

Order Sheet

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

R.A No. 157 of 2023

[Nihal Khan and others v. Province of Sindh and others]

Date	Order with signature of Judge
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Applicants :Through Mr. Muhammad Arshad S. Pathan, Advocate
Respondents 1-10 :Through Mr. Wali Muhammad Jamari, Asstt: A.G.
Respondent-11 :Through Mr. Mangal Meghwar, Advocate.
Respondent-12 :Through Mr. Ghulam Murtaza Shaikh, Advocate.
Respondent-13 & 14 :Nemo

Date of Hearing: 23.09.2024

ARSHAD HUSSAIN KHAN, J - . This Civil Revision Application is directed against the judgment dated 13.05.2023, passed by 2nd Additional District Judge, Tando Allahyar, in C.A No. 134 of 2011, whereby learned Judge while dismissing the appeal maintained the order of rejection of plaint dated 01.10.2022, passed by 2nd Senior Civil Judge, Tando Allahyar, on an application under Order VII Rule 11 CPC, moved in F.C. Suit No. 109 of 2020.

2. The facts giving rise to the present Revision Application are that the Applicants (plaintiffs) filed F.C Suit bearing 109 of 2020 before 1st Senior Civil Judge Tando Allahyar, for Declaration, Cancellation, Mandatory and Permanent Injunction against the respondents in respect of exclusion of S.No.369/1 (8-00 Acres) situated in Deh Dhandh Shah Taluka, Tando Allahyar [**“subject land”**] from Entry No. 27 dated 02-08-1973 of D.K Book No. 26386 as well as from Entry No.58 of VF-VII by the District Officer (Revenue) Tando Allahyar [the **“D.O. Revenue”**], upon the application of the father of respondents (defendants) No.11 and 12. Pursuant to the notice of the above suit, written statements were filed by the respondents (defendants) , besides respondent No.11 also filed application under Order VII Rule 11 CPC for rejection of the plaint. Subsequently, out of the pleadings on 20.03.2021, issues were framed, however, before the evidence could be recorded, learned 1st Senior Civil Judge, heard the counsel for the parties on the application of rejection of plaint and, vide its order dated 01.10.2022, rejected the plaint. Against the said order, the Applicants

preferred Civil Appeal No.134 of 2022, which was dismissed by 2nd Additional District Judge, Tando Allahyar, vide order dated 13.05.2023. The Applicants have impugned the above said orders of the courts below in the present revision application.

3. Learned counsel for the applicants while reiterating the contents of the main application, inter alia, has argued that the orders impugned in the present proceedings are contrary to the law, equity and good conscience. It is contended that learned courts below while passing the impugned orders have failed to consider the fact that the subject land including others were granted to Applicants' father by Provincial Government Land Commission of Pakistan and were mutated in the record of rights, as such, interference/disturbance by the revenue hierarchy, in any manner, whatsoever, in the said record is prohibited and un-warranted under the Land Revenue Act 1967 [the "**LRA 1676**"]. He has further contended that learned courts below have failed to consider the fact the long-standing mutation have been illegally and unlawfully interfered with by the D.O. Revenue whereby title and possession of the subject land in favour of the Applicants have been disturbed and that, too, without notice to them. It is argued that learned courts below have also failed to take into consideration the malafide and fraud on the part of the revenue authority in collusion with the contesting respondents, which is clearly visible from their act that while excluding Applicants' survey S.No.369/1 from the record in favour of contesting respondent no notice was issued to the Applicants. Learned counsel while referring to Section 9 of CPC and Section 53 of the LRA 1967, has contended that the civil courts being the court of ultimate jurisdiction are competent to try all suits of civil nature. It is also argued that the revenue authorities have no jurisdiction to decide the title of the party; it is the civil court that has jurisdiction to decide the right and title of the parties that, too, after recording evidence. Lastly, he has contended that concurrent orders are not sacrosanct and can be interfered with by this Court under Section 115 of CPC if they are perverse and fanciful. Learned counsel for the Applicants in support of his contention has relied upon the cases of *Mir Muhammad and others vs. Muhammad Pannah and others* [2007 YLR 960], *Rasta Mal Khan and others v. Nabi Sarwar Khan and others* [1996 SCMR 78], *Ahsan Ali through L.Rs. and others*

