

IN THE HIGH COURT OF SINDH CIRCUIT COURT
LARKANA

Civil Revision Application No. S- 29 of 2004.

Petitioner(s) : Divisional Forest Officer, Dadu & others, *through* M/s. Liaquat Ali Shar, Additional Advocate General and Mohsin Ali Khan, Assistant Advocate General, Sindh.

Respondents : Rasool Bux son of Muhammad Bux Junejo, (since dead) through his LR& and others
Through Mr. Ghulam Dastagir Shahani, Advocate

Date of Hearing : 24.08.2026
Date of Judgment : 07.09.2026.

JUDGMENT

Ali Haider 'Ada' J:- Respondent No.1, namely Rasool Bux (since deceased), through his legal heirs, and Respondent No.2 (also since deceased), as plaintiffs, instituted Civil Suit No.22 of 2000 before the learned Senior Civil Judge-I, Larkana, seeking declaration and permanent injunction against the Divisional Forest Officer, Dadu, and others. The plaintiffs claimed lawful ownership and possession over various survey numbers situated at Deh Soi, Tapa Veehar, Dokri, comprising a total area of 92-25 acres. They asserted that the said land was *Darya Khurdi* land and not reserved forest land. The cause of action was stated to have arisen from letter dated 12.05.1999 issued by the Divisional Forest Officer, Dadu, to the Deputy Commissioner, Larkana, seeking their dispossession on the ground that they had occupied land reserved for the Forest Department. The plaintiffs, therefore, sought a declaration that they were entitled to remain in possession and could not be dispossessed except in accordance with law.

2. In response, the Range Forest Officer filed a written statement, supported by a chart, specifically asserting that Survey Nos. 151,

142, 165, 242, 244, 276, 251, 245, 246, 247 and 251 were reserved forest land under Bombay Government Gazette Notifications Nos. 2551 dated 26.04.1887, 5382 dated 10.06.1914 and 3520/17263 dated 29.01.1924. It was further asserted that Survey Nos. 25, 26 and 44 of Deh Lashari were likewise reserved forest land under Notification No.2557 dated 26.04.1887. The Forest Department categorically denied the plaintiffs' claim that the land constituted *Darya Khurdi* land.

3. The learned trial Court framed the following issues: —

I S S U E S

01. *Whether the plaintiffs are in legal possession and Occupation of an area (22-22 acres) from S. No.151 (2-10) acres from S.No. 142 and (4-0) acres from S.No. 165 situated in Deh Soi, Taluka Dokri being owners and whether defendants have any right or title over the said area and the suit property belongs to forest department?*
02. *Whether an area of (64-0) acres from DHORO Situated between Karyo Mohammad Khan deh Soi and Karyo Ghulam Ali Deh Lashari is in possession and occupation of the plaintiff and where two tube-Wells are installed?*
03. *Whether an area of (92-25) acres from S.No. 151 Deh Soi and Darya Khurdi area of (40-0) acres from S.No.142 is in cultivating possession of the plaintiffs?*
04. *Whether the plaintiffs have encroached upon the forest land and their possession over it is as tress passer. What is its effect?*
05. *Whether suit is maintainable?*
06. *Whether the suit is without cause of action?*
07. *Whether the plaintiffs are entitled for the relief sought by them?*
08. *What should the decree be?*

4. Thereafter, the plaintiffs led their evidence and examined Imdad Ali, legal heir of Rasool Bux, who produced the Form VII-B entries and copy of the map as primary documents. On behalf of the defendants, Muhkummudin, Range Forest Officer, was examined,

who produced the relevant Bombay Government Gazette Notifications, whereby the land in question was notified as reserved forest land.

5. After hearing the parties, the learned trial Court, vide judgment dated 24.08.2001 and decree dated 27.08.2001, decreed the suit as prayed. The Divisional Forest Officer preferred an appeal, and the learned Additional District Judge-VI, Larkana, in Civil Appeal No.77 of 2001, partly allowed the appeal and remanded the matter to the trial Court with a direction to appoint the Survey Superintendent as Commissioner to survey and demarcate the land in question and submit his report for fresh decision after recording the requisite evidence.

