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ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
Civil Revision No.27 of 2014

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| DATE OF HEARING | ORDER WITH SIGNATURE OF HON'BLE JUDGE |
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1. For orders on office objection 'A'.
2. For Hearing of main case.

Applicant: **Ghulam Abbas S/o Mohammad Waris**

Respondents: **Abdul Hameed & Others**

Mr. Zamir Ali Shah, advocate for the applicant.

Mr. Ali Raza Pathan, advocate for the respondent No.1.

Mr. Asif Raza Jatoi, State Counsel.

Date of hearing: 11.09.2017
Date of Judgment: 06.10.2017

J U D G M E N T

Muhammad Junaid Ghaffar, J: Through this Civil Revision, the applicant has impugned judgment dated 29.01.2014 passed by Additional District Judge, Kamber in Civil Appeal No.55 of 2010, whereby, the appeal has been dismissed by maintaining judgment dated 29.09.2010 passed by Senior Civil Judge, Kamber in F.C Suit No.01 of 2010 through which the Suit filed by the applicant was dismissed.

2. Precisely the facts of the case as stated are that father of the applicant, namely, Mohammad Waris purchased an Agricultural land bearing S.No.160 having an area of 9-09 acres in Deh Mona, Taluka Kamber, through registered sale deed dated 30.11.1968 for an area of 4-4 ½ acres and another sale deed dated 22.05.1982 for an area of 2-12 acres and sale deed dated 07.04.1993 for an area of 2-12 acres. It is further stated that the record of rights was also mutated in the name of applicant's father vide entry No.58, whereas, the father of the applicant also mortgaged S.No.160 with Agricultural Development Bank, Kamber on 27.12.1993 vide entry No.289. It is further stated that father of the applicant has expired, whereas, respondents No.1, 2 & 3 after expiry of their father came to the applicant and claimed ownership of the Suit land and made an attempt to dispossess him. They further approached respondent No.6, E.D.O Revenue Kamber for cancellation of

Entry No.58 in the record of rights on the ground that their father had not sold out his share to the applicant's father and E.D.O Revenue through order dated 15.09.2009 passed the impugned order by cancelling the entry No.58. Such order was impugned by filing F.C Suit No.01 of 2010 seeking the following prayers:

- A) That this Honourable Court be pleased to declare that the father of the plaintiff namely Mohammad Waris Kalhoro is real owner of the Suit property by way of registered sale deeds as mentioned in the plaint.
- B) That this Honourable Court be pleased to cancel the impugned order passed by the defendant No.6 dated.15.09.2009.
- C) That this Honourable Court be pleased to grant permanent injunction against the defendant No.1 to 6 restraining them from changing the record of rights of Suit property without due course of law.
- D) Cost be awarded to the plaintiff.
- E) Any other relief which this Honourable Court deems fit and proper be awarded to the plaintiff.

3. After issuance of summons written statement was filed and the contents of the plaint were denied to the extent that their share was never sold out to the applicant's father; where-after issues were framed and through judgment dated 29.09.2010 and decree dated 04.10.2010 the plaintiff's Suit was dismissed against which an appeal was preferred and the same has also been dismissed through impugned judgment dated 29.01.2014; hence instant Civil Revision Application.

4. Learned Counsel for the applicant has contended that E.D.O Revenue is not competent in law to pass any order for cancellation of the entry as he was at the same time also exercising powers of an appellate authority; that for this reason the applicant did not challenge the said order within the hierarchy and filed Suit; that the said Suit was maintainable in view of Section 53 of the Land Revenue Act, 1967; that the applicant is having admittedly a registered sale deed in his favor which is in subsistence for more than thirty years and, therefore, a presumption to its correctness is attached; that there was no subsequent entry in the revenue records regarding other purchasers; that the applicant in presence of a registered document was not required to lead any evidence; that the learned trial Court has seriously erred in law by applying the test provided under Article 79 and 80 of the Anon-e-Shahabad Order 1984, whereas the applicant's case falls within Article 100 ibid; that there is no dispute to the effect that the applicant