v. Province of Sindh through District Coordination Officer Thatta and 4 others [2007 MLD 884], *Dr. Raees M. Mushtaque through General Attorney v. Province of Sindh through Secretary Food and 3 others* [2018 MLD 918], *Ajmal Khan v. Mst. Gul Zahira Bibi through L.Rs. and 4 others* [2016 MLD 1394], *Aziz- Ur-Rehman v. Maulana Muhammad Zahir Shah and 11 others* [2008 CLC 1411] and *Muhammad Altaf and others v. Abdur Rehman Khan and others* [2001 SCMR 953].

4. Conversely, learned counsel for private Respondents No. 11 and 12 as well as learned Assistant Advocate General for official respondents while supporting the impugned orders of the courts below, have contended that the Applicants instead of challenging the order dated 17.03.2010, passed by the D.O. Revenue in revenue hierarchy, initially filed the constitutional petition, which was dismissed and subsequently filed civil suit, inter alia, seeking declaration that the said order of D.O. Revenue was against the law, as such, the suit was not maintainable. Thus, the plaint of the suit was rightly rejected and the order of rejection of plaint was also maintained by the appellate court. It is also argued that present revision is not maintainable against the concurrent orders of courts below, as such, same is liable to be dismissed. Learned counsel in support of contention has relied upon the cases of *Raja Khan v. Shah Nawaz and 10 others* [2019 CLC 206] and *Niaz Hussain and others v. Nizamuddin and 13 others* [2017 YLR 1691] .

5. I have heard learned counsel for the parties, perused the record as well as the case law cited at the Bar.

From perusal of the record, it appears that in the year 1959-60 the Applicants' grandfather namely; Saapahi Lashari was awarded the agricultural land on Harap basis bearing Survey No. 375/2 (Acres 04-00), 375/3A (01-34 Acres) 369/1 (08-00 Acres), 379 (0-18 Acres) total admeasuring 14-12 acres situated in Deh Dhandh Shah Taluka, Tando Allahyar. The grandfather of the Applicants paid some installments, however, subsequently upon promulgation of Martial Law Regulations remaining installments were waived under para 28 of Martial Law Regulation 115 and the Entry No. 27 dated 01.08.1973 as well Entry No. 58 of VF-VII-A were kept in favor of Khanan the father of the Applicants. In the year 2010, an application was filed by one Ali Murad s/o Ali Bux Bozdar, the father of respondents No. 11 and 12, before the

District Officer (Revenue) Tando Allahyar praying therein for exclusion of Survey No. 369/1 (8-00 Acres) from Entry No. 27 of DK. Book No. 26586 and Entry No. 58 of VF-VII-A on the ground that the land was Government *Na-Qabuli* land and it was allotted to him by the Barrage Department, however, during re-writing village record same was erroneously included in the above entries. The D.O. Revenue, vide its order No. 61 dated 17.03.2010 excluded S.No.369/1 from the above entries in favour of Ali Murad. The operative part of the order of D.O. Revenue is reproduced as under:-

“From the above facts, it appears that S.No.369/1 area 8-00 acres of deh Dhand Shah was Government Nakaboli land and it was allotted to Applicant Ali Murad Bozdar by the defunct Barrage Authorities vide A-Form No. 12490 and T.O Form No. dated 28-07-1982 and such entry is available on the record and later on Applicant gifted the said land to his sons namely Iftikhar Hussain 0-50 paisa share and Ishtiaque Hussain to the extent of 0-50 paisa share respectively vide entry No.519 dated 19-06-2004 and land is in possession of Applicant and who had kept / planted mango garden, enjoys its produce and pay land revenue as reported by S.T and Tapedar of the beat and Mukhtiarkar (Revenue), Tando Allahyar has fully corroborated and supported reports of Tapedar and S.T. Mukhtiarkar (Revenue), Tando Allahyar is therefore authorized to make correction in the relevant entries and also make note about exclusion of S.No.369/1 from entry No. 27 dated 02-08-1973 of D.K Book No. 26386 and also from entry No.58 of VF-VII A, prepared during the course of re-writing. In the light of subsection 7/5, 7/6 of section 44 and 166 of the Land Revenue Act 1967, with a view to rectify mistake and bring the record up to mark in order to avoid further confusion. If any person has any objection over the Judicial Order, he can make an appeal before E.D.O (Revenue) Tando Allahyar or Board of Revenue or any court of law for amending this order.”