6. In compliance with the remand order, Abdul Jabbar, Survey Inspector, was examined, who produced the relevant reports, letters, maps and certificate. His report, inter alia, disclosed that the *Deh* map relied upon by the plaintiffs to establish the land as *Darya Khurdi* was not available on record.

7. Upon remand and after hearing the parties, the learned trial Court, vide judgment and decree dated 27.02.2003, again decreed the suit as prayed. Aggrieved thereby, the applicant preferred Civil Appeal No.76 of 2003 before the learned Additional District Judge-IV, Larkana, which was dismissed vide judgment dated 30.01.2004 and decree dated 31.01.2004, thereby maintaining the judgment and decree of the trial Court.

8. Being aggrieved by the aforesaid decision, the instant Civil Revision Application has been filed.

9. Learned Law Officer, submitted that the land in question belongs to the Forest Department and was duly notified as reserved forest land under the relevant Bombay Government Gazette Notifications issued in the years 1887, 1914 and 1924, at a time when the Indian Forest Act, 1878 was in force. He contended that the

entries relied upon by the plaintiffs were not supported by any periodical record or other reliable documentary evidence disclosing the basis upon which such entries were made, nor did the entries establish that the land had ever been lawfully granted to the ancestors of the plaintiffs. He further submitted that the land in question was not *Darya-Khurdi* land and that the learned Courts below, without properly determining the question of title, had decreed the suit in favour of the plaintiffs, thereby restraining the Forest Department, as the lawful owner, from asserting its rights over the reserved forest land. Regarding the photocopies of the Gazette Notifications, he placed reliance upon the judgment of the Honourable Supreme Court of Pakistan in Civil Appeal No.85-K of 2011, wherein the Government Gazettes were duly recognized and authenticated. He, therefore, contended that the impugned judgments and decrees of the Courts below had caused serious prejudice to the Forest Department and impeded its lawful utilization and management of the reserved forest land, including its efforts to develop forest resources thereon.

10. On the other hand, learned counsel for the respondents, objected to the maintainability of the instant Civil Revision Application, contending that the same was barred by Section 79, C.P.C. read with Order XXVII, Rules 1, 2 and 3, C.P.C., as the proceedings had not been instituted by a competent person. He argued that the Divisional Forest Officer was not competent to institute the present proceedings, nor was he competent to prefer the appeal, as the Province of Sindh, if aggrieved, was the proper party to initiate such proceedings. He further contended that the Civil Revision Application was barred by limitation, having been filed beyond the prescribed period of 90 days, with a delay of 25 days. He submitted that the Forest Act, 1927 was applicable to the matter and that the procedure prescribed under Section 20 thereof for reservation of forest land had not been followed. He further contended that the Forest Officer had admitted that, except for

Survey No.142, none of the other survey numbers had been reserved for forest purposes. According to learned counsel, the report of the Survey Superintendent and the demarcation report supported the case of the plaintiffs, while the revenue entries on record sufficiently established their title. In support of his submissions, he relied upon the judgments reported as 1987 SCMR 1757, PLD 1973 Karachi 618, 2004 CLC 1202 and 2004 CLC 1206.

11. Heard. Record perused.

12. Firstly, the question of maintainability arises in view of the objection that the Divisional Forest Officer lacked authority to institute the proceedings on behalf of the Province of Sindh and that the matter is hit by Section 79, C.P.C. The issue, therefore, requires consideration as to whether the Province may be transposed as the proper party so that the real controversy is adjudicated in accordance with law. In such context, it is quite clear that the Court possesses the power to transpose a party, though such power is discretionary and may, in appropriate circumstances, be exercised even without the consent of the party sought to be transposed. Guidance in this regard may be drawn from *Fayez Ahmed and another v. Kunchama Khatun and others*, PLD 1961 Dacca 263 (D.B.), followed by the same Court in *Kamaruddin Ahmad and others v. Nripendra Lal Das and others*, PLD 1964 Dacca 510, wherein it was held that:

32. The High Court has power under section 151 of the Code of Civil Procedure to transpose a party from one category to another. This view is supported by the case of Surya Kunta Jana and others v. Tarak Nath Jana and others (A I R 1927 Cal. 37). In that case it has been observed that the High Court has ample power in the interest of justice to add parties or to transpose a party from one category to another.

