

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S – 301 of 2024

(Imam Bux and others v. Khan Muhammad and others)

Date of hearing : 16.09.2025

Date of decision : 16.09.2025

Mr. Tariq Gul Mangi, Advocate for applicants.
Mr. Abdul Sattar Brohi, Advocate for private respondents.
Mr. Ghulam Abbas Kubar, Assistant Advocate General Sindh.

J U D G M E N T

Mahmood A. Khan, J. – This revision application has been filed impugning the learned appellate Court’s judgment dated 17.10.2024, wherein the suit of the private respondents, since dismissed by the learned trial Court, the judgment was reversed, and as such, this civil revision application has been filed in respect to the subject land.

2. The background of the matter being that the private respondents had filed the suit claiming declaratory rights along with possession in respect to the subject agricultural land, being U.A. No.308, measuring 02-00 acres, situated in Deh Lohi, Taluka Mirpur Mathelo, District Sukkur now Taluka Khangarh, District Ghotki. In respect of which, it was further claimed that the allotment was made in the name of their father, and to which all the due amounts have since been paid, whereafter the same was illegally acquired by way of force on part of the private defendants / applicants herein, to which the applicants herein, being defendants before the learned trial Court, were able to get the suit dismissed, wherein the learned trial Court was pleased to frame the following issues:

- 01. *Whether suit of plaintiff is not maintainable and barred under the law?*
- 02. *Whether suit is bad due to misjoinder and non-joinder of the necessary parties?*
- 03. *Whether father of plaintiff namely Khan Muhammad Lashari was granted agricultural land from U.A No. 308*

measuring (09-00) acres situated in Deh Lohi, Taluka Mirpur Mathelo, District Sukkur now Taluka Khangarh, District Ghotki?

04. *Whether from Rabi 1974-75 vide "A" Form No.5652 on harap basis and same U.A number is converted in block Nos256/3, (00-10) ghuntas, 257/4 (01-05) acres 263/1 (00-20) acres?*
05. *Whether the plaintiff No.1 has expired in the year 1990 and he left behind plaintiff Nos. 1(a) to 1(h) as his legal heirs?*
06. *Whether the defendants No.1 to 4 are entitled to hand over the possession of suit land to the plaintiffs?*
07. *Whether Plaintiffs is entitled to receive mesne profits from defendants No.1 to 6?*
08. *Whether Plaintiff is entitled to relief claimed?*
09. *What should the decree be?*

3. The learned trial Court was pleased to consider that, despite issuance of the TO Form, as the same was not entered in the revenue record, the Court was not having jurisdiction, and accordingly, the suit was dismissed, which order was set aside by the learned appellate Court by way of the impugned judgment, wherein the learned appellate Court was pleased to reappraise the evidence and decree the suit of the plaintiffs. The private respondents were also liable for mesne profits, and the Mukhtiarkar (Revenue), Khangarh, was directed to place the entry in respect to the suit land in the record of rights on the basis of the TO Form accordingly.

4. Learned Counsel for the applicants contended that a conflicting judgment is present in the matter, wherein the learned trial Court had dismissed the suit, whereas the learned appellate Court had decreed the same. He further contended that points of determination, as required under Order XLI Rule 31, CPC, have been violated by the learned appellate Court, as have been given therein. It is also contended that death certificate has not been produced by the respondents in order to show the entitlement. It is further contended that details of dispossession were not coming on part of the respondents, along with the details of

possession as was claimed on part of the said respondents. It is lastly contented that Article 126 of the Qanun-e-Shahadat Order required that the respondents to prove their entitlement, and in this regard, the onus was not to be shifted to the present applicants, which were admittedly in possession, for proof of entitlement. Learned Counsel in this regard has referred to the following authorities:

- Syed Takawal Hussain and others v. Mst. Shamim Fatima Rizvi and others (1999 MLD 1)
- Mst. Roshi and others v. Mst. Fateh (1982 SCMR 542)

Learned Counsel for the applicant lastly required the matter to be remanded to the learned appellate Court for rehearing.

5. Learned Counsel for the respondents, however, supported the judgment of the learned appellate Court. He further contended that the learned appellate Court was pleased to refer in Para-11 of its judgment the deposition of witness of the applicants itself, which conceded the position stated by the private respondents. It is lastly contended that details of dispossession were present in Para-6 of the plaint.

6. Learned AAG Sindh contended that allotment was not in question in the matter, and the revenue forum was available. However, as to the possession, he conceded that it was available for the plaintiffs to question.

7. Having heard the learned Counsels and gone through the record, apparently, the learned trial Court had considered the matter in a restrictive sense of legal entitlement, and on account of revenue entry not being available, had de-suited the private respondents. It has been observed in the judgment of the learned trial Court that the entitlement has not been considered in the matter. Apparently, the learned appellate Court was pleased to consider the same.

8. The onus of proving that the 'A' Form and subsequently the TO Form not being issued to the predecessor of the private respondents was

on the present applicants, who had claimed otherwise that a person of similar name had provided them the entitlement of possession after the evidence of the respondents, which apparently was failing on their part. The learned appellate Court had reappraised the evidence and rightly not considered the matter of revenue entry having not been made a ground to de-suit the party. The civil proceedings are determined on the betterment of title and not upon proof beyond a reasonable doubt.

9. In the present case, irrespective to the procedural shortcoming and requirements which are termed as violation, however in the present record not amounting to miscarriage of justice as the appellate Court's judgment for the issues being points of determination which could have been better made out, the judgment itself is not found liable to be disturbed as the exercise required, nor the findings are shown to be not based upon the record. Accordingly, this revision application having no merits stands **dismissed**.

J U D G E

Abdul Basit