Judgment Sheet

IN THE HIGH COURT OF SINDH, KARACHI

IInd Appeal No. 139 of 2010

[Abdul Khaliq & others vs. Province of Sindh & others]

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Appellant	Through Mr. Azizur Rehman Akhund, Advocate
Respondent-5	Through Mr. Sanaullah Noor Ghori, Advocate
Date of Hg:	21.01.2026
Date of Judgment:	06.02.2026

ARSHAD HUSSAIN KHAN, J. Through the present second appeal, the appellants have called in question the judgment dated 19.08.2010 and decree dated 24.08.2010, passed by the learned IInd Additional District Judge, Thatta, in Civil Appeal No.02 of 2008, whereby the appeal filed by the respondents No. 6 to 9 was allowed, the judgment and decree dated 22.11.2007 and 27.11.2007, passed by the learned Senior Civil Judge, Sujawal, in F.C. Suit No.42 of 2005 were set aside, and the suit of the respondents No.6 to 9 was decreed.

2. Briefly stated, respondents No.6 to 9 [plaintiffs before the trial court] filed a suit for declaration, cancellation of documents/entries, and mandatory and permanent injunction in respect of agricultural land admeasuring 290 acres situated in Deh Pir Muhammad Shah, Taluka Shah Bunder, District Thatta, pleading that the suit land was originally granted to Mst. Fatima d/o Haji Muhammad Dars in 1933 and duly mutated in her favour. It was further pleaded that after de-survey due to river action, the land was restored in her name vide order dated 22.05.1966 and mutation entry dated 04.06.1966, and that she subsequently gifted her entire share to the plaintiffs through mutation entry dated 22.02.1979, whereafter they remained in possession. The plaintiffs alleged that they later discovered that the suit land was wrongly treated as Government land and proposed to be disposed of through open Katchery, and despite seeking exclusion, the revenue authorities threatened dispossession. During earlier proceedings, certain defendants claimed title, and it was further revealed that the suit land had been unlawfully allotted and mutated in favour of appellants/defendants Nos.6 to 23, parts whereof were mortgaged and sold. According to the plaintiffs, the suit land was neither available for allotment nor lawfully vested in the alleged allottees, and the allotments, mutation entries, T.O.

Forms, and sale deeds were procured through fraud and collusion with revenue officials. Consequently, after withdrawing the earlier suit with permission, the plaintiffs instituted the aforesaid Suit No.42 of 2005.

3. Record shows that respondents/defendants Nos.1 to 3 and 5 were proceeded ex-parte vide order dated 29.11.2005. Respondent/defendant No.4 (Mukhtiarkar Shah Bunder), in his written statement, denied the plaint averments and asserted that no mutation entry No.42 dated 05.12.1933 existed in favour of Mst. Fatima, alleging that the said entry, subsequent mutation entries, sketches, maps, and official signatures were forged and fabricated. He further denied any restoration order of 1966 or possession of the suit land by Mst. Fatima or the plaintiffs, contending that the block survey had already been conducted prior to 1993–94 and that respondents/defendants Nos.6 to 23 were lawful allottees of the suit land through the Barrage and Revenue Authorities.

4. Conversely, Appellant /defendants Nos.6 to 10, 13, and 14, in their written statements, denied the plaint averments and contended that during the years 1993–94 various Block Survey numbers, including Blocks Nos.23/1–2, 24/2, and 16/3–4, were lawfully granted to appellant/defendants Nos.6 and 7 by the Barrage Authorities, who paid the requisite installments, maintained Form-A, and remained in cultivating possession. It was further pleaded that certain Block Survey numbers were purchased by Appellants/defendants Nos.8 to 10 from appellants Nos.13 and 14 through registered sale deeds, whereafter mutation entries were effected in their favour. They further asserted that Block Survey Nos.126/1 to 4 and 127/1 to 4 were Na-Qabooli Government land in possession of third parties, and that the respondent/plaintiffs were neither owners nor in possession of the suit land, whereas the appellants /defendants were lawful allottees and purchasers thereof.

