

JUDGMENT SHEET
THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Second Appeal No. S-31 of 2026

Appellant : Zulfiqar Ali through Mr. Abdul Hafeez Mari,
Advocate

Respondent : Assistant Manager (NADRA) and others not
represented.

Date of Hearing : 20.08.2026

Date of Judgment : 24.08.2026

JUDGMENT

Muhammad Humayon Khan, J.: This is a second appeal against concurrent findings of fact and law. The Appellant, Zulfiqar Ali son of Allah Bachayo, is the nephew of deceased Esso son of Matto who statedly died on 01.01.2004. He filed First Class Suit No. 129 of 2023 before the learned IIIrd Senior Civil Judge, Mirpurkhas, for declaration and mandatory injunction against the Respondents Nos. 1 to 4 with the plea that the Respondent No. 4 is not the son of Esso son of Matto but rather used to work with him and that he has committed fraud in the record of NADRA by showing himself as the son of deceased Esso in order to usurp the property left behind by him.

2. The Respondents Nos. 1 to 3 (NADRA officials) filed their joint written statement, stating that the Respondent No. 4 had obtained his CNIC bearing No. 44109-0361935-9 vide tracking ID No. 303361052693 dated 29.08.2017 on the verification and biometrics of Mst. Bhooryani, the wife of deceased Esso. He then renewed his CNIC in 2023. However, the Appellant remained silent and did not raise any grievance until the filing of the suit. The Respondents Nos. 1 to 3 categorically denied the Appellant's case and stated that no cause of action had accrued in his favour. The Respondent No. 4 also filed his written statement denying the Appellant's case and stating that he is the son of deceased Esso; that the deceased had two wives, namely his mother, Mst. Bhooryani, and one Mst.

Khairi; and that the Appellant's father, Allah Bachayo, and his father, Esso, were on inimical terms due to land dispute and which is why the said suit was filed.

3. The learned Senior Civil Judge framed four issues. Thereafter, the respective parties recorded their evidence, and by Judgment and Decree dated 13.12.2023, the suit of the Appellant was dismissed. Against the said Judgment and Decree, the Appellant filed First Appeal No. 08 of 2024 before the learned IInd Additional District Judge/Model Civil Appellate Court, Mirpurkhas, which too was dismissed by Judgment dated 15.01.2026 and Decree dated 22.01.2026.

4. The judgments and decrees of both the learned Senior Civil Judge and the learned Additional District Judge have now been challenged by the Appellant in this second appeal under Section 100 of the Code of Civil Procedure, 1908 (hereinafter the "CPC"). The matter was taken up before me on 20.08.2026 for hearing on the main case along with office objections and M.A. No. 862 of 2026, when I heard learned Mr. Abdul Hafiz Mari, Advocate for the Appellant, at pre-admission stage and had reserved the matter for orders.

5. I first turn to the scope of a second appeal under Section 100 of the CPC, which is known to be narrow and limited with no permission for a full blown reappraisal on facts like in a first appeal under Section 96 of the CPC. Section 100 of the CPC provides for three (3) grounds on which a second appeal lies, namely that (a) the decision is contrary to law or to some usage having the force of law, (b) the decision having failed to determine some material issue of law or usage having the force of law, or (c) a substantial error or defect in the procedure provided in the CPC or in some other law which may have produced an error in the decision on merits. Under Section 101 of the CPC, it is strictly stated that a second appeal shall not lie except under the said grounds, whereas Section 103 provides the Court an ancillary power subject to Section 100 to determine an issue of fact provided that the following conditions exist:

- i) a validly instituted second appeal under the grounds enumerated in Section 100 of the CPC;

- ii) sufficient evidence to decide the said issue;
- iii) the issue of fact is necessary for the disposal of the appeal; and
- iv) the said issue has been (a) not determined at all, or (b) wrongly determined by the first appellate Court by reason of illegality, omission, error or defect as per Section 100 of the CPC.

Section 103 does not provide an additional ground for appeal but is an exercisable power in an otherwise competent second appeal.

6. In *Zafar Iqbal and others v Naseer Ahmed and others* 2022 SCMR 2006, the Hon'ble Supreme Court has expounded the expression of the decision being contrary to law in subsection (a) of Section 100 of the CPC read with the power to determine issue of facts in Section 103, and harmonised the two powers by holding that a decision will be considered "contrary to law" and therefore amenable to second appellate jurisdiction under the following situations:

- i) the decision is based on no evidence;
- ii) it is based on non-reading or misreading of the relevant and admissible evidence; and/or
- iii) it is based on inadmissible or irrelevant evidence.