13. Moreover, in *Zargham Hussain Shah v. Muhammad Arshad and others*, 1994 CLC 70, it was observed that the Court possesses wide powers to transpose a party from one side of the proceedings to the other. Such power is discretionary and is to be exercised in the

interest of justice, particularly to avoid multiplicity of litigation and to facilitate the effective and complete adjudication of the controversy. It was further held that the provisions relating to limitation are not attracted to an order of transposition. The relevant observations are reproduced as under:

7.....The Court had wide powers under Order 1, Rule 10, C.P.C. to transpose the party from one side to another. This power is discretionary and is exercised to further the cause of justice. This provision is one of the conveniences and is aimed to avoid multiplicity of the litigation. In Arunadoya Chakrabarty and others v. Muhammad Ali and others (AIR 1928 Calcutta 138), it was held "while exercising the discretion conferred by Order 1, Rule 10 of Civil Procedure Code, it is proper to consider the convenience of both parties as well interest of providing condition in which the full and final adjudication may be made of dispute between the parties. This rule was followed in Satyabhama De v. Jatindar Mohan Deb and others (AIR 1982 Calcutta 269)....."

14. However, where the Court orders transposition of a party, whether on the motion of any party or *suo motu*, it merely changes the procedural position of such party from one side of the proceedings to the other, or permits the parties to interchange their respective positions. Such transposition does not, by itself, alter the pleadings or affect the complexion, character or nature of the matter; the foundational controversy between the parties remains unchanged. In the present case, viewed in this context, it is apparent that the Province of Sindh has the same interest and seeks substantially the same relief as that being pursued by the Divisional Forest Officer. Reliance in this regard may be placed upon *Miss Rukhsana Mashadi and 4 others v. Syed Qasim Hussain Mashadi and 2 others*, PLD 2002 Karachi 542.

15. The power to transpose a party is derived, *inter alia*, from Order I, Rule 10, C.P.C., which is required to be interpreted liberally in the interest of complete and effective adjudication of all questions involved in the *lis* and to avoid multiplicity of proceedings. In this regard may be placed upon *Rauf B. Kadri v. State Bank of Pakistan and another*, PLD 2002 Supreme Court 1111, wherein it was held that:

6. Order I, rule 10, C.P.C. is very wide in its scope. The power to transpose is derived, amongst others, from the aforesaid provisions, which has always been interpreted liberally in the interest of complete adjudication and of all the questions involved in *lis* and in order to avoid multiplicity of the proceedings. This power is invariably exercised generously and technical hurdles are always bypassed for considerations of effectual adjudication and inexpensive access to justice. For reference see *Said. Alam v. Raja Sohrab Khan* (1970 SCMR 839), *Central Government of Pakistan v. Suleman Khan* (PLD 1992 SC 590) and *Uzin Export Import Enterprises v. Union Bank of Middle East Ltd.* (PLD 1994 SC 95).

16. Furthermore, if a party is subsequently transposed, such transposition relates back to the commencement of the proceedings, and the party so transposed is deemed to have been a party from the inception. Reliance in this regard may be placed upon *Ghulam Nabi and others v. Abdullah Khan and others*, PLD 2003 Lahore 544. It is also to be observed that proceedings before a Court exercising civil jurisdiction do not, *ipso facto*, fail merely because a necessary or proper party has not been impleaded, or an improper party has been impleaded. The Court possesses ample power to transpose a respondent as a co-applicant, and *vice versa*, where such course is necessary for effective adjudication of the *lis*. Conversely, where the Court finds that the controversy can be effectively adjudicated without such transposition, it may proceed to decide the matter accordingly. Reliance in this regard may be placed upon *Chaudhry Muhammad Munir and others v. Election Tribunal, Mandi Bahauddin and others*, 2009 SCMR 1368, and *Munawar Ali and others v. Umar Daraz and others*, 2022 CLC 920 (Sindh-DB).

