15. The applicants failed to produce any material on record in support of their claim and on the contrary material available on record shows that applicants have sold out their share in the suit property to the respondent No.1 through sale statement before *Mukhtiarkar* concerned in year 1982 and such mutation entry was affected in favour of the respondent No.1.

16. From the above discussion, it is crystal clear that the applicants have failed to point out any illegality or material irregularity in the impugned judgment and decree of learned lower appellate Court so also judgment and decree of trial Court; hence instant Civil Revision Application is dismissed accordingly.

**Judge**

“Saleem”