

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

*Civil Revision Application No.S-130 of 2023
(Ali Murad and others Vs. Province of Sindh and Others)*

Applicants : Ali Murad and Others,
Through Mr. Muhammad Zubair Malik,
Advocate.

Respondents : Province of Sindh and others,
Through Mr. Waheed Ahmed Shaikh,
Advocate for Private Respondents No. 06 to
09.
Mr. Abdul Waris Bhutto Assistant Advocate
General, Sindh

Date of Hearing : 13.11.2025.

Date of Decision : 27.11.2025.

JUDGMENT

Ali Haider 'Ada'.J:- Through this Civil Revision Application, the applicant assailed the order dated 04-08-2023 passed by the learned District Judge, Shikarpur, (Appellate Court), whereby the learned Appellate Court dismissed the applicant's application under Order XLI, Rule 27, C.P.C., in Civil Appeal No. 03 of 2023. The applicant, who was the plaintiff in Civil Suit No. 300 of 2018, had sought a declaration, cancellation of sale deed, entries, and permanent injunction against the respondents. After a full trial, the learned trial Court dismissed the suit; the applicant preferred an appeal and, during the pendency of the appeal filed an application under Order XLI, Rule 27 C.P.C. for production of additional evidence. When that application was declined, the present revision is instituted, challenging the said order while the appeal remained pending.

2. The factual matrix, insofar as is necessary for the disposal of this revision, is that the applicant claims title to 0-22 acres comprised in Survey No. 347, Deh Jahan Khan. The respondents claim a smaller area, namely 0-02 acres, and there is a dispute regarding a passage or right of way which is alleged to encroach upon or traverse the land claimed by the applicant. The applicant contends that the deh map and certain revenue records are essential to determine the true location of the passage and that such documents could not be produced at trial without calling evidence of revenue functionaries. For that reason, the application under Order XLI, Rule 27 was brought before the appellate court.

3. Learned counsel for the applicant contends that the learned appellate Court failed to consider the material available on record. He submits that the production of additional evidence is a recognized right under the Code and may be invoked in appropriate circumstances; in the present case, the deh map and allied revenue records can only be effectively produced through the evidence of revenue functionaries and are therefore essential for a proper determination of the controversy.

4. Conversely, learned counsel for respondents No.6 to 9 argues that there is no need for additional evidence and that the appellate Court rightly dismissed the application because the applicant has not demonstrated sufficient cause for allowing further evidence.

5. Learned AAG drew attention to the narrow compass of the dispute that nobody controverts, that the applicant is the owner of 0-22 acres, and that the respondents claim 0-02 acres. The real question between the parties concerns the course of the passage/right of way and from which land it runs. In that scenario, the remedy of appointing a local commission under Order XXVI, C.P.C., is appropriate to resolve the factual issue. At the hearing, both counsels indicated their willingness to have the matter investigated through a local commission or otherwise to follow the procedure prescribed by Order XXVI.

6. Heard the arguments and perused the material on record.

7. After hearing the arguments at some length, the court notes with approval the proposal advanced by the learned Assistant Advocate General, Sindh, that the controversy between the parties may be effectively and finalized by recourse to a local commission. Both parties have expressly indicated their readiness to have the factual questions resolved through the mechanism provided under Order XXVI, C.P.C. In the present case, the core issue is essentially factual and local in character, the precise course and extent of the passage/right of way and its relation to the lands claimed by the parties. Order XXVI, C.P.C., expressly empowers the court to order local inspection and to appoint Commissioners for the purpose of ascertaining and reporting upon questions of fact which are essentially local, technical or otherwise amenable to investigation on the spot. Where, as here, the determination of title, boundaries, or the course of a passage depends upon physical inspection, revenue records, and testimony of revenue officials.

8. In light of the consensus between the parties and keeping in view the nature of the controversy, it is observed that the applicant or any of the parties concerned shall be at liberty to move an appropriate application before the appellate court under Order XXVI, C.P.C., and seeking appointment of a Local Commissioner for the purposes of local investigation. Likewise, if the parties mutually agree that the issue be more appropriately determined by the trial court, they may request the appellate court to remit the matter with specific directions to the trial court to proceed under the ambit of Order XXVI, C.P.C., for the determination of the disputed passage and allied factual issues. Upon receipt of such application, if filed, the appellate court shall entertain and decide the same strictly in accordance with law. Alternatively, if the parties consensually request that the appeal be disposed of by issuing directions to the trial court for undertaking proceedings under Order XXVI, C.P.C., the appellate court shall decide such a plea and pass an appropriate order to ensure a lawful, effective, and conclusive adjudication of the matter.

9. In view thereof, the Civil Revision, insofar as it calls into question the order passed by the learned appellate court under Order XLI, Rule 27, C.P.C., is dismissed. However, in the interest of justice and to facilitate the proper resolution of the underlying dispute, the appellate court is directed to proceed in accordance with the process delineated above. The Civil Revision stands disposed of in the foregoing terms.

JUDGE