17. In the present context, the applicant possesses sufficient authority to institute the proceedings, being a competent officer in that regard, while the Province of Sindh, already being a party to the proceedings, may also be transposed for the purpose of complete and effective adjudication of the *lis*. Reliance in this regard may be placed upon *Messrs D.G. Khan Cement Company Limited and others v. The Federation of Pakistan through Secretary Revenue, Islamabad and others*, PLD 2026 Federal Constitutional Court 168. In view of the foregoing, and keeping

in consideration the nature of the present proceedings, the status of the Province of Sindh may appropriately be treated as that of the applicant/appellant rather than as a respondent, so as to enable the Court to effectively and completely adjudicate the *lis*.

18. So far as the question of the Civil Revision having been filed beyond the period of limitation is concerned, according to the copyist's endorsement, it has been mentioned that the copies of the relevant documents were delivered on 22.05.2004, whereas the judgment was pronounced by the learned appellate Court on 30.01.2004 and the decree was also prepared on 31.01.2004. No doubt, Section 5 of the Limitation Act was attracted. The August Supreme Court of Pakistan, in the case of **Muhammad Arif Saeed versus Shamim-ul-Haq (1996 SCMR 920)**, held that disputes should, as far as possible, be decided on their merits and, in such circumstances, upheld the condonation of delay. However, in the case of **Col. (Retd.) Ayub Ali Rana versus Dr. Carlite S. Pune (PLD 2002 Supreme Court 630)**, it was also observed that where the Courts find that a matter ought to be proceeded in accordance with law, delay should not ordinarily be permitted to defeat the decision of the dispute on merits, and where the delay is neither deliberate nor attributable to negligence, such delay should be condoned in the interest of justice. Reliance is also placed upon **Pir Muhammad Azam versus Pir Azizullah (2011 CLC 355)**.

19. In the present matter, while discussing the merits of the case, it apparently transpires that the two Courts below failed to exercise proper jurisdiction and, not only that, also committed gross illegalities while exercising such jurisdiction by decreeing the suit of the private respondents. Hence, this is a fit case for exercise of jurisdiction under Section 115, C.P.C. Consequently, the delay, if any, in filing the present Civil Revision Application is hereby condoned. Reliance is placed upon **Province of Sindh through Secretary and 2 others versus Rahim Bux and others (2022 CLC 2063)**.

20. Now, in order to determine the legal status and character of the plaintiffs, it is necessary to examine their claim that the land in question does not belong to the Forest Department but constitutes **Darya-Khurdi land**, as reflected in the Revenue Record through Form VII-B. If the land is, in fact, subject to Darya-Khurdi rights, the relevant provisions of the **Colonization and Disposal of Government Land Act, 2012**, would necessarily require consideration. In this regard, **Section 10(2)** of the aforesaid Act empowers the Government to frame and notify the terms and conditions governing the allotment or disposal of Government land. For ready reference, Section 10(2) of the Colonization and Disposal of Government Land Act, 2012, is reproduced hereunder:

10. (1) The [Board of Revenue subject to the general approval of the Government] may grant land in a colony to any person on such conditions as it thinks fit.

(2) The [Provincial Government] may issue a statement or statements of the conditions on which it is willing to grant land in a colony to tenants.

21. In view of the foregoing, the Land Utilization Department framed a statement of conditions, wherein, under Conditions Nos. **2(b), 2(c), and 2(h)**, the terms “allottee,” “Darya-Khurdi right,” and “land,” respectively, were defined. For ready reference, the relevant conditions are reproduced hereunder:

(b) "allottee" means the persons to whom land is granted under these conditions and includes the term grantee;

(c) "darya Khurdi right" means the right to hold Katcha State land in lieu of Kabuli land eroded or lost in river action.

