IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Revision Application No. S- 193 of 2011

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE

1. *For hearing of main case*
2. *For hearing of CMA 977/2011 (stay)*

Date of hearing: ***24.03.2025***

Date of order: 28***.03.2025***

Applicant: Through Mr. Ali Gul Abbassi, Advocate

Respondents No 6 to 8: Through Mr. Soomer Das R. Permani, Advocate

Respondents No 1 to 5: Through Mr. Ghulam Abbass Kuber, AAG.

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JUDGMENT

NISAR AHMED BHANBHRO, J. The instant Revision Application is directed against the Judgment and Decree dated 27.09.2011 (**the impugned judgment and decree**) passed by the Court of Learned Additional District Judge II Ghotki (**the Appellate Court**) in Civil Appeal No 02 of year 2009, whereby the judgment and decree dated 29.01.2009 and 02.02.2009 passed by the Court of Learned Senior Judge Ubauro (**the Trial Court**) in First Class Suit No 09 of 2003 was set aside and the suit filed by the applicant was dismissed.

2. The facts in brief, for filing of the instant revision application are that the applicant (Plaintiff) filed suit No 09 of 2003 before the Trial Court seeking relief of Declaration, Permanent and Mandatory injunction averring therein that he was granted 06-18 acres of land in an un-assessed (UA) No.366 in Deh Jhangal Malik by the then Colonization Officer Gudoo Barrage Sukkur in the year 1991-92. On payment of full tenancy amount through installments,

the land was surveyed and survey numbers 53/1(1-05 acres), 54/1(1-35 acres), 55/3(1-05 acres), 55/4(2-02 acres) and 74/2(0-3 acres) admeasuring in all 6-18 acres (**the Suit Property**) were carved out of the UA No 366. The Colonization Officer issued T.O (Tear Off) Form, pursuant to that Revenue Authorities maintained entry No.49 dated 27.06.1997 in Record of Rights and mutation Register in favor of the Applicant. Since the date of Grant Applicant was in possession of **the suit property**. It is further averred that out of the same UA No.366, an area of 12-39 acres was granted to Respondent No.8. That to the utter surprise of the applicant the then Executive District Officer Revenue/Respondent No.2 cancelled the grant with respect to **the Suit Property** vide order dated 10.02.2003 **(the impugned order),** without issuing any notice and affording an opportunity of hearing to the applicant. The impugned order passed by the Respondent No.2 was illegal ab initio, null and void and was not binding upon the applicant as it was passed in violation of the settled principles of law. That few days prior to filing of the suit, Respondents Nos. 6 to 8 came to **the Suit Property** and tried to dispossess the applicant. it was then when he came to know about **the impugned order** passed by the Respondent No.2. The Applicant filed suit before **Trial Court** praying inter alia therein to set aside **the impugned order** and grant of permanent and mandatory injunction restraining thereby the Respondents from interfering with the rights of the Applicant in **the Suit Property.**

3. The Respondents No 6 to 8 filed joint written statement pleading that the Grant in favour of the Applicant was made on the orders of the Chief Minister Sindh who was not competent authority; **the Suit Property** was situated within 20 chains of Village Site of Village Jhangal Malik which fell under the prohibitory clause 13 of Land Grant Policy and could not be granted for cultivating purpose; that **the Suit Property** was disposed of secretly without holding open katchery; the Applicant was not Hari but a businessman residing in deh Nerly Taluka Ubauro about 6 to 8 kilometers away from **the Suit Property**, he was not entitled for grant of land on harap conditions. The suit was barred under section 11 of the Sindh Land Revenue Jurisdiction Act 1876, prayed for dismissal of the suit.

4. The Trial Court based upon the divergent pleadings of the parties framed five issues. In support of respective claims parties led evidence. Trial Court vides Judgment and Decree dated 29.01.2009 and 02.02.2009 decreed the suit of the plaintiff as prayed. The Respondents No. 6 to 8 filed Appeal No.02 of 2009 before the Court of Learned District Judge, Ghotki, which was made over to the Appellate Court for disposal according to law. The Appellate Court after hearing the parties allowed the appeal and dismissed the suit of the applicant, hence this Revision Application.

