THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Civil Revision Application No. S-09 of 2006

[Muhammad Bachal Khokhar Vs. Khawand Dino & others]

Applicants	**:**	Through Mr. Vinod Kumar G. Jessrani, Advocate
Respondents No.1 to 4	**:**	Nemo
Respondents No.5 to 8	**:**	Through Mr. Abdul Waris Bhutto, Assistant Advocate General, Sindh
Date of Hearing	**:**	**19-10-2026**
Date of Judgment	**:**	**02-11-2026**

J U D G M E N T

ARBAB ALI HAKRO J. – Through this Civil Revision Application under section 115 CPC, the applicants, legal heirs of the appellant Muhammad Bachal, challenge the judgment dated 25.10.2005 and the decree dated 27.10.2005, passed by the learned I-Additional District Judge, Larkana (hereinafter referred to as '**the appellate court**') in Civil Appeal No.88 of 1998, whereby the judgment dated 15.08.1998 and the decree dated 21.08.1998, passed by the learned III-Senior Civil Judge, Larkana (hereinafter referred to as '**the trial court**') in F.C. Suit No.112 of 1991 (old No.279 of 1980), dismissing the suit for declaration and permanent injunction, were maintained.

2. The suit was instituted in 1980 by the late Ghulam Qadir and, after his death, was pursued by his son Muhammad Bachal on the amended plaint filed on 12.11.1989. The case pleaded that on 01.08.1973 the Assistant Revenue Officer, Sukkur Barrage, Khairpur, granted to Ghulam Qadir 4-00 acres from S.No.310 and 0-22 ghuntas from S.No.317, Deh Mir Khan Abro, taluka Larkana. On appeal by Gahi (defendant No.2), in which Khawand Dino (defendant No.1) joined as intervener, the Additional Commissioner, Sukkur, reserved S.No.310 for village asaish. In revision, the Member (Relief and Settlement), Board of Revenue, Sindh, by order dated 16.01.1978, found

that the land was separated from village Khokhar by a working karia, vacated the reservation, directed that 4-00 acres of S.No.310 and 0-22 ghuntas of S.No.317 be disposed of afresh, and kept the remaining 6-33 acres of S.No.310, where Bhils were residing, out of disposal.[1] In compliance, the Assistant Revenue Officer, by order dated 23.08.1978, granted 4-22 acres in S.Nos.310 and 317 to Ghulam Qadir in open katchehry.[2]

3. Thereafter, on a report dated 03.09.1979 from the Colonization Officer, Sukkur Barrage, "relating to disposal of S,No:310 (4-13) acres", the Senior Member, Board of Revenue, took up the matter as a suo motu revision under No.1666/74-75 and, by order dated 26.08.1980 (hereinafter referred to as '**the order of 1980**'), directed that the village of the Bhils "should remain intact (area 1-33 acres)" and that the rest of the area be disposed of afresh "keeping belt of 20 chains free".[3] The plaintiff, who had already been forbidden by the Mukhtiarkar, Larkana, on 30.10.1979 from cultivating the land, sought a declaration that the order of 1980 and the threatened action of the Mukhtiarkar were illegal, ultra vires, mala fide and without jurisdiction, pleading that the Senior Member had passed the order "without any legal authority by reviewing his own order", together with a permanent injunction against interference with his possession.[4]

4. Defendant No.1 admitted that 4-00 acres had been granted to the plaintiff in 1973-74 but pleaded that the grant was cancelled, that a fine was recovered from him in March, 1975, and that he was dispossessed; he asserted that the Bhils' village was a settled village of 30-35 houses. Defendant No.2, whose written statement was adopted by defendant No.7 Jiwan, denied the grant and the deposit and pleaded that 2-20 acres of S.No.310 were in Jiwan's possession under a grant of 12-00 acres made to his father Suhrab Khan in 1946-47. Defendants No.3 to 6, the official defendants, admitted that 4-00 acres of S.No.310 and 0-22 ghuntas of S.No.317, in all 4-22 acres, had been granted to the plaintiff and pleaded that the grant stood cancelled by the order of 1980, which was lawful.

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[1] Ex.252, order dated 16.01.1978 in SROR-1666 of 1974-75 and Review-674 of 1975-76, to which Ghulam Qadir was respondent No.2 and in which he appeared in person.
[2] Ex.253.
[3] Mark A-1.
[4] Amended plaint verified on 12.11.1989, paras 7 to 9 and 15.