6. The applicants challenged the said order of D.O. Revenue in CP No. D- 747 of 2011, however, the said Petition was dismissed, vide order dated 3.9.2020. An excerpt of the order is reproduced below:-

“8. Admittedly, the petitioners failed to avail the remedy as provided under the Land Revenue Act, as has been held in the case of Mumtaz Ahmed and another v. The Assistant Commissioner and another (PLD 1990 SC 1195). Honorable Supreme Court held that: -

"Petitioners should not have approached the High Court without exhausting other remedies provided in law in the hierarchy of the Revenue Forums. Constitutional Petition being premature thus could be dismissed on that ground alone. Proper procedure to be followed by the petitioners."

9. Accordingly, without going into the validity of order passed by the District Officer Revenue, Tando Allahyar, we consider it fit to dismiss this petition on alternate ground that the petitioners should not have approached this Court without exhausting other remedies provided in law to them in the hierarchy of Revenue Forum as has been held in the case of Mumtaz Ahmed and another v. the Assistant Commissioner and another

reported in PLD 1990 SC 1190 (supra). Thus this petition being not maintainable is dismissed leaving the aggrieved party to take recourse as provided under the law.

10. This constitutional petition was dismissed by a short order dated 3.9.2020. These are the reasons for the same.”

7. Thereafter, the Applicants filed the above said suit for declaration, cancellation, mandatory and permanent injunction. In the said suit respondent Nos. 11 & 12 along with written statement filed an application for rejection of plaint. From the divergent pleadings of the parties, the trial court formulated the following issues:-

1. Whether the suit is maintainable according to law?
2. Whether the father of the plaintiff is the owner of agricultural land bearing revenue survey No. 369/1 admeasuring 8-00 acres situated in deh Dhand Shah, Taluka District Tando Allahyar alongwith other survey numbers granted under MLR-115?
3. Whether district officer (revenue) Tando Allahyar passed order dated 17.03.2020 without notice and hearing the parties and Mukhtiarkar Tando Allahyar order No.61 dated 17.03.2020 and the subsequent entry on the basis of said order as well as entry No. 519 dated 19.09.2004 in favour of private defendants No. 11 & 12 even entry No. 163 dated 02.06.1987 & entry No. 518 dated 18.06.2004 alongwith entry No. 519 dated 19.06.2004 are illegal, unlawful and without due course of law and same was with malafide intention, manipulated and planted against the plaintiffs by concerned Mukhtiarkar?
4. Whether Aijaz Bozdar who remained as Mukhtiarkar played unofficial role/helped/acted badly while conveying the suit land in the name of Ali Murad (who was the father of private defendants No.11 &12) and subsequent entries in the name of his sons i.e. defendants No. 11 and 12? If yes then all subsequent entries in the name of Ali Murad and his descendants will liable to be cancelled?
5. Whether the Plaintiffs are entitled to relief they claimed?
6. What should the decree be?

However, before the evidence could be recorded the trial court after hearing learned counsel for the parties decided the application for rejection of plaint filed by the contesting respondents, vide order dated 01.10.2022. The operative part of the said order is reproduced as under:-

