

Order Sheet

IN THE HIGH COURT OF SINDH, KARACHI

IInd Appeal No. 306 of 2025

[Mst. Zubaida Golani v. The Deputy Commissioner & others]

Appellant Through Mr. Shujjaat Rasool Korai, advocate
 Date of Hearing & Order 05.11.2025

ARSHAD HUSSAIN KHAN, J. The appellant, through instant second appeal, has challenged the concurrent findings recorded by the two courts below and has sought the relief as follows:

“a) To set aside the impugned Judgment & Decree dated 04.10.2023 passed by the learned IIND Senior Civil Judge Malir Karachi in Civil Suit No.624 of 2022.

b) To set aside the impugned Judgment & Decree dated 01.09.2025 passed in Civil Appeal No.112 of 2023 learned District & sessions Judge Malir Karachi being not maintainable and then remand back the matter to the learned Trial Court for decision on merits.

c) To call the R&Ps of the matter in order to meet with ends of justice.

d) To restrain the impugned process over the impugned Judgment & Decree dated 01.09.2025 passed in Civil Appeal No.112 of 2023 passed by the learned District & sessions Judge Malir Karachi and to restrain the impugned execution process over the impugned Judgment & Decree dated 04.10.2023 passed in Civil Suit No.624 of 2022 by the learned IIND Senior Civil Judge Malir Karachi, till the final disposal of instant Civil Appeal.

e) Any other relief(s) which this Honourable Court may deems fit and proper, under the circumstances of the case.”

2. Briefly stated, the facts of the case are that the appellant/plaintiff claims to be the owner of Plot No. C-2021, situated in Ibrahim Hyderi Village, Deh Ibrahim Hyderi, Taluka Bin Qasim, District Malir, Karachi (the *subject property*). She asserts that upon payment of the requisite challan dated 17.12.2012, *Sanad No.C-2021* was issued in her favour. According to the appellant, the subject plot originally belonged to her uncle, Phul Golani @ Haji Sassi Faqeer, who executed a *Will* dated 11.11.2010, on the basis of which the property was transferred to her, and possession of the open plot was also handed over. She alleges that respondent No.3 subsequently encroached upon and occupied the

property, forcing her to file Suit No.624/2020 for declaration, possession and mesne profits. The suit was dismissed by the learned IInd Senior Civil Judge, Malir, Karachi on **04.10.2023**. Her appeal, Civil Appeal No.112/2023, met the same fate and was dismissed on **01.09.2025**. The appellant has now challenged these concurrent findings through the present Second Appeal.

3. Learned counsel for the appellant contends that the impugned judgments suffer from misreading and non-reading of evidence and were passed without proper judicial application of mind. He submits that the Courts below failed to appreciate the appellant's unrebutted documentary and oral evidence, including the Will and alleged delivery of possession in her favour. It is argued that the findings were recorded in haste, contrary to the facts on record, and in violation of principles of natural justice. Counsel maintains that the judgments are based on mere assumptions and presumptions and therefore deserve to be set aside.

4. Heard learned counsel for the appellant and perused the material available on the record.

5. Precisely, the stance of the appellant is that she claims ownership of the subject property, admeasuring 377 square yards, on the strength of a *Sanad* purportedly issued by the Mukhtiarkar under the Sindh Gothabad Scheme Act, 1987. However, under the Scheme, the Collector is not empowered to allot or issue *Sanad* for land exceeding *two ghuntas*, except in the limited circumstances expressly provided in the proviso to Section 3. The said provision reads as under:

“3. Allotment of land. Subject to the other provisions of this Act, the Collector may on the recommendations of the Allotment Committee allot not exceeding two ghuntas for construction of a house to a deserving person in the dehs in which he ordinarily resides free of cost in such manner and on such terms and conditions as may be prescribed.

Provided that the aforesaid limit shall not apply to the land or Asaish whereupon a deserving person has built a house before the coming into force of this Act with a view to taking up permanent residence.

The record is also completely silent regarding any recommendation of the Allotment Committee for allotment of the subject property in favour of the appellant. It is further noteworthy that the purported *Sanad*

relied upon by the appellant bears *no date, no Jaryan number, and no reference to Deh Form-II*, and, moreover, it pertains to a plot far exceeding the statutory ceiling of *two ghuntas*. These cumulative factors render the *Sanad* issued in favour of the appellant ex-facie defective, invalid, and without legal sanctity.

6. Besides the above, the appellant has also taken the plea that the subject property was ancestral property belonging to her uncle, Phul Golani @ Haji Sassi Fageer. However, except for an unregistered and legally insignificant “Will”, she has produced no title document whatsoever to establish ownership of her predecessor. Even otherwise, the alleged *Will* does not mention any plot number, area, or description of the subject property, thereby rendering it wholly unreliable.

7. From perusal of the judgments impugned in the present proceedings, it appears that both the courts below thoroughly examined the evidence of the appellant and reached a concurrent conclusion that the appellant miserably failed to prove her case by leading any positive and cogent evidence and, he has no locus standi viz. right or title to file the suit against the respondents, as such, the suit was dismissed and subsequently, the appeal was also met with same fate.

8. This Second Appeal has been filed under Section 100, C.P.C. It is by now a settled principle of law that the jurisdiction of the High Court in a second appeal is extremely limited and may be invoked only on the following grounds expressly enumerated in Section 100 of the Code of Civil Procedure, 1908:

1. *that the decision is contrary to law, or to a usage having the force of law;*
2. *that the decision has failed to determine a material issue of law, or a usage having the force of law; or*
3. *that the decision suffers from a substantial error or defect in the procedure, prescribed either by the C.P.C. or by any other law for the time being in force, which may reasonably be said to have affected the decision on merits.*

A second appeal cannot be entertained merely on questions of fact or re-appreciation of evidence. The appellant must establish that the impugned judgment squarely falls within one of the above statutory

contingencies. In the present matter, however, none of these grounds is attracted.

On this issue, the Hon'ble Supreme Court of Pakistan, while elucidating the scope and ambit of Section 100, C.P.C., has held in *Zafar Iqbal and others v. Naseer Ahmed and others* [2022 SCMR 2006] as follows:

“The scope of second appeal is thus restricted and limited to these grounds, as section 101 expressly mandates that no second appeal shall lie except on the grounds mentioned in section 100. But we have noticed that notwithstanding such clear provisions on the scope of second appeal, sometimes the High Courts deal with and decide second appeals as if those were first appeals; they thus assume and exercise a jurisdiction which the High Courts do not possess, and thereby also contribute for unjustified prolongation of litigation process which is already choked with high pendency of cases”.

9. It is also well settled law that concurrent findings of facts by the courts below cannot be disturbed by the High Court in the second appeal, unless the courts below while recording the findings of fact have either misread the evidence or have ignored the material piece of evidence¹. Besides, the concurrent findings of fact recorded by the two courts below are entitled to deference and cannot be interfered with in the absence of any legal infirmity, jurisdictional error, or misreading of evidence. Learned counsel for the appellant has failed to point out any such material irregularity.

Accordingly, in view of the above discussion, this second appeal is dismissed in limine, being devoid of any merit, alongwith pending applications.

JUDGE

Naveed PA

¹ *Keramat Ali and another v. Muhammad Yunus Haji and another* (PLD 1963 SC 191), *Phatana v. Mst. Wasai and another* (PLD 1965 SC 134) and *Haji Muhammad Din v. Malik Muhammad Abdullah* (PLD 1994 SC 291).