5. On 12.04.1993 the trial court framed seven issues: whether the Assistant Revenue Officer granted the suit land to the plaintiff on 01.08.1973; whether the plaintiff was in possession; whether the order of 1980 and the threatened action of the Mukhtiarkar were illegal, ultra vires, mala fide and without jurisdiction; maintainability; non-joinder; jurisdiction and relief. The plaintiff's son examined himself and the hari Muhammad and produced the revenue orders, the record of rights, khasra girdawari, the notice of the Mukhtiarkar and land revenue receipts. None of the defendants led evidence, and their side was closed on 04.05.1998.

6. The trial court answered issue No.1 in the negative, holding that no original grant order, ijazatnama or challan of the initial deposit had been produced; answered issue No.2 in the affirmative; held under issue No.3 that the plaintiff's possession was an encroachment and that the order of 1980 was "proper and legal to the extent of his jurisdiction"; left issues No.5 and 6 unanswered while observing that it had jurisdiction to entertain the suit and dismissed the suit. The appellate court dismissed the appeal, holding that the Senior Member was "competent to review the order passed by his pre-decessor, which is legal within his jurisdiction under Section 153 of Land Revenue Act" and that the plaintiff's possession was that of an encroacher over land lying within 20 chains of the Bhils' village.

7. During the pendency of this revision, Muhammad Bachal and some of the respondents died and their legal heirs were brought on record. Notices to the newly impleaded heirs were repeated through all modes and upon publication in the daily "Kawish", Hyderabad dated 18.11.2024, service upon the respondents was held good on 11.12.2024. Respondent No.3 was represented by counsel on 07.11.2024 and 11.12.2024. On 18.09.2026, his counsel stated that respondent No.3 had taken away the file and brief from him and that he was no longer acting for him. As an indulgence, fresh notice was ordered to respondent No.3 through all modes including publication and through the Mukhtiarkar (Revenue), Taluka Larkana. No one appeared for the private respondents at the hearing. Service having been held good and respondent No.3 having withdrawn his brief with full knowledge of these proceedings, the revision has been heard and is being decided on the record.

8. Learned counsel for the applicants contended that the grant in favour of Ghulam Qadir was proved by the revenue orders on record and admitted by the official defendants; that his possession was proved and found by the trial court itself; that the respondents led no evidence despite ample opportunity; that the order of 1980 was a suo motu review of a final order of the Board, which the Board had no power to make; and that the judgment of the appellate court does not conform to Order XLI Rule 31 CPC.

9. Learned Assistant Advocate General supported the impugned judgments.

Questions for determination

i. Whether the revision is within time and, if not, whether it calls for the exercise of suo motu jurisdiction;

ii. Whether the Civil Court could examine the order of 1980;

iii. Whether the order of 1980 was lawfully passed;

iv. Whether the courts below misread or failed to read material evidence or otherwise acted illegally in the exercise of their jurisdiction and

v. What relief the law permits.

10. The question of limitation must be examined even though no objection has been taken. Learned counsel would count the period from 27.10.2005, the date on which the decree was signed. That is incorrect. Under Order XLI Rule 35(1) CPC, the decree of an appellate court bears the date on which the judgment is pronounced, and the decree itself records that the appeal came up for final disposal on 25.10.2005. The period is therefore to be reckoned from 25.10.2005.

11. Under the second proviso to Section 115(1) CPC, an application in revision must be made within ninety days of the decision of the subordinate court and under the first proviso, the applicant must furnish copies of the pleadings, documents and order of the subordinate court. By virtue of Section 29(2) of the Limitation Act, 1908, Sections 4, 9 to 18 and 22 of that Act, though not Section 5, apply to such an application, so that the time consumed in obtaining certified copies of the pleadings, documents and

order required in support of the revision stands excluded.[5] Copies of the appellate judgment and decree were applied for on 14.11.2005 and delivered on 28.11.2005, and copies of the pleadings, depositions, exhibits and the trial court's judgment and decree were applied for on 24.11.2005 and delivered on 21.01.2006.[6] The revision was presented on 07.02.2006. Once that period is excluded, the revision was presented well within ninety days.

12. Even if some part of that period were not to be excluded, for instance because a portion of the copying cost was deposited on 19.01.2006, the result would be the same. A revision filed beyond time does not denude this Court of its suo motu jurisdiction under Section 115 CPC, and the petition may be treated as information where an error of jurisdiction is shown. That power is discretionary and is not to be exercised merely to relieve a party from the consequences of delay.[7] As discussed below, the courts below have upheld an order passed without lawful authority. This is a case in which the exercise of that jurisdiction cannot properly be declined.

