

*Judgment Sheet*  
**THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANO**  
**Civil Revision No. S-46 of 2017**  
*(Khuda Bux Marhato v/s. P.O Sindh through Secretary, Revenue & Ors.*

Date	Order with signature of judge
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Before:  
*Mr. Justice Nisar Ahmed Bhanbhro*

**Applicant:**  
Khuda Bux Marhato                      Through Mr. Muhammad Qasim Khan, Advocate.

**Respondents:**  
Province of Sindh and others              Through Mr. Munwar Ali Abbasi,  
Assistant Advocate General, Sindh.

Date of Hearing:                      15.09.2025  
Date of Judgment:                      15.09.2025

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**J U D G M E N T**  
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*Nisar Ahmed Bhanbhro J.-* Through this Civil Revision Application, the Applicant has challenged the conflicting findings of the Courts below. The Suit No 135 of 1990 Re. “Khuda Bux Versus Province of Sindh and 2 others”, filed by the Applicant seeking relief of Declaration, Possession and Permanent Injunction before the Court of Learned Senior Civil Judge Kandhkot (**Trial Court**) was decreed vide judgment and decree dated 06.02.1998 and 10.02.1998 respectively. The Civil Appeal No 04 of 1998 Re: “Province of Sindh and 2 others Versus Khuda Bux” filed by the Respondents before the Court of Learned 1<sup>st</sup> Additional District Judge Kandhkot (Appellate Court) was allowed vide judgment and decree dated 29.06.1998, (**impugned judgment and decree**) result thereof, the suit filed by the applicant was dismissed.

2. It is pertinent to mention that this Revision Application was filed before the Bench of this Court at Sukkur in the year 1998 and later on received by this Court by way of transfer for want of jurisdiction in year 2017.

3. The facts in brief leading to file this revision application are that the applicant is the owner of the land bearing Survey No.146, admeasuring 6-32 acres **(Suit Property)**, situated in deh Akhero, taluka Kandhkot, which was purchased by him through registered Sale Deed dated 01.05.1988. The Suit property remained in peaceful possession and enjoyment of the applicant for all means and purposes. The office of the Assistant Commissioner, Kandhkot, which was already constructed on the adjacent plot, erected the boundary wall on the suit property without consent and permission of the applicant, by dispossessing him, hence he filed suit for declaration of ownership and possession before Learned Trial Court.

4. On notices, the Assistant Commissioner, Kandhkot filed its written statement, wherein it was averred that the adjacent plot bearing No.142 was acquired by the Revenue Department for construction of the office of the Assistant Commissioner, Kandhkot in year 1966. It was averred that the khata of the Suit Property in favour of the applicant was doubtful as the Suit Property was transferred to him in violation of the Marshal Law Regulations 46-A as the land owned by the original owner Haji Sharif, was below the threshold of 16 acres, which mandated the owner to alienate the land holdings. It was further averred in the written statement the office of the Assistant Commissioner was constructed over survey No.142, which was owned by Bahadur Khan son of Mirzan Khan Suhriyani and it was acquired by the Revenue Department in the year 1966.

5. Learned Trial Court on the divergent pleading of the parties framed as much as Six issues, invited the parties to prove their claims through evidence.

6. In support of respective claims, the plaintiff examined himself, witness namely Maqsood Ahmed. The Defendants in support of the claim examined Abu Bakar Kanrani, the then Mukhtiarkar Kandhkot. The learned trial Court after hearing the parties decreed the suit of the plaintiff as prayed vide judgment and decree dated 06.02.1998 and 10.02.1998 respectively. The Respondents (Province of Sindh and 2 others) filed appeal against the judgment and decree of Learned Trial Court before the Court of learned District Judge, Jacobabad, which was made over to Learned Appellate Court for disposal in accordance with law. The learned

Appellate Court after hearing the parties allowed the appeal vide impugned Judgement and Decree dated 29.06.1998, reversed the findings of the Trial Court, set aside the judgment and decree under appeal and dismissed the suit of applicant. Hence this Civil Revision Application under section 115 of C.P.C.