and other legal heirs are owners of the property of their father; that it is settled proposition of law under Order 1 Rule 9 C.P.C; that a Suit would not be incompetent merely for non-joinder and miss-joinder of the parties; that the order of E.D.O Revenue was based on malades and was passed without jurisdiction for the simple reason that only a Misc. Application was filed by the respondents and it was entertained. In support of his contention, he has relied upon the cases of *Dhabi Box v. Ali Sheer 2007 UC 1080*, *Muhammad Duwamish v. Muhammad Husain 1999 CLC 106*, *Hamada Begum V. I shad Begum 2007 SCMR 996*, *Abdul Latin Khan v. Gull Redman 1993 MLD 643*, *Sheer Muhammad v. Sir Muhammad and others 2006 PSC 516*, *Dilbert Husain Hisami v. M.C.B PLJ 2001 SC 25*.

5. On the other hand learned Counsel for the respondents has contended that the Suit filed by the applicant was incompetent as he ought to have challenged the impugned order before the Revenue Authorities under section 161 of the Land Revenue Act, 1967, by filing an appeal; that the applicant has miserably failed to prove his case, even otherwise by not adducing proper evidence within the contemplation of Article 72 of Anon-e-Shahabad Order. In support of his contention he has relied upon the cases of *Muhammad Abdul Manna v. M. Hamid Afar 2002 MLD 1368* & *Said Amin v. Naiad 2011 CLC 309*.

6. I have heard both the learned Counsel and perused the record.

7. The facts have already been stated hereinabove and need not be reiterated. It appears that the applicant claims ownership of S.No.160 comprising a total area of 9-09 acres in DE Mona, Toluca Camber on the basis of various registered sale deeds, i.e. 4-4½ Acres from father of Respondents No.1 to 3 Glulam Sara Kalahari on 30.11.1968, 2-2 Acres on 22.5.1982 and remaining 2-12 Acres from one Shah Ali Brahe on 7.4.1993. It also appears to be an admitted position that Entry No.58 regarding the mutation was available with the Land Revenue Authorities. This entry was challenged on behalf of the respondents by filing a Misc. Application before E.D.O Revenue Camber-Shahdadkot who through order dated 15.09.2009 came to the conclusion that Entry No.58 was a bogus entry, and therefore, the same was cancelled. Applicant was aggrieved by such order and filed the Suit in question seeking the prayers as referred to hereinabove. Written statement was filed whereby the contention of the applicant was denied and the trial Court settled the following issues for adjudication:

1. Whether father of plaintiff deceased Muhammad Waris Kalhoro was real owner of the Suit property through registered sale deed?
2. Whether order passed by the defendant No.6 is illegal and liable to be set-aside?
3. Whether no cause of action accrued to the plaintiff as he failed to made other legal heirs of his father party to the Suit and the Suit is not maintainable in the eye of law.
4. What should the decree be?

8. Insofar as the finding of the learned trial Court regarding issue No.1 is concerned, it appears that the trial Court after perusal of the evidence came to the conclusion that the applicant has not been able to prove the existence of the sale deeds registered in favour of his father. In this regard the trial Court observed that firstly the author of the sale deed was not examined; nor were the attesting witnesses or the registering authority was called for examination. On this ground alone the trial Court came to the conclusion that the sale deeds are not proved. The other thing which prevailed upon the learned trial Court for deciding this issue against the applicant was to the effect that he was only one of the legal heirs who has come before the Court, whereas, others have not been joined and, therefore, the Suit was bad for non-joinder and mis-joinder. However, I am not impressed by the reasoning of the learned trial Court on both counts, firstly; it is to be appreciated that the applicant had only impugned the order of E.D.O Revenue whereby the mutation entry was cancelled. In that case the applicant was not supposed to prove the existence of his father's sale deed as recorded by the learned trial Court. The applicant produced at least four witnesses in his support; whereas, the defendants had chosen not to cross examine any of the witnesses. Moreover, the sale deeds were registered at different intervals, the first one was done in the year 1962 to the extent of 50 percent having the joint ownership with the father of the respondents, second one in 1982 and third one in 1993. This impliedly means that at least to the extent of 50 percent there was no dispute and sale deed stood admitted; secondly the applicant was aggrieved by the order of cancellation of entry and was not seeking a declaration for existence of the sale deed. This was not a case wherein the respondents had sought cancellation of the sale deed of applicant's father, rather they chose a remedy which by itself could not have been exercised for the simple reason that there still exists an alleged registered sale deed until a competent Court of law orders for its

