

THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision Application No.S-66 of 2019

[Mst.Parveen Akhtar v. Late Iqbal Ahmed (deceased) through L.Rs and others]

Applicant by : Mr.Zia-ul-Haque Kamboh, Advocate

Respondents No.1 to 12 by : Mr.Najeebullah Jalbani, Advocate

Mr.Zulfiqar Ali Naich, Assistant A.G

Date of Hearing : 24.08.2026 & 07.09.2026

Date of Announcement : 18.09.2026

J U D G M E N T

ARBAB ALI HAKRO, J. – This civil revision application is directed against the judgment and decree dated 22.12.2017 passed by the learned 1st Senior Civil Judge, Naushahro Feroze (hereinafter referred to as “the trial court”) in F.C. Suit No.75 of 2011, whereby the suit of the applicant was decreed in part and against the judgment and decree dated 31.01.2019 passed by the learned III-Additional District Judge, Naushahro Feroze (hereinafter referred to as “the appellate court”) in Civil Appeal No.16 of 2018, whereby the appeal of the applicant was dismissed. The two decisions are hereinafter referred to collectively as “the impugned judgments”.

2. The applicant is a daughter of the late Masoo Khan, son of Sawan Khan Tagar, an advocate of Naushahro Feroze, who died in April 1986, leaving a widow, seven sons and two daughters. She instituted F.C. Suit No. 75 of 2011 for declaration, cancellation of entries in the record of rights, mesne profits, possession and a permanent injunction. She states that her brothers had been paying her the bhattai share of the produce until Rabi 2010, when the payments stopped, and that upon inquiry she learnt that a gift of her share had been entered in the revenue record in favour of her brothers, which gift she had never made.

3. In the plaint as originally framed, the applicant described her late father's estate as measuring 57-23 acres, comprising seventeen survey numbers of Deh Wassayo, giving the areas of Survey No.34 as 1-34 acres, of Survey No.62 as 3-38 acres, and of Survey No.99 as 1-24 acres. On 28.10.2015, she applied under Order VI Rule 17 CPC to substitute those figures with 2-30 acres, 5-06 acres, and 6-18 acres, respectively, and to read the total as 64-24 acres, describing the figures originally pleaded as a typing mistake. The trial court dismissed that application on 02.11.2016, but in Civil Revision Application No.40 of 2016, the learned District Judge, Naushahro Feroze, by order dated 14.11.2017, allowed the amendment, and the amended plaint was filed accordingly.

4. Respondents No.1 and No.6, a brother and a sister of the applicant, filed written statements supporting her and admitting the larger figure of 64-24 acres. The contesting respondents No.2 and No.5 denied it. Their case was that during his lifetime the late Masoo Khan had been in litigation with one Zulfiqar Ali son of Moula Bux Khushik, a son of his sister; that the litigation ended in Civil Appeal No.30 of 1982 before the learned 1st Additional District Judge, Nawabshah, by a compromise recorded upon an application under Order XXIII Rule 3 CPC dated 20.09.1982; that under that compromise the late Masoo Khan took 57-06 acres and Zulfiqar Ali took 19-25 acres; that the record of rights was mutated on that basis by entry No.36 of VF-XV dated 27.08.1983; in compliance with office letter No.507 dated 23.08.1983 and that Survey Nos.34, 62 and 99 were joint khatahs in which the late Masoo Khan held a share only, the remaining shares belonging to Ghulam Muhammad son of Jurio Tagar, and Allah Warrayo son of Sarho Tagar.¹

5. On the amended pleadings, the trial court settled six issues, of which the second and fourth concerned the extent of the estate. The applicant examined herself. The contesting respondents examined

¹Application under Order XXIII Rule 3 CPC dated 20.09.1982, Exh.142-C; compromise decree dated 22.09.1982 passed in Civil Appeal No.30 of 1982, Exh.142-D.

Ashfaq Ahmed as DW-1, who produced, among other documents, the original registered sale deed of 1937, the compromise application, the compromise decree, the office letter No.507, entries No.117, 118 and 119 of VF-VII-A, and entry No.83 of VF-VII-B. Muhammad Jameel, Tapedar, was summoned as DW-2 to produce the revenue record.