“Perusal of the R & P's reveals that plaintiffs have filed instant suit for the Declaration, Cancellation, Mandatory and Permanent Injunction against answering defendants and claimed that his father namely late Khanan was owner of agricultural land bearing revenue survey No. 369/1 admeasuring 08-00 acres situated in Deh Dhand Shah, Taluka

and district, Tando Allahyar along with other survey numbers granted under MLR-115 and after the death, the plaintiff being the legal heirs having right of inheritance as owner thereof but the father of private defendant No. 11 and 12 namely Ali Murad in collusion with the revenue staff being designated as District Officer, Revenue (Presently), the deputy commissioner and Additional Deputy Commissioner, made application U/S 42 R/W section 166 of land revenue act for exclusion of survey numbers 369/1 admeasuring 8-00 acres hiddenly before the revenue authorities and no notice to that application was ever been made to the father of the plaintiffs nor any report was called and the then District officer, being in collusion with said father of private defendants No.11 and 12 passed order illegally, unlawfully in respect of exclusion of one survey No. 369/1 from the entry No.27 of DK register / Book No. 26586 of Deh Dhand Shah and Re-write entry No. 58 of village Form VII B, being prepared during rewriting of the record as per order of the High ups of the revenue department. It is contended by the plaintiff that the then District Officer, Revenue Passed the order, on 17.03.2010 and hiddenly got entered a note in the original entry in the name of father of the defendants and subsequent entries illegally, unlawfully without lawful authority and has started claiming the ownership and claiming the possession illegally and tried to dispossess the father of the plaintiffs from the land i.e. survey No.369/1 admeasuring 8-00 acres situated at Deh Dhand Shah. He contended that entire exercise has been carried out hiddenly right from filing of application and its entertainment, passing of order and keeping the illegal, unlawful note in the record of rights of father of plaintiffs i.e. entry No. 27 which is gross negligence and the collusion of revenue staff with ulterior motives while the official defendants left no stone unturned in such massive illegal practice in disturbing the old record of rights in spite of that long standing entries cannot be disturbed, from the clear cut perusal of the pleadings of plaint it is crystal clear that the plaintiff has filed the present suit wherein, he has challenged the order passed by District Officer, Revenue and cancellation of subsequent entries based on such order, which is totally domain of the revenue authorities and this court is lacking jurisdiction having no right to entertain instant suit and refrain to interfere in the entries kept in the record of rights by the revenue authorities, if the plaintiffs have any grievances against such order or entries, they have to adopt proper remedy which is available as per law, the civil court has no jurisdiction where, especially when a remedy lies in the domain of revenue hierarchy.

In this regard the reliance is placed on 2017 MLD 112 wherein, Honourable High court has given its very speaking finding concerning with revenue matters. i.e.

"Revenue courts had exclusive jurisdiction to determine the matter with regard to making and maintenance of record-of-rights, assessment and collection of land revenue, survey and demarcation of boundaries of land, appointment and functions of revenue officers and matters connected with Land Revenue Administration in the province".

Moreover, the plaintiff prior to filing present suit had approached to Honourable High court by filing petition bearing No. 747/2012 which was also dismissed with the findings as under:-

"Accordingly without going into the validity of order passed by District Officer (Revenue) Tando Allahyar we consider it fit to dismiss this petition on alternate ground that the petitioners

should not have approached this court without exhausting other remedies provided in law to that in the hierarchy of revenue forum as has been held in the case of Mumtaz Jan & others Vs. The Assistant Commissioner & Others reported in PLD 1990 SC 1190 Supra." Thus, this petition being not maintainable is dismissed leaving the aggrieved party to take the cost as provided under the law."

In view of above discussion coupled with case law as well as in light of above mentioned conclusion of worthy order of Honourable High court of Sindh, circuit court, Hyderabad passed in CP bearing No. 747/ 2012, instant suit of the plaintiffs is disposed of by rejecting the plaint through the provision of U/O VII Rule 11 CPC with no order as to cost."

8. The applicants being aggrieved by the above said preferred Civil Appeal, which was also dismissed, vide judgment and decree dated 13.05.2023. Relevant portions of the said judgment are reproduced as under:

"I am of the humble view that long standing entries are not solemn document generated in revenue record is just like an information to Patwari to maintain the record of rights / register as per revenue hierarchy and are not come within the domain of registered document. The appellant as per settled principal of law did not exhausted all the remedies before revenue forum but directly approached Honourable High court of Sindh for his legal redressal. After disposal of constitution petition, filed the lis after considerable delay and delay has not been properly explained.