The appellants/defendants No. 11, 12, and 15 to 23 in their written statements contended that the suit land was lawfully granted to them under the existing revenue and land grant policy. They maintained that they were in cultivating possession of their allotted portions, had paid all dues, and that their titles were validly recorded in the revenue records. They denied the plaintiffs' claims of ownership, gift, or possession over the suit land, asserting that the documents and entries

relied upon by the plaintiffs were forged, fraudulent, or baseless. They further contended that the plaintiffs' suit was misconceived, barred under law, and not maintainable, and that they were entitled to continue in peaceful possession of the land without interference.

The learned trial court, after framing issues, recording evidence, and hearing learned counsel for the parties, dismissed the suit vide judgment and decree dated 22.11.2007 and 27.11.2007, respectively. The respondents/plaintiffs assailed the said judgment and decree through Civil Appeal No.02 of 2008. The learned IInd Additional District Judge, Thatta, set aside the judgment and decree of the trial court and allowed the appeal, decreeing the suit vide judgment and decree dated 19.08.2010 and 24.08.2010, respectively, which are the subject matter of the present second appeal.

5. Learned counsel for the appellants has contended that the impugned judgment and decree are contrary to law and evidence, having been recorded by misapplying Articles 88 and 100 of the Qanoon-e-Shahadat Order, 1984. It was argued that the lower appellate court misread the law, relied on unproved and allegedly forged revenue records of 1933 and 1966, ignored material admissions, contradictions, and the question of limitation, and failed to appreciate that the respondents/plaintiffs did not establish lawful title, gift, or possession. The respondents/plaintiffs' claim rested on alleged revenue entries and orders, none produced in original form despite admitted availability of the primary record with the Barrage Department and the Deputy Commissioner; reliance on certified copies was therefore impermissible. The respondents themselves admitted non-production of original grant orders, while the Mukhtiarkar Shah Bandar deposed that the relied-upon entries were forged, and material contradictions in the respondents/plaintiffs' documents, including discrepancies regarding the area mentioned in the alleged order dated 22.05.1966, were overlooked by the lower appellate court. It was further argued that the alleged gift of 1979 was not proved, as neither lawful ownership of the donor nor essential ingredients of a valid gift were established, and possession of the suit land was also unproved, the revenue receipts produced not relating to the land, whereas evidence established lawful possession by the appellants under grants and sale transactions. The suit was barred by limitation, the allotments and official acts of 1993–94 being within the

plaintiffs' knowledge well before institution of the suit in 2005. Lastly, it was contended that the lower appellate court exceeded its jurisdiction by reversing the well-reasoned findings of the trial court without any misreading or non-reading of evidence, rendering the judgment perverse and tainted with jurisdictional error, thereby raising substantial questions of law warranting interference by this Court.

6. On the other hand, Notices against respondent Nos. 6 to 9 through all modes have been issued but they chose to remain absent and service upon the said respondents held good, vide order dated 28.02.2017.

7. Learned counsel for respondent No.05, Zarai Taraqiati Bank Limited, while reiterating the contents of its Written Statement filed in this case has contended that the Bank has been impleaded merely as a proforma party and is not a necessary party to the present second appeal, as it claims no right, title or interest in the suit land and is not concerned with the inter se dispute of ownership between the appellants and private respondents, its role being confined only to certain loan transactions.

8. Heard learned counsel for the appellants and perused the material available on the record.

It is evident from the record that the entire controversy revolves around the question whether the respondents/plaintiffs succeeded in establishing lawful title over the suit agricultural land on the basis of alleged old revenue entries, gift mutation and orders purportedly passed in favour of Mst. Fatima, and whether the courts below were justified in accepting or rejecting such claim.

9. The trial court, after appreciating both oral and documentary evidence, recorded a categorical finding that the respondents/plaintiffs failed to prove the genuineness, authenticity and lawful origin of the revenue entries relied upon by them. It was specifically held that the alleged entries of the years 1933, 1966 and 1979 were not traceable from proper custody and were seriously disputed by the official respondents, who deposed on oath that no such record existed in the relevant revenue offices. The trial court further held that mere production of certified copies, in absence of corroboration from original record or competent official authority, was not sufficient to establish title over State land,

particularly when revenue entries are meant primarily for fiscal purposes and do not by themselves confer ownership.

10. The first appellate court reversed the said findings mainly by extending presumption under Article 100 of the Qanoon-e-Shahadat Order, 1984. However, a careful examination of the impugned judgment reveals that such presumption was applied mechanically, without examining whether the documents were produced from proper custody, whether the foundational facts for invoking Article 100 were established, and whether the presumption stood rebutted by cogent evidence produced by the official appellants/defendants. The presumption under Article 100, even when available, relates only to execution or handwriting of a document and does not validate the legality of a transaction or the authority of the officer purported to have passed such orders, particularly in matters involving State land.

