

Judgment Sheet

HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Civil Revision Application No. 44 of 2025

[Walji Ram and another v. Dodo and 06 others]

Applicants by : Mr.Santosh Kumar J. Kalal, Advocate
Respondents No.1 by : Mr.Parshotam K. Khatri, Advocate
Respondents No.2 to 7 : Mr.Ayaz Ali Rajper, Assistant A.G Sindh
Date of hearing : 13.04.2026
Date of decision : 22.04.2026

J U D G M E N T

ARBAB ALI HAKRO, J.- The present Civil Revision Application arises from a protracted lis concerning the title, location and possession of agricultural land situated in Deh Mokhal Bah, Tapo Dinor, Taluka Umerkot. The controversy has travelled through multiple stages before the trial Court and the appellate forum, culminating in the filing of the instant revision before this Court.

2. The factual matrix commences with the institution of F.C. Suit No.24 of 2023 by the plaintiffs Walji Ram and Amolakh, who asserted that their father Sulleman, son of Chandno Bheel, was the lawful allottee of agricultural land bearing Survey No.68 admeasuring 30-00 acres, allotted as enemy property by the Assistant Commissioner, Nara Valley, Umerkot in the year 1981-82. The plaintiffs pleaded that, after the demise of their father, the suit land devolved upon them through mutation entry No. 27 dated 13.10.2017, and that they have since been in peaceful, uninterrupted cultivation. They further alleged that defendant No.1 Dodo, son of Jalal, harbouring mala fide intent, procured fabricated revenue entries by misrepresenting Survey No.68 as Survey No.70 in collusion with revenue officials and thereafter issued threats of forcible dispossession. The plaint averred that the defendant No.1 “got prepared the false revenue record misrepresenting the location of Survey No.68 as Survey No.70” and was attempting to usurp the suit land.

3. Upon service of summons, defendant No.1 entered an appearance and filed his written statement. He denied the plaintiffs' assertions and contended that they were attempting to alter the revenue records. He maintained that he was the owner of Survey No.70 admeasuring 20-00 acres, whereas the plaintiffs had unlawfully encroached upon Survey No.70. He relied upon demarcation reports prepared by three Tapedars and forwarded by the Mukhtiarkar, asserting that such reports recorded that the plaintiffs had occupied Survey No.70 and were attempting to "change survey No.70 to instead of Survey No.68." Defendant No.1 further pleaded that proceedings regarding demarcation were already pending before the Assistant Commissioner and that the civil suit was not maintainable.

4. Defendant No.5, the Survey Superintendent, Mirpurkhas Division, also filed his written statement. He stated that demarcation had already been conducted on the request of the Assistant Commissioner vide letter dated 21.08.2019 and that the joint report of the Survey Tapedar and village staff had been forwarded to the Mukhtiarkar. He clarified that, under Rule 67 of the Sindh Land Revenue Rules, 1968, the functions of measurement and demarcation lie with the Mukhtiarkar, while the Survey Department may extend technical assistance.

5. During the pendency of the suit, defendant No.1 filed an application under Order VII Rule 11 CPC, seeking rejection of the plaint on the grounds that the suit was barred under Section 172 of the Sindh Land Revenue Act, that the plaintiffs lacked cause of action and that the suit was otherwise not maintainable. The plaintiffs filed counter-objections by affidavit, denying the allegations and asserting that the dispute involved questions of possession and title, which could only be adjudicated after the recording of evidence.

6. Learned Senior Civil Judge-I, Umerkot, after hearing both sides, dismissed the application under Order VII Rule 11 CPC vide order dated 02.08.2023, by holding that the plaint disclosed a valid cause of action and that the controversy involved questions of possession requiring evidence.

7. Aggrieved by the dismissal of his application under Order VII Rule 11 CPC, defendant No.1 invoked the revisional jurisdiction of the learned Additional District Judge-II/MCAC, Umerkot, through Civil Revision Application No.09 of 2023. Vide order dated 02-11-2023, the revisional Court set aside the earlier order dated 02.08.2023 and remanded the matter to the trial Court with specific directions. The revisional Court observed that both sides were asserting rights to distinct survey numbers and that the real controversy concerned the identification and location of the land. It held that the trial Court ought to have secured meaningful participation of the official respondents, whose assistance was indispensable for proper adjudication. The revisional Court accordingly directed that the trial Court require a written statement and a necessary report from all official respondents and then decide the matter keeping in view the requirement of Order XV Rule 1 C.P.C. The application under Order VII Rule 11 CPC was ordered to remain pending until such participation was ensured.

8. Upon remand, the trial Court called for reports from the Mukhtiarkar (Revenue), Umerkot, the Assistant Commissioner, Umerkot and the Survey Superintendent, Mirpurkhas Division. The Mukhtiarkar submitted his report dated 04.01.2024, confirming that Survey No. 68 stood in the name of the plaintiffs' predecessor, while Survey No. 70 stood in the name of Jalal, son of Momin Arisar. The report further stated that, according to Tapedar, Survey No. 70 was presently being cultivated by Walji Ram after the 2023 monsoon. The Assistant Commissioner also forwarded his report along with the Mukhtiarkar's findings. The Survey Superintendent reiterated that demarcation was the statutory function of the Mukhtiarkar.

