

JUDGMENT SHEET
IN THE HIGH COURT OF SINDH
CIRCUIT COURT MIRPURKHAS

2nd Appeal No.S-26 of 2025

Appellants: Mano s/o Wanhial,
Since dead through his L.Rs.
a. Ghulam Rasool s/o Mano.
b. Waheed s/o Mano.
c. Wanhial s/o Mano.
d. Achar s/o Mano.
e. Mst Bara d/o Mano.
Through Mr. Muhammad Noordin
Bhatti, Advocate.

Respondent: Muhammad Khan & others.

Date of hearing: 11.09.2025.

Date of Decision: 11.09.2025.

J U D G M E N T

Amjad Ali Sahito, J:- Through this 2nd appeal, appellants have challenged the impugned Judgment dated 08.04.2025 passed by the learned 2nd Additional District Judge(MCAC), Sanghar in Civil Appeal No.04 of 2025 [Re-Mano v. Muhammad Khan & others] whereby dismissed the appeal, which was filed against the impugned Judgment and Decree dated 12.12.2024 passed by 1st Senior Civil Judge, Sanghar in F.C Suit No.27/2022 [Re-Mano v. Muhammad Khan & others], wherein suit of the appellants was dismissed. Hence, the appellants have approached this Court for setting aside the impugned Judgments and Decree passed by the Courts below.

2. The brief facts to decide this appeal are that, the appellants had filed suit for Declaration, Cancellation, Possession, Mesne Profit and Permanent Injunction against the respondents before the learned Trial Court stating therein that, an agricultural land bearing Survey No. 183/1 to 4, measuring 16-00 acres, situated in Deh Toganchho, Taluka and District

Sanghar, is the subject matter of the present suit and shall hereinafter be referred to as the "suit land." According to the plaint, the suit land was allotted to the plaintiff, Mano, under the Hurr Claim in the year 1949-50 through A-Form No. EM/96. Based on this allotment order, a mutation was recorded in the name of the plaintiff, Mano, son of Wanhial, in Village Form VII-B under Jeryan No. 95 dated 18.10.1984 for Deh Togachho, Taluka and District Sanghar. It is further stated that the suit land remained in the possession of the plaintiff's father without any hindrance or disturbance. However, on 10.03.1988, the plaintiff, Mano, passed away in a road accident. Following his death, the legal heirs (L.Rs) of the plaintiff continued to retain possession of the suit land without any interference. The plaint further asserts that after the demise of Mano, the process of "foti khata badal" (mutation) in favor of his legal heirs was not carried out due to their illiteracy. In June 2021, Defendant No.1, accompanied by 10 to 15 armed individuals, allegedly attempted to dispossess the legal heirs of the plaintiff from the suit land. However, due to the timely intervention of the plaintiff's legal heirs and neighboring zamindars, the attempt was unsuccessful, and the defendants left after issuing threats, stating that they would return to forcibly evict the plaintiffs, as Defendant No.1 claimed to have purchased the suit land from the late Mano through a registered sale deed. Upon hearing this, Muhammad Ibrahim, a cousin of the legal heirs, approached the office of Mukhtiarkar Sanghar and filed an application. The concerned Tapedar informed him that the suit land had been transferred to Defendant No.1 through a sale by Mano Ibupoto, with mutation recorded in revenue records under Entry No. 91 dated 04.03.1990. Shocked by this revelation, Ibrahim then visited the office of the Sub-Registrar Sanghar, where he discovered that his father, Mano, had allegedly sold the suit land to Defendant No.1 for a sale consideration of Rs. 30,000/- through a registered sale deed No. 35 dated 15.01.1990. Upon obtaining certified copies of the registered sale deed and Village Form VII-B in the name of Defendant No.1, it was alleged that Defendant No.1, in collusion with lower revenue staff, had