13. Concurrent findings of fact are not to be disturbed on revision merely because another view of the evidence is possible. Interference is, however, warranted where the courts below have misread or failed to read material evidence, or have acted illegally or with material irregularity in the exercise of their jurisdiction.[8] Whether the Board of Revenue had the power to make the order of 1980 is a question of law arising on the face of that order, which both sides relied upon. A conclusion resting on a wrong answer to that question is not a finding of fact entitled to protection in revision.

14. The order of 1980 was made in a matter relating to the disposal of State land under the Colonization of Government Lands Act, 1912. The ouster of the jurisdiction of the Civil Court in such matters protects orders made by the authorities within the four corners of their jurisdiction; it does not extend to orders that are without jurisdiction, mala fide, in excess of authority, or otherwise not in accordance with law, which remain open to

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[5] *Hafeez Ahmad and others v. Civil Judge, Lahore and others* PLD 2012 SC 400, para 10.
[6] Copying endorsements on the certified copies annexed with the revision.
[7] *Hafeez Ahmad* (n.5 above), para 17; *Khan Bahadur Khan v. Khan Malook Khan* PLD 2022 SC 482, paras 6 to 8.
[8] *Haji Wajdad v. Provincial Government* 2020 SCMR 2046, paras 5 and 6.

examination by the Civil Court.[9] The suit was framed on that footing. The trial court observed that it had jurisdiction to entertain the suit, and that view was not challenged by any of the defendants, either in appeal or by way of cross-objection; it has attained finality between the parties.[10] The Civil Court could therefore examine whether the order of 1980 was passed with lawful authority, though not how the land ought to be disposed of on merit.

15. The order of 1980 must be read for what it is. It was registered under the number of the revision (SROR-1666 of 1974-75) which the Board had finally decided on 16.01.1978 and it describes itself as a suo motu revision. It was not moved by any party aggrieved by the order of 16.01.1978; it was set in motion by a report of the Colonization Officer, the very officer bound to implement that order. What it decided was precisely what the order of 16.01.1978 had decided, namely how much of S.No.310 was to be kept for the Bhils and how much was available for disposal. A revisional authority cannot revise its own final order; when it reopens and alters that order, it reviews it, whatever name is given to the proceedings. The appellate court itself treated the order of 1980 as a review of the predecessor's order.

16. The power of the Board of Revenue to review its orders is regulated by Section 8 of the Board of Revenue Act, 1957. It is exercisable on the application of an aggrieved person, within the prescribed period, on the grounds stated therein, and after notice to the parties affected. The Supreme Court has consistently held that no power of suo motu review vests in the Board, and that an order made in purported exercise of such a power is without lawful authority.[11] The order of 1980 was made on the Board's own motion, without any application by an aggrieved person and more than two years and seven months after the order of 16.01.1978. It suffers from the very defects which the Supreme Court found fatal in the case of ***Abdul Shakoor***. It is true that Ghulam Qadir was noticed and appeared through counsel, but a hearing satisfies the rule of natural justice; it does not supply

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[9] *Province of the Punjab v. Haji Yaqoob Khan* 2007 SCMR 554, para 8; *Muhammad Nazir Khan v. Ahmad* 2008 SCMR 521, para 3.
[10] *Muhammad Nazir Khan* (n.9 above), para 3.
[11] *Member (Colonies) Board of Revenue, Punjab v. Muhammad Shafi* 2008 SCMR 589, para 7; *Senior Member Board of Revenue, Punjab v. Abdul Shakoor* 2026 SCMR 605, paras 4 and 7.

a power which the law has withheld. Nor could the Board undo a final order passed on its judicial side through proceedings initiated on its own motion.[12]

17. The appellate court failed to show how Section 153 of the Land Revenue Act, 1967 conferred the power it attributed to the Senior Member, and its view runs contrary to the law declared by the Supreme Court, which binds all courts under Article 189 of the Constitution. The trial court did not examine the source of the power at all. It disposed of issue No. 3 on the ground that the plaintiff never approached the Board after the order and that the proceedings were between Khawand Dino and Gahi. The latter ground is contrary to the record, for the order of 1980 names Ghulam Qadir as a respondent and records his presence with counsel; the former is no reason at all, since the plaintiff chose the remedy of a suit and instituted it within months.

