

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Rev. Appl. No. S-167 of 2024

Applicant : Muhammad Hanif s/o Muhammad Suleman, Shah
Through Mr. Noor Hassan Malik, Advocate

Respondent : Ali Asghar s/o Rasool Bux, Kolachi
Through Mr. Asif Aman Shaikh, Advocate

Date of hearing : 02.02.2026
Date of order : 02.02.2026

ORDER

KHALID HUSSAIN SHAHANI, J.- The applicant has invoked the revisional jurisdiction of this Court under Section 115 C.P.C to assail the appellate judgment dated 25.05.2024 and the preliminary decree dated 30.05.2024 passed by the learned 1st Additional District Judge, Naushahro Feroze in Civil Appeal No.139 of 2022, whereby the appeal was allowed, the judgment and decree dated 16.08.2022 passed by the learned 2nd Senior Civil Judge, Naushahro Feroze in F.C Suit No.95 of 2016 were set aside, and the suit was decreed for declaration, possession and mesne profits; the decree was treated as preliminary to the extent of mesne profits and the trial Court was directed to quantify the same and draw a final decree accordingly.

2. Learned counsel for the respondent has raised a preliminary objection to the maintainability of this revision on the grounds that (i) pursuant to the appellate directions, the trial Court has already passed a final decree dated 13.06.2024 quantifying mesne profits; (ii) the said final decree has not been challenged and has thus attained finality; and (iii) the revisional jurisdiction cannot be employed to upset an appellate adjudication which has culminated in a preliminary decree followed by a final decree.

3. Learned counsel for the applicant, on the other hand, contends that the impugned appellate judgment and the resulting preliminary decree

suffer from illegality and material irregularity in the exercise of jurisdiction and have occasioned miscarriage of justice; he submits that the existence of a consequential final decree does not bar an otherwise competent challenge to the foundational adjudication embodied in the preliminary decree.

4. I have heard learned counsel for the parties on the limited question of maintainability. At this stage, it is neither necessary nor appropriate to enter into the merits of the controversy touching the correctness of the appellate court's appreciation of evidence or its conclusions on title, possession and entitlement to mesne profits; those matters, if the revision is found maintainable, shall be examined at the hearing on merits within the settled parameters of Section 115 C.P.C.

5. It is well settled that where the Code contemplates a preliminary decree followed by a final decree, the preliminary decree constitutes a distinct adjudication of rights, and the final decree is consequential to it to the extent it merely works out what has already been determined. The passing of a final decree, by itself, does not render a competent challenge to the preliminary decree infructuous. The principle is also reflected in Section 97 C.P.C, which underscores the separate legal character of a preliminary decree by providing that where a party aggrieved by a preliminary decree does not appeal therefrom, he shall be precluded from disputing its correctness in an appeal from the final decree.

6. In the present case, the revision is directed against the appellate judgment dated 25.05.2024 and preliminary decree dated 30.05.2024, i.e the foundational adjudication whereby rights regarding declaration, possession and entitlement to mesne profits were determined, and the matter was remitted only for quantification of mesne profits. The final decree dated 13.06.2024, passed in pursuance thereof, is consequential in nature and primarily operationalizes the quantification aspect. The mere

fact that the final decree has not been separately challenged does not, at the threshold, bar examination of the legality and propriety of the preliminary decree which constitutes its foundation; if the preliminary decree is interfered with in accordance with law, the consequential decree cannot independently survive to the extent it is founded thereon. As to the objection that revisional jurisdiction cannot be invoked against the impugned adjudication, it is clarified that the question whether the case ultimately meets the strict threshold of Section 115 C.P.C is distinct from the question whether the revision is maintainable to examine an alleged illegality or material irregularity in the exercise of jurisdiction. At this preliminary stage, the objection is confined to maintainability and cannot be sustained merely on the basis that a consequential final decree has been drawn.

7. For the foregoing reasons, the preliminary objection is repelled. The Civil Revision Application is held to be maintainable, subject to the applicant establishing at the hearing on merits that the impugned appellate judgment/preliminary decree attract interference within the limited scope of Section 115 C.P.C. The matter shall be fixed for hearing on merits.

J U D G E