After perusal of order VII Rule 11 CPC it reflects that plaint can be rejected, if plaint came in the way of order VII rule 11 CPC. The contents of plaint does not convince that there is genuine cause of action accrued to the appellant and suit, prima facie appeared to be hopelessly time barred not maintainable within four corners of law. It is now very well settled that an incompetent cause should be buried at the very initial stage. I am guided by the case law reported in 2001 MLD 1159 Ghous Bux Vs Muhammad Sulleman & other, wherein it was held:-

"Further there can be no two opinions on the legal preposition that court can reject the plaint suo moto at any stage of the proceedings, even by appellate court or revisional. On meaningful and/or formal reading, if sought or not fruitful result thereof is expected to come out then the provision of order 7 rule 11 CPC would come into play. The court can even reject the plaint under its inherent power if the matter does not come within the scope of order 7 rule 11 CPC. The provision is not exhaustive and the court can reject the plaint where it finds that the suit is impliedly barred by law."

The point No.1 is therefore, answered in Negative.

Point No.2.

In view of above facts and circumstances, the learned trial court has rightly rejected the plaint U/O VII R 11 CPC, which is legal order and needed not to interfere with, I therefore, maintain the order dated 01.10.2022, as result the civil appeal is hereby dismissed with no order as to cost. Let the copy of this judgment be sent to trial court for information and record.”

The applicants have challenged the above concurrent orders of the courts below in the present revision application.

9. From perusal of the orders impugned in the present proceedings, it appears that the plaint of the suit filed by the applicants was rejected mainly on the premise that against the order of D.O. Revenue, the Applicants/Plaintiffs had to approach the revenue hierarchy as remedy to challenge such type of order is available under the LRA 1967 and further the Revenue Courts has exclusive jurisdiction to determine the matter with regard to making and maintenance of record-of-rights, assessment and collection of land revenue, as such, jurisdiction of civil court is barred. From the order of D.O. Revenue, it appears that under the pretext of correction, Survey No.369/1 was excluded from the entries of the Applicants that, too, without notice to them. It may be observed that there is difference between correction of entry in the record of rights, periodical record or register of mutation and the entries interfered with the rights of a person in the land. Section 53 of the LRA 1967 deals with entry whereby rights, title and possession of a person in the land is interfered with, whereas, Section 172(2)(vi) of the LRA 1967, relates to the correction of entry in record of rights, periodical record or register of mutation. For the sake of ready reference, Section 53 as well as Section 172(2)(vi) of the Land Revenue Act, 1967 are reproduced as under:-

"53. Suit for declaratory decree by persons aggrieved by an entry in a record. If any person considers himself aggrieved by an entry in a record-of-rights or in a periodical record as to any right of which he is in possession, he may institute a suit for a declaration of his right under Chapter VI of the Specific Relief Act, 1877 (Act I of 1877).

172. Exclusion of jurisdiction of Civil Courts in matters within the jurisdiction of Revenue Officers. (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, empowered by this Act to dispose of, or take cognizance 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 generality of the provisions of subsection (1), a Civil Court shall not exercise jurisdiction over any of the following matters, namely:

.....

(vi) the correction of any entry in a record-of-rights, periodical record or register of mutations;

10. It may be pointed out that exclusion of jurisdiction of Civil Court relates to the correction of the entries made by the Revenue Officer in performance of his duty without touching the right of the persons in the land but whenever such entries interfered with the rights of a person in the land record, maintained in the record of rights, and such person feels aggrieved, for correction of such entries he has to approach Civil Court for declaration under section 53 of the Act or in other words under section 42 of Specific Relief Act both the reliefs available being of the same nature and identical¹.

