

HIGH COURT OF SINDH CIRCUIT COURT LARKANA

Civil Revision Application No. S-10 of 2025

Applicant : Anwar Ali Phulpoto s/o Ali Madad,
through Mr. Ghayoor Abbas Shahani, Advocate

Respondent No.1 : Mst. Hazooran Khatoon w/o Muhammad Yousif
Mangnejo;

Respondent No.2 : Rajib s/o Kohral Mangnejo and
Respondent No.3 : Abdul Ghaffar s/o Kohral Mangnejo
through Mr. Mazhar Ali Bhutto, Advocate,

Respondent No.4 : Mukhtiarkar, Ratodero
Respondent No.5 : Province of Sindh, through Mr. Munawar Ali
Abbasi, Assistant Advocate General, Sindh.

Date of hearing : **24.11.2025**

Date of decision : **24.11.2025**

J U D G M E N T

ARBAB ALI HAKRO, J.- Through this Civil Revision Application under Section 115, C.P.C, the applicant has impugned the concurrent findings of the courts below, namely, the Judgment and Decree dated 03.12.2024 passed by the learned Additional District Judge, Ratodero, in Civil Appeal No.94 of 2024, whereby the appeal of the applicant was dismissed, thereby affirming the Order dated 16.09.2024 rendered by the learned Senior Civil Judge, Ratodero in F.C. Suit No.36 of 2024, through which the plaint of the applicant was rejected under Order VII Rule 11, C.P.C.

2. The brief facts, as can be culled from the record, are that the applicant/plaintiff instituted a suit for declaration, possession and permanent injunction before the Senior Civil Judge, Ratodero, asserting his entitlement to ownership of a parcel of land admeasuring 10,000 sq. ft. His claim was predicated on a 'sanad' purportedly issued in 1993 under the Sindh Goth-Abad (Housing Scheme) Act, 1987 (the "**Act of 1987**"). The applicant maintained

that the said allotment conferred upon him a valid and enforceable right in respect of the suit property and, consequently, sought judicial recognition of his ownership, recovery of possession from the private respondents alleged to be in illegal occupation, and a restraint against further encroachment or alienation.

3. Upon presentation of the plaint, however, the trial Court, while exercising its jurisdiction at the very threshold, proceeded to examine the maintainability of the suit. Having scrutinized the pleadings and the annexed documents, the trial Court formed the view that the allotment claimed by the applicant was *ex facie* in contravention of Section 3 of the Act of 1987, which restricts the allotment of land to a maximum of two ghuntas (approximately 2,178 Sq Feet) for construction of a house to a deserving person ordinarily residing in the relevant Deh. The claim of 10,000 Square feet was thus found to be far in excess of the statutory ceiling. The trial Court further observed that the 'sanad' relied upon by the applicant was deficient in essential attributes of authenticity, inasmuch as it was not affixed with any official seal, bore no date of issuance, and did not *prima facie* emanate from the competent authority in accordance with law. In the Court's estimation, such a document could not confer any legal character or status upon the applicant within the contemplation of Section 42 of the Specific Relief Act, 1877. Consequently, the plaint was rejected in *limine* under Order VII Rule 11, C.P.C, on the ground that the suit was incompetent and devoid of lawful foundation.

4. Aggrieved, the applicant preferred Civil Appeal No.94 of 2024 before the learned District Judge, Larkana, which was transferred to the learned Additional District Judge, Ratodero. The appellate Court, after hearing the parties, dismissed the appeal on 03.12.2024, concurring with the trial Court's view that the applicant lacked the legal character to seek a declaration under Section 42 of the Specific Relief Act, 1877, and that the plaint was incompetent. The applicant has now approached this Court through the present revision application.

5. Learned counsel for the applicant has argued that both courts below acted in undue haste and failed to exercise proper judicial discretion. He submits that the plaint was rejected at the very threshold, without framing issues or allowing the parties to lead evidence, thereby depriving the applicant of his right to establish his claim through a fair trial. He contends that the courts misapplied Section 3 of the Act of 1987 by relying solely on the main provision restricting allotment to two ghuntas, while ignoring the proviso that protects allotments where construction had already been completed before the commencement of the Act. According to him, this omission rendered the Order and Judgment unsustainable. Learned counsel further submits that the 'sanad' relied upon by the applicant bears the signature of the Collector, which, *prima facie*, required evidentiary scrutiny. Whether the document was genuine or otherwise could not be determined summarily, and the trial Court erred in pronouncing upon its validity at the admission stage. He also points to the enquiry report prepared by the SDPO Naudero, which records that Respondent No.1 is in illegal possession of the disputed property. This report, annexed with the plaint, constituted material evidence supporting the applicant's cause of action but was overlooked by the courts below. On these grounds, learned counsel prays that the impugned orders be set aside and the matter remanded to the trial Court for framing of issues and recording of evidence, so that the applicant's claim may be adjudicated on merits.