(h) "Land" means the Katcha state land located in between the flood protective bunds of river Indus known as reverine Katcha area.

22. There is a prescribed procedure for the grant under Condition No. 12, while the relevant Condition No. 5 also lays down the procedure governing the grant and enjoyment of Darya-Khurdi

rights. For ready reference, Condition No. 5 is reproduced hereunder:

5. Darya khurdi rights. –

(a) Darya khurdi right holder shall be granted land by way of compensation from such accaption of land as may be caused by river action in the same deh, proportionate to the loss of kabuli land but in no case the land granted to him shall exceed thirty two acres.

**[Provided that subject to availability, a claim of land exceeding thirty two acres and upto two hundred acres in the same deh of which Qabuli land was lost, may be allowed by the Board of Revenue with the approval of Government.*

(b) The land so granted shall vest in the Darya khurdi right holder without payment of malkono and the land lost in lieu of which land is granted shall vest in Government. Darya khurdi claim in respect of land in other Dehs shall not be entertained.

(c) All land granted in satisfaction of darva Khunii rights shall bear par with the proprietary rights and so recorded in the Record of Rights.

23. Now, coming to the case of the plaintiffs/respondents, it is manifest from the record that they have completely failed to disclose or establish, through any cogent and reliable evidence, that their claim falls within the category of Darya-Khurdi rights or that the land in question was ever granted to them or their predecessors-in-interest on the basis of such rights. The case set up by the plaintiffs was that they were in possession of agricultural land situated outside the forest area in the Katcha, which, according to them, had been granted by the Government of Sindh to their grandfather on the basis of Darya-Khurdi rights. Under the erstwhile scheme governing the grant of Katcha State land, a person claiming such land was required to establish his entitlement on the basis of recognized Darya-Khurdi rights, pursuant to proceedings conducted through a common assembly (Jalsa-e-Aam), whereafter Katcha State land in the same Deh could be granted for agricultural purposes. However, in the present case, the plaintiffs have not produced any letter of grant, order, sanad, revenue record or any other contemporaneous document demonstrating that the land in question was ever granted by the Government of Sindh to them or to their

forefathers against Darya-Khurdi rights. In the absence of such foundational evidence, a mere assertion of possession or an unsubstantiated claim of having inherited Darya-Khurdi rights cannot establish a lawful grant of Government land. A similar question arose before this Court in **Ghulam Mustafa v. Divisional Forest Officer, Nawabshah and 4 others (2021 CLC 1657)**, wherein, in the circumstances of that case, the claim founded upon Darya-Khurdi rights was not accepted in the absence of satisfactory evidence establishing the grant of Katcha State land pursuant to such rights.

24. As the plaintiff relied upon the entries, the mere production of an entry in regard to Form VII-B does not create an entitlement to vest ownership or proprietary title of land. In addition to the above, it is a settled principle of law that even a mutation entry is not a document of title, which by itself does not confer any right, title, or interest. It is also well settled that if the foundation is illegal and defective, then the entire structure built on such a foundation would have no value in the eyes of the law. Even, mutation proceedings are summary in character and do not provide ample opportunity to litigants claiming title to land. Reliance in this regard is placed on *Rehmat Noor versus Zulqarnain (2023 SCMR 1645)* , *Muhammad Akram and another v. Altaf Ahmad (PLD 2003 Supreme Court 688)*, and *Nazeer Ahmed and others versus Province of Sindh through Secretary Revenue and others (2024 CLC 2044)*.

