

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P No.S-357 of 2025

[Nazeer Ahmed Baloch and another v. Province of Sindh and 09 others]

Petitioners by : Mr.Nazeer Ahmed Bhatti, Advocate

Respondent No.7 by : Mr.Shoukat Ali Birahmani, Advocate

Respondents No.9 &10 by : Mr.Khalid Mustafa Shoro, Advocate

Respondents No.1 to 6 by : Mr.Allah Bachayo Soomro, Additional Advocate General, Sindh

Respondent No.8 by : Nemo.

Date of hearing : **20.02.2026, 27.02.2026 & 06.03.2026**

Date of Decision : **17.03.2026**

JUDGMENT

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 and propriety of the order dated 08.01.2025, passed by the Revisional Court¹, whereby the Revisional Court declined to interfere with the order dated 20.02.2024 of the trial Court². Through the said order, the trial court allowed an application under Order XIV Rule 2 C.P.C, framed two preliminary issues of law, and directed the parties to address the arguments thereon without recording evidence.

2. Brief facts of the case are that the petitioners claim ownership of House No. C-298, admeasuring 450 square feet, situated in Mohalla Khadd, Sehwan. Their case is that the property was gifted to them by one Abdul Majeed and that the private respondents have no lawful claim or entitlement thereto. Earlier, the petitioners instituted F.C. Suit No.29 of 2021 seeking declaration, possession and injunction. The plaint in that suit was rejected under Order VII Rule 11 C.P.C on 12.04.2022. The petitioners preferred Civil Appeal No.18 of 2022,

¹ Additional District Judge, Sehwan in Civil Revision No.10 of 2024

² Senior Civil Judge, Sehwan

which was disposed of by a consent order dated 16.05.2023. By virtue of that order, the petitioners were permitted to file a fresh suit after removing defects, while the respondents undertook not to press objections under Order VII Rule 11 or Sections 10 and 11 C.P.C and the trial court was directed to proceed on the merits without resorting to technicalities.

3. Pursuant thereto, the petitioners instituted F.C. Suit No.87 of 2023. Written statements were filed by the official defendants as well as respondents No.7, 9 and 10. During the pendency of the suit, respondent No.7 moved an application under Order XIV Rule 2, C.P.C., seeking framing of preliminary issues on the grounds that the suit was barred under Section 42 of the Specific Relief Act, Section 11 of the Sindh Revenue Jurisdiction Act and that the petitioners lacked legal character in the property. The petitioners filed objections, asserting that the application was contrary to the consent order of the appellate court and that the matter required a full-fledged trial.

4. The trial court, through an order dated 20.02.2024, allowed the application, recast the proposed issues and framed two preliminary issues of law. The petitioners challenged the said order by way of Civil Revision No. 10 of 2024, which was dismissed on 08.01.2025. Aggrieved thereby, the petitioners have approached this Court.

5. Learned counsel for the petitioners contended that the trial court acted in derogation of the consent order dated 16.05.2023, wherein the respondents had expressly undertaken not to raise technical objections and the trial court was directed to decide the matter on the merits. It was argued that the framing of preliminary issues defeats the very spirit of the consent order, which contemplated a full trial after framing of issues of law and fact. Learned counsel submitted that the petitioners' claim is supported by documents which can only be proved or disproved through evidence and that the trial court erred in segregating issues of law at this premature stage. It was further argued that the Revisional Court failed to appreciate that the petitioners had already exhausted

the remedy of revision. Therefore, the impugned order is amenable to constitutional jurisdiction.

6. Conversely, learned counsel for respondent No.7 supported the orders of the courts below. He submitted that the petitioners have no legal character in the suit property, as the alleged donor, Abdul Majeed, held no title capable of transfer. It was argued that the suit is barred under Section 42 of the Specific Relief Act and Section 11 of the Sindh Revenue Jurisdiction Act, as proceedings concerning the same subject matter are pending before the revenue forum. Learned counsel maintained that these questions are purely legal in nature, go to the root of the matter and can be decided without recording evidence. He contended that the consent order did not preclude the trial court from exercising jurisdiction under Order XIV Rule 2 C.P.C, and that the trial court rightly framed preliminary issues to avoid unnecessary trial.

7. Learned counsel appearing for respondents No.9 and 10 adopted the submissions advanced on behalf of respondent No.7. He added that the petitioners' claim is inherently defective, as the alleged gift deed does not confer any enforceable right. He argued that the suit is misconceived and barred by law, and that the trial court correctly exercised its discretion by first determining the legal issues. He further submitted that the petitioners' reliance on the consent order is misplaced, as the said order did not restrict the trial court from framing preliminary issues where the law so mandates.

