

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Civil Revision Application.No.S-80 of 2019

(Muhammad Illyas & others Vs. Manthar Ali & others)

Applicants : Muhammad Illyas and others, through Mr. Rafique Ahmed K.Abro, Advocate.

Respondents : Manthar Ali and others (Nemo)
Mr. Abdul Waris Bhutto, Assistant Advocate General, Sindh.

Date of Hearing : 24.10.2025.

Date of Decision : 24.10.2025.

JUDGMENT

Ali Haider 'Ada' J:- Through this Civil Revision Application, the applicant has assailed the judgment and decree dated 12.12.2011 passed by the learned Senior Civil Judge, Shahdadkot (trial Court), whereby the suit filed by the plaintiff/applicant was dismissed in respect of Survey No. 218. The relevant findings of the learned trial Court are reproduced as under:

"In view of my findings on the above issues and the circumstances of instant case as plaintiffs have failed to establish that Survey Number 218 admeasuring 6-30 acres was evacuee property and was allotted to Syed Tafzul Dawood being claimant but on the other hand defendants have proved that Survey Number 218 is government property, therefore, suit of plaintiff to the extent of Survey Number 218 is hereby dismissed while plaintiffs have proved through evidence in above issues that 3-0 acres from Survey Number 363 and 3-14 acres from Survey Number 217 were allotted to Tafzul Dawood, being claimant from whom plaintiffs had purchased the suit property through registered sale deed as Ex.30-E, therefore, their suit to the extent of these survey numbers is hereby decreed with no order as to costs."

2. Being aggrieved by the aforesaid judgment and decree, the applicant preferred an appeal before the learned District Judge, Qamber-Shahdadkot (appellate Court), who, after hearing the parties, upheld the findings of the trial Court and dismissed the appeal. Consequently, the applicant has invoked the revisional jurisdiction of this Court, seeking declaration of ownership in respect of Survey No. 218, measuring 03-30 acres.

3. Briefly, the facts of the case are that in the year 1976, Muhammad Illyas, Qaimuddin, and Umer Din purchased the property from Tafzul Dawood

through a registered sale deed, which reflected the following survey numbers and measurements: Survey No. 217, area 03-14 acres; Survey No. 219/A, area 03-24 acres; Survey No. 344/A, area 01-33 acres; Survey No. 221/A, area 02-22 acres; Survey No. 218, area 03-30 acres; Survey No. 220/A, area 03-12 acres; and Survey No. 363, area 03-00 acres. The grievance of the applicants was that the respondents/defendants had unlawfully occupied the said property. The applicants, therefore, claimed their legal entitlement and ownership over the same. The respondents, in their written statement, denied the title and status of the applicants, asserting that the property bearing Survey No. 218 was government land, which had been granted to one Muhammad Ishaq. It was further contended that the said grant was subsequently cancelled by the revenue authorities, and Muhammad Ishaq himself had affirmed such cancellation. Thereafter, the learned trial Court framed the following issues: –

01. *Whether plaintiffs are owner of the suit property?*
02. *Whether plaintiffs are entitle for the relief of possession?*
03. *Whether plaintiffs are entitled for the relief of mesne profit?*
04. *Whether suit is not properly valued?*
05. *Whether suit is bad for mis-joinder and non-joinder of necessary parties?*
06. *What should the decree be?*

4. It is also pertinent to mention that the respondents had filed a separate civil suit claiming ownership over the suit property. Consequently, after the amalgamation of both suits, the learned trial Court framed consolidated issues for adjudication.

- a).Whether the suit property in FC Suit No. 314/2005 is a Government land?*
- b).Whether plaintiffs in F.C Suit No. 314/2005 are in possession of suit property?*
- c).Whether plaintiffs in F.C suit No. 13/2007 are owner of suit property?*
- d).Whether plaintiff in F.C Suit No. 13/2007 are not entitle for relief of possession and mesne profit?*
- e).Whether F.C Suit No. 13/2007 is under valued?*
- f).What should the decree be?*

5. After framing of issues and considering the legal aspects, the learned trial Court permitted both parties to lead evidence in support of their respective claims. The applicant's side recorded their depositions and produced relevant documentary evidence to establish their ownership of the suit property.

Thereafter, the defendants also adduced their evidence, while the public officials, namely the Mukhtiarkar and the Incharge Rehabilitation Branch (Revenue), were examined and produced the pertinent revenue record and related documents. After hearing the parties and evaluating the evidence, the learned trial Court dismissed the suit to the extent of Survey No. 218 while decreeing it with respect to the remaining survey numbers. Being aggrieved, the applicants preferred an appeal before the appellate forum, but the same was dismissed. Dissatisfied with the concurrent findings of both Courts below, the applicant has invoked the revisional jurisdiction of this Court under Section 115, C.P.C.

6. After filing of the present Civil Revision Application, notices were issued to the respondents. However, despite service through all recognized modes, including publication, none appeared on their behalf; hence, service was held good.