cancellation. Mere cancellation of mutation entry would not confer any title in the respondents. Insofar as the non-joinder of other legal heirs is concerned, I am of the view that again the trial Court has erred in law by observing that this is a case of mis-joinder and non-joinder. The applicant's right at least to the extent of his share still exists and the Suit cannot be dismissed in its entirety on this ground. Even if it was not maintainable then it could only be to the extent of other legal heirs who were not before the Court.

It is by now a settled proposition of law that mere existence of a mutation entry in the revenue record does not confer any title to a party. Moreover, when the adverse party claims its ownership on the basis of a registered document, it has attached to it a presumption of correctness and genuineness. As stated the respondents have never challenged the existence of sale deed by filing any such Suit; though the sale deeds were and / or in the knowledge of the respondents. On the same line the Appellate Court has also failed to appreciate the evidence on record and only framed a single point for determination that as to whether the impugned judgment and decree requires interference by the Court. The entire discussion of the learned Appellate Court does not dilate upon this point and has only confined to other issues regarding maintainability of the Suit (which is being dealt with later in this judgment). In view of such position, I am of the view that insofar as findings' regarding issue No.1 is concerned, the same needs to be set aside and it is so ordered.

9. Insofar as issue No.2 is concerned, it involves a legal question as to whether the order passed by Revenue Authority can be impugned and challenged before a Civil Court directly without exhausting the remedy provided under the hierarchy of the department. There is no cavil to the proposition that if a statute provides a proper mechanism for availing the departmental remedy; then it must be availed by an aggrieved party. However, this Rule is not absolute and there is an exception to this proposition and by now it is settled by the Apex Court that where the order impugned is tainted with malafides or without jurisdiction or is otherwise incompetent in law; then jurisdiction of a Civil Court cannot be ousted and is not barred. Reference in this regard may be made to the case of **ABBASIA COOPERATIVE BANK (NOW PUNJAB PROVINCIAL COOPERATIVE BANK LTD.) versus Hakeem Rafiz MUHAMMAD GHAUS and 5 others** reported as **PLD 1997 Supreme Court 3.**, wherein the Hon'ble Supreme Court has been pleased to dilate upon the issue in hand in the following manner;

5. The next question which arises for consideration in the cases is, whether the Civil Court was competent to examine the validity of the auction conducted by the authorities? The Civil Court 'under section 9 of the Code of Civil Procedure are competent to try all- suits of civil nature except those or which their jurisdiction is barred either expressly or by necessary implication. It is a well-settled principle of interpretation that the provision contained in a statute ousting the jurisdiction of Courts of general jurisdiction is to be construed very strictly and unless the case falls within the letter and spirit of the barring provision, it should not be given effect to. It is also well-settled law that where the jurisdiction of the Civil Court to examine the validity of an action or an order of executive authority or a special tribunal is challenged on the ground of ouster of jurisdiction of the Civil Court, it must be shown (a) that the authority or the tribunal was validly constituted under the Act; (b) that the order passed or the action taken by the authority or tribunal was not mala fide; (c) that the order passed or action taken was such which could be passed or taken under the law which conferred exclusive jurisdiction on the authority or tribunal; and (d) that in passing the order or taking the action, the principles of natural justice were not violated. Unless all the conditions mentioned above are satisfied, the order or action of the authority or the tribunal would not be immune from being challenged before a Civil Court. As a necessary corollary, it follows that where the authority or the tribunal acts in violation of the provisions of the statutes which conferred jurisdiction on it or the action or order is in excess or lack of jurisdiction or mala fide or passed in violation of the principles of natural justice, such an order could be challenged before the Civil Court in spite of a provision in the statute barring the jurisdiction of Civil Court. In the case before us, the action of the Cooperative Authorities in auctioning the suit property for recovery of the loan against respondent No.1 was challenged in the suit as contrary to the provisions of the Ordinance and M.L.O. 241.