7. Mr. Muhammad Qasim Khan, learned counsel for the applicant contended that the applicant is the lawful owner of the suit property. He argued that the ownership of the applicant over suit property was not disputed by the respondents. He argued that the suit property was unauthorizedly occupied by the office of Assistant Commissioner, Kandhkot. He argued that since the date of its illegal occupation by the Respondents, rent of the property was not paid to applicant. He contended that the respondents had acquired the land from one Bahadur Khan Suhriyani and area of the acquired land was specifically mentioned in the award, therefore, action on the part of the Assistant Commissioner, Kandhkot, illegally occupying the Suit Property was not justified and not sustainable under the law. He argued that if the suit property was required for public purposes, the Respondents could have acquired the same by resorting to the provisions of the Land Acquisition Act, 1894. He further contended that the appellate Court without framing of points for determination, allowed the appeal, which is violation of provisions of Order LXI Rule 31 C.P.C. he argued that the Appellate Court did not appraise the evidence as required under the law and there were serious misreading and non-reading of the evidence in impugned judgment and decree. He prayed to set aside the impugned judgment and decree passed by the appellate Court by maintaining the judgment and decree passed by Trial Court. He placed reliance on the case of Mst. Ameer Begum Versus Muhammad Naeem Khan and another (PLD 2000 SC 839), case of Amir Haider versus Shabir Ahmed through Legal heirs and others (200 SCMR 859), the case of

8. Learned Assistant Advocate General, Sindh contended that the Suit property is Government Property acquired by the Revenue Department for the construction of office of the Assistant Commissioner, Kandhkot. He argued that the applicant has no right or title in the suit property. He argued that the suit filed by the applicant was misconceived and rightly dismissed by the appellate court. He prayed for dismissal of revision application.

9. Heard arguments of the counsel for the parties and perused the material available on record.

10. Re-appraisal of the evidence adduced by the parties revealed that title of the applicant was not disputed in any manner in the pleadings filed by the Respondents. During cross examination of the applicant a suggestion was given to him that the office of the Assistant Commissioner was constructed much prior to the purchase of the Suit property by the applicant. The Counsel for Respondents put another suggestion to the applicant that the compound wall of Assistant Commissioner Office was erected some 25 years ago. This piece of evidence, was sufficient to infer that the boundary wall of the office was constructed latter on. The applicant during evidence produced the Khatas of land in his favour. Admittedly the respondents being officials of Revenue Department were the custodian of the record of rights, no adversity was pointed out in the said khata in the evidence. The applicant had also examined witness No.2, Maqsood Ahmed who was the officer of the office of the Assistant Commissioner, Kandhkot. PW 2 Maqsood Ahmed in his evidence before Trial Court produced letter dated 20.07.1991, issued by the Assistant Commissioner, Kandhkot, wherein it was stated that the original compound wall was demolished in year 1996 and new compound wall was erected thereafter, which covered the vacant area claimed by the applicant. The contents of the said letter demonstrated that the applicant had made representation to the Assistant Commissioner, wherein the measurement of the area under possession of the office of the Assistant Commissioner, Kandhkot was done. After measurement it transpired that the office of the Assistant Commissioner was occupying an area of 80850 sq ft. as against the acquired area of 60000 sq ft. Learned counsel for the respondents did not cross examine the witness on this document, which remained un-challenged. Non cross examination of this witness and non-denial of the letter dated 20.07.1991 evidenced that the case of the stance of the applicant stood admitted. It can be safely held that Assistant Commissioner Kandhkot, while erecting the boundary wall in year 1996 had illegally occupied the Suit property. It further transpired from record that Mukhtiarkar Kandhkot Mr. Abdu Bakar was examined as defendant witness No.1. in his evidence before trial court, he admitted that the area acquired by the government for the purpose of construction of office and residential bungalow of the Assistant Commissioner Kandhkot was 1-10 acres, which if measured in feet would become equal to about 60000 sq ft. The Defendant's witness in his cross examination admitted that the then Assistant Commissioner wrote a letter dated 20.01.1991 to the Deputy Commissioner, Jacobabad, this piece of evidence of the respondents' side also admitted claim of the applicant in the suit property.

