

HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS

C.P No.S-33 of 2026

[Government of Sindh and 03 others v. Laiqino and 06 others]

Petitioners by : M/s Ayaz Ali Rajper and Harish Chander,
Assistant Advocates General, Sindh

Respondents by : Mr.Mohan Lal, Advocate

Date of hearing : **09.04.2026 & 11.05.2026**

Date of decision : **21.05.2026**

ORDER

ARBAB ALI HAKRO, J:- The petitioners before this Court trace their claim to agricultural land comprising Survey Nos. 267 admeasuring 39-17 acres, 290 admeasuring 02-31 acres and 291 admeasuring 22-31 acres, situated in Makan, Deh and Tapo Khario Ghulam Shah, Taluka Islamkot, District Tharparkar. It is alleged that said land was originally cultivated by the petitioners' predecessor, late Taj Muhammad alias Taju son of Mooso, under the Thar Land Grant Policy of 1930. It stands admitted in the contemporaneous revenue material that the predecessor remained in continuous cultivating possession for the requisite period, after which the land was brought on the Hameshgi Yadashat and rough survey for the year 1979-80, and the above survey numbers were formally allotted to him. The Deputy Commissioner, Tharparkar at Mirpurkhas, thereafter sanctioned the grant on payment of Malkana at the rate of fifteen rupees per acre, which amount was duly deposited on 05.11.1980, followed by issuance of Zamimo "H" (Pata) in favour of the grantee on 04.12.1980.

2. It further emerges from the record that although Form XV was the operative record-of-rights at the relevant time, the suit land was not entered therein owing to an admitted oversight on the part of the then Tapedar. When the revenue record was reconstructed in 1985-86 through the introduction of V.F. VII-A and VII-B, the omission persisted, and the land was erroneously carried into the list of Na-Qabuli numbers under Entry No. 102 of V.F. VII-A for

Deh Khario Ghulam Shah. The petitioners, being illiterate cultivators, continued in possession under the bona fide belief that the mutation would be duly reflected in the revenue record, and the omission came to light only when the area was surveyed for purposes of land acquisition in the Thar Coal Mining Project.

3. Upon discovering the anomaly, the petitioners approached the Mukhtiarkar, Islamkot and obtained copies of the rough survey and other relevant documents. They thereafter preferred an appeal under section 161 of the Land Revenue Act before the Deputy Commissioner, which was heard by the Additional Deputy Commissioner-I. During the pendency of that appeal, the Mukhtiarkar called for a report from the concerned Tapedar, who categorically admitted that the land had been sanctioned in favour of the petitioners' father, that Malkana had been paid, that Zamimo "H" had been issued and that the failure to enter the land in the record-of-rights was a clerical lapse. The Mukhtiarkar forwarded this report to the Deputy Commissioner under a letter dated 01.11.2018. Despite this unequivocal admission of official error, the Additional Deputy Commissioner-I dismissed the appeal on 14.11.2019, holding the land to be Na-Qabuli Government land.

4. The petitioners thereafter instituted F.C. Suit No. 198 of 2019 seeking declaration of their title, correction of the revenue record and injunctive relief. The defendants, including the Mukhtiarkar, Assistant Commissioner, Deputy Commissioner, and the Government of Sindh, entered an appearance through the Deputy District Attorney and filed a written statement acknowledging that the disputed survey numbers were indeed present in the Hameshgi Yadashat approved by the Deputy Commissioner. However, they are presently shown in the Na-Qabuli list. Evidence was recorded, including the testimony of the very Tapedar who had earlier admitted the error and the suit was decreed on 30.11.2020.

5. Subsequently, an application under section 12(2) CPC was filed by the official defendants alleging fraud and collusion by the then Assistant Commissioner and Mukhtiarkar. The trial court dismissed the application on

02.10.2021, holding that no fraud had been established. The revisional court affirmed the dismissal on 29.01.2022. The matter was then taken to this Court through C.P. No. D-1434 of 2022 and connected petitions, wherein the High Court set aside both orders and remanded the matter for recording evidence on the 12(2) application. After remand, evidence was again recorded, including that of the Mukhtiarkar, who conceded that the Government officials had themselves filed the written statement and participated in the suit proceedings without alleging fraud at any stage. The trial court, upon re-examination of the entire record, again dismissed the 12(2) application on 06.01.2024 with costs, holding that the plea of fraud was an afterthought and that the decree had been passed after full contest and based on admitted revenue material. The revisional court, vide order dated 29.05.2024, upheld the dismissal, observing that the decree was consent-based and that no element of fraud or misrepresentation had been proved.

