

Judgment Sheet

HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

2nd Appeal No.S-67 of 2024

[Province of Sindh and 04 others v. Riaz Hussain and another]

Appellants by : Mr.Muhammad Sharif Solangi, Assistant
Advocate General, Sindh

Respondent No.1 by : Mr.Abdul Ghaffar Narejo, Advocate

Respondent No.2 by : Nemo

Date of hearing : 14.04.2026, 23.04.2026 & 14.05.2026

Date of decision : 21.5.02026

J U D G M E N T

ARBAB ALI HAKRO, J.- This Second Civil Appeal is directed against the concurrent findings recorded by the learned Senior Civil Judge, Khipro (“trial Court”), through judgment and decree dated 05.09.2019 in F.C. Suit No.34 of 2017 and affirmed by the learned Additional District Judge, Khipro (“appellate Court”), through judgment dated 24.08.2022, in Civil Appeal No.07 of 2019, whereby the suit of respondent No.1 for declaration and permanent injunction was decreed.

2. The factual matrix of the case is that respondent No.1 instituted suit seeking declaration of ownership and permanent injunction in respect of land admeasuring 00-07 ghuntas from Survey No.741, Deh Khipro, purchased through registered sale deed No.428 dated 30.06.2009, from respondent No.2. It was pleaded that he had also purchased an adjacent area of 03-22 acres from the same survey number through registered sale deed No.427 dated 30.06.2009, which was subsequently converted into a housing colony known as “Zam Zama Housing Scheme” after approval by the competent Town Planning authorities. It was further averred that the Mukhtiarkar, Khipro, along with staff, obstructed construction activity on the suit land, demanded gratification and threatened the plaintiff, compelling him to seek declaratory and injunctive relief.

3. Defendant No.4 filed written statement admitting the plaintiff’s title to 00-07 ghuntas under sale deed No.428 and 03-22 acres under sale deed No.427, as reflected in mutation entries No.1398 and 1397. However, it was alleged that the

plaintiff had encroached upon Government land adjacent to Survey No.741 and that demarcation indicated possession beyond his holding, though no precise measurement could be ascertained due to the absence of permanent survey points. Defendant No.7, the vendor, supported the plaintiff's case and confirmed the execution of both sale deeds and the delivery of possession.

4. Upon divergent pleadings, the trial Court framed nine issues, including maintainability, bar under the Sindh Revenue Jurisdiction Act, ownership of the suit land, allegation of excess claim, alleged inclusion of land in the housing scheme, and entitlement to relief.

5. The plaintiff examined official witnesses from the Sub-Registrar's office, Mukhtiarkar's office, Microfilming Department and Town Planning Department, who produced the original sale deeds, mutation entries, microfilming rolls and approval letter of the Zam Zama Housing Scheme dated 15.09.2009. The plaintiff's attorney also appeared and produced the original sale deeds. The defendants examined the Mukhtiarkar, who admitted the plaintiff's title documents, admitted entries No.1267 and 1422 showing the sale of plots by the plaintiff, and conceded that he did not know the correct area of Survey No.741, nor had he produced any document establishing Government ownership of the alleged encroached land. Defendant No.7 also appeared and fully supported the plaintiff's ownership and possession.

6. The trial Court decreed the suit, holding that the plaintiff had proved ownership of the suit land through registered sale deeds duly reflected in the revenue record; that the Government defendants produced no evidence to establish encroachment upon Government land; that issues relating to excess claim or inclusion in the housing scheme were unsupported by evidence and that the suit was maintainable and not barred by the Sindh Revenue Jurisdiction Act.

7. The Government-defendants preferred Civil Appeal No.07 of 2019, which was dismissed by the appellate Court vide judgment dated 24.08.2022, holding that the trial Court had correctly appreciated the evidence; that the plaintiff's title stood proved; that the Government had failed to produce any documentary evidence of encroachment and that the vendor himself supported the plaintiff's claim. The appellate Court affirmed the decree in toto.

8. The appellants have now filed the present Second Civil Appeal, primarily alleging misreading and non-reading of evidence, erroneous findings on issues relating to maintainability, excess area and encroachment and asserting that the suit was barred under Section 79(b), C.P.C., Article 174 of the Constitution and Section 11 of the Sindh Revenue Jurisdiction Act.

9. Learned Assistant Advocate General Sindh contended that both Courts below failed to appreciate that the plaintiff had allegedly encroached upon Government land; that demarcation reports indicated possession beyond the purchased area; that purchasers of plots were not impleaded; that the suit was not maintainable against Government functionaries without impleading the Province of Sindh, and that the matter fell within the exclusive jurisdiction of Revenue authorities. It was argued that the concurrent findings were perverse and liable to be set aside.

10. Conversely, learned counsel for respondent No.1 submitted that the plaintiff's title was admitted by the Government-defendants in their written statement; that no document of Government ownership was produced; that the demarcation relied upon by the appellants was inconclusive, un-notified and carried out without permanent survey points; that the vendor fully supported the plaintiff and that the concurrent findings were based on proper appreciation of evidence and raised no substantial question of law.

11. Heard arguments and perused the record.

12. The jurisdiction of this Court under Section 100 C.P.C is confined to substantial questions of law. Interference with concurrent findings of fact is permissible only where such findings are perverse, based on misreading or non-reading of evidence or where material evidence has been ignored.

13. The plaintiff's ownership of 00-07 ghuntas and 03-22 acres from Survey No.741 stands proved through registered sale deeds No.428 and 427, mutation entries No.1398 and 1397, microfilming records and the testimony of official witnesses. Significantly, the Government-defendants admitted these entries in their written statement. The vendor (respondent No.2) also confirmed the execution of the sale deeds and the delivery of possession. These findings are purely factual and supported by documentary evidence. No substantial question of law arises on this aspect.

14. The appellants' entire case of encroachment rests on an un-notified, inconclusive demarcation carried out without permanent survey points, without notice to parties and without any supporting documentary proof of Government ownership. The Mukhtiarkar admitted in cross-examination that he did not know the correct area of Survey No.741, had not produced any document showing Government land, and that entries No.1267 and 1422 pertained to plots sold by the plaintiff from his own land. Both Courts below rightly held that the allegation of encroachment was unproven. This finding is factual, evidence-based and unassailable in a second appeal.

15. The plea that the suit was barred under Section 79(b) C.P.C, Article 174 of the Constitution or Section 11 of the Sindh Revenue Jurisdiction Act was neither substantiated nor supported by evidence. The suit sought declaration of title and injunction against interference, reliefs squarely within civil jurisdiction. The Province of Sindh was effectively represented through its functionaries, and no prejudice was shown. Both Courts below correctly held the suit maintainable. No substantial question of law arises.

16. The appellants failed to produce any evidence that the plaintiff claimed an area in excess of 03-29 acres or that the suit land was included in the Zam Zama Housing Scheme, contrary to the record. The Town Planning Department's approval letter dated 15.09.2009, confirms the scheme area as 03-22 acres, consistent with the plaintiff's purchase. These findings are factual and supported by evidence.

17. The concurrent findings of both Courts below are based on a proper appreciation of evidence and are neither perverse nor arbitrary and do not suffer from misreading or non-reading. The appellants have failed to demonstrate any substantial question of law warranting interference under Section 100 C.P.C.

18. For the foregoing reasons, this Second Civil Appeal is dismissed. The concurrent findings of the Courts below do not call for interference. The impugned judgments and decrees are hereby maintained. No order as to costs.

JUDGE

