

**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**

*Constitutional Petition No. S-331 of 2025*  
*[Bahawaluddin Jatoi vs. Ghulam Nabi and others]*

***Before:-***

***Mr. Justice Ali Haider 'Ada'.***

Petitioner : Bahawaluddin Jatoi, *through*  
Mr. Asif Ali Rajput Bhatti,  
Advocate.

Respondent No.1 : Ghulam Nabi Korai, *through*  
Mr. Abdul Qadir Shaikh,  
Advocate.

Respondents No.2 to 5 : Abdul Latif and others,  
*through* Mr. Arif Ali Abbasi,  
Advocate. (Called absent).

Respondents No.6 to 10 : Province of Sindh and others,  
*through*, Mr. Agha Athar  
Hussain, Assistant Advocate  
General Sindh.

Date of hearing : 27.04.2026.  
Date of Decision : 27.04.2026.

**ORDER**

**Ali Haider 'Ada' J.-** Through this constitutional petition, the petitioner has assailed the order dated 16.10.2025 passed by the learned Additional District Judge-V, Sukkur (Revisional Court) in Civil Revision No. 38 of 2025, whereby the order dated 02.06.2025 passed by the learned Senior Civil Judge-I, Pano Aqil (trial Court) was set aside.

2. The facts, in brief, are that the petitioner instituted F.C. Suit No. 131 of 2023 before the trial Court against respondent Nos. 2 to 5, seeking specific performance of the contract dated 24.11.2018. It was the case of the petitioner that respondent Nos. 2 to 5, claiming to be owners of land bearing Survey No. 224, admeasuring 08-07 acres, had agreed to sell a portion thereof measuring 0-07 ghunta. Upon service of notice, respondent Nos. 2 to 5 filed their written statement,

wherein, according to the petitioner, they admitted the claim. Consequently, the petitioner moved an application under Order XII Rule 6 read with Section 151, C.P.C., seeking judgment on admissions. The learned trial Court, vide judgment dated 29.01.2024, decreed the suit in favour of the petitioner. Thereafter, the petitioner initiated execution proceedings through Civil Execution Application No. 03 of 2024.

3. During the execution proceedings, respondent No.1, namely Ghulam Nabi, appeared before the trial Court and filed an application under Section 12(2), C.P.C., asserting that he is the lawful owner of land bearing Survey No. 224, measuring 01-35 acres out of the total land, and that the petitioner, in collusion with respondent Nos. 2 to 5, had obtained the decree through fraud and misrepresentation with the intention to usurp his property. It was alleged that respondent Nos. 2 to 5 had no valid title to the extent claimed and, despite this, they collusively admitted the suit, resulting in a fraudulent decree affecting the rights of respondent No.1.

4. The petitioner filed objections to the said application; however, the learned trial Court, vide order dated 02.06.2025, dismissed the application under Section 12(2), C.P.C. Being aggrieved, respondent No.1 preferred Civil Revision No. 38 of 2025 before the Revisional Court, which, vide impugned order, set aside the order of the trial Court and remanded the matter with directions to frame issues on the questions of fraud, misrepresentation, and possession, and to decide the application afresh after recording evidence.

5. Learned counsel for the petitioner contended that respondent No.1 is a stranger to the proceedings and has no locus standi to invoke Section 12(2), C.P.C. It is argued that the essential ingredients of Section 12(2), C.P.C. were not fulfilled, and that the decree, having attained finality and entered into execution, could not be reopened

on the application of a third party. It is further contended that the Revisional Court failed to appreciate the facts and committed material illegality and irregularity in remanding the matter. Reliance was placed upon reported judgments 2021 YLR 1705, 2023 YLR 2022, and PLD 2024 Supreme Court 262.

6. Conversely, learned counsel for respondent No.1 submitted that his claim is based on registered title documents, which have neither been challenged nor set aside. It is contended that respondent Nos. 2 to 5, in collusion with the petitioner, deliberately admitted the suit without contest, thereby facilitating a fraudulent decree aimed at dispossessing respondent No.1 of his lawful property. It is further argued that the question of the title of respondent Nos. 2 to 5 was not adjudicated by the trial Court, and that the decree suffers from serious infirmities arising out of fraud and misrepresentation. Learned counsel maintained that the Revisional Court has rightly remanded the matter for proper adjudication after recording evidence. He further argued that the present constitutional petition, involving disputed questions of fact, is not maintainable. Reliance is placed upon various precedents, such as 2003 YLR 2610, 2002 CLC 1804, 2001 SCMR 1493, PLD 1969 Dhacca 94, PLD 1974 Supreme Court 139, and PLD 1979 Lahore 145.