fraudulently obtained the sale certificate by producing an imposter in place of the plaintiff's deceased father, Mano Ibupoto. Consequently, the said sale deed (Registration No. 35 dated 15.01.1990) and the subsequent mutation in Village Form VII-B under Entry No. 91 dated 04.03.1990 are alleged to be fraudulent and therefore liable to be canceled. The plaintiff asserts that the original entry in the revenue record should be restored in the name of the late Mano, and the Mukhtiarkar Sanghar should be directed to carry out the "foti khata badal" in favor of the legal heirs of the deceased plaintiff by issuing a mandatory injunction. It is asserted in the plaint that, the plaintiff Mano, passed away on 10.03.1988, whereas the disputed registered sale deed was allegedly executed on 15.01.1990, long after his death. This strongly indicates that the sale deed is forged, fabricated, and the result of fraudulent activity. It is further alleged in the plaint that, approximately one week before the filing of this suit, Defendant No.1, accompanied by 10 to 15 armed individuals, forcibly took possession of the suit land from the legal heirs of the plaintiff, hence, appellants had filed the suit before the learned Trial Court with the following prayers:-

a) To declare that the father of plaintiffs namely Mano is lawful owner of the suit land having been allotted to him under Hurr Claim and such khata in Revenue record of right in village form VII-B vide entry No:95 is available on record and the L.Rs of plaintiff being legal heirs of late Mano Ibupoto could retain it's possession with their own rights title and interest being legal heirs of late Mano Ibupoto.

b) To declare that the father of plaintiffs namely Mano s/o Wanhial Ibupoto died on 10.03.1988 and the alleged sale deed No:35 dated 15.03.1990 is product of fraud and it's entry No: 91 dated 04.03.1990 is illegal, null and void and are product of fraud and on the basis such forged registered sale deed Khata in Revenue record of rights are liable to be cancelled and restored the original khata in the name plaintiff late Mano s/o Wanhial and then such fotti khata badal in the name of L.Rs of plaintiff be

effected in respect of suit land by issuing mandatory injunction against the Official defendants.

c) That this Honourable Court may be pleased that after cancellation of alleged registered sale deed and khata in revenue record of right, in the name of defendant No:1 the L.Rs of plaintiff Mano s/o Wanhial be put in vacant possession of the suit land.

d) That since the defendant No.1 is in illegal possession of the suit land, hence he is liable to pay mesne profits at the rate of Rs:25,000/- per acres per years and from year 2022 at the same rate with increase of 10% per annum to L.Rs of plaintiff.

e) To issue permanent injunction, thereby restraining the defendant No:1 from transferring, alienating mortgaging or selling the suit land to any other else and the official defendants be restrained not to issue the sale certificate in respect of suit land by themselves, or through their agents, associates, attorney, helpers, servants etc. in any manner whatsoever till final decision of the suit.

f) Costs of the suit be borne by the defendant No:1.

g) Any other relief which this Honourable Court deems fit and proper may be awarded to the L.Rs of plaintiff.

3. On notice, Respondent No.1/Defendant No.1 filed a written statement, whereas the remaining official defendants were declared ex-parte. In his written statement, Defendant No.1 denied the claims and allegations made by the plaintiffs. He asserted that during the lifetime of the plaintiff, Mano, he had lawfully sold the suit land to the father of the answering defendant through a registered sale deed bearing Registration No. 35, dated 15.01.1990. Based on this registered sale deed, the mutation of the land was duly recorded in the revenue records in Village Form VII-B in the name of minor Muhammad Khan through his father, Basit. Since its purchase, the suit land remained in the possession of Muhammad Khan.

Furthermore, Basit Ali, during his lifetime, sold the suit land to one Abdul Kareem, son of Mir Allahndo Khan, through a sale agreement dated 27.09.1992. Presently, the suit land is in the possession of Abdul Kareem. The defendant further contended that it is upon the plaintiffs to prove their claims. He also asserted that the legal heirs of the deceased plaintiff, Mano, were fully aware of the sale of the suit land by their father. Additionally, the defendant argued that no valid cause of action arose for the plaintiffs to file the present suit and alleged that they had not approached the court with clean hands. He maintained that the suit is not maintainable, as the plaintiffs were aware of the land's transfer to Basit, who subsequently sold it to Abdul Kareem. Given that the suit land is currently in Abdul Kareem's possession, the plaintiffs have no legal basis for initiating this litigation. Therefore, the defendant asserted that the suit is liable to be dismissed.

