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ORDER SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA  
Civil Revision No.S-34 of 2011.

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE
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21.11.2016.

Messrs Ghulam Dastagir A. Shahani and Imdad Ali  
Mashori, advocates for the applicants.

Mr. Ameer Ahmed Narejo, State Counsel.

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This Civil Revision application under section 115, C.P.C. is directed against the judgment and decree dated 04.01.2011 and 05.01.2011 respectively, whereby the learned Additional District Judge, Kandhkot while dismissing Civil Appeal No.07 of 2010, maintained the judgment and decree dated 08.04.2010 and 13.04.2010, thereby the learned Senior Civil Judge, Kandhkot dismissed F.C. Suit No.32 of 2009, filed by the applicants/plaintiffs. Today the cause for the parties submit that since short points are involved in this matter, it may be heard and decided finally at the stage of Katch peshi.

2. Brief facts of the case are that the applicants herein filed aforementioned Civil Suit for recovery of Rs.1,20,77,869/- against the respondents/defendants in the Court of learned Senior Civil Judge, Kandhkot, averring therein that they are owners of survey numbers 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 545, 546, 549, 550, 551, 552, 553, 554, 555, 756, 757, 758, 747, 748, 749, 900, 901, 902, 903, 904, 187, 188, 193, 195, 201, 202, 203, total admeasuring 260 acres, situated in Deh Khariro, Taluka Kandhkot ("**the suit land**") and such mutation stands in their names in record of rights. It is further averred that in the year 1991 some persons forcibly occupied the suit land, hence on the application of applicant No.1, the then Deputy Commissioner, Jacobabad appointed respondent No.2 i.e. Mukhtiarkar (Revenue) Tangwani as receiver from year 1991, who remained receiver up to

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15.11.2008 and the amount of produce is lying with him. Thereafter, applicant No.1 filed a Constitutional Petition in High Court of Sindh, Circuit Court Larkana for assessment of the amount whereupon respondent No.2, submitted assessment statement from the year 1999/2000 to 2007/2008 and admitted that said amount is lying with him as AMANAT. It is also averred that the applicants then repeatedly approached to respondent No.02 for getting the amount of produce but he after keeping them on false hopes refused them and; thereafter, applicants filed the aforementioned civil suit.

3. The respondents contested the suit by filing their written statement wherein they have stated that Taluka Tangwani was created on 29<sup>th</sup> June, 2005 and prior to this Mukhtiarkar Kandhkot was appointed as receiver, who appointed Munshi Ghulam Ali Kato, Supervising Tapedar of that time as watchman on land and on his report F.I.Rs were lodged at the concerned police station against the haris, who had taken away the crop of applicants.

4. From the pleadings of the parties, the trial Court framed the following issues:-

1. *Whether the suit of the plaintiffs is not maintainable according to law?*
2. *Whether the suit is bad by mis-joinder of necessary parties?*
3. *Whether the defendant No.02 was appointed as Receiver on the application of the plaintiffs?*
4. *Whether the plaintiffs have no cause of action to file his suit?*
5. *Whether the plaintiffs are entitled to receive the amount of Rs.1,20,77889/- from the defendants?*
6. *What should the decree be?*

5. At the trial, applicant/plaintiff No.1, Akbar Shah, examined himself at Ex.14, he produced true copy of order passed by the High Court of Sindh, Circuit Court, Larkana in Constitution Petition at Ex.14/A; assessment report submitted

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by Mukhtiarkar (Revenue) Kandhkot, at Ex.14/B; original letter of Deputy Commissioner, Jacobabad dated 30.08.1999 at Ex.14/C; letter issued by Assistant Commissioner to Mukhtiarkar (Revenue) Kandhkot, dated 01.09.1999 at Ex.14/D.

6. Respondent/ defendant No.2, Allah Dino Channo, Mukhtiarkar (Revenue) Tangwani was examined at Ex.17, who produced authority letter at Ex.17/A; entry No.169, dated 13.04.1989; entry No.222 at Ex.17/B; entry No.237 at Ex.17/C; entry No.203, 211, 138 and 256 at Ex.17/D and Constitution Petition No.D-39 of 2008 at Ex.17/E.

7. After assessing the evidence on record, the learned trial Court decided the Issue No.1 1 and 2 in favour of appliants: Issue No. 3, 4, and 5 against them, while deciding Issue No. 6 dismissed the suit of the applicants, vide judgment dated 08.4.2010 and decree dated 13.04.2010. The applicants being aggrieved filed Civil Appeal No.07/2010, which was heard and dismissed by the learned Additional District Judge, Kandhkot vide judgment dated 04.01.2011 and decree dated 05.01.2011. It is against this judgment and decree that the instant Civil Revision Application has been filed by the applicants/plaintiffs.