5. Mr. Ali Gul Abbassi Learned Counsel for the Applicant contended that the applicant was granted land after fulfilling all formalities viz. holding open katchery/Jalsa Aam, scrutiny with regard to entitlement of applicant for grant of land. Applicant paid the entire amount, the land was surveyed and thereafter T.O form was issued in his favour. He further contended that the impugned order was passed without giving notice and right of hearing to the applicant. Respondent No 2 passed the impugned order in stereotyped style and cancelled the grant without assigning any sound reasons. The Suit Property was situated outside the village site of Village Jhangal Malik and it did not fall under prohibitory clause 13 of the Land Grant Policy, 1989. He contended that the impugned order was arbitrary in nature, illegal ab initio and without jurisdiction. He contended that the status of land got changed on issuance of T.O Form after full payment. He contended that the Applicant came to know about the impugned order when Respondents No 6 to 8 and other private persons started causing harassment and interfering with the possession of the applicant over the Suit Property then he filed suit. He contended that the suit was competent and not hit by Section 11 of the Sindh Land Revenue Jurisdiction Act, 1876. He contended that the learned Appellate Court failed to settle points for determination and passed the impugned judgment without proper appreciation of the evidence. He prayed that the Revision Application be allowed by setting aside the impugned judgment and decree and judgment and decree passed by the Trial Court be maintained.

He placed reliance upon the cases of **Pakistan through Secretary, Ministry of Finance vs. Muhammad Himayatullah Farukhi** (PLD 1969 Supreme Court 407), **Mitho**

Khan vs. Member Board of Revenue Sindh Hyderabad and another (PLD 1997 Karachi 299), **Mst. Razia Sultana and 2 others vs. Chairman Evacuee Trust Property Board Lahore and 3 others** (2002 CLD 1257), **Messers Ahmed CLINIC vs. Government of Sindh and others** (2003 CLC 1196) and **Dr. Ghulam Hussain and others vs. Ahmed Nawaz and 8 others** (2013 MLD 1845).

6. Mr. Soomer Das R. Parmani, Learned counsel for Respondents No. 6 to 8 contended that the Suit Property was situated within 20 chains of the village site. The Respondent No 2 during hearing of the application visited the Suit Property and found the same within 20 chains of the village site. He contended that any land situated within 20 chains of the village Site cannot be granted in terms of prohibition contained in clause 13 of the Land Gant Policy 1989. He contended that the applicant admitted in evidence that the land was granted to him by the orders of Chief Minister and under the law Chief Minister was not competent authority to order for grant of land to any person. He contended that the suit was hit by Section 11 of the Sindh Land Revenue Jurisdiction Act 1876 as the impugned order passed by Respondent No 2 was not challenged before the competent Revenue forum. He prayed for dismissal of revision application.

He relied upon the cases of **Abdul Haque Indher and others vs. P.O Sindh through Secretary Forest, Fisheries and Livestock Department Karachi and 3 others** (2000 SCMR 907), **Jehan Khan vs. Province of Sindh and others** (PLD 2003 Karachi 691), **unreported case of this Court in the case of Muhammad Aslam vs. Qadir Bux and others** (C.P No. D-171 of 2000) decided on 28.11.2000, **Sindh People's Welfare Trust Regd through Secretary vs. Government of Sindh through Secretary Housing, Town Planning and Local Government and 2 others** (2005 CLC 713), **Iqbal Hussain vs. P.O Sindh through Secretary Housing and Town Planning Karachi and others** (2008 SCMR 105) and **American International School System vs. Mian Muhammad Ramzan and others** (2015 SCMR 1449).

7. Mr. Ghulam Abbass Kubar, Learned Assistant Advocate General Sindh has supported the Judgment passed by the Appellate Court and contended that land was granted to the applicant in violation of the Land Grant Policy, therefore, rightly cancelled by the Respondent No 2.

8. Heard Learned Counsel for the Parties and perused the material available on record with their able assistance.

9. The moot point involved in the instant matter is the grant of land to the applicant from UA No 366 of Deh Jhangal Malik Taluka Ubauro and its cancellation by the Executive District Officer Revenue Ghotki/Respondent No 2 through the impugned order dated 10.02.2003.