6. Learned Assistant Advocate General Sindh contended that the entire edifice of the respondents' claim rests upon a revenue entry which, in law, never ripened into title and which stood expressly negated by the competent revenue appellate authority through its order dated 14.11.2019, declaring the land to be Na-Qabuli Government property. He submitted that the decree obtained in F.C. Suit No.198 of 2019 was the product of a collusive arrangement orchestrated by the then Assistant Commissioner and Tapedar, who, instead of safeguarding the proprietary interests of the Provincial Government, facilitated the respondents by filing a written statement inconsistent with the official record and by withholding material facts from the Court. Learned A.A.G argued that the subsequent proceedings under section 12(2) CPC were necessitated by the discovery of this collusion when contempt notices were issued, and that the Government cannot be divested of valuable public land merely because subordinate officials acted in dereliction of duty or in connivance with private parties. He maintained that this Court, in its earlier remand order, had already observed prima facie indicators of fraud and misrepresentation and that the trial court, instead of undertaking a judicious appraisal of the evidence, again dismissed the application in a perfunctory manner. He urged that the impugned orders suffer from material

irregularity, non-reading of the revenue record and a failure to appreciate that no lawful grant, sanad, or statutory authority ever existed in favour of the respondents, rendering the decree void and liable to be set aside in the supervisory jurisdiction of this Court. In support of his contentions, he relied upon case law reported as **2024 YLR 1309**.

7. Conversely, learned counsel for the respondents submitted that the plea of fraud is a belated afterthought, raised only when the official petitioners were confronted with contempt proceedings for non-compliance with a decree that had attained finality. He argued that the Government departments were duly served, entered an appearance through the Deputy District Attorney, filed a written statement, produced their own Tapedar as a witness and fully participated in the trial, thereby negating any allegation of concealment or collusion. Learned counsel emphasized that the respondents' predecessor had been granted the land under the Thar Land Grant Policy, had paid Malkana, had been issued Zamimo "H" and had remained in uninterrupted cultivating possession for decades, all of which stood admitted by the revenue officials themselves both in the suit and in the earlier appeal under section 161 of the Land Revenue Act. He submitted that the 12(2) application was twice dismissed after full evidence, and that the revisional court had already affirmed that no misrepresentation or fraud was proved, particularly in light of the decree being passed on admitted documents and official testimony. Learned counsel maintained that the petitioners are attempting to reopen concluded findings under the guise of constitutional jurisdiction, despite the fact that the decree was neither ex parte nor obtained surreptitiously and that the supervisory jurisdiction cannot be invoked to unsettle concurrent factual determinations rendered after full contest. He therefore prayed for dismissal of the petition as frivolous, vexatious and an abuse of process. In support of his contentions, he relied upon case law reported as **2004 SCMR 270, 2007 SCMR 1023, 2003 SMCR 1331, 2006 CLC 1438, 2020 YLR Note 35, 2005 SCMR 1848, 2002 MLD 1049, 2009 MLD 750, PLD 1994 Supreme Court 336, PLD 1996 Karachi 423, 2005 SCMR 1848, PLD 1997 Karachi 299 and PLD 2012 Supreme Court 400**.

8. Heard and perused the record.

9. The starting point of the inquiry is the statutory text of Section 12(2) CPC. The provision is not a substitute for an appeal, revision or review. It is a narrow gateway, available only where the decree is shown to have been obtained by fraud practised upon the Court, by misrepresentation of material facts or by proceedings so collusive as to constitute a deception of the judicial process. The burden under Section 12(2) is heavy, stringent and exacting, and fraud must be pleaded with particularity and proved with cogent, convincing and unimpeachable evidence. The fraud is never presumed; it must be established by evidence of a quality higher than that required in ordinary civil litigation. Section 12(2) cannot be invoked to reopen matters which were fully adjudicated after contest, nor can it be used to correct errors of judgment or to revisit findings of fact.