8. Learned counsel for the applicants has mainly contended that the learned Courts below while dismissing the suit and appeal of the applicants have committed material illegality. He has further submitted that the learned trial Court while deciding Issues No. 3.4 and 5 non-suited the applicant merely on the ground that the Mukhtiarkar (Revenue) Kandhkot, who was appointed as receiver by the then Deputy Commissioner Jacobabad, was not made party in the suit and also for the reasons that the order of appointment of receiver has not been produced by the applicants. He has also submitted that in fact Mukhtiarkar (Revenue) Kandhkot was appointed as receiver in the year 1991 by the then Deputy Commissioner, Jacobabad and subsequently Taluka Tangwani was

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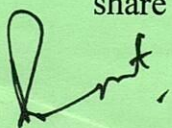
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created in the year 2005, hence looking to the fact that the suit land is situated within territorial jurisdiction of Taluka Tangwani, Mukhtiarkar (Revenue) Tangwani was made party as defendant No.2 in the suit. He added that the appointment of the then Mukhtiarkar (Revenue) Kandhkot as receiver is an admitted fact, hence non production of the copy of the order could not have any adverse effect over the claim/case of the applicants; however, the applicants have filed an application i.e. C.M.A. No.124/2014, under Order 41 Rule 27 R/w section 151, C.P.C., seeking permission for production of true copy of application dated 25.03.1991, addressed to Deputy Commissioner Jacobabad for appointment of receiver and order passed thereon, as additional evidence; therefore, this is a fit case for remand to trial Court to decide the same afresh after arraying Mukhtiarkar (Revenue) Kandhkot as defendant in the suit.

9. Mr. Ameer Ahmed Narejo, learned State Counsel, while conceding the arguments of learned counsel for the applicants has recorded his no objection for the remand of this case to trial Court.

10. I have heard the learned counsel for the parties and perused the material available on record.

11. It appears that the learned trial Court dismissed the suit of the applicants while deciding Issue No. 3, 4 and 5 by holding that no document in respect of appointment of defendant No.2 i.e. Mukhtiarkar (Revenue) Tangwani as receiver was produced by the applicants; that Mukhtiarkar Kandhkot was appointed receiver in the year 1991 but no document has been produced by the applicant No.1 showing that any amount so recovered/collected has been transferred to the respondent No.2, or he has been directed or receive the Zamindari share of the produce of suit lands, therefore, the applicants have failed to prove that the respondent No.2 had ever been appointed as Receiver for produce of Zamindari share of suit land.





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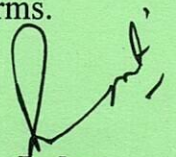
12. It is an admitted position that the Mukhtiarkar (Revenue) Kandhkot was appointed as Receiver by the Deputy Commissioner, Jacobabad in March 1991 to the suit land, which was at that time situated in Taluka Kandhkot but after creation of Taluka Tangwani in June 2005, it is now situated in Taluka Tangwani. The applicants/plaintiffs instead of impleading Mukhtiarkar (Revenue) Kandhkot as defendant, made Mukhtiarkar (Revenue) Tangwani as defendant No.2 in the suit. It is obviously a mis-description of the party, which under Order 1 Rule 10, C.P.C can be corrected by the Court at any time and for this purpose the nature of the allegations in the plaint and the relief sought should be looked into. However, the suit should not be dismissed on this account.

13. It further appears that the learned trial Court while deciding Issue No.3 against the applicants has observed that they have failed to produce <sup>my</sup> copy of the order passed by the Deputy Commissioner, Jacobabad for the appointment of Receiver on the suit land. It is also matter of record that the appointment of Mukhtiarkar (Revenue) Kandhkot as Receiver is not disputed; however, the applicants have filed C.M.A. No.124/2014, under Order 41 Rule 27 R/w section 151, C.P.C, seeking permission for production of true copy of application dated 25.03.1991, addressed to Deputy Commissioner Jacobabad for appointment of receiver and order passed thereon, as additional evidence, which was disposed of by this Court vide order dated 15.12.2014 with observation that the points raised in the CMA would be considered at the time of final hearing of revision application.

14. There is no cavil to the proposition that where the rights of the parties are not determined in accordance with law, in such situation, concurrent findings cannot be considered sacrosanct. The revisional jurisdiction of this Court is meant to rectify the errors made by the subordinate courts.

15. For the foregoing facts and reasons, I am of the view that the learned Courts below have acted in the exercise of jurisdiction with material irregularity. Hence, this Civil Revision application is allowed, the impugned judgments and decrees passed by the lower Courts below are set aside and the matter is remanded to trial Court to pass de novo judgment and decree after arraying Mukhtiarkar (Revenue) Kandhkot as defendant No.2 by striking out Mukhtiarkar (Revenue) Tangwani, who shall be allowed to file his written statement within stipulated period and then after framing ammended issue, out of the pleading of the parties, the parties be allowed to lead their evidence afresh in accordance with law. Since the mater pertains to the year 2009, the learned trial Court is expected that it shall conclude the case within a period of six months hereof.

The Civil Revision Application stands disposed of in above terms.

  
Judge

M.Y.Panhwar/\*\*