

IN THE HIGH COURT OF SINDH AT KARACHI

Civil Revision Application No. 143 of 2023

[Arif Hussain v. Mst. Rukhsana Bano]

Applicant : Arif Hussain
through Mr. Sikandar Khan,
advocate

Respondent : Mst. Rukhsana Bano
through Mr. Ahrar Jawaid Bhutto,
Advocate

Date of Hearing : 18.02.2025

Date of Decision : 06.03.2025

J U D G M E N T

Jan Ali Junejo, J. --- The Applicant has called in question the Judgment and Decree dated 07.09.2023 (hereinafter referred to as the *Impugned Judgment and Decree*) passed by the Court of learned XIIth Additional District Judge, Karachi-South in Civil Appeal No.54 /2023 whereby dismissed the Civil Appeal preferred by the Applicant under Section 96, of the Code of Civil Procedure, 1908 against the Order and Preliminary Decree dated: 08-05-2023 passed by the Court of learned Vth Senior Civil Judge, Karachi-South whereby Civil Suit No.1126 of 2021 instituted by the Respondent was decreed by virtue of Preliminary Decree.

2. The essential facts leading to the filing of this Civil Revision Application are that the Respondent instituted Civil Suit No.1126 of 2021 before the Court of learned Vth Senior Civil Judge, Karachi-South (here-in-after referred to as the "Trial Court) for "Administration, Partition, Mesne Profit and Permanent Injunction" against the Applicant. It is the version of the plaintiff that Respondent and the Applicant are real siblings

and legal heirs of their deceased mother, Saira Bibi (widow of Ghulam Hussain). The disputed property is located at RC-5/94, Saira Bai Building, Jamila Street, adjacent to Jubilee Centre, Ranchorline, Gazdarabad, Karachi. It consists of a ground-plus-five-story building on 470 square yards, with multiple flats and shops occupied by 24 tenants. After their mother's death on March 10, 2010, the Applicant has been solely receiving rent and income from the suit property. The Respondent repeatedly requested her lawful share in rents and income, but the defendant gave false assurances and failed to pay. The Applicant holds the title documents of the property. The Applicant has been enjoying possession and income from the property since their mother's death. In January 2021, the Respondent again demanded her share, but the Applicant refused and even threatened her. Community elders (Nek Mards) were approached for mediation, but the Applicant deliberately avoided settlement. The last payment the Respondent received was Rs. 7,000 in May 2021, after which the Applicant stopped paying her. The Applicant gave possession of one flat (four rooms and a common area) to his daughter, Shehnila, without the Respondent's consent, exceeding his lawful share. The Applicant allegedly replaces old tenants with new ones for financial gain (Pagri/Goodwill), depriving the Respondent of rightful income. Being issueless and widowed, the Respondent has faced continuous threats from the Applicant to prevent her from seeking legal recourse. The Respondent recently learned that the Applicant intends to sell the suit property and, upon confrontation, he refused to give her due share. Lastly, the Respondent prayed for the following reliefs:

a. Partition the Suit Property viz. RC-5/94, Saira Bai building, Jamila Street, adjacent to Jubilee Centre, Ranchorline, Gazdarabad, Karachi and if the same is found indivisible, Nazir

of this Hon'ble Court may please be directed to auction the suit property whereby the plaintiff be given her respective share out of proceed.

b. Appoint the Nazir of this Hon'ble Court to collect future rents and incomes from all tenants / occupants of suit property as well as past rents and incomes received by the defendant till disposal the case.

c. Permanent Injunction, thereby restraining the defendant, his men, agents, sub-ordinate, staff, crew employees, servants, other persons acting on his behalf or under his authority from illegally/forcefully dispossessing the plaintiff from the suit property.

d. Any other relief which this Hon'ble Court may deem fit and proper under the circumstances of the case.