18. Nor can the order of 1980 be sustained as an exercise of the Board's revisional power over its subordinate officers. It does not purport to revise any order of the Colonization Officer or the Assistant Revenue Officer, nor does it mention the grant of 23.08.1978. Its operative effect is to substitute a fresh determination for the Board's own final order of 16.01.1978, which no provision of law permitted. The order of 1980 was therefore passed without lawful authority to the extent that it reopened the order of 16.01.1978 and set at naught the grant made in compliance with it.

19. On issue No.1, the trial court held that the grant "was not approved by the government" because neither the original grant order nor the challan of the initial deposit had been produced. It confined itself to the grant of 01.08.1973, which had in any case been overtaken by later events, and overlooked the order dated 23.08.1978, by which 4-22 acres were granted to Ghulam Qadir pursuant to the Board's order of 16.01.1978. It also overlooked that the official defendants, who represented the grantor, did not deny the grant and rested their defence only on its cancellation by the order of 1980. No defendant pleaded that the grant had lapsed for non-payment of the initial deposit, and none led evidence. Pleadings are not by themselves evidence, and the admission of one defendant does not bind a contesting co-

[12] *Abdul Shakoor* (n.11 above), para 5.

defendant.[13] But the grant does not rest on the admission. It stands proved by the order dated 23.08.1978 read with the order dated 16.01.1978, and the stand of the official defendants only shows that the grantor never disputed it. The finding on issue No.1 is the result of non-reading of material evidence.

20. Issue No. 2 regarding possession was decided in the plaintiff's favour and was not challenged by the defendants. The conclusion that his possession was that of an encroacher, and the appellate court's finding that the land lies within 20 chains of the Bhils' village, have no foundation in the evidence. The defendants led none. The order of 1980 records no such finding with regard to the plaintiff's land, and the order of 16.01.1978, having set apart 6-33 acres of S.No.310 for the Bhils, treated the remaining 4-00 acres as available for disposal. These findings are the result of a misreading of the record.

21. The appellate court, being the final court of fact, was also required by Order XLI Rule 31 CPC to state the points for determination, its decision thereon and the reasons for it.[14] Its judgment recites the pleadings and contentions and then affirms the trial court without addressing the reasoning on the decisive issues. Such a defect would ordinarily call for remand. Here, however, the evidence is complete, the respondents led none, the decisive question is one of law arising on documents relied upon by both sides, and the suit has been pending since 1980. A remand would serve no purpose that cannot be served in these proceedings.[15]

22. The relief must remain within the limits of the suit and the jurisdiction of the Civil Court. No declaration of title was sought, and the Civil Court cannot assume the functions of the revenue authorities in the disposal of State land or in determining whether the conditions of a grant were fulfilled. The declaration must therefore be confined to the effect of the order of 1980 upon the order of 16.01.1978 and the grant of 23.08.1978. To that extent, the order of 1980 goes, and the order of 16.01.1978 remains operative; it retains 6-33 acres of S.No.310 for the Bhils, a larger area than the order of

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[13] *Abdul Majid v. Syed Muhammad Ali Shamim* 2000 SCMR 1391, para 20.
[14] *Pakistan Refinery Ltd. v. Barrett Hodgson Pakistan (Pvt.) Ltd.* 2019 SCMR 1726, para 7.
[15] *Abdul Majid* (n.13 above), para 17.

1980 left with them. The claim of the heirs of Jiwan to 2-20 acres under the grant of 1946-47 was not tried in the suit and is left open.

23. For the foregoing reasons, the revision is within time and, in any event, discloses a jurisdictional error which this Court is bound to correct. Accordingly, it is **allowed**. The impugned judgments and decrees are set aside, and the suit is decreed in the following terms:

a) The order dated 26.08.1980, passed by the Senior Member, Board of Revenue, Sindh, in Suo-Moto Revision No.1666/74-75, is declared to have been passed without lawful authority and to be of no legal effect to the extent that it reopens the order dated 16.01.1978 passed in SROR-1666 of 1974-75 and affects the grant of 4-22 acres (S.No.310: 4-00 acres; S.No.317: 0-22 ghuntas), Deh Mir Khan Abro, Taluka Larkana, made to the late Ghulam Qadir on 23.08.1978; and

b) The respondents are restrained from dispossessing the applicants of the said land otherwise than in due course of law.

24. Nothing in this judgment shall preclude the competent revenue authority from proceeding, strictly in accordance with law and after notice and hearing to the applicants, in respect of any question relating to the conditions of the grant or the status of the land. Nor shall it prejudice any claim of the legal heirs of Jiwan in respect of any part of S.No.310, which they may pursue in accordance with law. The observations made herein are confined to the questions decided. There shall be no order as to costs.

JUDGE

Zulfiqar