6. Learned counsel for respondents No.1 to 3 has supported the concurrent findings of the courts below, submitting that the applicant's entire claim rests upon a 'sanad' which is patently contrary to law. He contends that the 'sanad' relied upon by the applicant is bereft of seal, date, and official authentication, and therefore cannot create any legal character or cause of action.

7. Learned Assistant Advocate General Sindh has also defended the impugned orders, stressing that the Goth-Abad Scheme was designed to provide small residential plots to indigent persons for habitation, not to confer expansive tracts of land for commercial or speculative use. He submits that the applicant's claim of 10,000 square feet undermines the very object of the

Act and is legally untenable. He further maintains that the concurrent findings of the courts below are well-reasoned, intra vires and free from any material irregularity, leaving no ground for interference under Section 115, C.P.C.

8. Having heard at length the learned counsel for the applicant as well as the submissions advanced on behalf of respondents No.1 to 3 and the learned Assistant Advocate General Sindh, and having assiduously scrutinized the record with due circumspection.

9. It is incontrovertible that the plaint of the applicant was non-suited at the very inception by the trial Court under Order VII Rule 11, C.P.C, which Order was subsequently affirmed by the appellate Court in the Appeal. The applicant has invoked the revisional jurisdiction of this Court under Section 115, C.P.C, assailing the concurrent findings. The remit of this Court in revision is circumscribed; it does not function as a Court of appeal, nor is it empowered to re-appraise evidence or substitute its own subjective view. Interference is permissible only where the subordinate courts have acted *coram non iudice*, failed to exercise jurisdiction vested in them or committed a manifest illegality or material irregularity in the exercise thereof.

10. The fulcrum of the controversy is the applicant's assertion of ownership over 10,000 square feet of land on the strength of a 'sanad' allegedly issued in the year, 1993 under the Act of 1987, couched in unequivocal terms, ordains that the Collector may, on recommendation of the allotment committee, allot land not exceeding two ghuntas (\approx 2,178 sq. ft.) for construction of a house to a deserving person ordinarily residing in the relevant Deh, free of cost and subject to prescribed conditions.

11. The 'sanad' relied upon by the applicant purports to confer rights over 10,000 square feet, which is ex facie *ultra vires* the statutory ceiling. The trial Court rightly observed that such a document, bereft of seal, date and other indicia of authenticity, could not prima facie confer legal character upon the applicant within the contemplation of Section 42 of the Specific Relief Act, 1877. The appellate Court, upon independent scrutiny, concurred with this view.

12. The dictum laid down in a case of *Musheer Ahmed Bhatti*¹ is apposite. In that case, it was held that under Section 3 of the Act of 1987, the maximum allotment permissible is two ghuntas only, and any 'sanad' purporting to allot land in excess thereof is patently void ab initio. It was further held that agreements predicated upon such illegal 'sanads' are void not only for mistake as to the legal existence of their corpus but also for their unlawful object, amounting to usurpation of State property. The ratio *decidendi* of that case squarely governs the present matter, as the applicant's claim is similarly founded upon a 'sanad' exceeding the statutory limit.

13. The contention that the proviso to Section 3 of the Act of 1987 was ignored is devoid of substance. The record does not disclose that any house existed on the disputed land prior to the commencement of the Act. On the contrary, the plaint itself acknowledges that the property is vacant and allegedly in illegal possession of Respondent No.1. Thus, the applicant cannot avail himself of the protective umbrella of the proviso.

14. It is further argued that the genuineness of the 'sanad' required evidentiary scrutiny. While ordinarily questions of fact are resolved through evidence, it is equally axiomatic that where the plaint itself discloses no cause of action or is barred by law, the Court is justified in rejecting it at the threshold. In the present case, even if the 'sanad' were assumed genuine, it would still be repugnant to Section 3 of the Act of 1987 and therefore incapable of conferring any enforceable right. The defect is not factual but jurisdictional, striking at the very root of maintainability.

15. The enquiry report dated 18.07.2024, by the SDPO Naudero, relied upon by the applicant, may at best establish possession, but possession sans lawful title does not entitle a person to declaratory relief under Section 42 of the Specific Relief Act. Declaratory relief is discretionary and cannot be granted to sanctify a claim founded on an illegal or void document.

16. In light of the foregoing, I am constrained to hold that both, the trial

¹ 2009 MLD 515 (Musheer Ahmed Bhatti v. Province of Sindh)

Court and the appellate Court, acted intra vires, applied the correct legal principles and committed no material irregularity or illegality. The applicant has failed to demonstrate any jurisdictional defect or miscarriage of justice warranting interference under Section 115, C.P.C. Accordingly, the revision application is bereft of merit and is hereby **dismissed**. No order as to costs.

JUDGE

Qazi Tahir PA/*