3. On being summoned, the Applicant entered his appearance and filed written statement wherein it is stated that the suit is not maintainable due to concealment of material facts. The Respondent has allegedly hidden details about both movable and immovable properties. The Respondent has also concealed a family agreement dated 03/01/2014, based on their mother's oral will. The Respondent is issueless and allegedly trying to deprive the actual legal heirs of their rightful inheritance. The Respondent failed to file a list of legal heirs before the court. The Applicant acknowledges some facts but claims the Respondent concealed ownership of:

- **A shop and two flats**
- **Gold ornaments (152 tolas in total)**
- **Rents from properties: Rs.50,000/- monthly from a shop in Clifton and Rs.2,00,000/- annually from an antenna installed on a building.**

The Respondent allegedly adopted the Applicant's son (Amir) but later expelled him and took possession of his dowry items and gold (52 tolas). The Respondent is allegedly transferring inherited properties to her adopted daughter, which is against Shariah law. The Applicant claims

he has regularly paid the Respondent's share of rent as per their mother's oral instructions. The Respondent allegedly refused to accept the rent in September and October 2021 despite accepting it earlier. The Applicant asserted that he alone has borne the maintenance costs of the inherited properties. The Applicant asserts that, as a legal heir, he is entitled to his fair share of the properties. He claims that Shariah law does not grant inheritance rights to the Respondent's adopted daughter. The Applicant denies the Respondent's claims, arguing they are false, misleading, and contradictory. He requests the Court to reject the plaint under Order VII Rule 11 of CPC for concealment of facts. He seeks special costs under Section 35-A of CPC due to the Respondent's alleged malafide intentions.

4. During the pendency of the suit proceedings, the Applicant admitted the deceased's ownership of the Suit Property and acknowledged the status of the parties as legal heirs. Based on these admissions, the learned trial Court issued an Order dated 08-05-2023, followed by a Preliminary Decree on the same date. The trial Court directed the Nazir to take charge of the Suit Property, oversee its partition, and, if partition was not feasible, to auction the property. Dissatisfied with the Preliminary Decree, the Applicant filed Civil Appeal No. 54 of 2023, which was transferred to the Court of the learned XIIth Additional District Judge, Karachi-South (here-in-after referred to as the "Appellate Court"). The Appellate Court, however, dismissed the appeal through its Impugned Judgment and Decree dated 07.09.2023, upholding the trial Court's decision.

5. The learned counsel for the Applicant argued that the impugned order and preliminary decree were passed without recording evidence from both parties, contrary to Order XX Rule 18 of the CPC, which mandates a judgment in partition

matters. The trial court misinterpreted the legal provisions under Order XX Rule 13 of the CPC, resulting in an unjust decision. Furthermore, the plaint was not maintainable due to procedural defects, and the plaintiff deliberately concealed facts regarding both movable and immovable properties from the court. It is further argued that the plaintiff also failed to disclose a family settlement dated 03/01/2014, which was based on the oral will of their mother. Additionally, the plaintiff/respondent is issueless, and there are allegations of depriving the actual legal heirs of their rightful inheritance. It is further alleged that the plaintiff concealed substantial assets, including:

One shop and two flats
Gold ornaments (100 tolas and 52 tolas)
Rental income of Rs. 50,000/- from a shop in Clifton, Karachi
Rs. 2,50,000/- rental income from an antenna installed on a plot (RC-5/94, Saira Bibi Building)

Moreover, it was contended that the plaintiff/respondent expelled the defendant's adopted son and unlawfully retained dowry articles, including 52 tolas of gold. The appellate court relied on the order dated 19/04/2022 but failed to consider the subsequent order dated 20/05/2022, which had set aside the earlier order dated 28/02/2022. The matter was remanded to the trial court for fresh adjudication, but the directions were not properly followed. The trial court failed in its duty to ensure justice and instead focused on technicalities. It overlooked the written statement and issued a suo motu order that was in direct contradiction to Order XX of the CPC and Section 54 of the CPC. The provisions of the Partition Act were disregarded, leading to the deprivation of the applicant's inheritance rights. The impugned orders were inconsistent, particularly in summary proceedings. Despite an application under Order XL Rule 1 of the CPC, the court refused to appoint a commissioner

to inspect the suit properties and collect evidence. The appellate court dismissed the appeal without calling for the record and proceedings (R&P) from the trial court, violating principles of due process. The impugned order violated Articles 4 and 10-A of the Constitution of Pakistan, which guarantee due process and the right to a fair trial. As a result of a misinterpretation of the WILL/Family Settlement, the applicant was denied his rightful inheritance. In conclusion, the learned counsel for the Applicant prayed for allowing of the Civil Revision Application and requested that the Suit be remanded for reconsideration of the application under Order XL Rule 1, CPC.