25. Now, coming to the question as to whether the Gazette notifications relied upon by the Forest Department are duly authenticated and can be relied upon, it may be observed that the **Bombay Government Gazette**, issued under the **Indian Forest Act, 1878**, reflects that certain survey numbers were declared/reserved as forest land. The contention raised on behalf of the plaintiff that, after the enactment of the Indian Forest Act, 1927, the procedure prescribed under Section 20 thereof was required to be complied

with and, in the absence thereof, the earlier notifications could not confer the status of reserved forest upon the land in question. The said contention, however, does not appear to be tenable in the circumstances of the present case. The Forest Department has relied upon the Bombay Government Gazette notifications issued in the years 1887, 1914 and 1924. Admittedly, all these notifications pre-date the enactment of the Indian Forest Act, 1927 and were issued during the period when the Indian Forest Act, 1878 was in force. Therefore, the applicability of the procedural requirements of the Act of 1927 cannot, by itself, be invoked to discard the notifications which were issued under the then-prevailing statutory regime.

26. As regards the authenticity and evidentiary value of such Gazette notifications, the mere fact that the copies produced before the Court are photocopies would not, in the circumstances, render them inadmissible or incapable of reliance, particularly where the same have been duly authenticated and their contents have remained consistent with the official record relied upon by the Forest Department. The notifications, being Government Gazettes issued under the relevant statutory framework prevailing at the relevant time, carry their own evidentiary significance. In this regard, guidance may also be drawn from the dictum laid down by the Honourable Supreme Court of Pakistan in **Civil Appeal No.85-K of 2011, Mst. Raj Bibi v. Divisional Forest Officer, Larkana**.

27. Furthermore, the report of the Mukhtiarkar, Dokri, available on record as part of the letter dated 08.05.2019 addressed to the Deputy Commissioner, Larkana, further lends support to the case of the Forest Department. The said report categorically affirmed that the land in question was forest land and that the relevant survey numbers had fallen within the forest area pursuant to the Gazette notifications. Thus, the report of the revenue authority, being consistent with the historical Gazette notifications relied upon by the

Forest Department, provides further corroboration that the subject land had been duly notified and treated as forest land.

28. At this juncture, it would also be apposite to advert to the constitutional and environmental significance attached to the preservation and protection of forests. The Honourable Supreme Court of Pakistan, in **Mehar Badshah v. Government of Khyber Pakhtunkhwa (PLD 2025 Supreme Court 36)**, while dealing with the right to a clean, healthy and sustainable environment, has emphasized the adverse and far-reaching consequences of deforestation and the vital role of forests in maintaining ecological balance. It has been observed that the forest cover of Pakistan has been rapidly diminishing, which has serious consequences for the environment and the people of the country. Deforestation contributes to landslides and flooding, diminishes the natural capacity of forests to sequester greenhouse gases and aggravates the effects of climate change. Earlier, in **Shah Zaman Khan and others v. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others (PLD 2023 Supreme Court 340)**, the Honourable Supreme Court also underscored the importance of environmental protection and the constitutional recognition of the right to a clean and healthy environment.

29. Pursuant to the foregoing discussion, it is observed that the learned Courts below have failed to properly adjudicate upon the controversy in hand in accordance with the applicable law and the evidence available on record. The findings recorded by the learned Courts below are, therefore, the result of misreading and non-reading of material evidence, coupled with failure to appreciate the law governing the subject matter. In such circumstances, this Court is vested with ample jurisdiction and authority to interfere with and set aside such findings in exercise of its revisional jurisdiction under Section 115, Code of Civil Procedure, 1908. Reliance in this regard may be placed upon *Mst. Nazir Begum v. Muhammad Ayyub and another (1993 SCMR 321)*, *Sultan Muhammad and another v.*

Muhammad Qasim and others (2010 SCMR 1630), and Ghulam Muhammad and 3 others v. Ghulam Ali (2004 SCMR 1001).

30. In view of the foregoing discussion and the evidence available on record, the contention of the Forest Department that the subject land is reserved forest land stands established. Consequently, the impugned judgments and decrees of the learned Courts below, being contrary to law, cannot be sustained and are hereby set aside. Accordingly, this Civil Revision Application is allowed.

JUDGE