THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

C.P No. S-222 of 2026

[Nazir Ahmed & others Vs. Province of Sindh & others]

Petitioners	**:**	Through Mr. Ajmair Ali Bhutto, Advocate
Respondents No.1 to 5	**:**	Through Mr. Saeed Akbar Siyal, Assistant Advocate General, Sindh
Respondent No.6	**:**	Through Mr. Tarique Gul Mangi, Advocate
Respondents No.7 to 9	**:**	Nemo
Date of Hearing	**:**	**02-11-2026**
Date of Order	**:**	**13-11-2026**

O R D E R

ARBAB ALI HAKRO, J;- Through this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioners, who are plaintiffs in F.C. Suit No.32 of 2023 pending before the learned 1st Senior Civil Judge, Shikarpur (hereinafter referred to as "**the trial court**"), call in question the order dated 08.06.2026 (**the impugned order**) passed by the learned III-Additional District Judge/MCAC, Shikarpur (hereinafter referred to as "**the revisional court**") in Civil Revision No.58 of 2024, whereby the order dated 31.08.2024 of the trial court, dismissing the application of respondent No.6 under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as "**the Code**"), was set aside and the plaint was rejected.

2. The suit land, measuring 31-16 acres and comprising Survey Nos. 512, 566, 567, 589, 591 and 735 of Deh Azeemabad, Tapo Nimoro, Taluka Lakhi Ghulam Shah, District Shikarpur, was granted on harap right to Muhib and Ghous Bux, sons of Obhayo Tanwri. Petitioner No. 1 and 2 are their sons, and petitioner No. 3 is their nephew. The case pleaded is that on 25.02.1984 the two grantees leased the land to respondent No. 6 for thirty-five years so that he would level and cultivate it; that during the lease respondent No. 6

had a registered sale deed No. 564 dated 22.06.1987 prepared, shown to have been executed by Muhib and Ghous Bux in his favour, on the basis of which entry No. 51 dated 31.08.1988 was recorded in the Deh Form VII; that Muhib died on 12.12.1985, before the said deed, and Ghous Bux never appeared before the Sub-Registrar nor received any consideration; and that respondent No. 6 later sold 8-10 acres out of Survey Nos. 512 and 735 to respondents No. 7 to 9 through registered sale deed No. 366 dated 08.10.2020. The lease expired in 2019; respondent No. 6 refused to restore possession on 29.12.2021, and the petitioners say they came to know of the transfer through the order dated 05.01.2023 of the Assistant Commissioner, Lakhi. They instituted the suit on 15.05.2023 for declaration, possession, cancellation of both sale deeds and the consequent entries, mesne profits and permanent injunction.[1]

3. Respondent No.6 filed his written statement, asserting that the grantees sold the land to him during their lifetimes of their own free will, that they had also executed a general power of attorney in his favour on 08.03.1984, that the lease agreement is fabricated, and that the death certificate of Muhib is forged. On 25.11.2023, he moved an application under Order VII Rule 11 of the Code, which the trial court dismissed on 31.08.2024, observing that the authenticity of the registered sale deed, as against the death certificate of one of its executants, could not be determined without evidence, and that the reliefs of declaration and possession were within time, since the lease period expired in 2019. Issues were framed on 22.02.2025, and the petitioners had filed the affidavits-in-evidence of three witnesses, whose cross-examination stood reserved, when the revisional court, on the revision of respondent No.6, held the suit to be time-barred, the petitioners to be without locus standi, as their predecessors had not questioned the sale deed in their lifetime, the plea of fraud to be bereft of particulars, and the objection based on the revenue laws to have remained unaddressed; consequently, it rejected the plaint.[2]

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[1] Plaint dated 15.05.2023 in F.C. Suit No.32 of 2023, paragraphs 3 to 31 and prayer clauses (i) to (vii).
[2] Written statement of respondent No.6 dated 27.04.2024; application under Order VII Rule 11 of the Code dated 25.11.2023; order of the trial court dated 31.08.2024; issues dated 22.02.2025; depositions at Exh.11, 12 and 13; impugned order, paragraphs 14 to 37.

4. Mr. Ajmair Ali Bhutto, learned counsel for the petitioners, contended that the revisional court exceeded the scope of Section 115 of the Code and, at the threshold, decided disputed questions of fact on which issues had already been framed, and evidence had commenced. He relied on **2020 MLD 1741, SBLR 2026 Sindh 653, 2021 YLR 315, PLD 2020 Sindh 507,** ***Misree Khan***[3], and the judgment dated 14.04.2026 of the Peshawar High Court, Abbottabad Bench, in R.F.A. No. 13-A of 2024.