4. The trial Court framed following issues:-

1. Whether, suit is not maintainable, barred by law?
2. Whether, father of plaintiffs namely Mano is lawful owner being allottee of suit land, such mutation entry NO.95 is available on record?
3. Whether, sale deed No.35 dated 15.03.1990 & its mutation Entry No.91 dated 04.03.1990 are product of fraud illegal, null, void kept on forged sale deed are liable to be cancelled?
4. Whether, defendant No.1 is in illegal possession of suit land? If yes, he is liable to pay mesne profit at the rate of Rs.25,000/- per acre per year from 2022?
5. Whether, plaintiff is entitled for relief claimed?
6. What should the judgment & decree be?

5. To substantiate their claim, the plaintiffs (hereinafter referred to as the appellants) presented several witnesses during the trial. P.W-01 Dost Muhammad, Junior Clerk at the Sub-Registrar Office Sinjhor, was examined at Ex.24. He

produced an authority letter marked as Ex.24/A and the original Sale Deed No.41, dated 15.01.1990, registered vide RD No.35, Page Nos.183 to 186, Volume No.566, marked as Ex.24/B (original seen and returned). P.W-02 Arshad Hussain, Tapedar of Jakhrao, was examined at Ex.25. He produced an authority letter at Ex.25/A, Form VII-A (Entry No.95, dated 18.10.1984) at Ex.25/B, and Village Form VII-B (Entry No.91, dated 04.03.1990) (originals seen and returned). P.W-03 Mst. Sukhan (witness) was examined at Ex.26. P.W-04 Ghulam Mustafa (witness) was examined at Ex.27. P.W-05 Waleh Dino (witness) was examined at Ex.28. P.W-06 Ghulam Rasool (Plaintiff No.1-A and attorney for the remaining plaintiffs) was examined at Ex.29. He produced a Special Power of Attorney at Ex.29/A and the death certificate of his father at Ex.29/B. P.W-07 Inayat Ali, Junior Clerk at the Mukhtiarkar Estate/Barrage Office Sanghar, was examined at Ex.30. He produced an authority letter at Ex.30/A and Form No. EM/96 for the year 1963-64, bearing Block No.183/1 to 4, measuring 16-00 acres in the name of Manoo son of Wanhyaal, Deh Togacho, marked as Ex.30/B (original seen and returned; photocopy retained on record). Thereafter, the matter was adjourned for the plaintiffs to lead further evidence. However, despite being afforded several opportunities, the plaintiffs failed to produce additional witnesses. Consequently, through the order sheet dated 05.11.2024, the learned Trial Court closed the plaintiffs' right to lead further evidence at Ex.32 and adjourned the matter for the defendants to present their evidence.

6. On the other hand, in rebuttal the defendant No. 01 got examined D.W-01 Rashid Hussain Tapedar at Ex.32, who produced relevant entries. The D.W-02 Dost Mohammad was at Ex.33, who produced sale deed. The D.W-03 Mohammad Khan was at Ex. 34 and D.W-4 Baig Mohammad was examined at Ex.35. Subsequently, the learned counsel for Defendant No.1, through a statement dated 25.11.2024, closed the defendant's side at Ex. 37. The matter was then adjourned for final

arguments, during which the learned counsels for both parties were heard.

7. The learned trial Court after hearing the advocate for parties passed the impugned judgment and decree, which have been assailed by learned 2nd Additional District Judge (MCAC), Sanghar and through instant appeal, the appellants, seeking the reversal of the learned court's below decision.