10. The Hon'ble Supreme Court in the case of ***Sher Muhammad v Muhammad & Others (2006 PSC 516)*** has been pleased to hold that if the order of the Civil Court is patently illegal or void or suffers from malice and ill-will, the parties can straight away approach the Civil Court and availability of remedy of appeal or revision in Revenue hierarchy cannot be pleaded to oust the jurisdiction of the Civil Court who being the Court of general jurisdiction is competent to declare the rights of the parties.

11. In the case of ***Mst. Hameeda Begum v Mst. Irshad Begum (2007 SCMR 996)*** while dilating upon the scope of Article 100 of The Qanun-e-Shahadat Order, 1984, the Hon'ble Supreme Court has held as under;

13. Even otherwise, there is presumption of due execution in favor of registered document and such presumption would be stronger in the case of registered deed being more than 30 years old by virtue of Article 100 of the Qanun-e-Shahadat Order, 1984. Registered deed was not only acted upon by way of mutation in the Register Haqdarar Zamin but also by continuous entries for a period spread over four decades in Jamabandi Register.....

12. In the case of ***Muhammad Durwaish v Haji Muhammad Hussain (1999 CLC 106)*** a learned Single Judge of the Peshawar High Court has been pleased to hold that:

10. Thus, the question to be determined is whether Article 79 or 100 of the Qanun-e-Shahadat Order be applied to resolve the controversy between the parties. If the former is relevant, the burden would be on the defendants to prove the execution of the sale-deed No.171, notwithstanding its registration. If Article 100 aforesaid is found to be applicable, the burden to disprove the execution of the deed would shift to the plaintiffs. Under Article 100 of the Qanun-e-Shahadat Order presumption of correctness is attached to the signatures and contents of a thirty-years old document if produced from proper custody. When a document fulfils requirements of Article 100, the person relying upon it is not required to prove its execution unless the presumption is rebutted. Thus, the provisions of Article 79 of the Qanun-e-Shahadat Order would not come into play if the benefit of Article 100 is available to the defendants.

13. In this matter the E.D.O Revenue entertained a Misc. Application filed on behalf of the respondents in the year 2009 for seeking correction of an Entry in the Revenue Record which was made somewhere in 1984. There is no dispute to that effect. Now whether the Revenue Officer is authorized to entertain such an application in a case wherein entry has been recorded on the basis of a registered sale deed(s) way back in the year 1984. The answer would be big "No". A registered instrument can only be cancelled by a Civil Court, whereas, in this matter the E.D.O Revenue on a Miscellaneous Application has practically made an attempt to cancel or nullify the effect of the sale deed(s) of the applicants. In fact even in cases where a sale deed is in existence and mutation has not been recorded; the revenue authorities are not competent to give a declaration of ownership. If such practice of entertaining applications and correction in entries is permitted then it would seriously prejudice the rights so accrued in favour of the parties. More so when there is always a clog of limitation attached for seeking cancellation. The respondents in this matter after expiry of their father have come forward with a claim that he never sold out the property and his share to the applicant's father. It is but surprising that no such claim was made when their father was alive. Moreover, they never came before the Court to seek cancellation of the sale deed and instead approached the E.D.O for cancellation and who even otherwise on a very flimsy and technical ground cancelled the entry. It would be advantageous to refer to the findings of the E.D.O Revenue which reads as under:

"After hearing both the parties and perusal of revenue record in this Court it appears that entry No.58 dated 04.10.1984 of D.K register showing transfer of the land from Ghulam Sarwar Kalhoro to Muhammad Waris Kalhoro and Shah Ali Brohi bogus since in the same there is mention of letter

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No.1163 dated 21.10.1984 of the defunct Deputy Commissioner, whereas the entry was kept as well as attested on 01.10.1984 (even before issuance of the letter of Deputy Commissioner) which does not touch the common reasoning. I therefore, cancel entry No.58 dated 04.10.1984 existing in favour of Muhammad Waris Kalhoro and Shah Ali Brohi with all subsequent changes made in the relevant record in respect of S.No.160 deh Mona and maintain the old entry NO.32 in favour of the late Ghulam Sarwar s/o Allah Dino Kalhoro.

Announce in open court in presence of applicant today 15th September 2009."

14. On perusal of aforesaid finding it appears that the entry has been cancelled merely on the basis of some discrepancy in the date of communication by the Deputy Commissioner as according to the E.D.O Revenue, there is mention of letter dated 21.10.1984 of the defunct Deputy Commissioner on record whereas entry was kept as well as attested on 01.10.1984; that is even before issuance of letter to the Deputy Commissioner and this does not touch the common reasoning. I am afraid merely on the basis of this finding and without bringing on record the relevant documents, the applicant Suit could not have been dismissed nor he could have been non-suited in this manner, whereas, on the face of it the order appears to have been passed without any lawful authority and jurisdiction. In such circumstances and the peculiar facts of instant case, I am of the view that resort to alternate remedy as provided under the hierarchy was not mandatory as the order impugned was without jurisdiction and any lawful authority, and the applicant was well within his rights to seek his remedy by filing a Civil Suit under section 9, C.P.C as he was in possession of registered documents vis-à-vis mutation entry in favor of respondents resulting due to cancellation of applicants Entry.

15. Even otherwise, if for sake of argument it is presumed that the impugned order passed by EDO Revenue is correct in law; even then it would not confer any title to the respondents for that they need to further get the sale deeds of applicant cancelled. It is settled law that a Mutation Entry in Revenue Record could neither create nor extinguish title to property as they are only maintained for fiscal purposes. See ***Muhammad Ali v Hassan Muhammad (PLD 1994 SC 245)***. Further a right to title or ownership of any property depends entirely on the title i.e. source of acquisition of the right while an Entry in the Record of Rights is not the conclusive evidence of the right to ownership. See ***Bahadur Khan v Qabool Ahmed (2005 CLC 1937)***. In the case of ***Rasta Mal Khan v Nabi Sarwar Khan (1996 SCMR 78)***, the Hon'ble Supreme Court had the occasion to dilate upon the exercise of jurisdiction by the Civil Court in respect of an entry in the Revenue Record viz a viz Section 172 of the West Pakistan Land Revenue Act, 1967, which bars the

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jurisdiction of the Civil Court in such matters. The relevant finding is as under;

10. Regarding bar of jurisdiction of the Civil Court under section 172 subsection (2), clause VI of the, -West Pakistan Land Revenue Act, 1967 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 interferes with the rights of a person in the land record in the Record of Rights, and such person feels aggrieved, for correction of such entries he has to B approach Civil Court for declaration under section 53 of the Act or in other words under section 42 of the Specific Relief Act both the re4ef available being of the same nature and identical. The dispute herein pertained to the nature of the transactions in the suits for pre-emption based on the impugned mutation. The suits were therefore rightly held triable by the Civil Court.

