

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P No.S-492 of 2025.

Zeeshan Hyder Vs. Ijlal Hyder Memon and others.

Petitioner: Through Mr. Muhammad Mubashir Khilji, Advocate.

Respondent No.1: Through Mr. Abdul Malik Shaikh, Advocate.

Respondent No.2&3: Through Mr. Abdul Qadeer Mirjat, Advocate.

Respondent No.4&5: Through Mr. Aslam Parvaz Sipio, Advocate.

Respondent N.6/NADRA: Through Mr. Habib-ur-Rehman, Advocate.

Respondent No.7: Through Mr. Allah Bachayo Soomro, Additional Advocate General, Sindh.

Date of hearing: 28.01.2026.

Date of decision: 16.03.2026.

J U D G M E N T

RIAZAT ALI SAHAR, J.- Through this Constitutional Petition, the Petitioner Zeeshan Hyder has called in question the legality and propriety of the order dated 02.07.2024 passed by the learned 7th Additional District Judge, Hyderabad, in Civil Revision Application No.108 of 2023 (hereinafter referred to as the “**Revisional Court**”), filed by Respondent No.1, Ijlal Hyder Memon.

2. Briefly stated, the facts of the case are that Respondent No.1, through his attorney Ghulam Hyder Memon (Junior), instituted F.C. Suit No.1695 of 2021 against the Petitioner and other respondents for Partition, Separate Possession and Permanent Injunction before the learned Senior Civil Judge-VII, Hyderabad. The said suit was decreed vide Judgment and Preliminary Decree dated 22.10.2022. Feeling aggrieved, the Petitioner Zeeshan Hyder preferred Civil Appeal No.322 of 2022, which was heard and decided by the learned 7th Additional District Judge, Hyderabad, who allowed the appeal and remanded the matter to the learned Trial Court vide Judgment dated 17.05.2023 and Decree dated 24.05.2023, with certain directions.

3. In pursuance of the remand order, the learned Trial Court, after hearing the parties, passed an order dated 02.10.2023, whereby directed for framing of issues and called upon the parties to submit their proposed issues. The said order was assailed by Respondent No.1 through Civil Revision Application No.108 of 2023, which was allowed by the learned Revisional Court vide order dated 02.07.2024, whereby the order dated 02.10.2023 passed by the learned Trial Court was set aside. Being dissatisfied with the said order, the Petitioner has approached this Court through the instant Constitutional Petition.

4. Learned counsel for the Petitioner contended that the impugned order dated 02.07.2024 passed by the learned Revisional Court is illegal and suffers from material irregularity, as the learned Revisional Court has misconstrued the scope of jurisdiction by directing the parties to approach the Revenue Authorities under Section 135 of the Sindh Land Revenue Act, 1967. It was argued that since the father of the parties has died intestate, the distribution of the estate amongst the legal heirs is a matter falling within the exclusive jurisdiction of the Civil Court. It was further contended that Respondent No.1 is in exclusive possession of the entire property and has been enjoying the income derived therefrom without rendering accounts to the other legal heirs, including the petitioner. According to the learned counsel, the claim relating to mesne profits necessarily involves determination of civil rights, which cannot be adjudicated by the Revenue Authorities and thus falls exclusively within the jurisdiction of the Civil Court. He therefore prayed that the impugned order be set aside.

5. Conversely, learned counsel for Respondent No.1 supported the impugned order and argued that the same has been passed after proper appreciation of the material available on record. According to him, the agricultural land was not the subject matter of the suit, as no specific relief regarding its partition was sought in the plaint. He submitted that in paragraph No.8 of the plaint, it was merely mentioned that apart from the suit bungalow, the deceased father had also left certain agricultural land, for which the appropriate remedy lies before the Revenue Authorities under Section 135 of the Sindh Land Revenue Act, 1967. He further contended that

there is no dispute amongst the parties regarding the ownership of the agricultural land, therefore the learned Trial Court had no jurisdiction to frame issues relating thereto, as such matters fall within the exclusive domain of the Revenue Authorities. He maintained that if the Petitioner has any grievance regarding the agricultural land, he may avail the remedy available under the relevant provisions of the Sindh Land Revenue Act before the competent forum. He therefore prayed for dismissal of the petition.

6. Learned counsel for the private respondents as well as the learned Assistant Advocate General have also addressed arguments.

7. I have heard the learned counsel for the parties and have carefully examined the material available on record along with the case law cited at the bar.

8. From perusal of the record, it appears that there is no dispute amongst the parties regarding the legal heirs of the deceased Ghulam Haider (father), nor is there any controversy regarding the identity of the subject property i.e. Bungalow No.560, admeasuring 300 square yards (residential-cum-commercial) situated in Cantonment Area, Saddar, Hyderabad, and agricultural land bearing Survey No.182 (8-3 acres), 186/1 to 4 (5-33 acres), 185/1 to 4 (6-14 acres), 175/A (4-8 acres), 178 (5 acres) and 184/B (5-23 acres) total admeasuring 34-36 acres situated in Tapo Hussain Khan Thoro Deh Ghotana Taluka, Hyderabad.

9. The real controversy between the parties revolves around the question of **mesne profits** arising from the said properties. A careful examination of memo of plaint as well as paragraphs 4, 5 and 9 of the written statement filed by the petitioner (Defendant No.1) shows that his specific plea is that after the demise of his father (Ghulam Hyder Memon), Respondent No.1 (Plaintiff) took control and management of the entire estate and has been exclusively enjoying the income and benefits derived from the properties, thereby allegedly depriving the other legal heirs, including the petitioner, of their lawful shares. In such circumstances, the claim relating to **mesne profits** necessarily requires determination of factual

controversies, which can only be resolved after framing proper issues and recording evidence of the parties.

10. Insofar as the agricultural land is concerned, the law is well settled that the partition of agricultural land falls within the jurisdiction of the Revenue Authorities, and the same is to be effected in accordance with the procedure prescribed under Section 135 of the Sindh Land Revenue Act, 1967.

11. However, with regard to the subject bungalow, the learned Trial Court is directed to pass a Preliminary / Partly Decree under Order XV Rule 1 CPC, determining the respective shares of the parties. Thereafter, if the property is found incapable of partition by metes and bounds, the same may be purchased by any of the co-sharers or otherwise disposed of through public auction and such amount shall be distributed amongst the share-holders in accordance with law.

12. As regards the controversy relating to **mesne profits** of entire Suit property (Bungalow No.560, admeasuring 300 Sq Yards and Agricultural land), the learned Trial Court shall frame appropriate issues, permit the parties to lead evidence, and decide the matter strictly in accordance with law.

13. The learned Trial Court is further directed to conclude the proceedings expeditiously, preferably within a period of **six** months from the date of receipt of this order.

14. In view of the foregoing discussion, the order dated 02.10.2023 passed by the learned Trial Court and the order dated 02.07.2024 passed by the learned Revisional Court are hereby **set aside** and the case is remanded to the Trial Court. The instant petition stands **disposed of** in the above terms.

15. Let a copy of this order be transmitted to the learned Trial Court for information and compliance.

JUDGE