8. Learned Additional Advocate General, Sindh, supported the impugned orders. He submitted that the trial court acted strictly within the framework of Order XIV Rule 2 C.P.C, which obligates the court to try issues of law first where the suit or any part thereof may be disposed of on such issues alone. He argued that the revisional court correctly held that the trial court neither rejected the plaint nor disposed of the matter on technicalities and that the petitioners' grievance is misconceived. Learned A.A.G. maintained that no illegality or jurisdictional defect is apparent in the orders of the courts below, warranting

interference in constitutional jurisdiction.

9. I have heard the learned counsel for the parties at considerable length and have meticulously perused the material available on record.

10. The pivotal question is whether the trial court acted within the contours of law in invoking Order XIV Rule 2 C.P.C, to frame and try preliminary issues of law and whether the revisional court rightly declined to interfere. The petitioners' entire case hinges on the argument that the consent order dated 16.05.2023 precluded the trial court from entertaining any preliminary objections and mandated a full-fledged trial on the merits. The sustainability of this contention must be examined through the prism of statutory interpretation, procedural jurisprudence and the inherent limitations of consent orders.

11. Order XIV Rule 2 C.P.C is a substantive procedural mandate. It provides that where issues both of law and fact arise, and the court is of the opinion that the case or any part thereof may be disposed of on issues of law alone, **“it shall try those issues first.”** The use of the word *shall* is deliberate and unequivocal. The rule is not directory; it is mandatory. The court is not merely empowered but obligated to try pure issues of law first where such issues have the potential to dispose of the suit without the necessity of recording evidence.

12. Before proceeding further, it is imperative to examine the legal character, scope, and limitations of a consent order, particularly where a party seeks to rely upon such an order to curtail or neutralise a statutory remedy available to the opposite party. The petitioners' entire edifice rests on the assumption that the consent order dated 16.05.2023 operates as a substantive bar to the respondents' right to raise jurisdictional objections or to the trial court's statutory authority under Order XIV Rule 2 C.P.C.

13. A consent order, though binding inter partes, is not a legislative instrument. It is neither a statutory amendment nor a judicial pronouncement on the merits of the controversy. It is a recorded settlement and agreement

between the parties, which the court endorses for procedural finality. No consent, concession, undertaking, or agreement can override, dilute or suspend a statutory command. The Code of Civil Procedure is a complete procedural code, and its provisions cannot be contracted out of by private arrangement.

14. Jurisdiction flows from statute, not from agreement. Where a statute mandates that a court “shall” act in a particular manner, the parties cannot, by consent, direct the court to act otherwise. Order XIV Rule 2 C.P.C is couched in mandatory terms. It obligates the court to try pure issues of law first, where such issues may dispose of the suit. This statutory obligation cannot be neutralised by a consent order, for to do so would amount to permitting parties to rewrite the Code of Civil Procedure.

15. The petitioners’ reliance on the consent order also ignores a fundamental doctrinal distinction: a consent order binds the parties, but it does not bind the court in the exercise of its statutory jurisdiction. The court is not a mere recording clerk of private bargains. It remains the guardian of procedural regularity and is duty-bound to apply the law irrespective of the parties’ undertakings. Even where parties agree not to raise certain objections, the court cannot be divested of its statutory duty to examine jurisdictional bars, maintainability or legal impediments apparent on the face of the record.

16. Furthermore, the consent order dated 16.05.2023 does not contain any language purporting to restrain the trial court from exercising its jurisdiction under Order XIV Rule 2 C.P.C. The undertakings recorded therein relate specifically to (i) non-invocation of Order VII Rule 11, C.P.C, (ii) non-invocation of Sections 10 and 11 C.P.C, and (iii) avoidance of technical objections aimed at knocking out the suit at the threshold. The order does not and legally could not extend to statutory provisions not mentioned therein. The petitioners’ attempt to expand the scope of the consent order to include Order XIV Rule 2 C.P.C is therefore interpretively untenable.