10. The Trial Court framed issue No 3 to resolve the above controversy and concluded that the suit was competent as the Executive District Officer Revenue who passed the impugned order lacked jurisdiction. No notice of hearing was given to the Applicant, the Suit Property did not fall within the 20 chains of village site as in between the village and the suit property there existed a watercourse and road. Decreed the suit of the applicant as prayed.

11. The Appellate Court overturned the findings of the Trial Court under the premise that prior to filing of the suit, the applicant had failed to exhaust remedy available under the law by way of filing appeal against the impugned order before Board of Revenue therefore the suit was not maintainable being hit by section 11 of the Sindh Land Revenue Jurisdiction Act 1876. The suit property fell within 20 chains of Village Site; therefore the grant was illegal and rightly cancelled by Respondent No 2. Dismissed the suit of applicant.

12. Scanning of the evidence adduced by the parties revealed that Plaintiff / applicant examined himself, PW - 02 Mohammed Ayoub, PW - 03 Roshan Ali and PW – 04 Dhani Bux. The plaintiff deposed that he was condemned unheard and the impugned order was

passed in violation of law. PW – 03 Roshan Ali and PW – 04 Dhani Bux were summoned by the Trial Court on the request of applicant to produce revenue record regarding grant of the Suit Property. PW – 03 Roshan Ali in his evidence produced the report dated 01.11.2002 of Mukhtiarkar Ubauro regarding the visit of the Suit Property and status of Revenue Record. The Mukhtiarkar Ubauro confirmed the existence of Revenue Record in favor of the Applicant and his cultivating possession over the Suit Property. For the sake of convenience, the report available at page No 101 of the memo of revision application is reproduced below:

No SIM/ 1890 of 2022
O/O the Mukhtiarkar (Revenue)
Ubauro dated 01.11.2022

To

The Executive District Officer
(Revenue) Ghotki at Mirpur Mathelo

Subject: ***REPORT ACCORDING TO THE RECORD OF RIGHTS REGARDING THE BLOCK NOS. 53/1 AND OTHERS AREA 6-18 ACRES FROM U.A NO 366 OF DEH JHANGAL MALIK TALUKA UBAURO***

Reference:Tthe verbal instructions of your good self conveyed through Bashir Ahmed Malik, Assistant Revenue E.D.O Office Ghotki dated 28.10.2002

In pursuance of the directions of your goodself conveyed through Mr. Bashir Ahmed Malik, Assistant, it is submitted that the report has been called for from the Tapedar of the beat, who has after verification of the records of rights reported that an area of 6-18 acres comprising of Block Nos 53/1(1-05 acres), 54/1(1-35 acres), 55/3(1-05 acres), 55/4(2-02 acres) and 74/2(0-3 acres) Total Area 6-18 acres from U.A No 366 of Deh Jhangal Malik, Taluka Ubauro was granted to Rasool Bakhsh son of Habibullah Bhutto by the Colonization Officer, Guddu Barrage Sukkur. The entry whereof was made in V.F VII(B) vide No 49 dated 27.06.1992, meanwhile the grant had been cancelled by the Government of Sindh vide BOR Sindh Hyderabad's Notification No 762 dated 19.05.1994, the note whereof is made in the record of rights.

Further to submit that the said grant was restored by the Government of Sindh Hyderabad's Notification No

PS/DE/LE/486 dated 08.08.1998. The note whereof is also made in the record of rights. As such the grant grant made to Rasool Bakhsh s/o Habibullah Bhutto stands intact and he is the lawful owner of the said property.

It is submitted that as per the instructions, I visited the site personally along with the supervising Tapedar and the Tapedar, in order to ascertain the cultivation and possession of the said land.

In this respect it is submitted that the grantee has cultivated an area of 4-18 acres with the cotton and that an area of 0-10 acres with kalargah, the remaining area is uncultivated out of which an area of about 0-01 acre is occupied with the construction of two rooms and verandas by the Bhuttas. As far the remaining area is concerned it has been filled with earth by the Bhuttas and that the fresh earth laid down is clearly apparent.