5. Mr. Tarique Gul Abro, learned counsel for respondent No. 6, raised a preliminary objection that the rejection of a plaint is a decree within the meaning of Section 2(2) of the Code and that the petitioners ought to have filed an appeal under Section 96, relying on **1986 SCMR 907**. On the merits, he submitted that the sale deed of 1987 was challenged after thirty-six years without any cogent explanation, relying on **2016 SCMR 910** and **2024 CLC 922**; that the predecessors of the petitioners never questioned it during their lifetime, relying on **2002 SCMR 1330, 2025 CLC 1018** and **2018 CLC 1930**; and that a lease of 1984 could not have been executed by persons who acquired rights in the land in 1986, relying on **2001 CLC 1021** and **2020 SCMR 832**. He also placed on record the application dated 29.12.2021 made by petitioner No. 3 to the Deputy Commissioner, Shikarpur.

6. Learned Assistant Advocate General left the matter to the discretion of this Court. No one appeared on behalf of respondents No.7 to 9.

7. Heard and perused the record.

8. The preliminary objection has been answered by the Supreme Court in ***Misree Khan***[4]**.** That case arose from a revisional order of an Additional District Judge rejecting a plaint. It was held that such an order, though a decree, is not appealable under Section 96 of the Code because that provision covers decrees passed in original jurisdiction; that a second appeal does not lie; and that a second revision is barred by Section 115(3) of the Code. The Court then said: "However, in instances where parties feel aggrieved by revisional orders, they may pursue a writ petition under Article 199 of the

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[3] *Misree Khan v. Abdul Ghafoor* PLD 2025 SC 24.
[4] *Misree Khan* (n.3 above), paragraphs 7 to 10.

Constitution." The petitioners were non-suited at the threshold after issues were framed and their evidence had begun, so the impugned order bears directly upon their substantive rights. The petition is maintainable and has been filed within time.

9. The power to reject a plaint is drastic, and the conditions for its exercise are stringent. The plaint is read as a whole, and its averments are taken to be correct; it may be rejected only where it *ex facie* discloses no cause of action or appears from its own statements to be barred by law. "In all other situations, the claims will have to be adjudicated in the course of the trial.[5]" The contents of the written statement are not to be placed in juxtaposition with the plaint, and an averment may be discarded only on the basis of the documents appended to the plaint, admitted documents, or a position which is beyond doubt.[6] Pleas of the defendant cannot be considered at this stage; mixed questions of law and fact are to be resolved through issues and evidence, and "the law does not permit piecemeal rejection. If even one prayer in the plaint is found to be maintainable, the plaint cannot be rejected in parts.[7]" The impugned order is to be tested on this touchstone.

10. In paragraph 28 of the impugned order, the revisional court observed that the discrepancy in dates relating to the death of one of the executants was not properly incorporated in the plaint. The record shows otherwise. Paragraphs 13 and 23 of the plaint state in clear terms that Muhib died on 12.12.1985, had passed away before the alleged date of execution of the sale deed, and that his death registration certificate is annexed to the plaint.[8] This was the very foundation of the plea of fraud, and it has been overlooked. A finding resting on a misreading of the pleading under examination cannot be sustained.

11. The rule that heirs cannot assail a transaction which their predecessor allowed to stand in his lifetime was laid down and applied in cases decided on evidence, where the predecessor survived the impugned entry for years

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[5] *Misree Khan* (n.3 above), paragraph 3.
[6] *Haji Abdul Karim v. Florida Builders (Pvt) Limited* PLD 2012 SC 247.
[7] *Ahmed Ali Talpur v. Sub-Registrar Latifabad, Hyderabad* PLD 2025 SC 302, paragraph 10.
[8] Plaint, paragraphs 13 and 23; death registration certificate (Annex-H to the plaint, Exh.11/D).

with knowledge of it.[9] In ***Muhammad Rustam***, the Supreme Court emphasized that "It has never been the case of the petitioners that either they or their predecessor-in-interest were unaware of the said mutation." Here, the plaint asserts that Muhib was dead before the sale deed came into existence, so there was no occasion for him to challenge it, and that neither grantee knew of any sale, as both were awaiting the return of the land on expiry of the lease. Whether Ghous Bux knew of and acquiesced in the deed is a question of fact. The authorities from the High Courts cited by learned counsel for respondent No.6 on this point were likewise decided after evidence had been recorded. The rule could not be applied at the threshold to reject the plaint.