6. The trial court held that the applicant had not gifted her share and cancelled gift entry No. 37; it held that the estate of the late Masoo Khan measured 57-23 acres, not 64-24 acres; it declined mesne profits on the finding that the land was uncultivated, and it directed the Mukhtiarkar (Revenue), Naushahro Feroze, to partition the land among all the legal heirs. The appellate court maintained that decision, holding that the compromise decree was the foundation of the title and that the claim to the larger area was unwarranted.

7. Learned counsel for the applicant contended that both the courts below failed to appreciate the material on the record; that the entries of VF-VII-A, rewritten for the year 1984-85, and the passbooks show the areas of Survey Nos. 34, 62 and 99 as 2-30, 5-06 and 6-18 acres against the full share of 0-100 paisa; that respondents Nos. 1 and 6 admitted the larger area in their written statements; that the deposition of DW-2 was recorded without oath and without cross-examination, and could not have been acted upon; and that the applicant, a widow of advanced years, has been kept out of her inheritance since the year 2010.

8. Learned counsel for the private respondents supported the impugned judgments. He submitted that the compromise decree of 1982 is the root of the title; that it has never been assailed by anyone; that it distinguishes between the total area of a survey number and the area falling to the share of the late Masoo Khan; and that the applicant is, in substance, claiming the whole of three survey numbers, in which her father owned only a part.

9. Learned Assistant Advocate General Sindh also supported the impugned judgments.

10. I have heard the learned counsel for the parties and, with their assistance, have reviewed the record and proceedings of both the courts below.

11. Two questions arise for determination. The first is whether the concurrent finding that the estate of the late Masoo Khan measured 57-23 acres suffers from misreading or non-reading of the evidence, or by an illegality or material irregularity of a nature that attracts the revisional jurisdiction of this Court under section 115 CPC. The second is whether, if it is not, any direction is nevertheless called for so that the decree already passed in favour of the applicant does not remain unsatisfied.

12. The limits of section 115 CPC are settled and require no elaboration. Interference is confined to cases of misreading or non-reading of evidence, jurisdictional error, or illegality of a kind that has a material effect on the result; and where two interpretations of the evidence are possible, the view taken by the courts below is to be maintained.² A revisional court is not a third forum for the reappraisal of evidence, and it may not substitute its own conclusions for concurrent findings without identifying the particular misreading or non-reading relied upon.³

13. The controversy is a narrow one. Of the seventeen survey numbers, fourteen are not in dispute. The dispute is confined to Survey Nos. 34, 62 and 99, and the difference between the two rival figures is a little over seven acres.

14. The answer lies on the face of the very document upon which both sides rely. The compromise application dated 20.09.1982 and the decree passed upon it set out the land in four columns, headed “S.Nos.”, “Deh”, “Total area” and “Area of appellant (Masoo Khan)”.⁴ For the fourteen undisputed survey numbers the figures in the last two columns are identical. For the three disputed survey numbers, they are not, and the entry against each is prefixed by the word “from”:

²Mst. Zarsheda v. Nobat Khan PLD 2022 SC 21; Muhammad Sarwar v. Hashmal Khan PLD 2022 SC 13.

³Pir Shah Abdul Haq (deceased) v. Muhammad Irfan 2026 SCMR 1019.

⁴Compromise application and decree (n.1 above).

S.Nos.	Total area	Area of appellant (Masoo Khan)
from 34	2-39 acres	1-26 acres
from 62	5-06 acres	3-30 acres
from 99	6-18 acres	1-24 acres

15. The column closes with the words “Total 57-6 Acres” and, in words, “(Total fifty seven acres and six ghuntas)”. The significance of the two columns is beyond doubt, as shown by the corresponding table in the same decree relating to the share of Zulfiqar Ali, which is drawn up in identical form under the headings “Total area” and “Area of Respondent No.1 (Zulfiqar Ali)”. The figure of 64-24 acres for which the applicant contends is the sum of the total area column. The figure of 57-23 acres found by the two courts below is, subject to a trifling difference to which I shall presently come, the sum of the column showing the area of her father. The applicant is therefore claiming the whole of three survey numbers in which the late Masoo Khan owned only a part.

