IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Second Civil Appeal No.S-12 of 2026

Applicants	:	Rasool Bux (through legal heirs) & others, *through* Mr. Ashique Ali Khokhar, Advocate.
Respondents	:	Mst. Kalsoom Babar & others (Nemo).
Date of hearing	**:**	**02.11.2026.**
Date of Decision	**:**	**02.11.2026.**

O R D E R

ARBAB ALI HAKRO, J.- Through this second appeal under section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as "**CPC**"), the appellants have challenged the judgment dated 18.09.2026 and decree dated 25.09.2026 of the learned II-Additional District Judge, Mehar (hereinafter referred to as "**the appellate court**") in Civil Appeal No.01 of 2026, whereby the judgment and decree dated 11.11.2025 of the learned Senior Civil Judge, K.N. Shah (hereinafter referred to as "**the trial court**") in F.C. Suit No.174 of 2018 were maintained.

2. The suit concerned 04-30 acres out of Survey No.536 (08-22 acres) of Deh Mir Muhammad, Taluka K.N. Shah, which is State land. Respondent No.1 pleaded that the survey number was granted to her on *harap* conditions in the open *katchery* held on 24.04.2010, that she had been paying the instalments, and that the appellants had forcibly occupied the area in suit. She sought a declaration, possession, *mesne* profits, and a permanent injunction. The appellants (defendants No.2 to 8) admitted the grant in paragraph 2 of their written statement, termed it collusive, pleaded long possession, and set up a purchase of 04-11 acres from respondent No.1 for Rs.12,00,000/- under an unregistered agreement dated 03.02.2016. The Mukhtiarkar (Estate) Dadu, through his authorized officer, proved the grant from the office record and deposed that seven of the fifteen instalments were paid between 2012 and 2018, that the grant stands neither cancelled nor re-allotted, and that further instalments were declined by the office on account of this litigation.[1] The

[1] Exh.100 and Exh.100/B (Form-A No.PE-678).

Mukhtiarkar Revenue, K.N. Shah, proved the Government entry and stated that appellant Ali Sher is in illegal occupation of the suit land and that the possession certificate relied upon by the appellants bears no outward number.[2] On this evidence, the trial court declared respondent No.1 the lawful allottee, directed her to deposit the remaining instalments with the Mukhtiarkar (Estate), and directed the appellants to deliver possession; *mesne* profits were declined. The appellate court concurred.

3. Learned counsel for the appellants contends that the allotment was obtained in collusion with the revenue staff, that the appellants have been in possession for a long time and have purchased the land from respondent No.1, and that both the courts below have misread and failed to read the evidence.

4. Heard. Record perused.

5. The jurisdiction of this Court in a second appeal is confined to the grounds enumerated in Section 100 CPC, and Section 101 excludes every other ground. Concurrent findings of fact recorded by the two courts below, if in accordance with law and the evidence on record, are not open to interference in this jurisdiction.[3] The memo of appeal does not formulate any question of law. Its grounds are general assertions of misreading and non-reading of evidence, without reference to any particular piece of evidence said to have been overlooked. Even so, the record has been examined to see whether any finding is contrary to law.

6. The grant of 24.04.2010 is proved by the Estate office's own records and is admitted in the pleadings of the appellants. It was never questioned before any revenue forum, and the Province, the only party with an interest in it, has not appealed from either decree. A party who pleads that it purchased the land from the grantee cannot, at the same time, be heard to say that the grant was collusive. The plea of collusion was, in any event, not proved by any evidence.

7. Respondent No. 1 specifically denied the agreement dated 03.02.2016. An agreement to sell immovable property must be attested by two witnesses, and when its execution is denied, it must be proved by producing the attesting witnesses, as required by Articles 17 and 79 of the Qanun-e-Shahadat Order,

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[2] Exh.98 and Exh.98/A (entry No.308 dated 06.10.1985, VF VII-A).
[3] *Malik Liaquat Ali (decd.) v. Mst. Sharifan Begum (decd.)* 2026 SCMR 1125.

1984.[4] Only one attesting witness, Qurban Ali, was examined. The death of the other was asserted but not proved, and the scribe or notary before whom the document is said to have been written was not called. Payment of the consideration in cash rests on the appellants' word alone. The finding of both the courts that the agreement was not proved is therefore in accordance with law. The appellants' witness Ali Sher went further and deposed to inheritance from his grandfather and to a purchase from Muhammad Ashraf in 1996, neither of which was pleaded. Evidence led beyond the pleadings cannot be looked at.[5]

8. Even if the agreement had been proved, it would not have assisted the appellants. An agreement to sell does not, of itself, create any right, title or interest in immovable property; it only confers a right to obtain a conveyance.[6] Where the subject is State land on which proprietary rights have not yet been conferred on the grantee, such an agreement is at best a contingent contract, enforceable only after those rights are conferred.[7] No proprietary rights have been conferred on respondent No.1, and the appellants have never sued for specific performance. An unproved and inoperative agreement furnishes no defence to a suit for possession by the grantee.

9. The possession certificate, *dhal* receipts and field book entry on which the appellants rely show, at most, occupation of Government land. The officer whose office is said to have issued the certificate has disowned the appellants' possession as illegal. Occupation of State land without a grant confers no right against the person to whom the State has granted it.

10. The objections of limitation, non-joinder and non-compliance with the remand order dated 18.04.2025 have been considered. The suit was filed in 2018, the year in which dispossession is alleged to have occurred. The non-joinder of a co-vendee under an unproved agreement does not defeat the suit (Order I Rule 9 CPC). After remand, the plaint was amended, the deficit court fee was paid, fresh issues were framed, and further evidence was recorded; the clerical misdescription of the date of the grant in issue No.3 misled no one. No error or defect in procedure affecting the merits is shown (Section 99 CPC).

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[4] *Farzand Ali v. Khuda Bakhsh* PLD 2015 SC 187.
[5] *Muhammad Iqbal v. Mehboob Alam* 2015 SCMR 21.
[6] *Rawail Khan (deceased) v. Khawaja Muhammad Arif* 2026 SCMR 1268.
[7] *Muhammad Anwar v. Muhammad Aslam* 2012 SCMR 345; *Muhammad Sadiq v. Muhammad Ramzan* 2002 SCMR 1821.

11. However, one aspect requires to be stated. The reasoning of the trial court at places describes respondent No.1 as the "owner" of the suit land. That is an overstatement. Under a running *harap* grant, the grantee acquires proprietary rights only on fulfillment of the conditions of the grant. The decree itself, correctly, declares her the lawful allottee and directs payment of the outstanding instalments. Nothing in the decree confers ownership. It is clarified that the declaration operates as one of allottee-ship under the grant of 24.04.2010. The conferment of proprietary rights shall remain subject to fulfillment of the conditions of the grant and to the orders of the competent revenue authorities in accordance with law, before whom respondent No.1 may tender the outstanding instalments.

12. No ground under section 100 CPC is made out. The concurrent findings are neither contrary to law nor the result of any misreading or non-reading of the evidence, and no material issue of law has been left undetermined. The appeal is accordingly **dismissed** in *limine*, subject to the clarification in the preceding paragraph, along with the pending applications. There shall be no order as to costs.

J U D G E

Qazi Tahir PA/*