9. Relying principally upon the Mukhtiarkar's report, the trial Court vide order dated 27.01.2024, allowed the application under Order VII Rule 11 CPC and rejected the plaint. The trial Court held that the plaintiffs had illegally occupied Survey No.70, that their claim was "false and bogus," and that they had approached the Court with unclean hands. The Court concluded that the suit was incompetent and barred under Section 42 of the Specific Relief Act.

10. The plaintiffs assailed the said order through Civil Appeal No.05 of 2024 before the learned Additional District Judge-II/MCAC, Umerkot. After hearing both sides, the appellate Court, vide judgment dated 29.04.2025, dismissed the appeal and affirmed the order dated 27.01.2024. The appellate Court held that the demarcation report and the Survey Superintendent's statement established that the plaintiffs were in occupation of Survey No.70 and therefore lacked a cause of action. It concluded that the rejection of plaint was lawful and required no interference.

11. Being dissatisfied with the concurrent orders rejecting their plaint, the plaintiffs have now invoked the revisional jurisdiction of this Court through the instant Civil Revision Application

12. Learned counsel for the applicants contends that the impugned orders suffer from material irregularity and jurisdictional infirmity, as the learned Courts below proceeded to reject the plaint on the basis of disputed and untested factual assertions. He submits that the plaintiffs' case, as pleaded, squarely disclosed a cause of action relating to title, possession and alleged interference, which could not be non-suited at the threshold without affording an opportunity to lead evidence. Learned counsel argues that the demarcation report relied upon by the trial Court was itself the subject of controversy and could not be treated as conclusive without recording evidence pro and contra. He maintains that the rejection of the plaint under Order VII Rule 11 CPC is permissible only when the plaint, on its face, is barred by law or discloses no cause of action, whereas in the present matter, the pleadings raised substantial triable issues. He further submits that the learned appellate Court failed to appreciate that the plaintiffs had consistently asserted possession of Survey No.68 and had denied encroachment upon Survey No.70, and that such disputed questions could not be resolved summarily. He therefore prays that the impugned orders be set aside and the suit restored for adjudication on the merits.

13. Conversely, learned counsel for respondent No.1 supports the impugned Judgment and order and submits that the plaintiffs approached the civil Court

with unclean hands, having admittedly occupied Survey No.70, which stands in the name of the father of respondent No.1. He argues that the demarcation report submitted by the Mukhtiarkar, prepared after examining the revenue record and the site, unequivocally establishes that the plaintiffs were cultivating Survey No.70 after the monsoon of 2023. Learned counsel submits that once the competent revenue authority confirmed that the plaintiffs were in illegal occupation of land not belonging to them, the suit became wholly incompetent and devoid of cause of action. He further contends that the plaintiffs sought declaratory relief without producing any title document in respect of Survey No.70 and that the suit was barred under Section 42 of the Specific Relief Act as well as under the scheme of the Sindh Land Revenue Act. He maintains that the trial Court rightly exercised jurisdiction under Order VII Rule 11 CPC and that the appellate Court correctly affirmed the same, leaving no ground for interference in revision.

14. Learned Assistant Advocate General Sindh adopts the stance that the official respondents acted strictly in accordance with law and placed before the Court the correct factual position as reflected in the revenue record. He submits that the Mukhtiarkar's report, supported by the Assistant Commissioner and consistent with the Survey Superintendent's clarification, demonstrated that Survey No. 68 and Survey No. 70 are distinct parcels of land, each standing in the name of its respective allottee. He further submits that the demarcation carried out by the revenue field staff revealed that the plaintiffs were cultivating Survey No.70, which does not form part of their holding. Learned A.A.G. argues that once the competent revenue authorities confirmed the factual position, the civil Court was justified in concluding that the plaintiffs lacked cause of action and that the suit was barred. He therefore supports the impugned orders and submits that the revision is devoid of merit.

15. Heard. Perused the record.

16. The revisional jurisdiction of this Court under Section 115 CPC is supervisory in nature and is to be exercised where the subordinate Court has

acted without jurisdiction, failed to exercise jurisdiction vested in it, or acted with material irregularity in the exercise of such jurisdiction.

17. The record reflects that the plaintiffs instituted a suit seeking declaration of ownership over Survey No.68 admeasuring 30-00 acres, permanent injunction against interference, and ancillary reliefs. The plaint avers that the plaintiffs are successors-in-interest of the original allottee, and that defendant No.1, in collusion with revenue officials, attempted to misrepresent the location of Survey No.68 as Survey No.70. The written statement of defendant No.1, on the contrary, asserts that the plaintiffs have encroached upon Survey No.70, which stands in the name of his father. The pleadings, therefore, disclose a clear contest over questions of title, possession, and the identification of the land.