16. The ouster of jurisdiction in terms of Section 172 of the Land Revenue Act is in fact only to the extent of correction of the Entry in the record made in performance of duty by the Officer without touching the rights of a person. It is not that the Officer of Revenue department can make correction of all sorts in any manner so deemed fit to him. In a similar nature of case the same question was posed before a learned Single Judge of the Peshawar High Court in the case of ***Syed Sardar Shah v Qazi Masood Alam (2003 CLC 857)*** and the objection regarding ouster of jurisdiction was repelled in the following manner with which I am fully in agreement;

14. The argument of the learned counsel for the petitioners that the Civil Court under section 172 of the Land Revenue Act has no jurisdiction to entertain the suit has no force at all. The scope of section 172 of the West Pakistan Land Revenue Act, 1967 is entirely different. It only excludes the jurisdiction of Civil Court from taking in hand the functions assigned to the Revenue Courts as also the question of their methodology adopted for the discharge of such functions. The functions of Revenue Courts are to prepare the Revenue Record in the light of evidence with regard to one's title or interest, but the finality is attached to the orders passed by Civil Court which ultimately determines civil rights. Section 42 of Specific Relief Act, 1877 confers right upon aggrieved person to seek declaration from Civil Court with regard to his rights or title to a character both in rem and in personam.

17. Similar view has been expressed by another learned Single Judge of the Peshawar High Court in the case of ***Mst. Gul Pari alias Gubaro v Zarin Khan (PLD 1994 Peshawar 249)*** in the following manner;

The thirist contention raised by the learned counsel hardly needs much discussion as in the suit in hand the respondents, besides seeking correction of the revenue record, and bringing challenge to the impugned 'Fard Badr' and the impugned mutation, have claimed a decree for declaration as to their title to and confirmation of their possession over the disputed land. The contention of the learned counsel that the order of the learned Civil Judge to, the effect that section 172 of the West Pakistan Land Revenue Act, 1967, created no bar to the filing

of suits to challenge the action of the revenue authorities was hardly maintainable is untenable. Section 53 of the West Pakistan Land Revenue Act, 1967, itself creates a right in favour of an aggrieved person to approach the Civil Court for declaration of his right under section 42 of the Specific Relief Act, 1877. On the other hand, as held by a Division Bench of Balochistan High Court in *Mir Rehman Khan and another v. Sardar Asadullah Khan and 14 others* (PLD 1983 Quetta 52) and to which I respectfully subscribe, that "the scope of section 172 of the West Pakistan Land Revenue Act, 1967 is entirely different. It only excludes the Civil Courts from taking in hand the functions assigned to the Revenue Courts as also the questioning of their methodology adopted for the discharge of such functions". I have, therefore, no doubt in my mind that the function of Revenue Courts is to prepare the revenue records in the light of the evidence with regard to one's title or interest, but the finality is attached to the orders of the Civil Courts who shall determine civil rights such as the claim of the petitioner being daughter of Said Khan deceased by leading cogent and reliable evidence before them. The view of the learned Civil Judge does not, therefore, suffer from any legal infirmity. Section 42 of the Specific Relief Act, 1877, confers a right upon an aggrieved person to seek declaration from a Civil Court with regard to his/her status (i.e. her claim of being -daughter of Said Khan deceased in this case), right or title to a character both in rein and in personam.

18. Reliance may also be placed on the case of ***Ghulam Ahmed v Muzafara Begum (2011 YLR 2991)*** wherein the dispute between the parties was to the effect that one party was relying upon the Entry in mutation record, whereas, the other party was claiming ownership on the basis of a registered sale deed and it was its case that Mutation Entry has been altered and or amended without there being any proof of ownership. The observation of the learned Division Bench of the Baluchistan High Court is pertinent to the facts of this case and reads as under;

It is settled principle of law that mere mutation does not confer any right in any property on any one and the mutation entry raises a rebuttable presumption in favour of person in whose favour the same is made. The presumption is rebuttable and in the instant case the entry in the Revenue Record has been duly rebutted by the appellant-plaintiff, who is challenging the entry by producing cogent and confidence inspiring evidence contrary to mutation entry. In the instant case the presumption attached with the mutation entry in favour of predecessor of respondents-defendants stands rebutted through registered sale-deed dated 16-6-1920 in view whereof the respondents-defendants or their predecessor cannot be held as exclusive owner of the disputed property rather the appellant-plaintiff and the respondents-defendants/their predecessor are half owners of the disputed property in equal share. The Revenue Record reflects that the entry in the Revenue Record in the name of predecessor of respondents-defendants is a result of fraud and under the law fraud vitiates most solemn proceedings. Reliance in this regard is placed on the case of *Muhammad Younus Khan v. Government of N.-W.F.P.* reported as 1993 SCMR 618, wherein it was held that,

