

IN THE HIGH COURT OF SINDH, CIRCUIT COURT MIRPURKHAS

Civil Revision Application No.S-48 of 2023

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Applicants: Province of Sindh through
Secretary Board of Revenue and others
Through Mr. Muhammad Shareef Solangi, A.A.G.

Respondents: Mehran and 10 others
Called absent.

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Date of hearing **16.01.2026**

Date of order **16.01.2026**

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ORDER

Muhammad Hasan (Akber), J-: The instant Civil Revision Application is directed against the impugned judgment and decree dated 25.07.2023 passed by the learned District Judge/Model Civil Appellate Court, Tharparkar @ Mithi, whereby the Civil Misc. Appeal No.01 of 2023, filed by the applicants/defendants has been dismissed.

2. Brief facts of the case are that the respondents/plaintiffs filed F.C Suit against the applicants/defendants seeking declaration and mandatory and permanent injunctions, claiming ownership of Survey No.260 measuring 09-22 acres, situated in Deh Makan, Tapo Khario Ghulam Shah, Taluka Islamkot. It is contended that the land was originally granted to their grandfather, Bachoo son of Mithan Mehranpoto, in 1979-80, and that Malkana at the prescribed rate was duly paid to the Government. Following payment, the land was entered in his name as Qabooli land in Deh Form VII-B through Entry No.194, which was verified by the Mukhtiarkar in 1999. Since then, the grantee and, after his death, the respondents remained in peaceful cultivating possession and regularly paid land revenue. It is further stated that during a survey conducted in 2020 for coal-mining compensation purposes, they discovered that the suit land had been wrongly shown as Na-Qabooli land in Deh Form VII, despite a clear mutation reflecting payment of Malkana and entry in Deh Form VII-B. Upon obtaining certified copies, they approached the revenue

authorities for correction of the record. However, the Deputy Commissioner failed to resolve the matter and verbally declined to rectify the entry, advising them to seek relief from the civil court. Hence the respondents/plaintiffs filed the above suit with the following prayers:-

- a) To declare that the plaintiffs being legal heirs of late Bachoo son of Mithan Mehran poto are lawful owners of suit land, viz. survey/Begoti No.260 admeasuring 09-22 acres situated in Makan, Deh & Tapo Khario Ghulam Shah Taluka Islamkot.
- b) To declare that the suit land is Qabooli land and same is entered in the name of grandfather of the plaintiffs Bachoo son of Mithan in Deh Form VII-B vide entry No.194 and same has been wrongly available in Deh Form VII-A entry No.102 of same Makan as NAQABOOLI LAND which is liable to be deleted from the said record as after payment of MALKANA the suit land is the Qabooli land of the plaintiffs.
- c) Grant Mandatory injunction against the defendants directing them to delete the suit land from the list of NAQABOOLI LAND mentioned vide entry No.102 of Deh Form VII-A and declare as QABOOLI LAND of late Bachoo son of Mithan Mehran Poto and now enter in the names of plaintiff on the basis of ownership and title documents mentioned supra.
- d) Grant permanent injunction against the defendants restraining and prohibiting them from interfering in the suit land of the plaintiffs by themselves, or through their men, agents, friends and subordinate, whosoever in the mean till the final disposal of the suit.
- e) Costs of the suit be borne by the defendants.
- f) Grant any other relief which this Honourable Court deem fit and proper in favour of the plaintiffs.

3. The trial court issued notice to the applicants/defendants and notice was served upon them and sufficient time was granted to them to file the written statement but they failed to file the same, consequently, the trial court passed the ex-parte order on 14.03.2023. The trial court after recording the evidence passed ex-parte judgment & decree dated 30.04.2022. Thereafter the applicants/defendants filed application under Order IX Rule 13 C.P.C r/w Section 151 C.P.C before the trial court within stipulated time seeking for setting aside the ex-parte judgment & decree, but the trial

court dismissed the said application vide order dated 11.03.2023. Thereafter they preferred Civil Misc. Appeal before District Judge, Tharparkar at Mithi, which was dismissed vide order dated 25.07.2023, which is impugned in this revision application.

4. Notice was issued to the respondents but they did not bother to appear and contest the matter.

5. Learned A.A.G submits that both courts below failed to appreciate the settled principle that disputes involving title to immovable property and correction of revenue record require adjudication on merits after framing of issues and providing effective opportunity of hearing to all necessary parties. He further submits that the ex-parte decree was passed without framing issues and hearing the Secretary, Board of Revenue, Government of Sindh. Lastly, he prayed that application be allowed.

6. Upon examination of the trial Court Judgment dated 30.04.2022, it is evident that the suit was decreed ex-parte without framing issues despite the fact that the suit involved serious and disputed questions relating to title, classification of land as Qabooli or Na-Qabooli and correction of revenue record. The trial court treated the absence of written statement and non-cross-examination as sufficient to conclusively establish the respondents/plaintiffs' claim, without independently examining the legality, jurisdiction and effect of the relief sought. Furthermore, the Appellate court also while dismissing the appeal, confined itself strictly to the technical requirements of Order IX Rule 13 C.P.C and proceeded on the premise that since summons were duly served and sufficient cause was not shown, the ex-parte decree could not be set-aside. It is settled principle of law that courts should lean in favour of deciding cases on merits rather than on technicalities particularly where valuable rights in immovable property are involved. The Revisional jurisdiction can be exercised where the courts below have acted with material irregularity or failed to exercise jurisdiction in accordance with law.

7. In view of the foregoing discussion, I am of the view that both the ex-parte judgment and decree dated 30.04.2022 passed by the

learned Senior Civil Judge-I, Mithi and the impugned order dated 25.07.2023 passed by the learned District Judge, Tharparkar @ Mithi, suffer from material illegality and irregularity warranting interference of this Court.

8. Accordingly, the instant Civil Revision Application is allowed. The impugned judgment and decree dated 30.04.2022 passed by the learned Senior Civil Judge-I, Mithi in F.C Suit No.141/2021 as well as the impugned Order dated 25.07.2023 passed by the learned District Judge, Tharparkar @ Mithi in Civil Miscellaneous Appeal No.01/2023, are hereby set-aside and the matter is remanded back to the learned trial court for decision afresh after allowing the opportunity to file written statements by the defendants and Secretary Board of Revenue, Government of Sindh; framing proper issues; recording evidence of the parties and deciding the case strictly on merits in accordance with law within a period of 90 days from the receipt of this Order and no unnecessary adjournment shall be granted to either side. Till final adjudication of the matter, the parties shall maintain status quo. These are the reasons of short order dated 16.01.2026.

JUDGE

"Faisal"