

# IN THE HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS

Second Civil Appeal No.S-03 of 2023

Muhammad Rasheed S/o Rehmat Hussain,  
By caste Jat, Muslim, Adult,  
R/o Village Ch: Rehmat Hussain, P.O Jhudo, Deh 313,  
Taluka Jhudo, District Mirpurkhas. ....Appellant/Plaintiff.

## Versus

1. Shah Muhammad S/o Mushtaque,
2. Shah Nawaz S/o Mushtaque,  
Both by caste Kapri, Muslims, Adults,  
R/o Deh: 314, Taluka Digri, now Taluka Jhudo,  
District Mirpurkhas.
3. Hussain Kapri S/o Balo Khan Kapri.
4. Hayat S/o Allah Bux.  
Both Muslims, Adults,  
R/o Deh 314, Taluka Digri, now Taluka Jhudo,  
District Mirpurkhas.
5. Additional Commissioner No.1,  
Mirpurkhas Division @ Mirpurkhas.
6. Additional Deputy Commissioner-I (Revenue),  
District Mirpurkhas @ Mirpurkhas.
7. Assistant Commissioner, Digri,  
Now Taluka Jhudo.
8. Mukhtiarkar (Revenue), Digri,  
Now Taluka Jhudo.
9. Province of Sindh, through its Secretary,  
Revenue Department, Sindh Secretariat @ Karachi.
10. Deputy Commissioner (Revenue), Mirpurkhas.
11. Incharge Evacuee Property Branch (EPB),  
Office of Deputy Commissioner (Revenue), Mirpurkhas.
12. Mukhtiarkar (Estate), Mirpurkhas.
13. Commissioner, Mirpurkhas Division, Mirpurkhas.
14. Secretary to Government of Sindh,  
Land Utilization Department, Board of Revenue Sindh,  
Shahbaz Building @ Hyderabad.

15. Supervising Tapedar of Deh 314,  
Tapo: Bandhwari, Taluka Jhudo.

16. Tapedar, Tapo of Deh 314,  
Tapo: Bandhwari, Taluka Jhudo.

The respondents No.15 and 16 to be served through;  
Mukhtiarkar (Revenue), Taluka @ Jhudo.

17. Province of Sindh through its Chief Secretary,  
New Sindh Secretariat @ Karachi. ....Respondents/Defendants.

Date of Hearing: 16.01.2024

Date of Decision: 24.01.2024

Mr. Tahseen Ahmed H. Qureshi, advocate for appellant/plaintiff.

Mr. Mehboob Ali Kapri, advocate for the respondent Nos.1 to 4.

Mr. Ayaz Ali Rajpar, Additional A.G for respondents No.5 to 17.

## J U D G M E N T

**Amjad Ali Bohio, J:** Instant Second Appeal under section 100, R/w section 107 & 151 C.P.C., is directed against the judgment and decree dated 31-05-2023 passed by District Judge, Mirpurkhas whereby the Civil Appeal No.38 of 2022, filed by the appellant/plaintiff has been dismissed, maintaining the order dated 25.02.2022 passed by the learned Senior Civil Judge, Digri on application under Order VII, rule 11(d), C.P.C., in F.C Suit No.69 of 2020 whereby plaint has been rejected.

2. The appellant, Muhammad Rasheed, filed suit in the Court of Senior Civil Judge, Digri, against the respondents, asserting that he was granted agricultural land of 29.15 Acres in Lot No: 24 (comprising Survey Numbers 31/4, 5, 6, 8, 9 to 16; and 38/1 to 6, totaling 17.00 acres) and Lot No. 25 (consisting of S.Nos.46/1 to 9, S.No.31/3, 4, 5, amounting to 12.15 acres) situated in Deh 314, Taluka Digri (now Taluka Jhudo), District Mirpurkhas. The grant was made through an open Katchery/auction in the year, 1968, conducted by the Assistant

Commissioner Digri. The appellant initially paid 1/4<sup>th</sup> of the total amount at that time and subsequently paid the remaining amount during the course of the legal proceedings. The Federal Government intervened in the matter, leading to a petition filed by the claimant before the High Court. After the conclusion of legal proceedings, appellant applied to the Board of Revenue for confirmation of land ownership, which was confirmed on 04-09-1997. The Deputy Commissioner Tharparkar @ Mirpurkhas and the Assistant Commissioner also confirmed the appellant's possession on 08-11-1986 and 05-09-1985, respectively. The appellant finalized the payment for the entire land on 10-02-1998. Following this, the Assistant Commissioner Digri, in a letter dated 10-07-1998, informed the Mukhtiarkar Digri about the complete installments paid by the appellant, requesting for mutation of the suit land in appellant's favor. Despite appeals by respondents No.1 and 2 to the Additional Deputy Commissioner-I Mirpurkhas, their claim for the suit land was dismissed on 13-04-2017. Subsequently, they filed a Revision before the Additional Commissioner Mirpurkhas Division, who decided that the suit land had not been disposed of or sold, confirming its ownership by the government. The respondents and others were found to be in possession, resulting in the cancellation of entry No. 68 dated 04-12-1998 in favor of the appellant, vide order dated 17-03-2020. Feeling aggrieved, the appellant filed a suit seeking declaration, possession, mesne profit, mandatory and permanent injunction, with the following prayers:

