

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**  
*Civil Rev. Application No.S-109 of 2014*

Date of hearing: 09.04.2021

Applicants: Muhammad Nawaz and others, through  
Mr. Ghulam Murtaza Korai, Advocate

Respondent No.1. P.O Sindh through Secretary Revenue  
(none present)

Respondent No.2 Chutto Khan (none present)

**ORDER**

*KHADIM HUSSAIN TUNIO, I-* Through instant civil revision application filed under Section 115 CPC, the applicants have impugned the judgment and decree dated 28.06.2014, passed by the learned Additional District Judge, Ubauro, in Civil Appeal No.26/2012, 'Re-Chutto Khan v. Muhammad Nawaz and others' whereby the learned Judge allowed the appeal, set-aside the judgment and decree dated 29.03.2012 and 31.03.2012 respectively, passed by the learned Senior Civil Judge, Ubauro in F.C Suit No.21/2009 'Re-Chutto Khan v. Muhammad Nawaz and others.

2. Precisely, the facts of the present case are that the respondent /plaintiff filed F.C Suit No.21/2009 against the applicants/defendants, for possession and mesne profit, stating therein that he is owner of 13-00 acres land from S.Nos.22/4 (0-20), 39/1 (0-30), 39/2(0-30, 39/4(0-15), 41/1(0-30), 40/4 (0-38), 40/3 (1-05), 40/2 (0-02), 40/1(2-10), 65/2 (0-08), 66/1 (0-02), 41/4 (0-02), 41/3 (1-30), 41/2 (03-00) aces, from Deh Chandia,

taluka Ubauro, District Ghotki, which was granted to him and khata was changed in his name on 14.12.2007 and he was enjoying its possession. On 14.12.2008 when he went to his said land, he saw that defendants were ploughing on his land who on enquiry issued him threats of murder. On 16.12.2008 plaintiff approached the Mukhtiarkar Land Revenue Uaburo by filing application for getting vacated his land from defendants but inspite of issuing notice by Mukhtarkar, they did not appear before him. plaintiff further stated in his plaint that defendants after encroaching upon his land grew wheat crop on it, which was about Rs.100,000/- and they wanted to take away the produce of suit land without paying batai share (mesne profits) to him, as such the plaintiff filed the above suit. The Civil Court, vide judgment and decree dated 29.03.2012, dismissed the suit of the plaintiff. The said judgment and decree was impugned by the plaintiff by filing appeal and the learned Appellate Court, vide judgment dated 28.06.2014, allowed the appeal, hence applicants/defendants filed present civil revision application.

3. Learned Counsel for the applicants submits that the learned appellate Court while passing the judgment and decree has erred in law and facts and has handed down the judgment and decree without proper discussion and considering the grounds, urged by the applicants; that the judgment and decree passed by the appellate court are against the law and facts; that the learned Appellate Court has failed to appreciate the evidence laid by the applicants; that the judgment and decree passed by

the learned appellate court is suffering from misreading and non-reading of evidence and that the findings recorded by the appellate court are conjectural, erroneous and without any legal foundation; that the valuable rights of the applicants are involved in the subject matter; that the learned appellate court has failed to consider the oral as well as documentary evidence adduced by the parties and has handed down the judgment in a slipshod manner. He lastly prayed for setting aside the impugned judgment.

4. On the other hand none appeared on behalf of the respondents to argue the matter despite due notice.

5. I have given due consideration to the arguments advanced by the learned Counsel for the applicants and perused the record minutely.

6. Perusal of record shows that at trial the respondent/plaintiff has produced documentary evidence i.e. attested copy of Deh Form VII-B at Ex.24/A, copy of order of sanction of loan obtained from Zarai Bank Ubauro at Ex.24/C, D & E. On the other hand applicant/defendant Muhammad Nawaz produced true copies of Form-A in the name of Muhammad Nawaz, Ali Gohar and Muhammad Murad at Ex.46/A to 46/C, true copy of sanction registers showing the detail of Hari in the name of Muhammad Nawaz at 46/D, robkari at Ex.46/E, 24 numbers of dhal receipts at Ex.46/F1 to 24. However, both the parties have failed to

examine any official from the Irrigation/Barrage Department and revenue authorities to ascertain the documents they have relied upon. Both the courts below also seem to have ignored the well settled principle of law that there is considerable difference between production of a document on record and proving contents thereof. Thus, bringing papers on record cannot be considered as *synonymous* with that of *proving* them. Guidance is taken from the case of Province of the Punjab through Collector v. Syed Ghazanfar Ali Shah & Others 2017 SCMR 172 wherein it is held as:-