Recently M/S Jan Mohammed Malik and others have forcibly raised the construction of two rooms out of which one is fully constructed whereas other is partially constructed.

The Rooms and verandah constructed by Bhuttas since last 20 years, are not in abide able condition and have demolished away.

This is for your kind information, record, perusal and further orders as deemed fit and proper under the circumstances."

Sd/

Mukhtiarkar Land Revenue Ubauro

13. The Respondents No 6 to 8 examined DW – 01 Bashir Ahmed, DW – 02 Khuda Bux who supported the version taken in Written Statement. Surprisingly the Respondents No 6 to 8 did not challenge the report of Mukhtiarkar produced in evidence by PW – 03 Roshan Ali, either by producing any witness from Mukhtiarkar Office or by seeking assistance of the Court for inspection of the Suit Property to contradict the factum of possession of the applicant and falling of the Suit Property outside the Village Site. In the scenario, the version of the Applicant / Plaintiff regarding his ownership, possession since last 20 years and status of the Suit Property being agricultural went unchallenged.

14. The Respondent No 2 while dealing with the application of Respondents No 6 to 8 passed following orders, available at page No 77 of the memo of Revision petition, the same is reproduced for sake of convenience:

OFFICE OF THE EXECUTIVE DISTRICT OFFICER (REVENUE) GHOTKI @ MPM

No. EDO/HVC/RAC/ - of 2003. Dated-

STATE

VERSUS

Jan Mohammed s/o Mohammed Paryal Malik and Bashir Ahmed son of Allah Dad Malik, r/o Village Jhangal Malik Taluka Ubauro

In the matter of allotment – reservation of Land viz. Serial No 53/1(1-05 acres), 54/1(1-35 acres), 55/3(1-05 acres), 55/4(2-02 acres) and 74/2(0-3 acres) admeasuring in all 6-18 acres from Deh Jhangal Malik Taluka Ubauro

Order:

In pursuance of order of Member (L.U) Board of Revenue Sindh in his letter No. P.S./MBR/(LU) / 1112 / 2000 of November 2002, received from District Coordination Officer Ghotki @ Mirpur Mathelo, the record in respect of grant of state land of Deh Jhangal Malik Taluka Ubauro in respect of applicant Jan Mohammed, Bashir Ahmed and other. The record was called from the Mukhtiarkar (Estate) Ghootki @ Mirpur Mathelo for examining the legality and correctness in exercise of suo moto revision /jurisdiction vested in the undersigned under Sindh Land Revenue Act 1967. I have also visited the site for proper verification and examining the factual position.

I have heard the applicant and after examining the record and site facts and come to the conclusion that the land acquisition is within 20 chains of village Jhangal Malik Taluka Ubauro.

The Land in question is already in possession of applicants 6- 18 acres 53/1(1-05 acres), 54/1(1-35 acres), 55/3(1-05 acres), 55/4(2-02 acres) and 74/2(0-3 acres) of Deh Jhaangal Malik is hereby reserved for Asaish of the Villagers of Village Jhangal Malik Taluka Ubauro.

Announced on 10.02.2003.

sd/

Hidayatullah Rajper

Executive District Officer Revenue

Ghotki @ Mirpur Mathelo

15. The Colonization and Disposal of Government Lands (Sindh) Act 1912 (**the said Act**) provides a mechanism for grant of state land on harap conditions, cancellation of the grants in case of any violation on the part of any allottee or grantee. Section 10 of the said Act empowers the Government of Sindh to issue statement of conditions for grant or allotment of statement land for agriculture purposes. The land so granted can be cancelled for the reasons specified in sub section 5 of the Section 10 of the said Act. For the sake of convenience section 10 of the said Act is reproduced below:

> 10. **Issue of statement of the conditions of tenancies**: - (1) *The Board of Revenue subject to the general approval of the Government may grant land in a colony to any person on such conditions as it thinks fit.*
>
> *(2). The Provincial Government may issue statement or statements of the conditions on which it is willing to grant in a colony to tenants.*
>
> *(2A). Notwithstanding anything contained in sub section (1) or sub section (2) such land shall not be exchangeable with private or kabuli land.*
>
> *(3). Where such statements of conditions have been issued, the collector may, subject to the control of the Board of Revenue, allot land to any person, to held subject to such statement or conditions under sub section (2) of this section, as the collector may by written order declare to be applicable to the case.*
>
> *(4). No person shall be deemed to be a tenant or to have any right or title in the land allotted to him until such a written order has been passed and he has taken possession of the land with the permission of the collector. After possession has been so taken, the grant shall be held subject to the conditions declared applicable thereto.*
>
> *(5). If a person, who has been granted, allotted or leased out land after applicability of this Act to the Province of Sindh, or a person who may be granted land under this Act hereinafter for specific purpose has:-*
>
> *(a) failed to deposit the occupancy price within a period of Six months after the issuance of offer letter or allotment letter regarding grant,*

allotment or lease of land, such offer letter or allotment shall automatically stand withdrawn and shall not be restored; provided that the grantee, allottee or lessee may apply afresh for grant, allotment or lease of the land and the Competent Authority may make a fresh grant, allotment or lease as the case may be.

(b) failed to use the land for the purpose for which it was granted or allotted or converted or leased out and the period of five years from the date of grant, allotment, conversion or lease has expired, the grant, allotment, conversion or lease of the land shall automatically stand cancelled and the amount deposited shall stand forfeited.

Provided that the Competent Authority may extend the period for one year more in the justified cases on payment of ten percent of the occupancy price.

Provided further that the Chief Minister may extend the period of completion of projects in respect of land granted for education and health purposes in the cases where the delay in completion of project is not on account of any negligence on the part of grantee.

Literal reading of sub section 5 of section 10 makes it clear that the breach of the conditions prescribed in clauses (a) and (b) of sub-section 5 will follow the penal consequences of cancellation of grant or allotment.

16. Careful examination of the impugned order dated 10.02.2003 passed by the Respondent No 2 (Executive District Officer Revenue), inferred that the grant in favor of the applicant was not cancelled on account of any deficiency or breach envisaged in sub – section 5 of the section 10 of the said Act. It was cancelled on the ground that the Suit Property fell within 20 chains of the Village Site, hence was not permissible for grant as envisaged in condition 13 of the Statement of Conditions of 1989 issued by Land Utilization Department Government of Sindh for grant of state land. While dealing with the application of Respondents No 6 to 8 under Revision proceedings, the Respondent No 2 had called a report

from concerned Mukhtiarkar, available at page No 101 of the memo of the Revision Application (reproduced in Para 12). Mukhtiarkar Ubauro in its report disclosed that the suit property was under cultivating possession of the applicant since last 20 years, in between the suit property and village there was a watercourse and road. The report of Mukhtiarkar did not support the stance of the Respondent No 2 taken in the impugned order for cancellation of grant that the land was located within 20 chains of the village site and was under possession of Respondents No 6 to 8.

17. The Respondent No 2 while passing the impugned order lost sight of the important aspect of case, that the grant had already matured and applicant had become full owner of the Suit Property. After issuance of T.O Form, entries in the record of rights were also maintained in his favor, the better course available to the Respondent No 2 was to advise the applicants to avail a remedy before appropriate forum. Prior to year 1975 the Colonization Authorities were vested with a jurisdiction under Section 30 of the said Act to look into the grants obtained through fraud or misrepresentation, the Colonization authorities were empowered to cancel grants at any time in referred situation. The said provision of law was omitted by the Sindh Repealing and Amending Act 1975 (Sindh Act No XVII of 1975). The Legislature in its own wisdom omitted section 30 from the said Act, thus the Revenue/ Colonization Authorities did not enjoy the powers to cancel grants after acquisition of the proprietary rights, as it happened to be prior to the amendments through the Sindh Act No XVII of 1975.