- a. Declaration that the plaintiff is owner of the suit land and the defendants No.1 to 4 have no right, title to the same.
- b. Declaration the order dated 17-03-2020 passed by the defendant No.5 Additional Commissioner-I Mirpurkhas

Division is void, illegal, malafide and the same is liable to be set aside and is based on false facts and reports.

- c. That the defendants may direct to deliver vacant possession of the suit land to the plaintiff.
- d. That the defendants No.1 to 4 may be directed to pay the mesne profit to the plaintiff from the year 2015 till they and put in vacant possession of the same at the rate of Rs.5000/= per year.
- e. Mandatory injunction may be issued against the defendants No.5 to 9 directing them to maintain the revenue entries in favour of the plaintiff in respect of the suit land and cancel the adverse entries against plaintiff of the suit land, if any.
- f. A permanent injunction may be issued against the defendants restraining them from transferring the suit land to anybody or in any manner whatsoever except in due process of law.
- g. Costs of the suit may be borne by the plaintiff.
- h. Any other relief which the Honourable court deems fit and proper under the circumstances of this suit.

3. Respondents No. 1 and 2 acknowledged in their written statement regarding the Revision Application No. 21/2017, which they filed before Additional Commissioner-I Mirpurkhas. In that application, it was decided that proper documents were not prepared regarding its allotment and it was decided that the suit property is government land, leading to the cancellation of the entry in favor of the appellant. They further contend that the appellants should have contested the order of Additional Commissioner-I, Mirpurkhas before the Revenue authorities. Therefore, the appellant's suit is not maintainable and liable to be dismissed.

4. In their written statement, Respondents No. 5 to 7 emphasized about absence of any entry, except for entry No. 68 dated 04-12-1998 in V.F VII-B, which indicates the appellant's ownership in the old record (PD XV). Conversely, VF VII-A specified that the suit land is categorized

as Government Na-qabooli land. They further stated that the Additional Deputy Commissioner-I Mirpurkhas invalidated entry No. 68 dated 04-12-1998, considering it fictitious, based on documentary evidence and available records. It was further asserted that the suit land has not been allocated or granted to any party, they vigorously prayed for the dismissal of the suit.

5. Similarly, Respondents/defendants No. 12, 15, and 16 reiterated the identical facts in their written statements as those agitated by respondents/defendants No. 5 to 7.

6. Meanwhile, respondents/defendants No.1 to 4 filed an application under Order VII, rule 11, C.P.C, which was contested by the appellant and after hearing the learned counsel for parties; the learned trial court allowed the said application and rejected the plaint in F.C Suit No.69 of 2020, vide order dated 25.02.2022.

7. Expressing dissatisfaction with the aforementioned order, the applicant/plaintiff opted for civil appeal No.38/2022 under section 96 of the Civil Procedure Code before the court of District Judge, Mirpurkhas. In this regard, the appellate court formulated the following points for the determination of the civil appeal:

**Point No.1: Whether the suit of the appellant/plaintiff was barred under the law?**

**Point No.2: What should the judgment be?**

8. After a thorough hearing of both parties, the learned District Judge, Mirpurkhas, dismissed the aforementioned civil appeal, upholding the order dated 25.02.2022 passed by the learned trial court,

as per the judgment dated 31.05.2023. Consequently, this second appeal has been filed.

9. I have attentively considered the arguments of Mr. Tehseen Ahmed H. Qureshi, the learned counsel for the appellant, Mr. Mehboob Ali Kapri, the learned counsel for respondents No.1 to 4, and the Additional Advocate General Sindh representing respondents No. 5 to 17. Furthermore, I have thoroughly reviewed the case records. Before reaching a conclusion on whether the discussed plaint is barred by any law, I intend to refer to the relevant law, i.e., Order VII, Rule 11(d) of the Civil Procedure Code (C.P.C), which is reproduced as follows:

*"11. Rejection of plaint .---The plaint shall be rejected in the following cases:---*

*(a) where it does not disclose a cause of action;*

*(b) where the relief claimed is under-valued and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*

*(c) where the relief claimed is properly valued" but the plaint , is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*

*(d) where the suit appears from the statement in the plaint to be barred by any law."*

10. Upon examining the available material on record, it is evident that respondents No.1 and 2 contested the allotment of the resumed suit land in favor of the appellant, Muhammad Rasheed, by filing a Revenue Appeal before the Additional Deputy Commissioner-I Mirpurkhas. However, this appeal was dismissed on both merit and being time-barred vide order dated 13-04-2017.