6. Per contra, the learned counsel for the Respondent has argued that the Applicant and Respondent are the sole legal heirs of Saira Bibi (deceased) and joint owners of the inherited property. The Applicant admitted shared ownership in the Written Statement (WS) but withheld the Respondent's due share of rental income. The Applicant relies on an alleged agreement dated 03.01.2014, which was neither executed nor witnessed by the deceased. The agreement does not impact the Respondent's legal entitlement and is irrelevant to the present proceedings. Suit 1126 sought partition or auction of the inherited property, leading to the Preliminary Decree dated 08.05.2023. The trial Court applied Order XX Rule 18 CPC correctly, relying on legal precedents (PLD 2017 Sindh 324, 2021 CLC 612 Lahore, PLD 2022 Sindh 423, AIR 1967 SC 1470). The decree directed partition through the Nazir or auction if indivisible. The Applicant unsuccessfully challenged the rent collection order, later attempting to withdraw rents in violation of court directives. Civil Appeal 54 was dismissed on 07.09.2023, affirming the legality of the Preliminary Decree. The Applicant's subsequent review application was filed solely to delay proceedings and later withdrawn after prolonged non-service. The Applicant misrepresented facts before the trial

court to hinder partition or auction. The Impugned Order is well-reasoned, addressing all factual and legal aspects. The Respondent, an elderly widow, has been deprived of her rightful share due to the Applicant's delaying tactics. The revision application is a clear abuse of process, aimed at frustrating the Respondent's lawful claim. Lastly, it is argued that the Civil Revision Application should be dismissed with special compensatory costs imposed on the Applicant for misuse of legal proceedings and deliberate delays.

7. I have thoroughly examined the arguments presented by the learned counsel representing both parties and have carefully reviewed the material on record with the utmost diligence. Upon reviewing the record, it is evident that the Applicant has acknowledged that the Suit Property originally belonged to the deceased mother, Saira Bibi. According to Muhammadan Law, following her demise, the property is required to be distributed among the legitimate legal heirs. Both parties acknowledge that they are the only surviving legal heirs of the deceased, eliminating disputes over their inheritance rights. The Applicant relied on an alleged family settlement dated 03.01.2014, but this was neither executed nor witnessed by the deceased, making it legally irrelevant to the distribution of the estate. Muhammadan Law grants heirs the right to seek partition of inherited property. Since the property consists of multiple rental units, if it cannot be practically partitioned, auctioning it and distributing the proceeds is a lawful solution. The Applicant admitted to collecting rental income but failed to distribute the Respondent's due share, violating inheritance rights under Islamic law. The trial Court, recognizing the indivisibility of the property, directed the Nazir to administer, partition, or auction the property. This aligns with Islamic inheritance principles, ensuring a just division. The Applicant's claim of an "oral will" is legally weak as

Islamic inheritance laws prioritize fixed shares for heirs unless a valid, written will exists, which does not appear to be the case here. Under Muhammadan Law, inheritance follows a clear distribution process. As the deceased's estate is not solely owned by a single party, it must be distributed in accordance with Muslim Personal Law (Shariat). In comparable situations, such as in the case of *Zafar Mahmood Khan v. Muhammad Ali Khan and another* (2017 MLD 1727), this Court has ruled that: "Party claiming any right on the basis of independent title or character, may file separate suit but on that plea, the process of 'partition' shall not stop, where prima facie the status of parties as co-sharer and that of subject matter as 'movable or immovable' is evident. The proceeding of 'partition' shall be undertaken in summary manner as 'short cause matter' and not as long cause for years and years because this provision is aimed to give the entitled persons their due as early as possible for which they are legally entitled". It has further been held by this Court that "As discussed above, I have come to the conclusion that there was no need to frame said issues as prima facie the status of the parties as joint owners / co-sharers is evident and patent from the record hence the requirement of law was to pass preliminary decree whereby seeking proposal from the Nazir or the one, which the Court feels proper, with regard to partition of the suit property".