7. The learned Assistant Advocate General also supported the impugned order and submitted that where allegations of fraud and misrepresentation are raised, requiring evidence, the proper course is to frame issues and decide the matter after recording evidence, as rightly directed by the Revisional Court.

8. On 13.04.2026, respondent Nos. 2, 3, and 5 appeared before the Court and submitted that respondent No.4 is their brother, assuring that he would be present on the next date of hearing. They further sought time to engage counsel. Subsequently, counsel was engaged on behalf of respondent Nos. 2 to 5 on 20.04.2026; however, despite the same, no one has appeared on their behalf today.

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

10. At the outset, it is pertinent to observe that Section 12(2), C.P.C. was inserted through Ordinance X of 1980 with the primary object of providing a specific and efficacious remedy to a person aggrieved by a judgment, decree, or order obtained by means of fraud, misrepresentation, or want of jurisdiction. The underlying principle is that where a party alleges that a decree has been procured through fraudulent means, the proper course is to challenge the same before the very Court which passed such judgment, rather than initiating independent proceedings. For ready reference, Section 12(2), C.P.C. is reproduced as under:-

*12. Bar to further suit.-(1) ----*

*[(2) Where a person challenges the validity of a judgment, decree or order on the plea of fraud, misrepresentation or want of jurisdiction, he shall seek his remedy by making an application to the Court which passed the final judgment, decree or order and not by a separate suit.]*

11. In the present case, respondent No.1 has placed on record a registered title document, which, admittedly, has neither been challenged nor set aside by any competent forum. The property in question pertains to the same survey number; however, respondent No.1 claims lawful ownership to the extent of 01-35 acres. In contrast, the petitioner claims only 0-07 ghunta, yet, by virtue of the decree obtained, the same survey number has been made subject to the decree, thereby giving rise to a serious allegation that the portion claimed by the petitioner has been carved out from the land belonging to respondent No.1 through fraudulent means.

12. It is an admitted position that the decree in favour of the petitioner was passed on the basis of no objection and admission on the part of respondent Nos. 2 to 5 in a suit for specific performance. However, during the entire process, the petitioner failed to disclose the true and complete legal status of Survey No. 224, which was essential, particularly when other persons, including respondent

No.1, were claiming lawful ownership through registered documents.

13. In such circumstances, where allegations of fraud, misrepresentation, and encroachment upon the property of a third party are raised, the matter necessarily requires proper adjudication after framing of issues and recording of evidence. It is a settled principle that an application under Section 12(2), C.P.C., is to be decided in accordance with the procedure applicable to a suit. In this regard, guidance can be drawn from Section 141, C.P.C., which provides that the procedure prescribed in the Code for suits shall, as far as may be, be followed in all proceedings before the Court of civil jurisdiction. For ready reference, Section 141, C.P.C. is reproduced hereunder:-

*Section 141. Miscellaneous proceedings – The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any court of civil jurisdiction.*

14. No doubt, every matter cannot be remanded as a matter of routine; however, where resolution of the controversy requires proper adjudication through recording of evidence, remand becomes necessary. In the present case, the nature of the allegations warrants determination through evidence; therefore, the learned Revisional Court has rightly remanded the matter for decision of the application under Section 12(2), C.P.C. in its true sense (*stricto sensu*). Guidance in this regard is drawn from **Mrs. Anis Haider v. S. Amir Haider, 2008 SCMR 236.**

15. The object of remand is to enable the trial Court to examine all relevant aspects, record evidence, and thereafter reach a just and proper conclusion. The remand order passed by the learned Revisional Court is aimed at ensuring a fair and comprehensive adjudication, and such jurisdiction has been rightly exercised. Reliance in this context is placed upon **N.W.F.P GOVT versus ABDUL GHAFOR KHAN PLD 1993 SC 418, GUL REHMAN**

**versus GUL NAWAZ KHAN 2009 SCMR 589, and REHMAN SHAH versus SHER AFZAL 2009 SCMR 462.**

16. In view of the foregoing facts and circumstances, no case for interference with the impugned order passed by the learned Revisional Court is made out. Consequently, the instant petition is dismissed, and the impugned order dated 16.10.2025 is maintained. The learned trial Court is, however, directed to conclude the proceedings expeditiously, preferably within a period of three (03) months from the date of receipt of this order. Order accordingly.

***JUDGE***