11. Learned Trial Court out of the pleadings of the parties, framed Issue No.3 regarding exclusive and lawful ownership of the applicant in the suit property. It would be appropriate to reproduce the issue No 3 for sake of convenience:

**3. Whether the plaintiff is exclusive lawful owner of an area 38 ¼ ghuntas from suit property?**

12. Learned trial Court after assessing the evidence of the parties decided this issue in favor of applicant. In its findings on issue No 3 Learned Trial Court observed that applicant/ plaintiff examined himself, produced record of rights which supported his claim of ownership. Applicant examined PW 2 Maqsood Ahmed who produced letter dated 20.07.1991 issued by the Assistant Commissioner Kandhkot, wherein it was admitted that the office of Assistant Commissioner was in possession of excess land of about 80850 square feet as against acquired land of 60,000 square feet. This witness was not cross examined and his evidence remained unchallenged, thus stood admitted.

13. Learned appellate Court reversed the judgment and decree of Learned Trial Court on a premise that the applicant failed to prove that boundary wall was erected in the suit property. The point which overwhelmed the Learned Appellate Court to disturb the judgment and decree was that since the matter was sub judice before the Civil Court, and applicant during pendency of suit approached the revenue authorities; such a move on the part of the applicant raised suspicion on his conduct. The relevant portion of the Judgment available at page 23 is reproduced below:

*"I am unable to understand when the matter was subjudiced why the plaintiff/respondent approached the revenue Authorities this creates doubt in the mind that the plaintiff/respondent in collusion with the successor Assistant Commissioner would have got this report. Otherwise there was no necessity to move the Deputy Commissioner when the matter was subjudiced, thus it clearly indicates that report Ex.128 is managed one, if this report was genuine the Govt: would have not preferred this appeal."*

14. The reasoning adopted by the learned appellate Court for setting at naught the Judgment and Decree passed by the trial Court baffles the wit of a prudent

mind as filing of application or representation with revenue authorities did not in any manner hamper the civil court to decide the matter on merits. On the contrary, the application moved by the applicant before the revenue hierarchy established his claim that the Assistant Commissioner erected the boundary wall upon the suit property without adopting a due course of law and Office of the Assistant Commissioner was under occupation in excess area.

15. The occupation of the Suit property by the office of the Assistant Commissioner cannot be let go escort free under the pretext that it is a government office. The right to own the property has been guaranteed under the Constitutional command. The constitution of the country is supreme and a live law, which has effect overriding in nature to all the other enactments. Article 23 of the Constitution, of Islamic Republic of Pakistan, 1973 protects the right of the citizens to own property, though such right was subject to any reasonable restriction imposed by law in the public interest. However, law does not empower any public functionary to deprive an individual from his property without adopting due course of law. Article 23, reads as under:

*23. Every citizen shall have the right to acquire, hold and dispose of property in any part of Pakistan, subject to the Constitution and any reasonable restrictions imposed by law in the public interest.*

16. The Government was empowered under the law to acquire the land through the acquisition process, if it is to be used for the public purposes. If the office of the Assistant Commissioner was of the view that the suit property was required for the public purpose, the right course available under the law was to take recourse to acquisition proceedings. In absence of acquisition of land through due process of law, the occupation of the private land by the government department would be an act not permissible under the law and would tantamount to violation of the fundamental rights of the aggrieved person guaranteed under article 24 of the Constitution, which reads as under:

***24. Protection of property rights***

*(1) No person shall be deprived of his property save in accordance with law.*

*(2) No property shall be compulsorily acquired or taken possession of save for a public purpose, and save by the authority of law which*

*provides for compensation therefor and either fixes the amount of compensation or specifies the principles on and the manner in which compensation is to be determined and given.*

*(3) Nothing in this Article shall affect the validity of—*

*(a) any law permitting the compulsory acquisition or taking possession of any property for preventing danger to life, property or public health; or*

*(b) any law permitting the taking over of any property which has been acquired by, or come into the possession of, any person by any unfair means, or in any manner, contrary to law; or*

*(c) any law relating to the acquisition, administration or disposal of any property which is or is deemed to be enemy property or evacuee property under any law (not being property which has ceased to be evacuee property under any law); or*

*(d) any law providing for the taking over of the management of any property by the State for a limited period, either in the public interest or in order to secure the proper management of the property, or for the benefit of its owner; or*

*(e) any law providing for the acquisition of any class of property for the purpose of—*

*(i) providing education and medical aid to all or any specified class of citizens; or*

*(ii) providing housing and public facilities and services such as roads, water supply, sewerage, gas and electric power to all or any specified class of citizens; or*