17. Even otherwise, a consent order cannot be used as a shield to prevent

the court from examining jurisdictional questions. Jurisdictional objections, such as those arising under Section 42 of the Specific Relief Act or Section 11 of the Sindh Revenue Jurisdiction Act, are not mere technicalities. They go to the very competence of the court to entertain the suit. It is settled law that the jurisdictional bars cannot be waived, and that a court must decline jurisdiction even if the parties consent to confer it. If jurisdiction cannot be conferred by consent, it follows a fortiori that jurisdiction cannot be ousted by consent either

18. The petitioners' argument also overlooks the principle that a consent order cannot create substantive rights where none exist in law. The petitioners seek to use the consent order as a substantive shield to prevent the respondents from raising legal objections. This is impermissible. A consent order cannot validate an otherwise defective claim, nor can it immunise a suit from statutory scrutiny. The right to raise jurisdictional objections is not a privilege that can be surrendered by agreement; it is a legal entitlement grounded in statute.

19. It is equally important to note that the consent order did not adjudicate upon the merits of the petitioners' title, nor did it declare the suit to be maintainable. It merely permitted the filing of a fresh suit after curing defects. The respondents' undertaking not to file certain applications cannot be construed as a blanket waiver of all legal objections. The law does not permit such an expansive interpretation. A consent order must be construed strictly, and nothing can be read into it by implication.

20. In sum, the consent order cannot be invoked to restrain the respondents from raising jurisdictional objections, nor can it restrain the trial court from exercising its statutory duty under Order XIV Rule 2 C.P.C. The petitioners' reliance on the consent order as a bar against the framing of preliminary issues is therefore legally misconceived and doctrinally unsustainable.

21. The petitioners' contention that the trial court "bypassed" the consent order is equally untenable. The revisional court correctly observed that the trial

court had neither rejected the plaint nor disposed of the matter on technicalities. The suit remains pending. The trial court merely framed preliminary issues of law, an act expressly sanctioned by Order XIV Rule 2 C.P.C. The petitioners' attempt to equate the framing of preliminary issues with the rejection of the plaint is legally unsustainable.

22. The issues framed by the trial court, whether the suit is barred by Section 42 of the Specific Relief Act and Section 11 of the Sindh Revenue Jurisdiction Act, are quintessentially issues of law. The bar under Section 42 is jurisdictional in nature. The bar under Section 11 of the Sindh Revenue Jurisdiction Act is statutory and absolute where applicable. The determination of these issues does not require the recording of evidence; they can be adjudicated on the basis of pleadings and admitted facts. The trial court was therefore correct in treating them as preliminary issues.

23. The petitioners' assertion that these issues are "mixed questions of law and fact" is not borne out by the record. The petitioners themselves pleaded that the suit property is an "un-surveyed house" allegedly gifted by Abdul Majeed. The respondents, on the other hand, pleaded that the matter is already sub judice before the revenue forum. Whether such parallel proceedings bar the civil suit is a pure question of law. Likewise, whether a declaratory suit is maintainable without a clear title document is also a pure question of law. These issues do not require oral evidence; they require legal scrutiny.

24. The petitioners' reliance on the earlier rejection of the plaint in F.C. Suit No.29 of 2021 is misplaced. That rejection was set aside only to the extent that the petitioners were permitted to file a fresh suit after curing defects. The consent order did not validate the petitioners' title, nor did it immunise the fresh suit from jurisdictional objections. The petitioners cannot use the consent order as a talisman to shield themselves from statutory scrutiny.

25. The revisional court's reasoning is legally sound. It correctly held that the trial court acted within jurisdiction and that the disposal of a case on a pure

issue of law cannot be equated with disposal on technicalities. The revisional court also correctly noted that the matter is still pending and that no prejudice has been caused to the petitioners.

26. The constitutional jurisdiction of this Court under Article 199 is supervisory, not appellate. This Court does not sit as an appellate court over interlocutory orders relating to the framing of issues. Interference is warranted only where the order is patently without jurisdiction, suffers from manifest illegality or results in a grave miscarriage of justice. None of these grounds are attracted in the present case.

27. The petitioners have failed to demonstrate that the trial court acted without jurisdiction or that the revisional court committed any legal error. The petitioners' entire case rests on an erroneous interpretation of the consent order, which cannot override statutory provisions.

28. For the reasons recorded above, this Constitutional Petition is **dismissed**. Consequently, impugned orders dated 20.02.2024, passed by the trial court and dated 08.01.2025, passed by the Revisional Court, are hereby **maintained**. The trial court shall proceed to decide the preliminary issues already framed under Order XIV Rule 2 C.P.C, strictly in accordance with law and thereafter take the suit to its logical conclusion.

Sajjad Ali Jessar

JUDGE