IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Civil Revision Appln. No. S-125 of 2024

Applicants	:	1. Syed Karam Ali Shah s/o Syed Niaz Ali Shah 2. Bibi Nasreen d/o Syed Niaz Ali Shah 3. Bibi Sheeren Syed Niaz Ali Shah 4. Qadir Bux S/o Imam Bux Through Mr. Tariq Gul Mangi, Advocate
		Versus
Respondents	:	1. Rabail Bibi wd/o Syed Hayat Ali Shah 2. Bibi Komal, 3. Uroosa Bibi 4. Haseeba Bibi 5. Bibi Zamzam 6. Soman Bibi (Resp. Nos.02 to 06 daughters of Syed Hayat Ali Shah, through Mr. Ayaz Ali Shaikh, Advocate) 7. City Survey Officer, Sukkur 8. Province of Sindh, through Secretary Revenue, Hyderabad (Resp. Nos.07 & 08 through Mr. Ghulam Abbas Kubar, Assistant Advocate General

Dated of Hearing	:	01.09.2025
Dated of order	:	15.09.2025

O R D E R

KHALID HUSSAIN SHAHANI, J- The applicants invoked the revisional jurisdiction of this Court, assailing the judgment and decree dated 26.02.2024, passed by the learned Additional District Judge-IV, Sukkur, whereby their Civil Appeal No.55 of 2024 was dismissed and the judgment and decree dated 05.09.2023, rendered by the learned Senior Civil Judge-II, Sukkur in F.C. Suit No.377 of 2017, was upheld. Through the said decree dated 05.09.2023, the learned Trial Court declared that respondent Nos.01 to 06 are the exclusive owners of the suit property, bearing C.S. Nos.623/1 and 623/2, admeasuring 137 square yards, situated at Bakhar Chowk, Old Sukkur, having inherited the same from their predecessor-in-interest under the *Shia* law of inheritance. It was further declared that the respondents, being exclusive owners, are entitled to receive rent of the suit property from applicant No.4, whereas the applicants

have no right, title or interest therein. Consequently, the applicants/defendants were directed to pay to the respondents/plaintiffs the rent received by them at the rate of Rs.21,000/- per month from March 2014, till the date of institution of the suit, and, in addition, to pay future rent at the enhanced rate of Rs.35,000/- per month from the date of filing of the suit until its disposal.

2. Learned counsel for the applicants argued that the learned courts below have miserably failed to consider that the suit of the respondents was time barred; the question of sect was not determined on the basis of *Nikahnama* thereby section 259 of Muhammadan Law was violated; the respondent No.3 namely Bibi Uroosa filed an application to the Mukhtiarkar Revenue, City Sukkur for making *Foti khata* of Syed Hayat Ali Shah and the same application was dismissed vide order dated 15.11.2017 at Exh.13/ and the same order was not challenged by respondents before the Revenue hierarchy, hence civil suit was not maintainable and barred under Section 161 of West Pakistan Land Revenue Act, 1967; hence, the impugned Judgment and Decree may be set aside by allowing this civil revision application. Learned counsel relied upon the cases reported as Province of *Punjab vs Muhammad Khan* (2023 YLR 1261 Lahore), *Muhammad Rasheed vs Shah Muhammad* (2024 YLR 1309 Sindh)*; DO Rev. Thatta vs Karim Bux (2016 CLC 1372) and Pir Bux Soomro vs Province of Sindh* (2017 MLD112 Sindh).

3. Learned counsel for the respondents conversely argued that, question of limitation was extensively addressed by the Trial Court in accordance with law; the revision application is not maintainable as the applicants failed to raise question of law in line with provisions of section 115 CPC rather raised factual controversies, the findings on which attained finality.

4. I have carefully considered the contentions of both the learned counsels and gone through the record. The controversy between the

applicants and respondents centers on succession to immovable properties bearing city survey Nos. 623/1 and 623/2, admeasuring 137 square yards, situated at Bakhar Chowk, Old Sukkur, where the respondents claim exclusive inheritance under *Shia* law as heirs of the deceased Syed Hayat Ali Shah, relying on documentary evidence of sect and asserting unlawful usurpation of rent by the applicants, whereas the applicants contend that the properties were actually purchased by their father, Syed Niaz Ali Shah, merely registered in the deceased's name, and that prior to his death, he settled the respondents' share through a monetary payment of Rs.1,000,000/-, thereby extinguishing their rights; they further dispute the sectarian claim by asserting that both deceased and heirs were *Sunni*, and maintain that as successors of Niaz Ali Shah they lawfully possess and manage the properties, rendering the respondents' suit time-barred, misconceived, and hit by Section 42 of the Specific Relief Act; thus, the real issue requiring adjudication is whether succession falls under *Shia* or *Sunni* inheritance principles, whether the respondents' rights were discharged through the alleged monetary settlement, and consequently who holds lawful title and entitlement to rents of the suit properties.