7. It is also quite well-settled that concurrent findings of fact arrived at by the trial and first appellate courts are ordinarily not disturbed in second appeal under Section 100 of the CPC and for the High Court to interfere in such findings there must be some clear and manifest misreading or nonreading of evidence. There can be no interference in such findings simply because a different view is possible. For interference to be warranted, the view taken must be purely against the facts or the law, and not a matter of difference of two valid opinions or perspectives. Reference may be made to *Mst. Farzana Zia and others v Mst. Saadia Andaleeb and others* 2024 SCMR 916, *Ayub through LRs and others v Nisar Ahmed and others* 2008 SCMR 703 and *Muhammad Khan v Mst. Rasul Bibi* PLD 2003 SC 676.

8. Now, there are three questions for the Court to decide with all three having to be discussed together being closely connected:

- i) Whether the Appellant being a third person had the *locus standi* or legal character under Section 42 of the Specific Relief Act, 1877, to challenge the paternity of the Respondent No. 4?
- ii) Whether there is any misreading or nonreading of evidence on the part of learned Courts below?
- iii) Whether the Appellant has been able to put forth a *prima facie* case for further proceeding of this appeal?

9. The legal aspect of the Appellant's case is related to Article 128 of the QSO and the law on negation of paternity by a third party where the putative parents of the person did not raise such an objection. Article 128 reads:

“Birth during marriage conclusive proof of legitimacy: (1) The fact that any person was born during the continuance of a valid marriage between his mother and any man and not earlier than the expiration of six lunar months from the date of the marriage, or within two years after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate child of that man, unless: --

- (a) the husband had refused, or refuses, to own the child; or
 - (b) the child was born after the expiration of six lunar months from the date on which the woman had accepted that the period of iddat had come to an end.
- (2) Nothing contained in clause (1) shall apply to a non-Muslim if it is inconsistent with his faith.”

10. In fact, the jurisprudence on such matters has over the years been developed at length consistent with the the injunctions of Islam, the Constitution of the Islamic Republic of Pakistan, 1973, and the law, and there is judicial consensus on the point that denial of paternity is generally the right of the putative father when he is alive and this right dies with him. The established principles relevant for the present purposes may be stated as follows:

- i) There is a strong presumption in favour of legitimacy and under Islamic law one must be very reluctant to attribute the stigma of illegitimacy to a child. This strong presumption can be rebutted only through unimpeachable and reliable material. See *Muhammad Akhtar Hussain Pirzada v Medical Superintendent, THQ Hospital, Lodhran and others* PLD 2025 SC 853, *Shahnawaz and another v Nawab Khan* PLD 1976 SC 767 and *Muhammad Nazir and others v Ali Muhammad through Legal Heirs and others* 2003 SCMR 1183.

- ii) A third party has no *locus standi* or legal character within the meaning of Section 42 of the Specific Relief Act, 1877 to seek a negative declaration against the paternity of a person where the same is not challenged by the putative father or parents of the child during their lives. A purported successor or relative cannot have a larger claim than that of the putative parents and cannot revive a repudiation not made by the putative parents during their lifetime. See *Mst. Laila Qayyum v Fawad Qayum and others* PLD 2019 SC 449 and *Munir Hussain and others v Riffat Shamim and others* 2023 SCMR 6 as well as *Muhammad Nazir* case.

11. On facts, the controversy essentially is a paternity challenge where the Appellant, a third person, has alleged that the Respondent No. 4 is not the real son of deceased Esso son of Matto mentioned above. In evidence, the Appellant produced himself as **PW-1**, however according to his own admissions:

- i) the CNIC of the Respondent No. 4 was issued in the year 2017 by NADRA authorities;
- ii) the putative mother of the Respondent No. 4, namely Mst. Bhoryani wife of deceased Esso lived until 2020. (It is not on the record that she challenged her attributed relationship with the Respondent No. 4);
- iii) deceased Esso had looked after the Respondent No. 4 from the time of his childhood; and
- iv) there is a dispute between him and the Respondent No. 4 regarding some property.

12. Mr. Ghulam Qadir Ujjan, Deputy Superintendent, NADRA Mirpurkhas, appeared for the Respondents Nos. 1 to 3 as **DW** and he denied any error on the part of NADRA and further denied the suggestion that no one had done their biometric verification to support the Respondent No. 4's issuance of CNIC. In *Moulvi Abdul Fateh v Yar Muhammad and others* PLD 2024 SC 1223 the Hon'ble Supreme Court has attached the presumption of correctness to the official record of NADRA in a matter on more or less the same issue of paternity. In *Roshan Ara and others v Abdul Karim and others* Misc. Appeal No. 41 of 2019 (Judgment dated 11.03.2020) (unreported), Nazar Akbar J was of a similar view. Therefore, in the attendant circumstances where no sufficient rebuttal has been made by the

Appellant, I am quite clear in my mind that the NADRA record will have to be given due deference as it was concurrently done by both the learned Courts below.

