

HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS

Second Appeal No.S-91 of 2024

Appellant: Bhawani Shankar S/o Rano Mal
Through Mr. Chaudhry Muhammad Zaman
Advocate.

Respondent No.1: Ratan S/o Jia Ram
Through Mr. Muhammad Ayoub Shaikh, Advocate.

Official Respondents: Through Mr. Muhammad Shareef Solangi, A.A.G

Date of Hearing: 08.04.2026.

Date of Order: 08.04.2026.

ORDER

Muhammad Jaffer Raza, J: Through the instant second appeal, the appellant has impugned the Order dated 20.08.2022 passed in Civil Appeal No.14/2022 by learned Additional District Judge-II, Umerkot. The said civil appeal emanated from Judgment dated 24.03.2022 which was passed on application of appellant under Order XII Rule 6 CPC and on application under Order I Rule 10 CPC of the respondent No.1.

2. Learned counsel for the appellant states that the application preferred by him under Order XII Rule 6 CPC was earlier allowed by the Court based on the admission made by respondent No.2, with whom he has privity of contract. He further contended that respondent No.1 has no privity with either party and is merely a co-sharer, and under Section 44 of the Transfer of Property Act, 1882, a co-sharer is entitled to sell his share of the property without any preferential right accruing to the other co-sharers. He argued that the impugned judgment be set aside and the earlier order be restored.

3. Learned counsel for the respondent No.1 states that he is a co-sharer in the property in question and is in possession of the entire property. He further argued that the judgment is likely to affect the proprietary and possessory rights in the suit property. Therefore, he is not only a necessary party but also a proper party.

4. I have heard learned counsel for the parties and perused the record with their able assistance.

5. The relevant portion of the impugned Judgment is reproduced as under:-

“The upshot of is that that the application U/O XII Rule 6 CPC will be deemed to have pending till applicant is joined as a defendant and after his written statement and objections if any, the learned trial court has to pass order as per law. Application U/O 1 Rule 10 CPC 1908 is allowed impugned order to the extent of application U/O 1 Rule 10 CPC stand set aside. Let appellant be joined as defendant. The learned trial court is directed to proceed the case and decide it strictly as per law. However there will be no order as to cost. Let decree be prepared accordingly”

6. It is apparent that the learned Appellate Court has merely directed that the application under Order XII Rule 6 CPC, preferred by the appellant, be reheard and reargued after respondent No.1 is impleaded as a party. I see no cavil in the impugned judgment, therefore, the instant second appeal is **dismissed** along with the pending application(s). However, the learned trial court is directed to decide the application of the appellant under Order XII Rule 6 CPC within a period of 30 days from today, strictly in accordance with law.

JUDGE

Faisal