19. The upshot of the above discussion is that both the Court(s) below have miserably failed to appreciate the evidence properly and it is a fit case of misreading and non-reading of evidence led by the parties,

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and therefore requires interference by this Court while exercising its revisional jurisdiction, in view of the dicta laid down by the Hon'ble Supreme Court in the case of, ***Nazim-Ud-Din v Sheikh Zia-Ul-Qamar (2016 SCMR 24)***, wherein it has been held by the Hon'ble Supreme Court as follows;

....."It is settled law that ordinarily the revisional court would not interfere in the concurrent findings of fact recorded by the first two courts of fact but where there is misreading and non-reading of evidence on the record which is conspicuous, the revisional court shall interfere and can upset the concurrent findings, as well as where there is an error in the exercise of jurisdiction by the courts below and/or where the courts have acted in the exercise of its jurisdiction illegally or with material irregularity".

20. Similar view has been expressed by the Hon'ble Supreme Court in the case of ***Islam-Ud-Din v Mst. Noor Jahan (2016 SCMR 986)*** in the following manner:

9. Mr. Gulzarin Kiani, the learned counsel for the siblings, contended that the High Court in exercise of its revisional jurisdiction could not have set aside the findings of the two courts below and if at all it should have remanded the matter. In this regard the learned counsel had cited a few cases (above). In the case of Sailajananda Pandey, which was referred to in the case of Gul Rehman, the matter was remanded because "further investigation of some necessary facts" was required where after "many different principles" of law were to be dilated upon. However, there is no need of any further investigation in the present case nor the need to consider many different [legal] principles as a consequence thereof. In *Iftikhar-ud-Din Haidar Gardezi's* case it was held that judgments in revisional jurisdiction could only be assailed in terms of section 115 of the Code of Civil Procedure ("the Code"). We entirely agree. However, in the present case the trial and appellate courts had exercised jurisdiction vesting in them illegally or with material irregularity, as they disregarded Article 79 of the Qanun-e-Shahadat Order and misread or did not read the evidence as noted above. Since the parties had already lead evidence and the material facts had clearly emerged the High Court had correctly exercised its revisional jurisdiction under the Code. It was held in *Nabi Baksh v Fazal Hussain (2008 SCMR 1454)* that concurrent findings of the courts below can be set aside by the High Court in its revisional jurisdiction if the same, "were based on misreading or non-reading of the material available on record".

21. Further reliance can be placed on the cases of ***Nabi Baksh v. Fazal Hussain (2008 SCMR 1454)***, ***Ghulam Muhammad v Ghulam Ali (2004 SCMR 1001)***, & ***Muhammad Akhtar v Mst. Manna (2001 SCMR 1700)***.

22. In view of hereinabove facts and circumstances of the case, I am of the view that both the Court(s) below have failed to exercise the jurisdiction so vested in them and have completely misread the evidence on record while dismissing the Suit of the Applicant. Accordingly the judgment dated 29.9.2010 passed by the Senior Civil Judge, Kamber in F.C. Suit No. 01 of 2010 as well as judgment dated 29.01.2014 passed by the Appellate Court in Civil Appeal No. 55 of 2010 are set aside. The

matter is remanded to the trial Court to decide the Issues so settled again except the question of maintainability of Suit which already stands decided as above in favor of the applicant. If requested and prayed the trial Court may consider leading of additional evidence by any of the parties in accordance with law.

23. Civil Revision Application is allowed in the above terms.

Dated: 06.10.2017

[Handwritten Signature]
JUDGE
6.10.17