8. The learned counsel for the petitioner has argued that the impugned judgments and decree passed by both the learned trial and appellate courts are contrary to law, equity, and the principles of natural justice. He further argued that the appellants/plaintiffs presented sufficient oral and documentary evidence to establish that the suit land was lawfully granted to their predecessor, Mano, through the Barrage Department, as evidenced by official records and testimonies, including those of government officials. Despite this, the trial court failed to appreciate or properly examine the evidence on record, particularly regarding the grant of the suit land, the death certificate of Mano, and the alleged fraudulent sale deed. The dismissal of the appellants' application under Order XVI Rules 1 and 2 CPC without justification, and the subsequent hurried pronouncement of judgment during the pendency of a revision application, reflect a miscarriage of justice and procedural irregularities. He further argued that both courts misread or failed to consider material evidence, including land records and official forms that corroborate the appellants' claim. The findings on key issues are based on flimsy grounds and lack cogent reasoning. Given the serious factual and legal errors, misreading/non-reading of evidence, and procedural irregularities in the impugned judgments, interference by this Honourable Court is not only warranted but necessary to prevent grave injustice and uphold the rule of law.

9. Heard and perused.

10. Upon a comprehensive review of the pleadings, evidence, and testimonies presented, it is evident that the

appellants/plaintiffs have failed to discharge the burden of proof required under the law to establish their claim over the suit land. While the plaintiffs asserted that the land in question was allotted to the late Mano against a Hur claim from the Barrage Department during 1949–50, and that possession was handed over at that time, no documentary evidence from the concerned department substantiating the original allotment, possession, or any subsequent mutation was produced. Mere oral assertions, without corroborating official records such as mutation entries, Dhal receipts, Abyana, or possession certificates, fall short of legal standards. The death certificate of Mano, central to the plaintiff's claim that he died in 1988, prior to the execution of the impugned sale deed is fraught with inconsistencies. The certificate was issued only in January 2022, decades after the alleged date of death, raising serious doubts about its authenticity and timing. The failure to examine the Union Council Secretary to prove the genuineness of the certificate through cross-examination further undermines its evidentiary value. However, the allegations of fraud leveled by the plaintiffs against the defendants were neither specific nor substantiated in accordance with **Order VI Rule 4 of the CPC**, which mandates that fraud must be pleaded with particularity. Vague claims regarding attempts of dispossession by armed persons, without furnishing names, dates, details of weapons, or independent corroboration, severely weaken the plaintiffs' case. No FIRs, complaints, or any evidence of criminal conduct by defendant No.1 were produced.

11. In addition, there are material contradictions in the testimonies of appellant and his witnesses regarding the cause and place of Mano's death, ranging from death at home, in hospital, and through an accident involving a dog or a fall into a ditch, which further casts doubt on the credibility of their version. It is also significant that the plaintiff failed to pay court fees timely despite claiming otherwise in the plaint, resulting in dismissal of the suit for non-compliance, as

recorded in the case diary dated 25th April 2022. Such conduct not only reflects negligence but also undermines the seriousness of the claim.

12. Moreover, Mst. Sukhan, the widow of Mano, was admittedly a necessary party but was not impleaded, which is a fatal defect. The appellants/plaintiffs also failed to take steps for mutation of inheritance (foti khata) for a long time, further weakening their claim of lawful succession and continuous possession. In contrast, the defendant has produced a registered sale deed dated 1990, which is more than 30 years old and, under the **law of evidence**, carries a presumption of authenticity. The sale deed bears the MNIC of Mano and his name is imprinted on the official seal, which supports the defendant's claim of lawful purchase. No cogent evidence was brought on record to rebut the sanctity of this document or to establish that it was obtained fraudulently.

13. In light of the above facts, contradictions in appellants/plaintiff's evidence, failure to meet evidentiary requirements, non-compliance with procedural laws, and the stronger documentary case of the defendant, the plaintiffs have failed to prove their case on the touchstone of preponderance of probabilities. Accordingly, the findings of the learned trial court stand justified and require no interference.

14. For what has been discussed above, instant appeal is **dismissed**.

JUDGE