12. The petitioners do not claim under the sale deed of 1987; they assail it as void, showing it was executed by a person already dead and by another who never appeared before the Sub-Registrar, and they seek possession from a lessee who did not vacate after 2019. Respondent No.6 himself admits paragraphs 14 and 15 of the plaint, which record the transfer of the land in the names of Ghous Bux and Muhib in 1986.[10] ***Agha Syed Mushtaque Ali Shah***, on which learned counsel for respondent No.6 relies, turned on a plaintiff whose own claim rested on a gift deed thirty-eight years old; the Supreme Court noted that it was not a case where the defendants admitted the plaintiff as the original owner and sought to replace him on the basis of a void instrument, and held that "it is only in cases where determination as to when the cause of action for the suit arose, is dependent upon a certain factor, situation, happening or occurrence, existence, extent and the nature whereof could only be ascertained after recording evidence, that the question of limitation needs to be determined after such evidence.[11]" The accrual of the cause of action in the present suit depends upon the date of death of Muhib, the existence and terms of the lease, and the character of the possession of respondent No.6, none of which can be ascertained without evidence. The plaint also pleads specific dates of refusal and of knowledge. The application of petitioner No.3 dated 29.12.2021, produced by respondent

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[9] *Abdul Haq v. Mst. Surrya Begum* 2002 SCMR 1330; *Muhammad Rustam v. Mst. Makhan Jan* 2013 SCMR 299; *Mst. Faheeman Begum (deceased) through L.Rs v. Islam-ud-Din (deceased) through L.Rs* 2023 SCMR 1402.

[10] Written statement of respondent No.6, paragraphs 12 and 13.

[11] *Agha Syed Mushtaque Ali Shah v. Mst. Bibi Gul Jan* 2016 SCMR 910, paragraphs 21 and 22.

No.6, does not alter the position at this stage, since it is not an admitted document whose effect can be weighed without trial. In any case, the prayers for possession and for cancellation of the sale deed of 2020 are not *ex facie* barred, and the plaint could not be rejected in part.[12]

13. The admissibility of the unregistered lease agreement under Sections 17 and 49 of the Registration Act, 1908, and the question of whether the grantees could lease the land in 1984 before the transfer orders of 1986, go to proof and merits. The title of the petitioners' predecessors does not rest on the lease, which is pleaded only to explain how respondent No.6 entered into possession. The authorities cited on this aspect deal with the proof of documents in evidence and are not attracted at the threshold. As to the plea of fraud, the plaint gives its particulars: the date of death of one executant, supported by a public document; the non-appearance of the other; the silence of the sale deed about the subsisting lease; and the position of respondent No.6 as lessee in possession. ***Aamir Afzal***, relied upon by the revisional court, was decided after a full trial on a plaint containing only general allegations.[13] Whether these particulars are proved is a matter for trial. As for the revenue bar, the Assistant Commissioner, Lakhi, by his order dated 05.01.2023, declined to interfere with an entry founded on a registered sale deed and directed the applicant to approach the competent forum[14]; cancellation of a registered instrument lies with the civil court under Section 39 of the Specific Relief Act, 1877, and the revisional court returned no finding that any bar was attracted.

14. The revisional court faulted the trial court for not evaluating the general power of attorney dated 08.03.1984 and other documents produced by respondent No.6. Those documents are disputed and form part of the defence; they could not be set against the averments of the plaint when deciding an application under Order VII Rule 11 of the Code.[15] The same holds true for the dates of birth of Muhib's children, and the delayed registration of his death, on which learned counsel for respondent No.6

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[12] *Ahmed Ali Talpur* (n.7 above).
[13] *Aamir Afzal v. S. Akmal (deceased) through L.Rs* 2024 SCMR 1649, paragraphs 5 and 6.
[14] Order No.AC/SM/-37 of 2023 dated 05.01.2023 of the Assistant Commissioner, Taluka Lakhi (Annex-A to the plaint, Exh.11/C).
[15] *Haji Abdul Karim* (n.6 above); *Ahmed Ali Talpur* (n.7 above).

placed emphasis. These may well be weighty matters at trial, but they cannot be resolved summarily.

15. In exercising jurisdiction under section 115 of the Code, the revisional court could interfere only where the subordinate court had acted without jurisdiction, failed to exercise jurisdiction, or acted illegally or with material irregularity. In [16]***Aamir Afzal***, the Supreme Court observed: "The manifest intention of the legislature is that the order of the trial court, right or wrong, shall be final, except in specific circumstances." The order of the trial court was within jurisdiction and applied the correct test. The revisional court substituted its own view on questions requiring evidence, misread the plaint, and relied on defence material; in doing so, it exercised a jurisdiction not vested in it, causing the petitioners to be non-suited without trial.

16. For the foregoing reasons, this petition is **allowed**. The impugned order dated 08.06.2026 passed in Civil Revision No.58 of 2024 is set aside, and the order dated 31.08.2024 passed by the trial court is restored. F.C. Suit No.32 of 2023 shall proceed from the stage at which it stood. The objections of respondent No.6 regarding limitation, locus standi, the particulars of fraud, and the bar of jurisdiction shall be decided along with the other issues on the basis of evidence. The trial court may frame any additional issue under Order XIV Rule 5 of the Code, if so required. The trial court shall decide the suit within six months of receipt of this order, without granting unnecessary adjournments. The observations made herein are tentative, confined to the decision of this petition, and shall not influence the trial court in deciding the suit on the merits. There shall be no order as to costs.

JUDGE

Zulfiqar

[16] *Aamir Afzal* (n.13 above), paragraph 6.