18. The Respondent No 2 passed the impugned order by invoking suo moto jurisdiction enjoyed by him under section 164 of the Sindh Land Revenue Act 1967 (SLRA). No doubt the Commissioner (the Respondent No 2 in the present case) and Board of Revenue may pass appropriate orders at any time of their own motion regarding any of the proceedings pending or disposed of by the subordinate Revenue Forum but such powers were not unfettered and subject to certain limitations. Exercise of such powers without affording opportunity of hearing to an interested party would not only be violation of the principles of natural justice but also contrary to the provisions of section 164 of the SLRA itself, which reads as under:

S. 164 Revision: (1) The Board of Revenue may at any time, on its motion or an application made to it within thirty days of the passing of any order, call for the record of any case pending, or disposed of by any Revenue Officer subordinate to it.

(2) The Commissioner or Collector may at any time, of his motion or an application made to him within thirty days of the passing of any order, call for the record of any case pending, or disposed of by any Revenue Officer under his control.

(3) If in any case in which the Collector has called for a record he is of opinion that proceedings taken or order made should be modified or reversed, he shall report the case with his opinion thereon for the orders of the commissioner.

(4) The Board of Revenue may, in any case called for under sub section (1) and a Commissioner may, in any case called for under sub section (2) or reported to him under sub – section (3), pass such orders as it or he thinks fit.

Provided that no order shall be passed under this section reversing or modifying any proceedings or order of a subordinate Revenue Officer affecting the rights of any person without giving such person an opportunity of being heard.

Provided further that any order passed in revision under this section shall not be called in question on an application of the party affected by such order;

Provided also that no Revenue Officer other than the Board of Revenue shall have power to remand any case to a lower authority

19. The impugned order dated 10.02.2003 has been passed in violation of mandatory provisions of section 164 of the SLRA, the applicant was condemned unheard, the impugned order was passed behind his back, which violated his rights as to the fair trial thus perverse to the law. The applicant had an inalienable right of hearing and impugned order was passed in

violation of principles of natural justice and doctrine of Audi Alterm Partem was applicable to it, on that score alone the impugned order dated 10.02.2003 was not sustainable under the law.

20. Adverting to the contention of the Learned Counsel for the Respondents No 6 to 8 that the suit was barred under section 11 of the Sindh Land Revenue Jurisdiction Act 1876. The objection was untenable under the law having no force, for the reasons that the Respondent No 2 passed an order under section 164 of the SLRA 1967, by exercising powers of suo moto. Section 164 SLRA vests the Commissioner and the Board of Revenue with an authority to revise or alter the findings of subordinate forum at any time of its own motion, otherwise the limitation to challenge any order passed by the sub ordinate Forum in appeal or revision was 30 days. The Respondent No 2 examined the case of applicant regarding his eligibility for grant of land after 10 years on an application filed by the Respondents No 6 to 8, though time barred, but converted into information for waiver of limitation. The Respondent No 2 was not competent to take suo moto notice of grant on an application filed by an interested party. The order of a Revenue Authority passed under its Revision Jurisdiction attains finality as no right of appeal, second revision or review was provided under the law. The applicant had no other remedy available under the law except to file a civil suit; as such the embargo contained in section 11 of the Sindh Land Revenue Jurisdiction Act 1876 did not apply to the present case. The Section 11 is reproduced below for the ease of reference:

> ***11. Suits not to be entertained unless plaintiff has exhausted right of appeal:*** *No Civil Court shall entertain any suit against the Government on account of any act or omission of any revenue officer unless the plaintiff first proves that previously to bringing his suit, he has presented all such appeals allowed by the law for the time being in force as, within the period of limitation allowed for bringing such suit, it was possible to present.*

21. The Applicant/Plaintiff in the pleadings took a specific plea that Respondent No 2 lacked jurisdiction to entertain the application filed by the Respondents No 6 to 8 and pass any order relating to cancellation of grant, this particular plea can only be examined by the Civil Court being the Court of Ultimate Jurisdiction. This view finds support from the dicta

laid down by the Honorable Supreme Court in the case of **Mian Mohammed Latif Versus Province of West Pakistan through Deputy Commissioner Khairpur and others** reported in **PLD 1970 Supreme Court 180**. The Honorable Court while dealing with question of bar contained in section 11 of the said Act was pleased to hold as under:

> **"There is no doubt that under it, ordinarily a party in revenue matters should exhaust all his remedies by way of appeal before invoking the aid of the civil court. But there are different considerations where the allegation of party is that the impugned order is nullity in the eye of law. There is ample authority that in such cases the jurisdiction of the Civil Court is not barred.**"

22. Under Article 4 of the Constitution of the Islamic Republic of Pakistan right of an individual to be dealt with in accordance has been guaranteed. To ensure that the subordinates Courts or quasi-judicial forums exercise jurisdiction vested in them in accordance with and within the bounds of law, the High Court has been bestowed with supervisory jurisdiction of superintendence. This supervisory role has its own significance in the dispensation of justice. Whenever it appears to the High Court that the subordinate courts have exercised a jurisdiction not vested in it by law, or have failed to exercise a jurisdiction so vested, or exercised jurisdiction illegally or with material irregularity, it can take cognizance of the matter in exercise of its revision jurisdiction under section 115 read with section 151 of the Code of Civil Procedure in matters relating to civil disputes to rectify the illegalities or/and irregularities in the judgments and orders of the subordinate courts, to secure the ends of justice. The Honorable Supreme Court of Pakistan in the case of **Mst Faheeman Begum (deceased) through Legal Heirs Versus Islamuddin (deceased) through Legal Heirs and others** reported in **2023 SCMR 1402** was pleased to hold as under:

> **"7. If the concurrent findings recorded by the lower fora are found to be in violation of law, or based on misreading, non-reading of evidence, then they cannot be treated as being so sacrosanct or sanctified that cannot be reversed by the High Court in revisional jurisdiction, which is pre-**

emptively corrective and supervisory in nature. In fact, the Court in its revisional jurisdiction under section 115 of the Code of Civil Procedure 1908("C.P.C") can even exercise its suo moto powers to correct any jurisdictive errors committed by a subordinate Court to ensure strict adherence to the safe administration of justice. The jurisdiction vested in the High Court under section 115 C.P'C is to satisfy and reassure that the order is within its jurisdiction, ought to exercise jurisdiction and, in abstaining from exercising jurisdiction, the Court has not acted illegally or in breach of some provision of law, or with material irregularity, or by committing some error of procedure in the course of the trial which affected the ultimate decision. The scope of revisional jurisdiction is restricted to the extent of misreading, non-reading of evidence, jurisdictional error or an illegality in the judgment of the nature which may have a material effect on the result of the case, or if the conclusion drawn therein is perverse or conflicting to the law."

23. Meticulous perusal of record and reappraisal of the evidence revealed that the Respondent No 2 exercised a jurisdiction not vested in it under the law and the Appellate Court failed to exercise jurisdiction vested in it. The wrong committed by the Respondent No 2 was rectified by the Trial Court through judgment and decree dated 29.01.2009 and 02.02.2009 respectively but the Appellate Court failed to comprehend the legal sustainability of the impugned order and authenticated the same which resulted in miscarriage of justice. Though the Appellate Court passed the impugned judgment and decree dated 27.09.2011 violating the mandatory provisions of Rule 31 of Order XLI of CPC without framing the points for determination, however the issue involved in the lis was a legal controversy and an elaborate discussion was made on the said legal controversy in the impugned judgment, therefore it would not be in the fitness of things to remand this matter back for decision afresh on appeal, as the parties are under litigation since last about more than 22 years and mere non

mentioning of the points under issue would not otherwise render the judgment nullity when the specific question came under consideration while dealing with the appeal.

24. With reverence and regards the case laws relied upon by the Learned Counsels for the parties, do not attract to the peculiar facts of the case and are distinguishable.

25. Sequel to the above discussion, this Court has reached to a conclusion that , this is fit case for exercising jurisdiction conferred under section 115 of CPC, the revision application is allowed, the impugned Judgment and Decree dated 27.09.2011 passed by the Appellate Court are not sustainable, consequently the same are set aside. The Judgment and Decree dated 29.01.2009 and 02.02.2009 respectively passed by the Trial Court are maintained, with no order as to the costs.

The Revision Application stands disposed of in above terms along with the listed application.

JUDGE