11. Insofar as the orders, passed in the constitutional petition earlier filed by the Applicants in respect of the order of D.O. Revenue is concerned, firstly by the said order this court did not decide the controversy on merits and secondly the aggrieved person in terms of Section 53 of the LRA 1967, will have concurrent remedies, i.e. extraordinary remedy before this Court under Article 199 of the Constitution of Islamic Republic of Pakistan as well as ordinary remedy before Civil Court under section 9 of the CPC, however, when any one of the remedies is availed, the other becomes barred under the principle of *res judicata*. In the instant case, from perusal of the order passed in CP-D No. 747/ 2012, it appears that the same did not decide the controversy between the parties on merit, as such, the same cannot come in the way of the applicants as *res judicata*. The Supreme Court of Pakistan in the case of *Nausher v. Province of Punjab through District Collector, Khanewal and another* [PLD 2022 SC 699] while dilating upon the scope of Judicial Review of legality of orders of Revenue Authorities by Civil Courts and concurrent remedies before the Civil Court and High Court, inter alia, held as under :

¹ Rastamal Khan and others v. Nabi Sarwar Khan and others [1996 SCMR 78]

“Judicial Review of legality of orders of Revenue Authorities by Civil Courts

10. Before advertent to the merits of the case, it would be appropriate to first address the preliminary objection made by the respondents to the jurisdiction of the Civil Court in entertaining the claim of the appellant challenging the decision of the Board of Revenue rendered in exercise of its statutory power conferred upon it by the law. He contended that under section 30(2) of the Colonization of Government Lands (Punjab) Act 1912 (**“the Act”**), the Board of Revenue, Punjab is vested with the power of dealing with the matter of resuming Government land acquired by any person by means of fraud or misrepresentation, and section 36 of the Act has expressly barred Civil Courts to take cognizance of the matter in which the Board of Revenue exercises any power vested in it by or under the Act.

11. In this regard, we reiterate the well-settled legal position that in view of the general jurisdiction conferred by section 9 of the Code of Civil Procedure 1908 (**“CPC”**), Civil Courts have the ultimate jurisdiction, even where their jurisdiction relating to certain civil matters is barred, to examine the acts, proceedings or orders of those special tribunals and determine whether or not such acts, proceedings or orders have been done, taken or made in accordance with law.² Accordingly, when a special tribunal is found to have acted not in accordance with the law under which it purportedly acted, its act does not come within the scope of the exclusionary provisions of the law that bar the jurisdiction of Civil Courts. That is why this Court has held in cases³ where the Revenue Authorities had acted in accordance with law that Civil Courts have no jurisdiction, and in cases⁴ where they had not so acted held that Civil Courts have the jurisdiction to interfere with, and strike down orders passed without lawful authority.

Concurrent remedies before Civil Court and High Court

12. There is another legal dimension that explains the exercise of such limited jurisdiction by Civil Courts to examine and determine the legality of the orders made by the administrative tribunals or authorities, despite the express bar on their general jurisdiction regarding certain civil matters: The right to be dealt with in accordance with law was itself a common law right, before its codification as a constitutional right under Article 2 of the erstwhile Constitution of Pakistan 1962, and Article 4 of the present Constitution of the Islamic Republic of Pakistan, 1973 (**“Constitution”**). By examining and determining whether or not the plaintiff has been dealt with in accordance with law by the administrative tribunal or authority in making the impugned order, a Civil Court enforces this right of the plaintiff, and does not deal with and decide upon the merits of the *lis* decided in the impugned order by the administrative tribunal or authority in exercise of its exclusive statutory power.

13. It would be pertinent to mention here that besides the ordinary remedy before Civil Court under section 9 of the CPC (mentioned above), an *aggrieved person* may invoke the extraordinary remedy before a High Court provided under Article 199 of the Constitution, for the enforcement of his constitutional right to be dealt with in accordance with law regarding the matters like the present one.⁵ This extraordinary remedy before High Court, however, does not affect or extinguish the ordinary remedy which may be available before Civil

Courts. Both these remedies are concurrent; however, when one is availed, the other becomes barred under the principle of *res judicata*.⁶

²Hamid Husain v. Govt. of W.P. 1974 SCMR 356; Secretary of State v. Mask and Co. AIR 1940 PC 105

³Muhammad Sharif v. Province of Punjab 1984 SCMR 1308; Bashir Ahmad v. Manzoor Ahmad 1987 SCMR 1620; Abdul Hamid v. Province of Punjab 1989 SCMR 1741; Alam Sher v. Muhammad Sharif 1998 SCMR 468; Muhammad Ishaq v. Abdul Ghani 2000 SCMR 1083; Muhammad Ali v. Province of Punjab 2005 SCMR 1302; Administrator v. Ali Muhammad 2012 SCMR 730.