18. The first application under Order VII Rule 11 CPC was dismissed by the trial Court on 02.08.2023. The revisional Court, vide order dated 02.11.2023, set aside that order and directed the learned trial Court to obtain written statements and the necessary reports from all official respondents and thereafter to decide the matter keeping in view the requirements of Order XV Rule 1 CPC. The revisional Court did not authorise the trial Court to treat the revenue reports as conclusive, nor did it direct that the plaint be rejected merely upon receipt of such reports. The purpose of the remand was to ensure meaningful participation of official respondents so that the factual controversy could be properly appreciated.

19. Order XV Rule 1 CPC contemplates the disposal of a suit at the first hearing only where the parties are not at issue on any question of law or fact. The provision is exceptional in nature and is to be invoked sparingly. Summary disposal is permissible only where no factual controversy remains, and the matter can be decided without evidence. It is also settled law that where the pleadings disclose disputed questions of fact, the suit cannot be non-suited summarily.

20. In the present case, the pleadings of the parties, as well as the earlier revisional order dated 02.11.2023, unmistakably demonstrate that the parties

were at issue on material questions of fact, including the identity, location and possession of the respective survey numbers. The plaintiffs denied encroachment upon Survey No.70 and asserted continuous possession of Survey No.68. Defendant No.1 asserted the opposite. These are matters which, by their very nature, require evidence. The trial Court, however, treated the Mukhtiarkar's report as determinative and proceeded to reject the plaint without framing issues or recording evidence. Such an approach is contrary to the settled law that a plaint cannot be rejected on the basis of disputed facts or on the strength of a report which itself is contested.

21. In addition to the above, the plaintiffs, in Paragraph-7 of the plaint, have categorically pleaded that defendant No.1, while using his political influence over the revenue department, in collusion with defendant No.2, 3 and the Tapedar of the beat, got prepared the false revenue record misrepresenting the location of Survey No.68 as Survey No.70, such record is false, fabricated, managed and engineered one and this averment, taken at its face value, raises a serious allegation of mala fide manipulation of official record which cannot be adjudicated without evidence. At the stage of Order VII Rule 11 CPC, the Court is confined to the plaint alone and the Supreme Court, in the case of Haji Abdul Karim¹ has held that the truth or falsity of such allegations cannot be tested summarily. The plea of fabrication of revenue entries also attracts the protective sweep of Section 9 CPC, which mandates that civil Courts shall have jurisdiction to try all suits of a civil nature unless expressly barred. It is well settled that allegations of fraud, collusion, or the mala fide exercise of authority by public officials are not triable by revenue authorities but fall squarely within the jurisdiction of the civil Court. The Sindh Land Revenue Act does not oust the jurisdiction of the civil Court where the dispute pertains to title, possession or alleged fraudulent manipulation of the record-of-rights. Thus, the plaintiffs' specific plea in Para-7 reinforces the maintainability of the suit and

¹ PLD 2012 SC 247 (Haji Abdul Karim v. Florida Builders)

demonstrates that the controversy involves disputed questions of fact which cannot be resolved at the threshold under Order VII Rule 11 CPC.

22. It is well settled principle of law that only the averments in the plaint are to be examined and the defence or external material cannot be imported to defeat the plaint. The trial Court cannot embark upon a factual inquiry at the stage of Order VII Rule 11 CPC, nor can it rely upon documents whose correctness is disputed.

23. The trial Court, in rejecting the plaint, relied heavily upon the Mukhtiarkar's report dated 04.01.2024, which stated that Survey No.70 was being cultivated by the plaintiffs after the monsoon of 2023. The plaintiffs disputed this assertion and pleaded that they were in possession of only Survey No. 68. Whether the plaintiffs had encroached upon Survey No.70 is a question of fact requiring evidence. The trial Court, however, treated the report as conclusive and rejected the plaint, thereby converting a disputed factual inquiry into a summary rejection. This constitutes a material irregularity in the exercise of jurisdiction.

24. Learned appellate Court also fell in error in affirming the rejection of the plaint by treating the revenue report as determinative. The appellate Court overlooked the principle that a demarcation report, unless proved through evidence and subjected to cross-examination, cannot be treated as conclusive. The appellate Court also failed to appreciate that the revisional order dated 02.11.2023 did not authorise summary rejection but required the trial Court to proceed in accordance with Order XV Rule 1 CPC, which itself prohibits summary disposal where parties are at issue.

25. The cumulative effect of the above is that both Courts below acted with material irregularity in rejecting the plaint at a stage where the controversy required framing of issues and recording of evidence. The jurisdiction under Order VII Rule 11 CPC was exercised in a manner inconsistent with the settled principles laid down by the superior Courts. The impugned orders, therefore, cannot be sustained.

26. For the reasons recorded hereinabove, the Civil Revision Application is allowed. The judgment dated 29.04.2025 and decree dated 02.05.2025, passed by the appellate Court, and the order dated 27.01.2024, passed by the trial Court, are hereby set aside. The plaint in F.C. Suit No.24 of 2023 is restored to its original position.

27. The trial Court shall proceed with the suit strictly in accordance with law, frame appropriate issues, record evidence of the parties and decide the matter on the merits without being influenced by any observation contained in this judgment.

JUDGE

Adnan Ashraf Nizamani