

# IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

## Constitution Petition No. D- 927 of 2014

(Ghulam Sarwar vs. Province of Sindh & others)

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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For hearing of MA No 7078/2015 (12 (2) CPC)

***Before***  
***Adnan-ul-Karim Memon, J:***  
***Muhammad Abdur Rehman, J***

Date of hearing: **07.05.2024**  
Date of order: **07.05.2024**

Mr. Muhammad Qayoom Arain, Advocate for petitioner  
Mr. Daman Ali Leghari, Advocate for intervener  
Mr. Ghulam Mustafa Abro, AAG

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### **ORDER**

Through this Petition, maintained under Article 199 of the Constitution Islamic Republic of Pakistan, the Petitioner had sought for a Foti Khata to be issued in respect of agricultural land bearing Survey No. 312, Deh Khuda Bakhsh Kubar, Tapa Same, Taluka Mirwah, District Khairpur admeasuring 2 Acres and Survey No. 1021, Deh Khuda Baksh Kbuar, Tapa Same, Taluka Mirwah, District Khairpur admeasuring 02 acres -30 Ghunta.

The Petitioner contends that his mother Mst. Wadan passed away on 25 February 2012 leaving behind the petitioner, his brother and two sisters as his legal heirs. The Petition was granted on 24 December 2014 and the names of the stated legal heir of Mst. Wadan were brought on record by the Mukhtiarkar Mirwah, District Khairpur.

Thereafter an application under Sub-Section (2) of Section 12 of the Code of Civil Procedure, 1908 has been maintained by one Ghulam Rasool contending that various property, including but not limited to the property claimed by the Petitioner was originally in the name of Muhammad Paryal, Qutib and Kamaluddin, the latter being the father of Mst. Wadan. He contends that he is the son of the brother of Mst Wadan and claims title to the property stating that the property was wrongly mutated into the name of Mst. Wadan and has instituted F.C Suit No. 89/2001 before the Court of Senior Civil Judge Mirwah, District Khairpur. He stated that on account of the order

dated 24 December 2014 the Senior Civil Judge Mirwah will not adjudicate the suit on merits on account of the order passed in this petition in favour of the Petitioner.

We have heard Counsel for the Petitioner, learned Assistant Advocate General and Counsel for the applicant.

As the Mukhtiarkar Revenue Mirwah, District Khairpur has filed his report admitting that the property claimed by the Petitioner was recorded in the name of Mst. Wadan, we do not see any fraud or misrepresentation that has been made by the Petitioner by maintaining this Petition seeking to mutate his and his siblings name in the record as legal heirs of Mst. Wadan.

However, keeping in mind that order of this Division Bench may prejudice *lis* of the applicant bearing F.C Suit No.89 of 2001 pending before Senior Civil Judge Mirwah. We dispose of this application with the directions that the proceedings in F.C Suit No.89/2001 before Senior Civil Judge Mirwah may be decided so as to determine the title of Mst. Wadan to the said property and that the order dated 24 December, 2014 directing the issuance of a foti Khata in favour of the petitioner and his sibling or the passing, will in no manner prejudice the mutation of Senior Civil Judge while deciding that case. MA No 7078/2015 stands disposed of and the order dated 24 December, 2014 passed in this petition stands modified in the above terms.

**J U D G E**

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