

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

[C.P. No.S-342 of 2025
(Naimatullah v. Mst. Arbab Zadi @ Arbu and others)

Petitioner: Naimatullah (since expired) his legal heirs namely Inayatullah & others through Special Attorney through Mr.Rasool Bux @ R.B Solangi, Advocate.

Respondent No.1: Mst. Arbab Zadi @ Arbu through Mr.Muhammad Arshad S.Pathan, Advocate.

Mr. Muhammad Ismail Bhutto, Additional Advocate General, Sindh.

Date hearing: 06.04.2026.

Date of Judgment: 06.04.2026.

JUDGMENT

RIAZAT ALI SAHAR, J: - The petitioner has filed this Constitutional Petition under Article 199 of the Constitution of Pakistan, 1973 with the following prayers:-

- a.** That it be ordered and set aside the impugned order dated. 03-08-2019 whereby, partly dismissed the relief of damages, the petitioner may be allowed through this petition for the relief of damages in FC suit No. 27 of 2017 (Naimatullah v. Mst. Arbab Zadi and others) pending in the Court of Senior Civil judge-1, Tando Muhammad Khan.
- b.** Any other relief be deemed fit and proper in favor of the petitioner.

2. Background of the case is that the petitioner/plaintiff instituted F.C Suit No. 27 of 2017 on 31.01.2017 before the learned Senior Civil Judge-I, Tando Muhammad Khan, seeking relief of possession and mesne profits in respect of the suit property. The respondents/defendants contested the suit by filing their written statement. During pendency of the proceedings, the petitioner moved an application under Order VI Rule 17 CPC on 25.03.2017 with prayer to allow the petitioner/plaintiff to amend/delete the 36/3 from line No.2 of title and add 63/3, this application was allowed by consent vide order

dated 29.04.2017. The petitioner moved another application under Order VI Rule 17 CPC on 17.02.2018, seeking extensive amendments in the plaint in paragraphs No.1, 2, 7, 10, 11, 12, 14, 16 and prayer clauses A and B, including correction of description of property, elaboration of facts, enhancement of valuation and inclusion of additional reliefs, particularly damages. The respondents opposed the said application through counter affidavit. The learned trial court, after considerable delay, dismissed the amendment application vide order dated 30.03.2019.

3. Aggrieved, the petitioner preferred Civil Revision No.02 of 2019 under Section 115 CPC before the learned District Judge/MCAC, Tando Muhammad Khan. The revisional court, vide impugned order dated 03.08.2019, partly allowed the revision petition by permitting certain amendments relating to clarification of subject matter, valuation concerning possession, mesne profits and permanent injunction and addition of declaratory relief. However, the revisional court declined amendments pertaining to claim of damages, holding that such amendment would change the nature and complexion of the suit. The petitioner, being dissatisfied with partial refusal, has invoked constitutional jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, seeking setting aside of the impugned order to the extent of refusal of amendment regarding damages.

4. Learned counsel for the petitioner contends that the impugned order suffers from misapplication of settled principles governing Order VI Rule 17 CPC, which requires a liberal approach in allowing amendments necessary for determining the real controversy between the parties. He contends that the proposed amendment relating to damages and mesne profits is merely ancillary to the main relief of possession and does not introduce any new cause of action, particularly when the respondents are alleged to be in continuous unlawful occupation of the suit property. He further contends that the amendment was sought at a stage when issues had not yet been framed and no evidence had been recorded; therefore, no prejudice would be caused to the respondents. He contends that refusal of certain

amendment would defeat substantive rights and compel the petitioner to initiate separate proceedings, thereby leading to multiplicity of litigation, which the law discourages. Learned counsel also contends that the revisional court failed to appreciate that inclusion of damages would not change the nature or complexion of the suit but would only enlarge the scope of relief based on the same cause of action. The finding of the revisional court to the contrary was termed as arbitrary, misconceived and against the settled law laid down by superior courts. He lastly submitted that the impugned order is non-speaking and devoid of proper reasoning, thus not sustainable in the eye of law.

5. Learned counsel for the petitioner additionally contends that during the pendency of the instant constitutional petition, the main FC Suit No. 27 of 2017 (Naimatullah v. Mst. Arbab Zadi & others) has already been decided by the learned trial Court and the appeal preferred there-against before the learned District Judge, Tando Muhammad Khan, has also been dismissed. Thereafter, a Second Appeal No. 48 of 2019 has been filed before this Court, which is presently pending adjudication. He contends that notwithstanding these subsequent developments, the legality and propriety of the impugned order still calls for determination, as refusal to allow amendment has materially affected the petitioner's rights and has a direct bearing on the outcome of the pending second appeal. Learned counsel maintained that the petitioner should not be non-suited on technical grounds and the controversy ought to be resolved on merits in order to secure the ends of justice.