8. In Case of *Saifullah Khan and others v. Mst. Afshan and others* (PLD 2017 Sindh 324), it was held by division bench of this Court that: "We have heard the learned counsel for the parties, perused the material available on the record of the case and our considered view thereon is that main purpose of a suit for administration is to have the estate of the deceased administered by Court, this Court can, for the purpose of achieving the object of such a suit besides determining the question of title to any property, the power of Court also extends to determining the existence or validity of any

alienation of property, not only by other persons after the death of deceased, but also by deceased himself during his life time. Under a decree passed in Administration Suit, the Court takes over charge for determining property and entire process of realization, payment, settlement and distribution of assets of deceased has to be made under supervision of the Court”.

9. The learned trial Court and the learned Appellate Court have affirmed the respondent’s entitlement to a share in the property, emphasizing that the case is consistent with established legal principles. By issuing the preliminary decree, the learned trial court has meticulously followed the provisions of Order XX Rules 13 and 18 of the Code of Civil Procedure (C.P.C.). As a result, no prejudice has been caused to the applicant’s rights, which have, in fact, been duly protected and safeguarded. The learned trial Court as well as the learned Appellate Court have thoroughly examined the material available on record and all the points raised by the Applicant were duly considered.

10. Regarding the argument put forth on behalf of the Applicant—that the application under Order XL Rule 1 of the C.P.C. must be decided as per the direction of the learned Appellate Court before proceeding further—it is evident from the record that the learned Trial Court has already passed a Preliminary Decree. Through this decree, the Nazir was appointed as the administrator of the Suit Property, granting him full authority to collect rent and carry out partition. Furthermore, if the property is deemed indivisible, it is to be auctioned, with the proceeds distributed among the legal heirs of the deceased. Given these circumstances, the very objective of filing the application under Order XL Rule 1 of the C.P.C. has already been fulfilled, rendering the application infructuous. Therefore, the Preliminary Decree cannot be set aside solely on this ground. Consequently, the present Civil Revision

Application filed on behalf of the applicant lacks substantive merit.

11. Since the Applicant has challenged the concurrent findings of fact recorded by the learned Courts below, it was incumbent upon the Applicant to demonstrate that the Courts below:

- (a) exercised a jurisdiction not vested in them by law, or
- (b) failed to exercise a jurisdiction so vested, or
- (c) acted in the exercise of their jurisdiction illegally or with material irregularity.

Unless any of the above conditions are satisfied, the concurrent findings of the learned courts below cannot be overturned under revisional jurisdiction as per Section 115 of the Civil Procedure Code, 1908 ("C.P.C."). It is a well-established principle that a revisional court, while exercising jurisdiction under Section 115 of the C.P.C., generally does not interfere with concurrent findings of fact recorded by the two courts below. This principle is based on the premise that an appellate court serves as the final authority for determining disputed questions of fact. However, this rule is not absolute. There are exceptional circumstances where intervention under Section 115 of the C.P.C. may be warranted, such as in cases of gross misreading or non-reading of evidence on record, or when the courts below have exercised their jurisdiction illegally or with material irregularity. In this regard, reliance may be placed on the dictum laid down by the Supreme Court of **Pakistan in *Haji Wajdad v. Provincial Government Through Secretary Board of Revenue Government of Balochistan, Quetta and others* (2020 SCMR 2046)**. It is a matter of record that the Applicant has not only failed to demonstrate gross misreading, non-reading of evidence, illegality, or material irregularity but has also been unable to establish any exceptional circumstances warranting intervention in the

concurrent findings of fact recorded by the learned Courts below.

12. In view of the foregoing reasons, this Civil Revision Application, lacking merit, is hereby dismissed. The concurrent findings of fact, as recorded in the impugned judgment and decree of the learned Appellate Court, as well as the preliminary decree passed by the learned Trial Court, are well-founded and do not justify any interference by this Court. Accordingly, the parties shall bear their own costs for these proceedings.

JUDGE