11. Subsequently, dissatisfied with the decision of the Additional Deputy Commissioner-I Mirpurkhas, respondents No.1 and 2 filed

Revision Application No. 21/2017 before the Additional Commissioner-I, Mirpurkhas Division, Mirpurkhas. During this stage, the appellant, Muhammad Rasheed, failed to produce any documents related to the proper procedure of land disposal, including the letter of Mukhtiarkar regarding availability of land, the schedule for land disposal, the Deputy Commissioner's authorization for auction, notices from Mukhtiarkar for advertisement, attendance registers of participants, and deposit registers for the successful auction. The report of Mukhtiarkar (Revenue) Jhudo, mentioned in his letter No. 921 dated 26-05-2015 and submitted before the Additional Commissioner-I, Mirpurkhas, was also considered. This report stated that an area of 0.38 ghuntas with a cotton crop was cultivated by respondent Shah Nawaz, and respondents No.1 and 2, along with others, had been residing on the suit land since long. Consequently, vide order dated 17-03-2020, the Additional Commissioner-I, Mirpurkhas, canceled entry No. 68 dated 04-12-1998 in favor of appellant Muhammad Rasheed, asserting that the disputed land belonged to the government. To challenge such order, the appellant should have filed Revision under Section 164 of the Land Revenue Act, 1967, before the Member Board of Revenue. However, the appellant did not provide any justification for bypassing the highest forum in the revenue hierarchy and directly filed the aforementioned suit before the Court of the learned Senior Civil Judge, Digri. This action is deemed to be barred by various provisions of the law. More importantly Section 11 of the Sindh Revenue Jurisdiction Act, 1876, explicitly prohibits the jurisdiction of civil courts, and the relevant portion is reproduced as follows:-

*11. No. Civil Court shall entertain any suit [against the Government] on account of any act or omission of any act or*

*omission of any Revenue-officer unless the plaintiff first proves that, previously to bringing his suit, he has presented all such appeals allowed by the law for the time being in force as, within the period of limitation allowed for bringing such suit, it was possible to present.*

12. Considering the language of sub-rule (d) of Rule 11 of Order VII, CPC, it can be reasonably concluded that a plaint shall be rejected if its contents indicate that it is barred by any law. It is prudent to dispose of incompetent suits promptly, preventing unnecessary time and resources from being invested in matters that are destined to fail due to legal prohibitions. A similar principle was deliberated upon by the Supreme Court of India in the case of *T. Arivandandam v. T.V. Satyapal* (AIR 1977 SC 2421), where the issue was addressed in the following words: -

*"5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the Court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. The learned Munsif must remember that if on a meaningful -- not formal --- reading of the complaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII, rule 11, C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clear drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X, C.P.C. An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Ch.XI) and must be triggered against them ...."*

13. The learned courts below, under the circumstances, rightly held that the appellant rather to prefer the Revision Application before the Board of Revenue against the order dated 17-03-2020 passed by Additional Commissioner-I, Mirpurkhas, directly filed the suit before learned Senior Civil Judge, Digri in violation of section 11 of the Sindh

Revenue Jurisdiction Act, 1876. In this regard reliance is placed on the case of Muhammad Jalat Khan v. Faisal Hayat Khan and 4 others (2003 CLC 837). Further the learned Courts below, under the circumstances, correctly held that the suit of the appellant before learned trial Court appears to be barred U/S 172 of Land Revenue Act, 1967, which reveals as under:-

**“172. Exclusion of jurisdiction of Civil Courts, in matter within the jurisdiction of Revenue Officer;---**(1) Except as otherwise provided by this Act, no Civil Court shall have jurisdiction in any matter which Government, the Board of Revenue, or any Revenue Officer, is empowered by this Act to dispose of, or take cognizable of the matter in which Government, the Board of Revenue, or any Revenue Officer exercises any powers vested in it or him by or under this Act.

