ORDER SHEET
THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Civil Revision No.S-27 of 2026

DATE	**ORDER WITH SIGNATURE OF JUDGE**

For hearing of main case.

30.10.2026

Mr. Abid Hussain Chang, Advocate for the Applicant.

Syed Babar Ali, Advocate for the Respondent No.1.

Respondents Nos. 2 and 4 to 10 not represented by any counsel; however, Nizamuddin Charan, OG-II, Qasimabad Branch-2031, NBP, Suhail Ahmed Qureshi, Officer Incharge, NSC Qasimabad, Hyderabad, Rehan Aftab, Officer Incharge, NSC, Hyderabad and Syed Naeemul Islam, Allied Bank Citizen Colony Branch, Hyderabad.

Mr. Shawak Rathore, learned DPG.

O R D E R

MUHAMMAD HUMAYON KHAN, J. - This order is being made after rehearing the case in relation to the exercise of this Court's power *suo motu* to admit certain additional evidence.

2. On 16.10.2026, the matter was taken up for arguments before me when all the learned Counsel present had argued. Briefly, the facts of the matter are that Mst. Zaibunnisa and her son, Zeeshan Ahmed, died in December 2021, however, the dates of their death are a matter of dispute between the Applicant, her husband, and the Respondent No. 1, her real sister. That is because, if Zeeshan Ahmed (son) predeceased Mst. Zaibunnisa, the right of inheritance would open to the Respondent No.1 as her sister, however, if it was opposite, i.e. Mst. Zaibunnisa predeceased Zeeshan Ahmed, only the Applicant as her husband would inherit and the Respondent No. 1 would be excluded from the inheritance due to a real issue (son) being involved.

3. The dispute first came up before the learned Senior Civil Judge-II, Hyderabad, in F.C. Suit No. 189 of 2022, in which, during the course of the proceedings, an application under r. 1(2) of O. XVI of the CPC and an application under r. 1 of O. XIII of the CPC was made for summoning an authorised official from the Nooriabad Police Station to produce the record of roznamcha register in relation to the road accident

that took place on 19.12.2021. The application was made by the Respondent No. 1 as plaintiff because according to her Zeeshan Ahmed and Mst. Zaibunnisa had died as a result of the said accident wherein Zeeshan Ahmed had died at the spot while Zaibunnisa was taken to hospital and died a few days later. On the other hand, the Applicant as defendant contested this position in his written statement directly and stated, inter alia, that Zaibunnisa died as a result of the accident while Zeeshan Ahmed never met such accident and died at home.

4. By Order dated 27.09.2024, the learned Senior Civil Judge had failed to allow the said roznamcha entries into evidence, however, it is seen from the Order that no reason has been prescribed for not permitting such evidence although prima facie the said evidence is highly relevant to the dispute and ought to have been produced for consideration. Eventually, the proceedings ended by Judgment and Decree dated 07.08.2025 whereby the learned Senior Civil Judge dismissed the suit without entertaining the roznamcha entries in evidence. The said Judgment and Decree were challenged by the Respondent No. 1 in First Appeal No. 212 of 2025 which came before the learned Additional District Judge-VI, Hyderabad, who disposed of the same by Judgment and Decree dated 08.01.2026 in the following manner:

> "In view of the above discussion held in preceding point, the instant appeal stands allowed with application of order 47 rule 27 read with section 151 CPC, impugned judgment and decree dated 07.08.2025 of the trial court are set aside. The matter is remanded to the trial court with direction to call SHO/official of P.S. Nooriabad to produce original record/entry of police station dated 19.12.2021 kept at 1800 hours to 1830 hours and after examining the said witness and evaluating the evidence of witnesses and documents as well as hearing the parties' counsel pass the judgment afresh. The parties to bear their own costs. Let true copy of judgment and decree be transmitted to the learned trial court along with R&Ps for information and compliance."

5. Against the Judgment and Decree dated 08.01.2026, the Applicant filed the present civil revision, which was taken up for arguments on 16.10.2026. I have heard and noted the detailed arguments advanced by Mr. Abid Hussain Chang for the Applicant and Mr. Babar Ali Kazmi for the Respondent No.1 in relation to the merits of the case.

