

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

C.P. No.D-261 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.18/2024 Re-Abdul Razzak V/s Abdul Ghaffar and so also set aside impugned order dated 21.3.2024 passed by the Respondent No.03 and allow the application u/o 16 rule 1&2 CPC and 13 rule 1 & 2 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. The present petition arises out of a dispute between the petitioner and the respondent regarding ownership, possession, and inheritance rights in the suit property. The opponent initially filed F.C. Suit No.297 of 2012 seeking declaration, possession, and mesne profits against the petitioner. In response, the petitioner filed F.C. Suit No.305 of 2012 for declaration, cancellation of gift statements, mandatory relief and permanent injunction, claiming legal rights as a successor of deceased Malik Allah Din. Summons were issued and

served, the petitioner filed a written statement, issues were framed, and evidence of the opponent was recorded. At the stage of filing his evidence, the petitioner filed applications under Order XVI Rules 1 & 2 CPC and Order XIII Rules 2 CPC for summoning witnesses and production of documents, which was dismissed by the Trial Court. The petitioner then preferred Civil Revision No.18 of 2024, which was dismissed for non-prosecution and a 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, contending that the petition is not maintainable, fails to disclose any illegality, and conceals material facts. The Respondent has denied all allegations in the petition, asserting that the impugned orders dated 21.02.2025 and 21.03.2024 were passed after careful examination of the record, proper appreciation of the facts and in accordance with settled law. The orders are well reasoned, lawful and based on merits and the Petitioner was granted ample opportunity to advance arguments. The respondent also placed reliance on the principle that law favours those who act diligently, as reflected in *Akhtar Nisar Ahmed v. Province of Punjab* (PLD 2024 SC 1268). The Respondent submits that the petition is misconceived, devoid of merit and seeks relief which is not legally tenable and, therefore, the same may be dismissed with compensatory costs.

4. Learned counsel contends that the impugned orders are illegal, perverse and contrary to law, facts and justice. He contends that the Courts below failed to apply judicial mind and dismissed the revision on technical grounds rather than on merits. Counsel contends that the amendment/application for summoning witnesses and producing documents is necessary for proper adjudication and does not change the nature of the suits. He further contends that the impugned orders were based on presumptions, surmises and misreading of pleadings and evidence. He, therefore, prays to aside of

the orders and the petitioner's application may be allowed as prayed for.

5. Learned counsel for Respondent No.1 contends that the petition is not maintainable, fails to disclose any illegality and conceals material facts. The impugned orders of 21.02.2025 and 21.03.2024 were passed after careful examination of the record, proper appreciation of facts and in accordance with settled law. The orders are well reasoned, lawful and based on merits and the Petitioner was afforded ample opportunity to present arguments. He further contends that the petition is misconceived, devoid of merit and not entitled to any relief and may be dismissed with compensatory costs.

6. Upon a query of the Court as to why the proposed official witnesses being record producer witnesses should not be allowed to produce the documents as the production of such documents would help to the just and proper decision before the trial Court and even the revision petition had not been decided on merits, learned counsel for Respondent No.1 stated that he does not oppose the production of official documents by witnesses listed at serial numbers 1 to 3 only listed in the application under Order 16 rule 1 & 2 CPC. 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 petition 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 reproduced the list of witnesses and the documents sought to be made in F.C. Suit No.297/2012 as prayed in the Application u/o XVI rule 1&2 CPC, as under:-

1. Concerned clerk Deputy commissioner (EX- Executive District officer(Revenue)) to produce the complete record of letter No:EDO(R),RB/3/267 of 2009 Mirpurkhas Dated:3.12.2009 alongwith all record.
2. Incharge District Council officer Mirpurkhas to produce the record of Letter No:ZM/MPS/846 of 2009 Dated: 19.11.2009 alongwith other related record and complaint of Malik Allah Din.
3. Record Keeper of Ist senior Civil Judge Mirpurkhas to produce the R & Ps of F.C Suit No:322 of 2011.
4. Ghulam Nabi Chandeja son of Sultan Chandeja as he make a faisla Son 10.5.2021 in respect of suit property.
5. Mohammad Asif Chohan son of Rahim bux as he make a faisla on 10.5.2021 in respect of suit property.
6. Malik Mohammad Shafi Bhensra son of Mehboob as he make a faisla on 10.5.2021 in respect of suit property.
7. Mohammad Irfan Khatri son of Mohammad Iqbal as he make a faisla on 10.5.2021 in respect of suit property.
8. Mohammad Zeehsan Khatri son of Mohammad Iqbal as he make a faisla on 10.5.2021 in respect of suit property.
9. Mohammad Babar Ghori son of Mohammad Yakoob as he make a faisla on 10.5.2021 in respect of suit property.
10. Malik Mohammad Muzamil son of Mohammad Farooque as he make a faisla on 10.5.2021 in respect of suit property.

The list of documents as mentioned in the application filed under Order XIII Rule 2 CPC read with section 151 CPC is also reproduced:-

1. Original Faisal held on:10.5.2021 in respect of property
2. Photo copy of letter No: EDO(R), RB/3/267 of 2009 Mirpurkhas Dated:3.12.2009.
3. Photo copy of letter No: ZM/MPS/846 of 2009 Dated: 19.11.2009.
4. Photo copy of application moved by late Malik Allah Din.

10. 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 production of documents by the official witnesses would be helpful 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 production of certain documents by the official witnesses 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.

11. 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 only the application under Order XVI rule 1 & 2 CPC filed before the trial Court is allowed to the extent of production of documents by the official witnesses listed at serial numbers 1 to 3 of the application without oath, 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 application, whereas refusal thereof may result in multiplicity of proceedings and incomplete adjudication of the dispute.

12. Article 131 of the Qanun-e-Shahadat Order, 1984, empowers the Court to decide the admissibility of evidence, disallow irrelevant or inadmissible evidence and regulate the process of its production. The Court may permit evidence if it is relevant, and may allow production of documents in a manner it deems appropriate, including deferring or modifying the order of proof, provided the parties' rights are protected and the proceedings remain fair and just.

13. Keeping in view the circumstances and for the reasons discussed hereinabove, by consent, this petition is **disposed of.** The impugned orders dated 21.02.2025 and 18.01.2025 passed by the

Additional District Judge-II/MCAC, Mirpurkhas and order dated 21.03.2024 passed by the Senior Civil Judge, Mirpurkhas are hereby **set aside**; as a result whereof, the petitioner's applications stand **allowed** to extent of production of certain documents as mentioned in list of witnesses at serial numbers 1 to 3 in the application under Order XVI rule 1 and 2 CPC, without taking oath as a record producer witnesses. 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.

The petition stands **disposed of** in the above terms.

JUDGE

Abdullah Channa/PS