13. In the aforesaid case of *Munir Hussain*, the circumstances are quite relevant. The case was before a very learned bench of the Supreme Court comprising their Lordships Qazi Faez Isa, Yahya Afridi and Jamal Khan Mandokhali JJ, and the facts were that the suit for declaration was filed by some relative of the child party some seven months after the death of her putative father. The child was brought up as the daughter of the deceased and her paternity was challenged for the first time when she was seventeen years old and after her father died. In that case, too, the mother of the child, being the wife of her deceased putative father, testified that she was her and the deceased's daughter. It was in this background that the Hon'ble Supreme Court found no option but to dismiss the claim of the relatives and to hold that the child was the deceased's daughter. The present case is on somewhat similar lines as *Munir Hussain* as the deceased's wife and the Respondent No. 4's putative mother lived for three years after the CNIC was issued upon her biometric verification before NADRA. She did not raise any recorded challenge as to Respondent No. 4's attribution to her and her husband as their son. Furthermore, it is an admitted position that the deceased looked after the Respondent No. 4 from the time of his childhood, however, the Appellant failed to produce any evidence to show that he regarded him as his servant and repudiated him as his son during his lifetime.

14. The Appellant has relied upon a purported *faisla*/settlement dated 22.10.2022 between him and the Respondent No. 4 upon the alleged intervention of some respectable elders, according to which it appears that the Respondent No. 4 agreed to cancel his CNIC in exchange of Rs. 312,000/- and it is alleged that the said amount has been paid by the Appellant. To my mind, that *faisla*/settlement turns on nothing in view of the obvious reasons I am about to discuss, and even if it does, such *faislas* or settlements do not have a better authority than the law and the Injunctions of Islam.

15. Neither the author of the purported *faisla* nor the notary public who attested the same was produced by the Appellant during evidence. Similarly, there are two persons mentioned as “ameens” of the *faisla*, namely Raees Mir Muhammad Mari and Raees Eesi Khan Mari who were neither produced nor their proper credentials are mentioned or pleaded. There were three purported witnesses to the said *faisla*, namely Shah Jahan, Dodo and Noor Ullah, but only one (Noor Ullah) was produced to depose on the *faisla* which does not fulfill the requirements of Articles 17(2)(a) and 79 of the Qanun-e-Shahadat Order, 1984 (hereinafter the “QSO”). Being a mandatory requirement, the failure in complying with Articles 17(2)(a) and 79 of the QSO by producing at least two marginal witnesses would militate against his claim. In the same vein, the failure of the Appellant to produce the alleged “ameens” of the *faisla* as well as its author (being a typed document) and the notary public who attested it are all telling elements which go against the Appellant’s case and lead me to presume that if the said witnesses were produced they would not have supported the *faisla*. This presumption arises under Article 129(g) of the QSO and the same fully operates against the Appellant specifically in respect of the alleged *ameens* and the marginal witnesses.

16. The Appellant similarly stated that the real father of Gul Khan was someone by the name of Hoto and he has two other brothers by the name of Ali alias Nawab and Ramzan. However, these facts were not pleaded by the Appellant in his plaint and were for the first time introduced in evidence which could not have been considered. In fact, it has been settled in a number of cases (e.g. *Abdul Majeed and others v Mst. Khalida Bibi (deceased) through LRs and others* 2026 SCMR 587) that evidence beyond pleadings is inadmissible and cannot be considered. On any view, the said evidence is not reliable inasmuch as the Appellant has not produced any evidence to even show that such persons exist much less that they are related by blood to the Respondent No. 4. The Appellant did not make any effort to produce the said persons and there is nothing on the record except mere names which are floating in thin air without any support and add nothing to the Appellant’s case.

17. The Appellant only produced one other witness, namely Noorullah son of Mehrullah Khan (**PW-2**), but he had no knowledge about the wives of deceased Esso and he admitted during cross-examination that he is not a close-relative of deceased Esso and that there is a land dispute between the parties. If anything, his admissions go against the Appellant and not in his favour.

18. In these circumstances, to my mind, the Appellant has failed to establish legal character or *locus standi* within the fours of Section 42 of the Specific Relief Act, 1877, and, on any view, he has failed to *prima facie* establish any misreading or nonreading of evidence in the concurrent findings of both the learned Courts below.

19. The present litigation has arisen out of a property dispute between the parties and has gone to a point where one is willing to unsettle the most sacred aspect of the other's existence, namely their parentage. This they have attempted to do through evidence which is grossly insufficient. Now, it may well be that this is more a case of lack of proof than it is of falsity, but it is not in the Courts' hands to judge except on evidence. It is in any case equally true for both parties that the issue is one of paternity, and I am at a loss to comprehend what so unfortunate has prevailed upon society for it to have reached a state where such a fundamental feature of human existence is being tossed in courtrooms after the deaths of the people who were the best placed to speak to it.

20. In the circumstances of the case there is no order I could make except that this appeal is dismissed in *limine* along with any listed applications. There shall be no order as costs. R&Ps may be returned to the respective Courts.

JUDGE

Mirpurkhas

Dated: 24th August, 2026.

APPROVED FOR REPORTING

Faisal