11. So far as Article 88 of the Qanoon-e-Shahadat Order, 1984 is concerned, the same has no application to the facts of the present case, as the dispute does not pertain to admissions but to proof of title based on disputed and controverted revenue record. The controversy before this Court relates to the legality and authenticity of alleged grants, allotments and mutation entries concerning State land, which cannot be determined on the basis of admissions within the meaning of Article 88.

12. It is well settled that mere existence of conflicting findings between the courts below does not, by itself, justify interference in second appeal; however, where such conflict arises due to misapplication of law or jurisdictional excess by the first appellate court, it gives rise to a substantial question of law within the meaning of Section 100 C.P.C. In the present case, the learned trial court recorded findings after a detailed appreciation of evidence, correctly placing the burden of proof upon the respondents/plaintiffs and applying settled principles governing State land and revenue record. The first appellate court reversed those findings without demonstrating any perversity in the trial court’s judgment, resulting in legally irreconcilable and conflicting findings. The Supreme Court has consistently held that where the first appellate court disturbs well-reasoned findings without lawful justification, the High Court is duty-bound to correct such illegality in second appeal.

13. Furthermore, disputes relating to title, allotment, cancellation of revenue entries, and declaration concerning agricultural land are governed by the Sindh Land Revenue Act. The trial court had rightly taken note of the statutory framework and the bar of civil jurisdiction, whereas the first appellate court failed to address this aspect in its proper legal perspective. It is also settled law that in a Second Appeal, interference is warranted only where a substantial question of law arises. Re-appreciation of evidence or substitution of factual findings is impermissible unless the findings of the courts below are shown to be perverse or based on misreading or non-reading of evidence. In the present case, no such perversity or illegality has been demonstrated in the judgment of the trial court. Conversely, the first appellate court, while reversing the judgment of the trial court, re-assessed disputed facts and substituted its own conclusions without identifying any misreading or non-reading of evidence, which was beyond the permissible scope of appellate jurisdiction.

14. It is well settled that the presumption under Article 100 of the Qanoon-e-Shahadat Order, 1984 is discretionary and permissive, and cannot be invoked in respect of documents which are disputed, alleged to be forged, or whose existence is denied by the lawful custodian. In the present case, the revenue authorities, who are among the respondent/defendants, consistently maintained that the suit land was State land, no valid grant was ever made in favour of Mst. Fatima, and the alleged orders and entries relied upon by the respondents/plaintiffs were not available in the official record. The burden to establish lawful grant, re-allotment, or gift squarely rested upon the respondents/plaintiffs, which they have not discharged.

For ease of reference, Article 100 provides that where a document of thirty years or more is produced from proper custody, the Court *may presume* its signature and execution to be genuine. This presumption, however, is limited to handwriting, signature, and due execution or attestation, and does not validate the truth of the contents, the legality of the transaction, or the origin of title, particularly in matters concerning State land or proprietary rights.

Before invoking the presumption, the Court must satisfy itself that the document is genuine, produced from proper custody, and not

rebutted by material on record. Where the document is disputed or denied by the lawful custodian, the Court is justified in declining the presumption. The Supreme Court has emphasized in Ch. Muhammad Shafi v. Shamim Khanum [2007 SCMR 838] that Article 100 provides a permissive evidentiary aid, to be exercised cautiously, especially where valuable proprietary rights are claimed on the basis of old or contested documents.

15. In view of the foregoing discussion, this court is of the considered view that the lower appellate court committed material illegality and jurisdictional error in reversing the well-reasoned judgment of the trial court by misapplying Article 100 of the Qanoon-e-Shahadat Order, 1984 and by overlooking settled principles governing State land and revenue record. Accordingly, the substantial questions of law involved in this Second Appeal are answered in favour of the appellants/defendants and against the respondents/plaintiffs. The Second Appeal is allowed, the judgment dated 19.08.2010 and decree dated 24.08.2010, passed by the learned appellate court are set aside, and the judgment and decree dated 22.11.2007 and 27.11.2007 respectively, passed by the learned trial court are restored.

JUDGE

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