7. Learned counsel for the applicant contends that the applicants' title stands duly established through a registered sale deed. The respondents never sought cancellation of the said registered document, through which the property was purchased from one Tafzul Dawood, whose ownership remained unchallenged. It is argued that the findings of the trial Court regarding Survey No. 218 are based on misreading and non-reading of evidence. The total area of Survey No. 218 was 06-30 acres, out of which 03-30 acres were lawfully purchased by the applicants from Tafzul Dawood through registered instrument, while the remaining 03-00 acres had been allotted to one Muhammad Ishaq Brohi. The said allotment was subsequently cancelled by the competent authority on account of non-payment of installments. Learned counsel further submits that neither Tafzul Dawood nor the applicants have any concern with the cancelled portion of 03-00 acres. Despite this, both the trial Court and the appellate Court erroneously treated the entire Survey No. 218 as cancelled, thereby affecting even the applicants' validly purchased portion. He referred to the record, including *Rubkari* at page 75, which shows that initially Tafzul Dawood's name was recorded in the ownership column, and later bifurcation was made to the extent of 30 ghuntas, which was later cancelled. He also referred to Form-A at page 77, which clearly reflects that Muhammad Ishaq was allotted only 03-00 acres, not the entire 06-30 acres of Survey No. 218. Therefore, the impugned judgments suffer from legal infirmity and misappreciation of evidence. It is accordingly prayed that the findings of the Courts below, to the extent of Survey No. 218, be set aside.

8. Conversely, the learned Assistant Advocate General supported the concurrent findings of the Courts below, submitting that both the trial Court and the appellate Court had properly evaluated the material available on record and passed well-reasoned judgments. He further contended that the revisional jurisdiction under Section 115, C.P.C. is limited in scope and does not warrant interference in the concurrent findings of fact.

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

10. First and foremost, the learned trial Court itself acknowledged the existence and validity of the registered sale deed executed in the year 1976. However, despite such admission, the suit was dismissed to the extent of Survey No. 218. It is pertinent to note that the said sale deed clearly specifies the measurement of the property as 03-30 acres, not 06-30 acres. Therefore, the applicant's claim pertains only to the extent of 03-30 acres, and not beyond that. Furthermore, the documentary evidence produced by the public functionaries themselves substantiates that Survey No. 218 consists of two distinct portions, one portion measuring 03-30 acres standing in the name of Tafzul Dawood, from whom the applicants derived title, and the other portion measuring 03-00 acres allotted to Muhammad Ishaq. The record further reflects that the allotment made in favour of Muhammad Ishaq was subsequently cancelled, and even Muhammad Ishaq, in his deposition, affirmed this factual position.

11. It is an admitted position that the periodical entry standing in the name of the original owner, namely Tafazul Dawood, was never challenged or called in question by any of the respondents or by the revenue authorities through any competent forum. Consequently, under the settled principles of revenue law, a presumption of correctness duly attaches to such entry. The law itself provides this evidentiary protection through **Section 52 of the West Pakistan Land Revenue Act, 1967**, which enacts a statutory presumption in favour of the correctness of entries made in the record-of-rights or periodical record until the contrary is proved. For ready reference, the provision reads as under:

52. Presumption as to correctness of the record.- *An entry in a record of rights shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor*

In view of the above, as no countervailing evidence or lawful substitution of record was brought on the file, the periodical entry in favour of Tafazul

Dawood retains its full legal sanctity and evidentiary value, thereby supporting the applicant's claim to ownership over the suit property.

12. Furthermore, it is observed that the learned trial Court failed to frame any specific issue with regard to the ownership, title, or status of Survey No. 218, for ad-measuring 3-30 acres nor was any issue settled to determine the exact extent, possession, or demarcation of the said land. In the present case, once the title of Tafazul Dawood stood established through a registered sale deed, and no proceedings for cancellation or annulment of the same were ever initiated by any competent authority, such title remained unclouded and un-impeached in the eyes of law. Consequently, the applicants, being successors-in-interest of the said lawful owner, cannot be deprived of their vested rights merely on presumptions or on misreading of the revenue record. Hence, the findings recorded by the trial Court beyond the settled issues are without lawful authority and not sustainable in law.

13. So, far on the point of maintainability of the suit of the applicants are concerned, a declaratory suit instituted to establish title or ownership over an immovable property embodies a subsisting right vested in the claimant. The right to institute such a suit is a continuing right, which remains enforceable so long as the plaintiff's ownership or possessory rights in the disputed property subsist. The crucial point of accrual of the cause of action emerges only when the opposite party denies, disputes, or challenges the claimant's title, or when there exists a definite and unequivocal threat to the claimant's proprietary rights. In circumstances where there are successive denials or recurring acts of interference, each such act constitutes a fresh cause of action, reviving the claimant's right to seek judicial declaration and protection of title. Reliance be placed upon the case of Mst. Ramzan Bibi vs. Ibrahim (deceased) through L.Rs. and others **2025 SCMR 955**.

14. Keeping in view the facts and circumstances of the case, the Civil Revision Application is hereby allowed. The judgment and decree passed by the learned Trial Court as well as the Appellate Court, to the extent of Survey No. 218 situated at Qubo Saeed Khan, whereby the suit of the applicants seeking declaration of ownership and possession was dismissed, are set aside to that extent only. Consequently, the applicants are declared to be the lawful owners of Survey No. 218, measuring 3-30 acres, their title having been validly established through the registered sale deed. Accordingly, the applicants' suit is decreed to

that extent, and they shall be entitled to the same relief as already granted by the learned Trial Court in respect of the other survey numbers. Hence, the instant Civil Revision Application stands disposed of in the above terms.

JUDGE