

HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

C.P No.S-617 of 2025

[Muhammad Siddique (deceased) through LRs and others v. Khan Muhammad (deceased) through LRs and others]

Petitioners by : Muharram Ali @ Dadhan Khaskheli,
Advocate

Respondent No.1(a)(i) by : Mr.Abdul Ahad, Advocate

LRs of respondent No.2 by : Imtiaz Ahmed Soomro, Advocate

Respondents No.3 to 6 by : Mr.Allah Bachayo Soomro, Additional
Advocate General, Sindh

Date of Hearing & Decision : **09.03.2026**

Date of Reasons : **16.03.2026**

ORDER

ARBAB ALI HAKRO, J:- The petitioners have invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution, calling into question the legality, propriety and correctness of the orders dated 17.04.2025, passed by the trial Court¹ and 25.09.2025 passed by the Revisional court², whereby the petitioners' application under Order VII Rule 11 C.P.C and the subsequent civil revision were dismissed.

2. Brief facts of the case are that the respondents instituted F.C. Suit No. 173 of 2024, seeking declaration of their legal entitlement in agricultural land measuring 148-18 acres situated in Deh 16 Dad, Taluka Nawabshah, together with possession by way of partition, mesne profits and permanent injunction. The plaint asserts that the suit land originally belonged to Khan Muhammad, whose estate devolved upon all legal heirs, including the plaintiffs and defendants, through Foti Khata Badal entries duly reflected in the revenue record. The plaintiffs averred that, although the defendants had been cultivating the land and paying *bhatai*, disputes arose more than two

¹ 2nd Senior Civil Judge, Shaheed Benazirabad

² Additional District Judge-IV/MCAC, Shaheed Benazirabad

years prior to the suit, resulting in the withholding of the plaintiffs' share and threats to alienate the land to third parties.

3. During the pendency of the suit, the petitioners moved an application under Order VII Rule 11, C.P.C, asserting that the plaint disclosed no cause of action, was barred by law and pertained to matters falling exclusively within the jurisdiction of revenue authorities. Learned trial court dismissed the application by Order dated 17.04.2025, holding that the issues raised required evidence and could not be adjudicated at the preliminary stage.

4. Aggrieved, the petitioners preferred Civil Revision No. 14 of 2025, which too was dismissed on 25.09.2025, the revisional court holding that the suit involved disputed questions of inheritance, title and entitlement, matters falling squarely within the jurisdiction of civil courts.

The petitioners have now approached this Court, alleging that both courts below acted without jurisdiction, failed to appreciate the bar contained in Sections 135 and 172 of the Sindh Land Revenue Act, 1967, and ignored material placed on record, including the Mukhtiarkar's report asserting that Khan Muhammad had no daughter.

5. Learned counsel for the petitioners contended that the suit was inherently barred by law, as the relief of partition of agricultural land lies exclusively before the revenue hierarchy. It was argued that the learned trial court failed to appreciate the statutory scheme under the Sindh Land Revenue Act, 1967 and proceeded to entertain a matter coram non judice. He submitted that the plaint was bereft of a valid cause of action, as the plaintiffs' alleged predecessor, Mst. Moozi was never recorded as a daughter of Khan Muhammad. Reliance was placed on the Mukhtiarkar's report dated 19.08.2024, which states that "the deceased Khan Muhammad has no daughter," thereby negating the very foundation of the plaintiffs' claim. It was further argued that the suit was hopelessly time-barred, as the Foti Khata entries were effected in 1977 and 1998, and no challenge was raised for

decades. The petitioners maintained that the trial court ignored these jurisdictional and legal bars and dismissed the application without proper scrutiny. Learned counsel submitted that the revisional court also failed to exercise its supervisory jurisdiction correctly, as it did not address the jurisdictional objection and merely endorsed the trial court's findings without independent appraisal.

6. Conversely, learned counsel for respondent No.1(a)(i) supported the impugned orders and submitted that the plaint clearly disclosed a cause of action requiring adjudication after recording evidence. He contended that the petitioners' objections pertain to disputed facts, including lineage, inheritance and possession, which cannot be resolved at the stage of Order VII Rule 11, C.P.C. He argued that the petitioners' reliance on the Mukhtiarkar's report is misconceived, as revenue entries neither confer nor extinguish title. The plaintiffs have produced their CNIC and family tree showing their lineage, which must be tested through evidence. Learned counsel submitted that the petitioners' attempt to invoke constitutional jurisdiction is merely a tactic to delay the trial and frustrate the respondents' right to have their claim adjudicated on the merits.