6. Learned counsel for respondent No.1 supports the impugned order and contends that the revisional court has exercised its jurisdiction in a lawful and judicious manner by allowing those amendments which were permissible while rightly declining such amendments that would materially alter the nature and scope of the suit. He contends that the original suit was confined to possession and mesne profits, whereas the proposed

inclusion of damages constitutes an independent and distinct claim requiring separate adjudication, thus changing the very complexion of the suit. He further contends that the amendment was sought after an inordinate and unexplained delay of more than two years, which reflects *mala fide* intention on the part of the petitioner to prolong the proceedings. According to him, allowing such amendment at a belated stage would necessitate fresh pleadings, framing of additional issues and leading of further evidence, thereby seriously prejudicing the respondents and disrupting the entire framework of the suit. Learned counsel also points out that parallel litigation concerning the same property has already been adjudicated, rendering the proposed amendments redundant and unnecessary. He contends that the law does not permit amendments which introduce inconsistent or mutually destructive pleas and the revisional court has rightly exercised its discretion with caution in declining the relief relating to damages. He lastly contends that the present constitutional petition is not maintainable, as no jurisdictional defect, illegality, or perversity has been pointed out in the impugned order, which is a well-reasoned exercise of discretion not warranting interference in writ jurisdiction.

7. Learned counsel further contends that the instant constitutional petition has, in fact, become infructuous in view of subsequent developments, as the original suit has already been decided by the learned trial court and the appeal there-against has also been dismissed, thereby exhausting the lis at both stages. He contends that the matter is presently sub judice before this Court in Second Appeal No. 48 of 2019 and any adjudication in the present petition would serve no useful purpose and may even lead to conflicting findings with the issues involved in the pending second appeal. He contends that constitutional jurisdiction should not be exercised for academic purposes, particularly where the relief sought has been rendered redundant due to subsequent events. He, therefore, prays that the petition is

liable to be dismissed being infructuous alone, even otherwise no case for interference is made out on merits.

8. Learned A.A.G. Sindh adopts the arguments advanced by learned counsel for the respondent No.1 and submits that no case for interference in constitutional jurisdiction is made out.

9. I have heard learned counsel for the parties, perused the material available on record and carefully examined the impugned order passed by the learned District Judge/MCAC, Tando Muhammad Khan.

10. At the outset, it is an established principle of law that constitutional jurisdiction under Article 199 of the Constitution is discretionary and limited in scope. **This Court does not sit as a court of appeal to reappraise evidence or substitute its own findings for that of the subordinate courts. Interference is warranted only where the impugned order suffers from patent illegality, jurisdictional defect, misreading or non-reading of material evidence, or is so arbitrary that it shocks judicial conscience.**

11. In the present case, the revisional court has undertaken a detailed examination of the proposed amendments and has drawn a clear distinction between those amendments which are necessary for effective adjudication of the controversy and those which would alter the fundamental nature of the suit. The amendments relating to correction of pleadings, valuations concerning possession and mesne profits and addition of declaratory relief have rightly been allowed as they are intrinsically connected with the original cause of action. Conversely, the claim of damages, as sought to be introduced through amendment stands on a different footing. The learned revisional court has rightly observed that the ingredients, scope and evidentiary requirements for establishing a claim of damages are distinct and independent from a suit for possession. Inclusion of such relief would not merely be an elaboration but would transform the lis into a substantially different controversy, thereby changing the complexion of the suit.

12. It is also pertinent to note that the power under Order VI Rule 17 CPC, though wide, is not unrestrained. Amendments cannot be allowed where they introduce a new and inconsistent cause of action or

where they prejudice the opposite party. The revisional court has exercised this discretion in a balanced and judicious manner by partly allowing and partly declining the amendments, ensuring that the real controversy is adjudicated without opening doors to unnecessary complications. Furthermore, no jurisdictional error or material irregularity has been pointed out by the petitioner. The findings recorded by the revisional court are based on proper appreciation of law and facts and do not suffer from any perversity or arbitrariness. Mere possibility of another view is not a ground for interference in writ jurisdiction. The stance of the petitioner that refusal of amendment would lead to multiplicity of proceedings, though attractive, cannot override settled principles governing amendment of pleadings. The petitioner, if so advised, may seek appropriate remedy in accordance with law for recovery of damages through independent proceedings. It is also significant that the revisional court has issued directions to the trial court to proceed expeditiously and decide the suit within a stipulated time frame, thereby ensuring that the matter is not unduly delayed.

13. It is also an admitted position that during the pendency of the instant petition, the main suit out of which the present controversy has arisen has already been decided by the learned trial court and the judgment thereof has been maintained up to the appellate stage. The matter is presently sub judice before this Court in Second Appeal No.48 of 2019. In such circumstances, the challenge thrown to an interlocutory order relating to amendment of pleadings has substantially lost its significance. It is a settled principle of law that courts do not decide academic or hypothetical questions and where subsequent events render the relief claimed ineffective or redundant the constitutional jurisdiction ought not to be exercised. Even otherwise, any observation made in the present proceedings may prejudice with the issues pending adjudication in the second appeal, which is the proper forum for examining the rights of the parties. He, therefore, contends that on this ground alone, the instant petition is liable to be dismissed being infructuous, as no meaningful or effective relief can now be granted to the petitioner.

14. For what has been discussed above, I find that the impugned order is well-reasoned, speaking and based on correct

application of legal principles. No case for interference under Article 199 of the Constitution is made out. Consequently, instant petition is **dismissed** along with pending application, with no order as to costs.

JUDGE

Abdullah Channa/PS