*(iii) providing maintenance to those who, on account of unemployment, sickness, infirmity or old age, are unable to maintain themselves; or*

*(f) any existing law or any law made in pursuance of Article 253.*

*(4) The adequacy or otherwise of any compensation provided for by any such law as is referred to in this Article, or determined in pursuance thereof, shall not be called in question in any court.*

17. Learned appellate Court failed to comprehend this important aspect of the case and without discussing the evidence adduced by the parties non-suited the applicant. Learned Appellate Court did not frame the points of determination, which was a mandatory requirement of law codified under Rule 31 Order 41 C.P.C. When confronted, Learned Assistant AG requested to remand the matter

back to Appellate Court for decision a fresh. This revision application pertains to year 1998 and parties are under litigation since last more than three decades, if the matter is remanded back on this deficiency, it will tantamount to defeat the interest of justice, as justice delayed is justice denied. This Court under its curative and supervisory powers can condone and rectify such deficiency in the judgment of appellate Court, which otherwise would not affect the merits of the case. It is held that the issues framed by the Trial Court were the points for determination before Learned Appellate Court and findings rendered by Learned Trial Court were in perspective of the issue in between the parties.

18. It is a settled principle of law that onus to prove the case always lied upon the person who claims the existence of the fact. In the present case the suit property was in possession of Respondents, who being officials of Revenue Department were custodian of the record of rights. The applicant successfully proved his case through oral and documentary evidence that he owned the suit property, once the applicant succeeded to establish his claim the onus shifted to the Respondents. The Respondent No 2 who is Assistant Commissioner was required to prove that the property under possession of Assistant Commissioner Office was not the suit property, but it was acquired land only. Contrary, the Respondents admitted that the Assistant Commissioner office was in possession of excess area. Applicant proved its case through documentary and oral evidence that he was dispossessed from the Suit property without a due course of law.

19. Reliance in this regard is placed upon the judgment of Honorable Supreme Court of Pakistan in the case of Mst. Ramzanu Bibi Versus Ibrahim (deceased) through L.Rs and others reported as 2025 S C M R 955, wherein it is held that

*In this particular case, respondents Nos. 1 to 5, who were identified as beneficiaries under mutation No.914 dated 24th of September, 1974, (Ex.P-2), had the burden to demonstrate the validity of the original transaction. This entailed meeting a threefold burden. Firstly, there was a pleading burden; these respondents ought to have articulated all relevant facts and material particulars regarding the purported gift in their written statement. Secondly, they had the burden of producing evidence, which means presenting documents or testimony supporting their claims. Thirdly, they carried the burden of persuasion, effectively convincing the court of the legitimacy of their assertions regarding the original gift transaction. It is*



*pertinent to note that these burdens are not abstract legal formalities-they form the bedrock of fairness in civil litigation. The burden of pleading ensures proper framing of issues; the evidentiary burden establishes factual basis; and the burden of persuasion is the ultimate determinant of legal entitlement. Now, let us examine how the respondents addressed and discharged each of these critical burdens.*

20. The case laws relied upon by Learned Counsel for the Applicant enunciated the powers of this Court under section 115 C.P.C. thus need not be discussed as it is settled proposition that this Court under its corrective and supervisory powers conferred under section 115 C.P.C can upset the findings of the Court below when it transpired from the record and material placed before that the findings of the Court below were perverse to the facts, there was misreading and non-reading of the evidence and Court below exercised the jurisdiction not vested in it or failed to exercise the jurisdiction vested in it.

21. For what has been discussed hereinabove, a case for indulgence under the corrective and supervisory jurisdiction of this Court conferred under section 115 CPC is made out. Consequently, this revision application is allowed. Since the appellate Court acted beyond the jurisdiction vested in it, therefore, the impugned judgment and decree dated 29.06.1998 passed by Learned the appellate Court in Civil Appeal No 04 of 1998 Re: "Province of Sindh and 2 others Versus Khuda Bux" is reversed and set aside. The judgment and decree dated 06.02.1998 and 10.02.1998 respectively passed by Learned Trial Court in Suit No 135 of 1990 Re. "Khuda Bux Versus Province of Sindh and 2 others", is maintained, with no order as to the cost.

**Judge**

*Manzoor*

*Approved for reporting*

*Larkana*

*15.09.2025*