7. Learned counsel appearing for the legal representatives of respondent No.2 adopted the stance that the plaintiffs' entitlement to their share in the estate of Khan Muhammad is not disputed by all heirs. It was pointed out that one of the co-sharers, Lal Bux, expressly conceded before the revisional court that he had no objection to the plaintiffs being given their due share. He submitted that the petitioners alone are resisting the claim and that their objections are factual and require evidence. Therefore, the courts below rightly refused to reject the plaint at the threshold.

8. Learned Additional A.G. Sindh supported the impugned orders and submitted that no jurisdictional defect has been demonstrated, warranting interference under Article 199. She argued that the petitioners have an

adequate alternate remedy before the civil court, where evidence can be led and factual controversies resolved. He further submitted that the constitutional jurisdiction is supervisory in nature and cannot be invoked to bypass the ordinary course of trial, particularly where the courts below have concurrently held that the matter involves disputed questions of fact.

9. I have heard the learned counsel for the parties at considerable length and have minutely examined the material placed on record.

10. Before advertng to the specific contentions, it is appropriate to recall the statutory framework of Order VII Rule 11 C.P.C. The provision, in essence, empowers the Court to reject a plaint at the threshold where, inter alia, it does not disclose a cause of action, where the suit appears from the statement in the plaint to be barred by any law, or where the relief claimed is under-valued or insufficiently stamped and the defect is not cured. The settled exposition of law, as repeatedly affirmed by the superior Courts, makes it abundantly clear that for the purposes of Order VII Rule 11 C.P.C, the Court is confined to the averments contained in the plaint and the documents appended therewith; the defence, however elaborate or forceful, cannot be imported to defeat a plaint at the inception. It is equally well-settled that where the controversy involves disputed questions of fact requiring evidence, the drastic power of rejection of the plaint is not to be exercised in limine.

11. The trial Court, while dismissing the application under Order VII Rule 11, C.P.C, correctly framed the controversy in terms of whether the plaint disclosed a prima facie cause of action and whether the objections raised by the defendants could be decided without evidence. The Order dated 17.04.2025 records that the plaintiff has produced her CNIC and family tree "showing Mst. Moozi... the mother of plaintiff Raheema, prima facie showing her lineage with Mst. Moozi," and that the Mukhtiarkar's report, on the other hand, states that Khan Muhammad had no daughter, thereby creating a

direct factual conflict which requires evidence. It is the right of the plaintiff in circumstances that she should be given a chance to prove her inheritance. The trial Court further observed that, in the context of a rural agrarian society, women are often deprived of their inheritance rights, and that the plaintiff's stance prima facie warrants deliberation, concluding that the matter requires evidence to reach a just and fair conclusion.

12. The revisional Court, in the impugned Order dated 25.09.2025, endorsed this approach and went a step further by articulating the nature of the dispute. It noted that the suit is not a mere partition proceeding simpliciter but involves the plaintiff's claim to her rightful inheritance from the estate left by her deceased maternal grandfather, Khan Muhammad, and that questions of inheritance, ownership, and denial of title are clearly involved and such matters fall within the exclusive jurisdiction of a civil court. The revisional Court also emphasised that revenue authorities are concerned with the preparation and maintenance of the record of rights and the collection of revenue, and that such entries do not confer ownership or title. Title to property passes by way of inheritance, not merely through a revenue entry or mutation.

13. The petitioners' principal argument is that the suit is barred by law as the relief of partition of agricultural land lies exclusively before the revenue hierarchy under Sections 135 and 172 of the Sindh Land Revenue Act, 1967. This contention, however, is premised on an unduly truncated reading of the plaint. A holistic reading of the plaint shows that the plaintiffs have sought: declaration of their status as legal and valid owners to the extent of their legal shares; possession by way of partition; mesne profits for the last two years; and permanent injunction restraining alienation or encumbrance of the suit land. The plaint specifically avers that the defendants have withheld *bhatai*, are in illegal possession of the plaintiff's shares, and are threatening to alienate the land to third parties. These are quintessential civil remedies,

anchored in questions of title, inheritance and accountability for use and occupation, which fall squarely within the domain of civil courts.

14. Even if it is assumed that, in isolation, the mechanical act of partition of agricultural land may be undertaken by revenue authorities, the law is equally clear that where the dispute involves denial of title, contest over legal heirship or complex questions of inheritance, the civil court is the proper forum. The revisional Court has rightly observed that the present case involves denial of the plaintiff's status as a legal heir, the petitioners asserting that the deceased Khan Muhammad had no daughter and that the plaintiff is not the maternal granddaughter of the deceased Khan Muhammad, relying on the Mukhtiarkar's report. Such a denial of lineage and inheritance cannot be adjudicated by revenue officers whose jurisdiction is confined to fiscal and record-keeping functions. To accept the petitioners' argument would be to conflate the evidentiary value of revenue entries with conclusive proof of title, a proposition repeatedly rejected by the superior Courts.

