

**IN THE HIGH COURT OF SINDH, CIRCUIT
COURT, MIRPURKHAS**

C.P. No.D-260 of 2025
(Abdul Razzak v. Abdul Ghaffar & others)

Petitioner: Abdul Razzak through Mr. Rana Rahail Mehmood, Advocate.

Respondent No.1: Abdul Ghaffar through Mr. Inam Mangrio, Advocate.

Respondents No.2&3: Through Mr. Muhammad Sharif Solangi, A.A.G. Sindh.

Date hearing & decision: 24.12.2025.

O R D E R

RIAZAT ALI SAHAR, J: - The petitioner has filed this Constitutional Petition under Article 199 of the Constitution of Pakistan, 1973 with the following prayers:-

- a)** To set aside the impugned order dated 21.2.2025 & 18.1.2025 passed by the respondent No.2/Learned Additional District Judge-II, Mirpurkhas in Civil Revision No.45/2024 Re-Abdul Razzak V/s Abdul Ghaffar and so also set aside impugned order dated 6.7.2024 passed by the Respondent No.03 and allow the application u/o 6 rule 17 CPC.
- b)** Any other relief which this Honourable Court deems fit and proper be also awarded to the petitioner.
- c)** Cost of the petition saddled upon the respondent No.1.

2. Background of the case is that there is a dispute between the parties arises out of rival civil suits regarding title, possession and inheritance rights in the suit property. The respondent instituted F.C. Suit No. 297 of 2012 seeking declaration, possession and mesne profits against the petitioner. Conversely, the petitioner instituted F.C. Suit No.305 of 2012 challenging certain alleged gift statements dated 05.03.1990 and asserting inheritance rights as legal heirs of deceased Malik Allah Din. After service of summons, written statement was filed and issues were framed, where after evidence of the respondent was recorded and the matter was fixed for petitioner's evidence. At

that stage, the petitioner moved an application under Order VI Rule 17 CPC seeking amendment in pleadings, which was dismissed by the Trial Court on 06.07.2024. The petitioner preferred Civil Revision No.45 of 2024, which was dismissed for non-prosecution and the restoration application was also dismissed. Consequently, the petitioner having no any other remedy approached this Court challenging the said orders.

3. Pursuant to notice, Respondent No.1 has filed comments raising preliminary objections that the petition is not maintainable, discloses no illegality and is based upon concealment of material facts. It is stated that the impugned orders dated 06.07.2024 and 21.02.2025 were passed after due consideration of the record, hearing of the parties and application of judicial mind and are well reasoned and lawful. It is further contended that the petitioner remained negligent and failed to diligently prosecute the revision and reliance has been placed upon the principle that law assists the vigilant. Respondent No.1 stated that the amendment sought would materially change the nature of the suit and cause of action, therefore, was rightly declined. It is asserted that the orders are speaking and consistent with settled principles of law and no jurisdictional error or illegality has been shown so as to warrant interference by this Court. Accordingly, dismissal of the petition with costs has been prayed for.

4. Learned counsel contends that the impugned orders are illegal, perverse and contrary to law, equity and justice. He contends that the Courts below failed to exercise judicial mind and decided the matter on technicalities instead of merits. Counsel contends that the proposed amendment does not alter the nature of the suit and is necessary for proper adjudication. He further contends that the impugned orders are based on misreading and non-reading of the record, therefore, he prays to set aside of the impugned orders and allow the amendment application is as prayed for.

5. Learned counsel for Respondent No.1 contends that the petition is not maintainable as no illegality or jurisdictional defect has

been demonstrated. It is argued that the impugned orders were passed after due appreciation of the pleadings and record and are fully reasoned and lawful. Counsel submits that the petitioner remained negligent in prosecuting the matter and cannot seek equitable relief. It is further asserted that the amendment sought would materially alter the nature of the suit and was rightly declined. Hence, dismissal of the petition with costs is prayed for.

6. Upon a query of the Court as to why the amendment should not be allowed as the amendment sought is originated upon documentary material without altering the nature of the suit, and even the revision petition had not been decided on merits, learned counsel for Respondent No.1 stated that he does not oppose the proposed amendment. However, he submitted that such permission may be granted subject to the condition that the suits, with F.C. Suit No.297 of 2012 as the leading suit, shall be concluded expeditiously within a period of three months. Learned counsel further submitted that the petitioner may be directed to fully cooperate and ensure that the trial is not delayed.

