ORDER SHEET

THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Constitution Petition No. S – 215 of 2026

[Ali Dino Burdi (deceased) through L.Rs v. Province of Sindh and others]

For Petitioners	:	M/s Safdar Ali Bhatti and Liaquat Ali Shar, Advocates
For Respondent No.8	:	Mr. Mehboob Ali Wassan, Advocate
For Respondents No.1 to 4	:	Mr. Ghulam Abbas Kubar, Assistant Advocate General Sindh
For Respondents No.5 to 7, 9 & 10	:	Nemo
Date of hearing	:	30.10.2026
Date of decision	:	30.10.2026

O R D E R

Adnan Iqbal Chaudhry J.– Predecessor of the Petitioners, Ali Dino Burdi, was plaintiff in Suit No. 147/2023 (new No.240/2024), filed before the Senior Civil Judge Khairpur, for declaration of title to Survey No. 111 of Deh Khairpur and for other consequential relief. Respondent No.8, who was one of the defendants in that suit, filed application for rejection of plaint under Order VII Rule 11 C.P.C., which was dismissed. That order was challenged by Respondent No.8 before the District Judge Khairpur by Civil Revision No.68/2025, which was allowed *vide* impugned order dated 05.05.2026 rejecting the plaint, hence this petition.

The learned District Judge rejected the plaint on the ground that an earlier Suit No.59/2018 filed against Respondents 5 to 7 by other co-owners of the same property had already been dismissed, which dismissal was maintained up till the High Court in Civil Revision No. S-56/2019, where it was observed that said co-owners did not appear to have title to the land; whereafter Respondents 5 to 7 had sold that property to Respondent No.8; that Ali Dino Burdi (plaintiff of latter Suit No.147/2023) who claimed to be another co-owner of same land, was acting as Attorney of plaintiffs in previous Suit No. 59/2018; he was thus aware of the orders passed against other co-owners of the same land, but never contested the same; therefore, orders emanating from Suit No. 59/2018 established that

Ali Dino Burdi had no title to the suit land, resultantly the suit was not maintainable.

Heard learned counsel and perused the record.

It is not disputed that the plaintiff of the latter suit, namely late Ali Dino Burdi, was not a plaintiff in the previous Suit No. 59/2018, rather he was acting as special Attorney of those plaintiffs. Though proceedings of the earlier suit, including the High Court's order in Civil Revision No. S-56/2019 emanating from that suit, could have been relied upon as evidence against him in the latter suit as co-owner of the same land having knowledge of dismissal of the earlier suit, those proceedings did not constitute *res judicata* against him for rejection of the plaint of the latter suit.

The other aspect of the matter is that the earlier Suit No.59/2018 was only for permanent injunction against dispossession, filed at the time when orders cancelling revenue entries of those plaintiffs were *subjudice* before the Member Board of Revenue under section 164 of the Sindh Land Revenue Act, 1967. The judgment dated 29.10.2018 passed in the earlier suit reflects that it was dismissed because orders holding the field in the revenue hierarchy up till that time, were in favor of Respondents 5 to 7. In other words, judgment in the previous Suit No. 59/2018 was not a determination of title to the suit land. Apparently, the revision before the Member Board of Revenue under section 164 of the Sindh Land Revenue Act also remains pending. Thus, the learned District Judge seems to have mis-read the record in passing the impugned order.

That said, the impugned order clearly transgresses the boundaries of Order VII Rule 11 CPC for rejecting the plaint. The suit has essentially been dismissed with a summary finding that the plaintiff has no title to the suit land.

In view of the foregoing, the impugned order dated 05.05.2026 passed in Civil Revision No.68 of 2025 is set aside. Resultantly, Suit No.147 of 2023 (new No.240 of 2024) stands revived. However, the question whether the suit is maintainable in view of the provisions of the Sindh Land Revenue Act, 1967 shall remain open. The trial Court shall frame an issue in that regard and decide the same in accordance with law. Petition allowed in said terms.

JUDGE

Naveed Ali