15. The petitioners have also pressed into service the plea of limitation, contending that the Foti Khata entries were effected in 1977 and 1985 and that the suit, filed decades later, is hopelessly time-barred. This argument, too, cannot be resolved at the stage of Order VII Rule 11 C.P.C, on the basis of the plaint alone. The plaintiff asserts a continuing cause of action, premised on the defendants' ongoing possession, their payment of bhatai for many years, the subsequent withholding of the plaintiff's share "more than two years back," coupled with threats of alienation. Whether the suit is barred by limitation will depend on a factual determination of when the cause of action first accrued, whether there was an acknowledgement of the plaintiffs' rights through payment of *bhatai* and whether the plaintiffs were in a position to assert their rights earlier. These are matters of evidence, not pure questions of law apparent on the face of the plaint.

16. It is also significant that the trial Court, while dealing with the plea of limitation, did not treat the Mukhtiarkar's report or the revenue entries as conclusive. Instead, it recognised that the plaintiff is an elderly lady, that her CNIC and family tree, prima facie, show her lineage, and that the alleged exclusion of daughters from the record may itself be a manifestation of the very deprivation she complains of. In such circumstances, to non-suit her at the threshold on the basis of limitation, without affording an opportunity to lead evidence, would amount to a denial of due process.

17. The petitioners' reliance on the Mukhtiarkar's report as a determinative document is also misplaced. The report states that, according to the revenue record, Khan Muhammad had no daughter and that the land was mutated in favour of his sons and their successors. However, the very issue in the suit is whether the revenue record correctly reflects the true legal heirs and whether a daughter (or her descendants) was unlawfully excluded. To treat the report as conclusive at the stage of Order VII Rule 11 C.P.C would be to prejudge the core issue in the suit and to elevate a piece of revenue evidence to the status of a final adjudication, which the law does not permit.

18. When the impugned orders are examined through the prism of this standard, it becomes evident that both Courts below have exercised jurisdiction vested in them by law, have applied the correct legal test under Order VII Rule 11 C.P.C and have refrained from venturing into the merits of the parties' rival claims at a premature stage.

19. The constitutional jurisdiction of this Court under Article 199 is supervisory and discretionary. It is not an appellate forum to re-appraise evidence or to substitute its own view for that of the subordinate Courts on matters falling within their lawful jurisdiction, particularly where concurrent findings have been recorded on a question of procedural law, such as the maintainability of a suit at the threshold. Interference is justified only where

there is a patent lack of jurisdiction, a jurisdictional error or a manifest violation of law resulting in miscarriage of justice. The petitioners have not been able to demonstrate that the trial Court or the revisional Court acted without jurisdiction, refused to exercise jurisdiction or committed any such material irregularity.

20. Much emphasis was placed by learned counsel for the petitioners on the argument that the suit is frivolous, factitious, incompetent and barred by law as stated in the application under Order VII Rule 11 C.P.C. However, mere characterisation of a suit in pejorative terms does not bring it within the ambit of Order VII Rule 11. The test is whether, assuming the averments in the plaint to be true, a cause of action is disclosed and whether the suit appears from the plaint itself to be barred by any law. On a plain reading of the plaint, the plaintiffs assert their status as legal heirs, allege the illegal withholding of their share, seek partition, mesne profits, and injunction and narrate a continuing course of conduct by the defendants. These averments, taken at face value, do disclose a cause of action. Whether they are ultimately proved or not is a matter for trial.

21. It is also relevant that one of the co-sharers, namely Lal Bux, has, before the revisional Court, expressly stated that he has no objection if the due share of the plaintiff is given to her. This concession, while not determinative of the entire controversy, reinforces the conclusion that the dispute is not a simple question of jurisdiction but a contested matrix of inheritance and intra-family claims, which must be resolved on evidence rather than on technical objections at the threshold.

22. For the reasons recorded above, I find no illegality, infirmity or jurisdictional defect in the impugned orders dated 17.04.2025 and 25.09.2025. Both orders are well-reasoned and do not call for interference in the exercise of constitutional jurisdiction. Consequently, this constitutional petition is **dismissed**. The trial Court shall proceed with F.C. Suit No.173 of

2024 expeditiously and decide the same strictly in accordance with law, un-influenced by any tentative observations contained in the Order, which is confined to the limited question of maintainability under Order VII Rule 11 C.P.C. There shall be no order as to costs.

Above are the reasons for my short Order dated 09.3.2026.

JUDGE

Ali Haider