7. Learned A.A.G. Sindh submits that the dispute essentially pertains to civil rights between private parties in respect of the suit property; however, keeping in view the circumstances of the case, he does not oppose the proposed amendment and also supports the expeditious disposal of the suits.

8. I have heard the learned counsel for the parties and perused the material available on record.

9. First, I would like to reproduce the amendment sought to be made in F.C. Suit No.305/2012 as prayed in the Application u/o VI rule 17 CPC read with section S.151 CPC, as under:-

“PROPOSED AMENDMENT:

In para No.9 of the plaint at the end following sentence be added, "and such application was moved by deceased Malik Allah din to the Zila Nazim and Administrative officer Zila

Nazim issued a letter No.ZN/MPS/846 of 2009 Dated:19.11.2009 to the executive District officer Revenue officer Mirpurkhas for taking necessary action and the Executive District officer Revenue Mirpurkhas issued letter to Mukhtiarkar Revenue Mirpurkhas for elaborate report and due to such of defendant No:1, deceased Allah din under stress and died on 30.12.2009"

10. Order VI Rule 17, C.P.C. mandates that the Court may, at any stage of the proceedings, permit either party to amend the pleadings where such amendment is necessary and just, so as to enable the Court to determine the real questions in controversy. The primary object of the provision is to advance substantial justice and avoid multiplicity of proceedings, if no prejudice is caused to the opposite party. It is true that under Order VII Rule 7, C.P.C., the relief claimed is ordinarily required to be specifically pleaded in the plaint; however, mere omission in that regard does not absolve the Court from granting appropriate relief where the ends of justice so demand, keeping in view the peculiar facts and circumstances of the case. The settled principle is that the plaint must be read as a whole and its substance, rather than the form or technical expression of the relief clause, must guide the Court in order to achieve complete justice.

11. Perusal of the order dated 18.01.2025 passed by the learned Appellate Court reflects that the civil revision preferred by the petitioner earlier was not adjudicated on merits and was dismissed in non-prosecution. Even, subsequent application for restoration of civil revision was also dismissed. The amendment sought by the petitioner in the plaint is based upon documentary record. It further appears that the amendment would not in any manner change the basic nature of the suit or creates a new cause of action; rather the same is necessary for the proper and complete adjudication of the controversy between the parties. The settled principle of law is that procedural provisions are intended to advance the cause of justice and amendments required for determining the real questions in controversy ought not to be refused merely on technical considerations, if no prejudice is caused to the opposite party.

12. It is also noted that during the course of proceedings, when confronted with a specific query from the Court, the learned counsel for Respondent No.1 candidly stated that he has no objection if the amendment is allowed, subject to the condition that the pending suits, with F.C. Suit No.297 of 2012 treated as the leading matter, are decided expeditiously within a period of three months. Such concession further reinforces the conclusion that no injustice would be caused to the respondent(s) by allowing the amendment, whereas refusal thereof may result in multiplicity of proceedings and incomplete adjudication of the dispute.

13. Keeping in view the circumstances and for the reasons discussed hereinabove, by consent, this petition is **allowed**. The impugned orders dated 21.02.2025 and 18.01.2025 passed by the Additional District Judge-II/MCAC, Mirpurkhas and order dated 06.07.2024 passed by the Senior Civil Judge, Mirpurkhas are hereby **set aside**; as a result whereof, the petitioner's application under Order VI Rule 17 CPC stands **allowed**. However, the petitioner shall not seek unnecessary adjournments and shall fully cooperate with the Trial Court. The respondent(s) shall also not delay the matter on any ground. The learned Trial Court is directed to proceed with the suits, F.C. Suit No.297 of 2012 as the leading suit and decide the same strictly in accordance with law, preferably within a period of **three months** from the date of receipt of this order. The Trial Court shall ensure that no adjournment is granted to either party except for reasons which are bona fide, unavoidable, or beyond the control of the party concerned. Any unwarranted delay shall be firmly discouraged so that the litigation may reach its lawful conclusion within the stipulated time-frame.

JUDGE