5. The arguments of learned counsel for applicants as to limitation was raised before the learned Trial Court and it was addressed in the Judgement of learned Trial Court that although the deceased died in 2005, the plaintiffs/the respondents were continuously receiving rent through the father-in-law (Niaz Ali Shah) until his death in 2014. The controversy only crystallized in November 2017 when Mukhtiarkar rejected the plaintiff's mutation application on the ground of a disputed sect. Learned Trial Judge thus treated 15.11.2017 (date of rejection by revenue officer) as the date when cause of action accrued. This reasoning is consistent with Article 120 of the Limitation Act, 1908 (six years for declaratory relief) if cause of action is

treated as “continuous denial of right” rather than the original death. Courts in this respect often hold that where heirs are in “permissive enjoyment” through a manager or trustee (here, the father-in-law), limitation starts only when rights are expressly denied. The accrual of the cause of action is plausibly pegged to the first clear and unequivocal denial of title (Mukhtiarkar’s order dated 15.11.2017), not the 2005 opening of succession, because until 2014, the father-in-law acted as a manager/collector and remitted rent to the respondents, creating a permissive/representative possession that is legally inconsistent with hostility. In such settings, limitation for a declaratory/ancillary injunctive claim runs from the first hostile assertion (Article 120, Limitation Act 1908) rather than from death. Additional props the court could have spelled out: (a) the father-in-law’s role had the attributes of a constructive trustee/bailee for the estate; limitation against beneficiaries does not run until a clear breach of duty or adverse assertion occurs; (b) the continuous acceptance/remittance of rent amounts to acknowledgment of the respondents’ beneficial interest, engaging the acknowledgment doctrine (akin to s.19, Limitation Act) to extend/postpone limitation; (c) the “continuing wrong/continuing denial” principle applies because rent diversion by the applicants began only after 2014 and solidified as a legal denial in 2017; (d) even if the period were computed earlier, excludable time principles are arguably triggered by the respondents’ bona fide pursuit of mutation before the revenue forum (logic parallel to S.14 exclusion), which the revenue officer himself directed them to replace with a civil suit; (e) critically, the reliefs include declaration and consequential injunction/account of mesne profits for such mixed reliefs the latest crystallizing denial is the operative date; and (f) the applicants’ own pleadings admit ongoing collection and management post-2014, which negatives adverse possession and supports late crystallization of the dispute.

6. So far as contention regarding declaration of sect of the deceased is concerned, the Trial Judge held that prayer (a) in the plaint, seeking declaration of ownership under *Shia* law, implicitly required determination of sect of the deceased, and thus issue No.2 was rightly framed. Evidence from *Nikah Khuwans,* marriage registration certificates, *fatwa/tasdeeqnama,* and even the defendants' own contradictory testimony (admitting *Shia* affiliation) was accepted to hold that the deceased was *Shia.* On standard of proof, sect is a status-like personal attribute determined on the preponderance of probabilities; direct documentary proof is rare, so courts are entitled to rely on course-of-life evidence: the officiant of nikah (a *Shia Alim*), burial practices, and participation in community institutions, tasdīq-namas, and admissions/contradictions by the opposing side. Beyond what the judgment learned Trial Court notes, three evidentiary pillars could have been expressly emphasized: (i) under the Qanun-e-Shahadat Order rules on reputation/opinion evidence regarding family/personal relations and customs, long-standing family reputation and the testimony of community office-bearers are relevant facts; (ii) adverse inference (QSO's illustration-g presumption) lies against the applicants for not producing the "best evidence" of their Sunni claim (e.g., Sunni nikah-khwān records, Sunni madrassa/register entries, or consistent religious documentation) despite asserting access; and (iii) estoppel by conduct/admission applies where applicants both accepted a Shia 'ālim for their own nikah and did not consistently plead or prove a Sunni course of life for the deceased; such conduct undercuts their sect narrative. Doctrinally, because the prayer sought ownership "under Shia law of inheritance," the sect determination was intrinsic to the declaratory relief; courts routinely decide antecedent status issues without a freestanding prayer when those issues are inseparable predicates of title. Finally, where evidence is in equipoise, civil courts may

prefer the coherent mosaic (nikah officiation, burial, community certification, and family testimony aligning on Shia identity) over bare assertions, which is exactly the matrix here. However, the finding of the learned Trial Court is based on reliable evidence and it does not indicate any illegality or material irregularity amenable to revision. The contention of learned counsel for the applicants is therefore meritless.

7. The contention of learned counsel for applicants regarding lack of jurisdiction of civil court is not tenable Section 9 CPC grants plenary civil jurisdiction unless specifically barred; neither the Sindh Land Revenue law nor any cognate statute confers on revenue officers the power to adjudicate personal status (sect) or determine proprietary title inter se rival heirs, still less to award mesne profits/rents or injunctive relief. Mutation is fiscal/administrative, intended to keep land records current; it does not create, extinguish, or conclusively declare title. The Mukhtiarkar's order itself declined adjudication and directed recourse to civil court, which is both a practical and jurisdictional admission that the controversy exceeds revenue competence. The principal reliefs i.e. declaration of exclusive ownership under a particular personal law, injunction against interference, rendition of accounts and rent recovery, sought by the respondents in their suit are quintessentially civil and non-derivable in revenue fora. Revenue forums lack procedural architecture (rules of evidence, witness examination, issues-framing under O.XIV CPC) to try status-laden title disputes, risking denial of due process if confined there. Even where special statutes create alternative remedies, courts frequently held that questions of complex title and civil consequences beyond entry-correction remain triable by civil courts. The presence of a tenant (Applicant no 4/Def. No.5) and claims for ongoing deposit of rent invoke contract/tenancy incidents outside revenue jurisdiction and permitting revenue authorities to decide sect-based succession would

collapse the personal-law inquiry into an administrative rubric, something neither intended nor safe in a system that assigns such determinations to civil courts. Hence, both in principle and on pleadings, the learned Trial Court properly exercised jurisdiction and the revenue forum was correctly treated as administratively limited and non-conclusive. The case law cited by learned counsel for the applicants reveal distinguished facts having no nexus with legal reasoning involved in the present case.

8. In view of above discussed reasons, the civil revision application in hand is not maintainable hence it is dismissed, with no order as to costs.

J U D G E