

ORDER SHEET
HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
2nd Appeal No.40 of 2025

| DATE | ORDER WITH SIGNATURE OF JUDGE(S) |
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1. For hearing of C.M.A No.1037/2025 (41 R 5 CPC)
2. For hearing of main case

18.11.2025

Mr.Zafar Iqbal Seenharo, Advocate for respondents No.2 to 4 and 6 to 9

On the last date of hearing, both Counsel were present and the hearing was fixed for 9:00 a.m. today. However, today, none are present for the appellant, neither L.R.s of Abdul Wahid Khan Abro, nor his pleader. No intimation is received.

The background of the case, as per the record available in the IInd appeal, is that the appellant-plaintiff herein, Abdul Wahid Khan Abro, himself, filed F.C. Suit No.48/1999 for declaration and permanent injunction against the present respondents, i.e. the wife and eight (8) children of Muhammad Ibrahim, Mukhtiarkar and the Province of Sindh through the Revenue Department.¹ The F.C. Suit No.48/1999, pursuant to an application under Order XII Rule 6 C.P.C. filed by Abdul Wahid Khan, which application was allowed vide Order dated 09.10.2023,² was decreed vide Decree dated 06.11.2003,³ in favour of Abdul Wahid and against the present respondents, i.e. the wife and eight (8) children of Muhammad Ibrahim. The said Order dated 09.10.2003, emerging from the application under Order XII Rule 6 C.P.C. was challenged by the private respondents, i.e. the wife and eight (8) children of Muhammad Ibrahim, vide Appeal No.327/2003, before the V-Additional District Judge, Hyderabad.⁴ Thereafter, the appellate Court passed the Judgment and Decree dated 12.8.2011 and 13.8.2011, remanding the matter to the

¹ Copy of plaint available in IInd appeal from pages 77 to 89.

² Available in IInd appeal from pages 47 to 65.

³ (available in IInd appeal on page 67

⁴ (available in IInd appeal from on Page 143-151.

trial Court.⁵ The legal heirs of Abdul Wahid preferred Civil Revision Application No. 310/2011, which was allowed vide Order dated 01.10.2024,⁶ by this (High) Court to the extent that the Court concluded that Abdul Wahid Khan had not been heard.⁷

During the pendency of (the second round of) the appeal No.327/2023, no stay order was passed by the appellate Court. Further, there is also nothing available on record to indicate that the proceedings before the trial Court in Abdul Wahid Khan F.C. Suit No.48/1999 (now re-numbered as Suit No.17/2025), had been stayed. Eventually, during the second round of appeal No.327/2003, the appellate Court passed impugned Judgment dated 03.02.2025,⁸ wherein this time the appellate Court concluded that the matter ought to be remanded to the trial Court.

Meanwhile, as no ad-interim order was passed to suspend the trial Court proceedings, the trial Court, continued the proceedings as none appeared on behalf of the legal heirs of Abdul Wahid, the F.C. Suit No.48/1999, now F.C. Suit No.17/2025, was dismissed vide Judgment dated 02.07.2025.⁹ According to Paragraph 6 of the Judgment dated 02.07.2025, it appears that the legal heirs of Abdul Wahid Khan had also entered an appearance in the second round of proceedings before the trial Court. The learned counsel for the respondents, i.e. the wife and eight (8) children of Muhammad Ibrahim, have also brought on record the copy of Civil appeal No.26/2025,¹⁰ which the LR's of Abdul Wahid Khan have filed against the private respondents, i.e. the wife and eight (8) children of Muhammad Ibrahim against the judgment dated

⁵ Available in IInd appeal from pages 201 to 213.

⁶ Available in IInd appeal on Page 235.

⁷ See appellate Court's diary dated 05.04.2007 available on page 153.

⁸ Available in IInd appeal from pages 29 to 45.

⁹ Certified copy of the Judgment & Decree dated 02.07.2025 in FC Suit No.17/2025 (Old FC Suit No.48/1999) available at serial no.1 of the Statement dated 11.11.2025 filed by Respondent Nos.1 to 8.

¹⁰ Certified copy of the civil appeal no.26/2025 filed against the said Judgment & Decree available at serial no.2 of the Statement dated 11.11.2025 filed by Respondent Nos.1 to 8.

02.07.2025 passed by the trial Court in FC Suit No.17/2025 (Old Suit No.48/1999), which appeal is still pending hearing at the appellate stage.

Given the above, it appears that this 2nd appeal against the impugned Order dated 03.02.2025 has become infructuous as the trial Court has proceeded to announce Judgment and decree in terms of dismissal of Abdul Wahid Khan's aforesaid F.C. Suit No.17/2025 (Old Suit No.48/1999), and Abdul Wahid Khan has also preferred an appeal under Section 96 C.P.C. No useful purpose will be served to decide anything further in this first round of the litigation when the second round of litigation has reached the appellate stage for the second time. Notwithstanding that the appellant has lost interest in these proceedings and has not been in attendance before this (High) Court in this IInd Appeal; whereas, the record of the second round of the appellate proceedings filed by the Respondent Counsel evidences that the appellant is diligently pursuing the second round of appeal.¹¹ Even otherwise, I do not find any defect or any illegality or irregularity in the impugned Order, which is essentially a "remand order". There is no reason for me to make any intervention at this stage given the litigious background of this dispute that is still unresolved after 26 years as per the appellate proceedings still pending hearing in the second round of litigation.

Given the above developments, this 2nd appeal is **dismissed** for the reasons stated above.

JUDGE

AHSAN K. ABRO

¹¹ Certified copy of the diary sheet from 23.07.2025 to 05.11.2025 in civil appeal no.26/2025 available at serial no.3 of the Statement dated 11.11.2025 filed by Respondent Nos.1 to 8 shows that the appellant (a) Ahmed Nawaz and his Counsel are consistently in attendance before the District Judge Tando Muhammad Khan.