

HIGH COURT OF SINDH CIRCUIT COURT, HYDERABAD

C.P No.S-398 of 2025

[Habibullah Khan vs. Muhammad Usama and others]

Petitioner:	By Mr. Muhammad Arshad Pathan, Advocate
Private respondent:	By Raja Jawad Ali Saahar, Advocate
Official respondents	By Mr. Wali Muhammad Jamari, A.A.G
Date of hearing	22.10.2026
Date of Decision	22.10.2026

O R D E R

ADNAN-UL-KARIM MEMON J:- The petitioner challenged the *ex parte* judgment and decree passed in F.C. Suit No.64 of 2022, as well as the orders dated 06.09.2023 and 14.10.2023 dismissing his application under Section 12(2) CPC and the subsequent revision.

2. Learned counsel for the petitioner contended that he had purchased and possessed a plot measuring 3,000 square feet in City Survey No.318, Ward-C, Kotri, since 30.03.1989, whereas respondent No.1 acquired a separate plot through a sale deed executed in 2012-2013; that the boundaries of the two plots were distinct, the suit was decreed *ex parte* without lawful service, and material facts regarding the property's subdivision and possession were suppressed. He challenged the summary dismissal of his application under Section 12(2) CPC without notice or consideration of the relevant documents, while execution proceedings and issuance of a writ of possession with police assistance continued. He sought setting aside of the impugned orders and decree and remand of the matter for decision afresh in accordance with law.

3. Learned counsel for the respondents controverted the contentions raised by the petitioner and submitted that the petitioner had been duly served with notice in the proceedings, but despite having knowledge, he failed to appear and contest the matter; that the decree was passed *ex parte* in accordance with law and that the petitioner could not subsequently challenge the same on the plea of non-service; that the application under Section 12(2) CPC was rightly dismissed, as the petitioner had failed to establish any fraud, misrepresentation or concealment of material facts warranting interference of this Court; that the dispute regarding the identity, boundaries and possession of the property had already been

adjudicated by the competent court and could not be reopened through collateral proceedings without sufficient legal grounds. Lastly learned counsel prayed for dismissal of the petition, contending that the execution proceedings and issuance of writ of possession were lawful and required no interference.

4. When confronted with the legal position that the controversy between the parties required adjudication on merits rather than dismissal on technical grounds.

5. Learned counsel for the parties, after arguing the matter at length, agreed that the orders passed on the application under Section 12(2) CPC, along with the judgment dated 05.01.2023 and decree dated 10.01.2023 passed in F.C. Suit No.64 of 2022, be set aside and the matter be remanded to the trial Court for fresh decision based on evidence of the parties. The request seems to be reasonable and acceded to without prejudice the rights of the parties in the lis.

6. Accordingly, the impugned orders, judgment and decree are set aside, and the suit is remanded to the trial Court for fresh decision after framing proper / legal issues and recording evidence of the parties strictly in accordance with law, preferably within one month from the date of the order. However, it is made clear that no unnecessary adjournment shall be allowed and the proceedings shall take place on day-to-day basis. As the counsel for the parties are present in Court they shall inform their clients to appear before the trial court to comply the directions in time.

7. The petition stands disposed of in the above terms.

JUDGE