(2). Without prejudice to the generally of the provisions of subsection (1) , a Civil Court shall not exercise jurisdiction over any of the following matters namely:---

- (i).....
- (ii).....
- (iii).....
- (iv).....
- (v).....
- (vi) the correction of any entry in a record of rights, periodical record or register of mutations;

14. The appellant, rather than challenging the order of respondent No. 5 through the established hierarchy of the Land Revenue Act before the Member Board of Revenue, chose to file a civil suit seeking a declaration that the said order by respondent No. 5 is void and illegal who through such order dated 17-03-2020, decided that entry No. 68 dated 04-12-1998 was fake and subsequently canceled it. The courts below have properly rejected the plaint, in line with the ruling in the case of Jan Muhammad Abbasi v. Mukhtiarkar Estate Larkana (Barrage Mukhtiarkar) and others (2007 CLC 1790), wherein it was held:

*“Admittedly, applicant has not filed any appeal or revision before the revenue authorities calling in question order passed by respondent*

*No.6. In the case of Hawaldar Sawar Khan v. Province of Sindh 1998 CLC 382, the learned Single Judge of this Court upheld the order of rejection of the plaint under similar circumstances as barred under section 11 of Sindh Revenue Jurisdiction Act, 1876 and in my view the learned Appellate Court rightly held that the suit filed by the plaintiff calling in question impugned order of respondent No.6, without first availing remedy available under .the hierarchy of the Revenue Act, was not maintainable. An order can be strictly riot in accordance with law or correct order, but it cannot be said that same has been passed without jurisdiction. Revenue Courts have exclusive jurisdiction to determine matter pertaining to revenue, partition etc. If any case-law is required, one can see Muhammad Hafeez v. Jalal Din 1981 SCMR 1171, Himayat Ahmad v. Khalid Khan and others 1991 MLD 153”.*

15. It would not be out of place to mention here that section 100 CPC dealing with second appeal specifies limited grounds as mentioned below:

(a) the decision being contrary to law or to some usage having the force of law; (b) the decision having failed to determine some material issue of law or usage having the force of law, or

(c) a substantial error or defect in the procedure provided by the C.P.C. or by any other law for the time being in force, which may possibly have produced an error or defect in the decision of the case upon merits.

Further section 101 CPC states that no second appeal shall lie except on the grounds mentioned in section 100. Section 103 further provides that the High Court while hearing second appeal may if the evidence on the record is sufficient, determine any issue of fact necessary for the disposal of the appeal which has not been determined by the lower Appellate Court or which has been wrongly determined by reason of illegality, omission, error or defect as mentioned under section 100. The Honourable Supreme Court of Pakistan in very recent case reported as 2023 S C M R 1652 MUZAFAR IQBAL---Appellant Versus Mst. RIFFAT PARVEEN and others has been pleased to further observe as under:

“7.....The procedure for dealing with appeals from original decrees as provided under Order XLI, C.P.C. is made applicable in terms of section 108, C.P.C. for hearing second appeal against the appellate decrees and orders made in the Civil Procedure Code or under any special or local law in which a different procedure is not provided. The prerequisites and rudiments of the Order XLI, Rule 31, C.P.C. is that the judgment of the Appellate Court shall state (a) the points for determination; (b) the decision thereon; (c) the reasons for the decision; and (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.

16. The jurisdiction of a High Court under section 100, C.P.C. is constricted to appeals encompassing a substantial question of law rather than causing interference on a pure question of fact and, while taking cognizance by means of second appeal under section 100, C.P.C., it is a foremost fragment of jurisdiction to formulate the question of law which is inherent in the spirit of such jurisdiction, hence, for all intents and purposes, the requirements of Order XLI, Rule 31, C.P.C. must be complied with, however, if it is conceivable from the judgment that substantial compliance has been made whereby the cause of justice has not suffered or depreciated, that would be sufficient for the safe administration of justice despite non-adherence to the said Rule stricto sensu. Instead the litmus test is to visualize from the perusal of the judgment whether the controversy between the parties has been decided with proper appraisal, weighing and balancing the evidence and law and, if it is manifested from the judgment, then obviously it would be valid even though it does not contain the points for determination. The right of appeal gives rise to a notion of accentuating by two fold and three fold checks and balances to prevent injustice, and ensuring that justice has been done. There is also marked distinction between two appellate jurisdictions; one is conferred by section 96, C.P.C. in which the Appellate Court may embark upon the questions of fact, while in the

second appeal provided under section 100 *ibid*, the High Court cannot interfere with the findings of fact recorded by the first Appellate Court, rather the jurisdiction is somewhat confined to the questions of law which is *sine qua non* for the exercise of the jurisdiction under section 100, C.P.C. The High Court cannot surrogate or substitute its own standpoint for that of the first Appellate Court, unless the conclusion drawn by lower fora is erroneous or defective or may lead to a miscarriage of justice, but the High Court cannot set into motion a roving enquiry into the facts by examining the evidence afresh in order to upset the findings of fact recorded by the first Appellate Court.

17. In light of the above discussion, there is no justification for interference in the findings arrived at by the trial court and upheld by the appellate court. Therefore, the instant second Civil Appeal is dismissed with no orders as to the costs.

**JUDGE**

*\*Saleem\**