16. Every other document on record points the same way. The registered sale deed of 1937 records the purchase by the grandfather, Sawan Khan, of 1-24½ acres out of Survey No.99, the total area of that survey number being shown therein as 6-8 acres.⁵ Entry No.117 of VF-VII-A records the khata jointly in the names of the late Masoo Khan, Ghulam Muhammad, Allah Warrayo and others. Entry No.83 of VF-VII-B dated 14.11.1993, upon which the learned counsel for the applicant laid stress, records the transfer of 4-34 acres out of Survey No.99 to Ghulam Muhammad and Allah Warrayo to the extent of 38 and 37 paisa, that is seventy-five per cent of 6-18 acres.⁶ The balance of twenty-five per cent is 1-24 acres, which is precisely the area allotted to the late Masoo Khan by the compromise decree eleven years earlier. That entry therefore took nothing out of the estate; it brought the record into conformity with what the decree of 1982 had already settled.

⁵Registered sale deed bearing Jaryan No.771 dated 09.09.1937, Exh.142-A.

⁶Entry No.117 of VF-VII-A, Exh.142-F; entry No.83 of VF-VII-B dated 14.11.1993, Exh.142-K and Exh.143-E.

17. The point is beyond argument as the decree itself, in the portion relating to Survey No.81, records that “from southern side 2-05 acres belong to Allah Warayo”.⁷ The presence of Allah Warrayo as a co-owner is thus established by a decree of the year 1982 and not by anything done after the death of the late Masoo Khan.

18. It may be added that the compromise decree gives the total as 57-06 acres, whereas entry No.36 and the foti khata entry No.30 give it as 57-23 acres. The difference of seventeen ghuntas is in favour of the heirs, and the courts below adopted the larger figure. The applicant has accordingly benefited from it.

19. In these circumstances, this is not a case in which two views of the evidence are possible. The documents admit one view only and that is the view the courts below have taken. There is neither misreading nor non-reading. I may observe that the trial court also invoked the rule of estoppel contained in Article 114 of the Qanun-e-Shahadat Order, 1984 (hereinafter referred to as “QSO, 1984”) on account of the figure originally pleaded. That reasoning was not necessary to the decision, as the claim failing upon the documents themselves, and I express no opinion upon it.

20. Two further matters urged for the applicant may be dealt with shortly. The admissions of respondents Nos. 1 and 6 in their written statements cannot enlarge an estate beyond what the deceased owned, nor can they bind Ghulam Muhammad and Allah Warrayo, who are not parties to these proceedings and whose shares are traceable to the year 1937. As to the passbooks, they were not produced in evidence by either side and a passbook is, in any event, not a document of title.

21. It was urged that the deposition of DW-2 bears the endorsement that the witness was not on oath, that no cross-examination was therefore conducted, and that the revenue record produced through him ought not to have been acted upon. Upon this record, the objection is misconceived. DW-2 was summoned for the limited purpose of

⁷Compromise decree (n.1 above).

producing certified copies of public records, to which the presumption of genuineness under QSO, 1984 attaches. Every document material to the finding under challenge was separately produced upon oath by DW-1, who was cross-examined at length upon it. Entries No.30/36 and No.37 were produced by the applicant herself.⁸ No objection to the mode of proof was taken when the documents were tendered, nor was any application made to recall the witness. An objection to the mode of proof is a matter of procedure capable of being waived and where it is not taken at the time it cannot be raised afterwards in appeal or in revision.⁹ The irregularity, such as it is, could not have affected the result and affords no ground for interference under section 115 CPC.

22. I would nonetheless observe, for the guidance of the courts below, that the better practice is to administer the oath even to a witness summoned merely to produce a record and to afford the opposite party an opportunity to put questions to him. Adherence to that practice costs nothing and forecloses objections of the present kind.

23. The refusal of mesne profits rests upon a finding of fact that the land is uncultivated and the applicant herself deposed that it has been so since the year 2014. Beyond that, the parties are co-sharers in an undivided holding, and until partition each co-sharer is in constructive possession of every part of it.¹⁰ The finding calls for no interference.

24. For the reasons recorded above, this civil revision application is dismissed, and the impugned judgments and decrees are maintained.

J U D G E

Naveed Ali

⁸Entry No.30/36 of VF-XV, Exh.32-A; entry No.37 of VF-XV, Exh.32-B.

⁹Gulzar Hussain v. Abdul Rahman 1985 SCMR 301.

¹⁰Al-Haaj Malik Muhammad Ashraf v. Javed Akhtar 2025 SCMR 787.