⁴Abdul Rab v. Wali Muhammad 1980 SCMR 139; Province of Punjab v. Yaqoob Khan 2007 SCMR 554; Muhammad Khan v. Province of Punjab 2007 SCMR 1169; Muhammad Nazir v. Ahmad 2008 SCMR 521

⁵Muhammad Shafi v. Member, Board of Revenue 1985 SCMR 817; Muhammad Ashraf v. Board of Revenue, PLD 1968 Lah 1155.

⁶Muhammad Anwar v. Nawab Bibi 1989 SCMR 836; Rehmat Ali v. Jan Muhammad 1983 SCMR 1109; Asif Jah v. Govt. of Sind PLD 1983 SC 46; Abdul Majid v. Abdul Ghafoor PLD 1982 SC 146; Ahmad Shah v. Pakistan PLD 1979 Lah 599 (DB); Chiragh-ud-Din v. Province of W.P. 1971 SCMR 447; Muhammad Shafi v. Muhammad Bakhsh PLD 1971 Lah 148 (DB).”

12. In the instant case, the applicants have challenged the order of the D.O. Revenue on the grounds that the revenue authority has no power and jurisdiction to interfere with the Applicants’ entries, which were made basis of land granted by Land Grand Commission of Pakistan and further the D.O. Revenue passed the order on the basis of forged and fraudulent documents that, too, without notice to the applicants, as such, malafide and fraud have also been alleged. It is also well settled that where the allegations of lack of jurisdiction or malafide, misrepresentation and fraud are attributed to the tribunal and authority passing the impugned order(s) then it is within the domain of Civil Court to examine the propriety of such order in the context of such allegations, being court of ultimate civil jurisdiction by virtue of section 9 of C.P.C. and bar under section 172 of the LRA 1967 and section 11 of the Revenue Jurisdiction Act 1876 will not oust the jurisdiction of Civil Court in such cases².

13. Moreover, it is the duty of the court to make a holistic and meaningful reading of the plaint and only when it is manifestly and uncontrovertibly evident that the requirements of Order VII, Rule 11, are met, and that if it is found that the plaint does not deserve to go to Trial, it should be ordered for rejection. It is also well settled that a

²Hamid Husain v. Government of West Pakistan [1974 SCMR 356], Rais Dil Murad Khan v. Ali Nawaz and others [1997 MLD 1309], Ahsan Ali vs. Province of Sindh [2007 MLD 884] and Rafiuddin v. Karachi Metropolitan Corporation [1994 MLD 874].

plaintiff should not be non-suited, unless, either there is incriminating evidence against a plaintiff that his claim is a time barred one, or, this issue could be decided on the basis of undisputed record. I consider that in the present case the proper course will be to give a chance to the parties to produce evidence before the trial court, which will be the proper forum to decide the dispute between the parties after deducing the evidence produce before it. It is also imperative to mention that after incorporation of Article 10-A, in the Constitution of Islamic Republic of Pakistan 1973, the fair trial in due process of law is the fundamental right of the litigants.

14. It is trite law that if the concurrent findings of the courts below are the result of jurisdictional error, it becomes the duty of the High Court/ revisional forum to set the wrong right in accord with its jurisdiction under section 115, C.P.C.³

15. In view of the foregoing discussion, and relying upon the ratio of the legal precedents, stated supra, it is observed that the impugned orders suffer from serious error of law as both the lower courts have not appreciated the law as discussed above and have wrongly rejected the plaint. Accordingly, Revision Application is allowed and the impugned orders, being unsustainable, are set-aside. The suit is remanded back to the trial court with the directions to record evidence of both the parties on the issues already framed by the trial court or any other issue(s), which the court may deem fit and proper in the circumstances of the case and then decide the suit in accordance with the law.

It is clarified that the observations made herein above are only to the extent of deciding the present case and shall not influence the trial court in any manner in deciding the lis before him.

JUDGE

Hyderabad
Dated: 20.12.2024

jamil

³ Samar Gul and others v. Mohabat Khan and others [2000 SCMR 974]