10. In the present case, the sole witness produced by the Petitioners, the Mukhtiarkar, entered office on 13.09.2023, long after the decree had been passed. His testimony is therefore not based on personal knowledge of the suit proceedings. He admitted in cross-examination that when the suit was filed, the Mukhtiarkar, Assistant Commissioner and Deputy Commissioner were all impleaded as defendants, that they were duly served, that they entered appearance through the Deputy District Attorney and that they filed a written statement. He further admitted that the written statement filed by the Government did not allege fraud, did not dispute the respondents' claim of grant and did not deny the issuance of Zamimo "H". He also admitted that the Deputy Commissioner had approved the suit land and that the Tapedar had submitted a written admission acknowledging that the land had been sanctioned and that the omission in the revenue record was a bona fide clerical lapse. He conceded that disciplinary action had been taken against the then officials, but no such record was produced. His testimony, therefore, does not establish fraud; rather, it confirms that the Government consciously participated in the suit proceedings and elected not to contest the respondents' claim on the merits.

11. The respondents' witness, Abdullah, remained consistent and unshaken. He reiterated that all original documents were produced in the suit, that the decree was passed after full evidence and that no fraud was committed. His testimony is corroborated by the contemporaneous record, including the rough survey, the Hameshgi Yadashat, the Malkana receipt, the Zamimo "H", the Tapedar's earlier report and the written statement filed by the Government.

12. Learned A.A.G argued that the decree was collusive because the Tapedar filed a written statement favourable to the respondents and later appeared as their witness. This contention, however, collapses upon scrutiny. The Tapedar was produced as a witness by the respondents only after the Government itself had filed a written statement admitting the existence of the Hameshgi Yadashat and acknowledging that the land was present in the rough survey. The Government's own law officer cross-examined the Tapedar in the suit and did not challenge his testimony as fraudulent. The decree was passed after the framing of issues, the recording of evidence, and the delivery of a reasoned judgment. The Government did not file an appeal. The plea of collusion is therefore an afterthought, raised only when contempt proceedings were initiated for non-compliance with the decree.

13. Learned A.A.G further argued that the decree is void because the Additional Deputy Commissioner had earlier held the land to be Na-Qabuli. This argument is legally untenable. The jurisdiction of the civil court is not ousted by an order under Section 161 of the Land Revenue Act. The civil court is the final arbiter of title. The decree in the suit was therefore not without jurisdiction.

14. Learned A.A.G also relied on the High Court's earlier remand order, suggesting that the High Court had already found prima facie fraud. This is a misreading. The High Court did not declare the decree fraudulent; it merely directed the trial court to record evidence in support of the 12(2) application. In light of such evidence, the trial court again found no fraud, and the revisional court affirmed that finding. These concurrent findings cannot be lightly disturbed.

15. The applicants have also failed to establish misrepresentation. Misrepresentation requires intentional concealment of material facts. The

respondents produced all documents in the suit. The Government had a full opportunity to contest them. The Government's own officials admitted the grant. There is no evidence that the respondents concealed anything from the Court.

16. The plea of jurisdictional defect is equally meritless. The civil court had jurisdiction over the subject matter. The decree is not a nullity. Section 12(2) cannot be invoked to challenge a decree passed by a court of competent jurisdiction merely because a party later regrets its litigation strategy.

17. The applicants' case ultimately rests on dissatisfaction with the decree and on allegations against their own subordinate officials. If an agent or subordinate official commits impropriety, the remedy lies against the agent, not against the decree passed in favour of a third party. The respondents were not privy to any alleged misconduct. They cannot be penalized for internal lapses within the revenue hierarchy¹.

18. In sum, the Petitioners have failed to discharge the heavy burden cast upon them by Section 12(2) CPC. Their allegations are unsupported by evidence, contradicted by the record, and legally insufficient to set aside a decree passed after full contest. The decree does not suffer from fraud, misrepresentation, collusion or jurisdictional defect.

19. For the reasons recorded above, the impugned orders of the trial court and the revisional court are upheld. No case for interference is made out. The petition stands **dismissed** with no order as to costs.

JUDGE

"Saleem"

¹ Mst.Shabana Irfan v. Muhammad Sham Khan & others (2009 SCMR 40)