“8. .... Where did NOC come from, who issued, and countersigned it and what is the latter fate of this document is again anybody’s guess. How did the Solicitor edge in and where did the letter purportedly written by him come from and how did it reach the hands of the person producing it in the Court? How did the Minister step in the matter when it was pending in the Court? Where did go the record of the letter and the register showing its dispatch, if at all it was written? Why did the respondents bypass the mode of proving the document prescribed by Articles 2 and 78 of the Qanun-e-Shahadat Order and what did constrain the Court to rely upon them? **How could, bringing of papers on the record, be considered synonymous with proving them?** All these questions are fundamental and foundational but the learned Additional; District Judge hearing the appeal and the learned Single Judge of the High Court hearing the revision petition relied on these documents without addressing anyone of them.

9. The argument that where a party did not raise objection as to the admission of a document and its exhibition, it cannot subsequently complain about its mode of proof has not impressed us **as the provisions governing the mode of proof cannot be compounded or dispensed with, nor can the Court, which has to pronounce a judgment, as to the proof or otherwise**

**of the document be precluded to see whether the document has been proved in accordance with law, and can, as such, form basis of a judgment.** In the case of *Messrs Bengal Friends and Co. , DACCA v. Messrs Dour Benode Saha and Co., and The Deputy Registrar of Trade Marks, Chittagong* (PLD 1969 SC 477) this Court while dealing with the mode of proof of the document nor properly brought on the record held as under:-

*“Besides the authenticity of the account books relied upon by the ..... It was omitted from consideration that under section 34 of the Evidence Act entries in books of account regularly kept in the course of business are only declared to be relevant whenever they refer to a matter into which the Court has to enquire. But this does not dispense with the requirement of section 67, that if a document is alleged to have been written by any person, the signature or the handwriting of so much of the document as is alleged to be in that person’s handwriting must be proved to be in his handwriting. **Mere production of account books kept in regular course of business, therefore, does not constitute evidence of entries contained therein.** The Legislature....*

7. The Honourable Apex Court has been pleased to hold in the another case of *Khan Muhammad Yousuf Khan Khattak v. S.M. Ayoub and 2 others* reported in PLD 1973 Supreme Court 160 that;

“Even documents are brought on record and exhibited without objection, they remain on the record as “exhibits” and faithful copies of the contents of the original but they cannot be treated as evidence of the original having been signed and written by the persons who support to have been written or signed them, unless the writing or the signature of that person is proved in terms of the mandatory provisions of section 67 of the evidence act”.

8. In the case of *Khurshed Ali & 06 others v. Shah Nazar* reported in *PLD 1992 S.C 822*, it has been held by the Honourable Supreme Court that;

“It is incorrect to think now under and Islamic dispensation that the Courts are only to sit and watch as to who commits a mistake and who does not commit a mistake and who does not commit a mistake, from amongst the contesting litigants, and one who commits a mistake, in procedural matter should be deprived of the right claimed; even if he is entitled to it. This court has not approved of such like practice. In the case of *Muhammad Azam v. Muhammad Iqbal* (PLD 1984 SC 95), even if the application had not been pressed “so called”, if it was necessary for just decision of the case, as held by High Court (to summon the material relied upon by the appellants side), is should have been summoned and treated as evidence in the matter without any formalities. And mere failure to exhibit a document formally would not make any difference”.

9. It appears that the learned trial Court as well as Appellate Court have committed material irregularity and illegality while not summoning the original record as well as adducing the evidence in respect of the suit property though, per law, the Court(s) are competent to exercise such discretion even without an application from parties. Thus, the judgments and decrees passed by the learned two Courts below are not sustainable under the law and the same are liable to be set-aside as both the Courts below have committed illegalities and irregularities while passing the impugned judgments and decrees.

10. In view of above facts and circumstances, particularly the law laid down by the Honourable Supreme Court as referred

hereinabove, instant civil revision application was partly allowed. Consequently, the judgment and decree passed by learned Additional District Judge Ubauro in Civil Appeal No.26/2012 'Re-Chutto Khan v. Muhammad Nawaz and others' and judgment and decree dated 29.03.2012 and 31.03.2012 respectively passed by learned Senior Civil Judge Ubauro in FC Suit No.21/2009 'Re-Chutto Khan v. Muhammad Nawaz and others' were set-aside and the matter was remanded to the Court of learned Senior Civil Judge, Ubauro for providing opportunity of cross-examination to the defendants, examining the officials of Irrigation/Barrage Department and Revenue Department as court witnesses, providing opportunity of hearing to the parties and passing a fresh judgment within six (06) months. These are the reasons of short order dated 09.04.2021.

**J U D G E**

Suleman Khan/PA