However, for purposes of the present order, it is relevant to state that the roznamcha entries mentioned above were of enormous emphasis for both the learned Counsel. In particular, on query by the Court, Mr. Abid Hussain Chang had stated as follows at the bar on 16.10.2026:

i) As for the roznamcha entries, he stated that he could not deny the authenticity or genuineness or correctness of the same but his argument was limited to the point that they could not be produced later on at a belated stage. He had no answer as to the contents of the roznamcha entries.

ii) The Applicant has no record or proof whatsoever as to whether deceased Zeeshan Ahmed was taken to hospital before his death. There is no record as to how the dead body was taken to the graveyard.

iii) The Court took notice of the fact that the death certificates of both the deceased were not made promptly. Mst. Zaibunnisa's death certificate was entered as late entry on 13.01.2022 while that of Zeeshan Ahmed was made on 20.04.2023 as late entry as well. Counsel had no reply to why this was not done promptly and specifically for Zeeshan Ahmed as to why his death was not registered for more than an year.

6. In reply to Mr. Abid Hussain Chang's answers to the Court's queries, Mr. Babar Ali Kazmi had the following to state:

i) The roznamcha entries made by the police were the first report of the incident before any dispute ever arose. The said entries are absolutely relevant in that they prove that Zeeshan Ahmed had died at the spot of the accident and that the Applicant, with *mala fide* intentions, refused the postmortem of the body and took the body directly from the police without any further action.

ii) The Applicant has in fact contracted second marriage and the deceased Mst. Zaibunnisa did not live with the Applicant. The entire story made by the Applicant is manufactured with the intent to usurp the property left by her.

7. After hearing the learned Counsel at length, the following order was passed on 16.10.2026:

> "Heard learned Counsel for the parties present. Reserved for judgment.
>
> In the meanwhile, issue direction to learned DPG and the SHO Nooriabad Police Station summoning original roznamcha register of the said police station for perusing Entries Nos.15, 16 and 18 dated 19.12.2021 relating to the road accident involved in the present dispute. Attested copies are also to be brought."

8. Upon the said order, and during the later hours on the same date, the ASI Naimatullah Halepoto from the Nooriabad PS appeared along with Mr. Shawak Rathore, learned DPG, and produced the original roznamcha register which was brought into arguments by the learned Counsel for all the parties. Consequently, on the same date a late diary was made by me which reads as follows:

> "In view of the directions of this Court recorded in the short-order of even date, ASI Naimatullah Halepoto of Nooriabad Police Station has appeared along with Mr. Shawak Rathore, learned DPG. He has produced the original roznamcha register of the police station as well as attested copies of Entries Nos.15 recorded at 18:00 hours on 19.12.2021, 16 recorded at 18:30 hours on 19.12.2021 and 18 recorded at 20:30 hours on 19.12.2021 relating to the road accident. The ASI as well as learned DPG have filed their statements as well which are taken on record. The original register has been perused by me and returned while the duly attested copies of the same are taken on the record of this case.
>
> Prima facie, these entries are highly relevant and important for the determination of the controversy. The Court therefore needs to consider exercise of power under Order XLI Rule 27 CPC.
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> Office to list the matter for rehearing on 28.10.2026 at 10:00 am for the limited purposes of Order XLI Rule 27 CPC. Issue intimation notices to all learned Counsel present for the parties today."

9. Heard the learned Counsel for the parties present and perused the record. The main emphasis for Mr. Abid Hussain Chang has been that the admission or otherwise of the roznamcha entries/register into additional evidence has already been considered by the learned Senior Civil Judge and decided by Order dated 27.09.2024 and so this Court cannot interfere in the same when the said Order was not challenged and attained finality, as such, opposed for the same. With all due respect to the learned Counsel, even though the Order dated 27.09.2024 was not separately challenged in appeal by the Respondent No. 1, the said order became open in appellate proceedings against the final disposal of the case. Reference may be made to **Rashid Baig and others v Muhammad Mansha and others (2024 SCMR 1385 (para 3))** and **Sewa v Mst. Santi and others (1992 SCMR 1306 (para 7))**. In this regard, s. 105 (1) of the CPC is relevant and provides as follows (emphasis added):

> "**105. Other orders.** (1) Save as otherwise expressly provided, no appeal shall lie from any order made by a Court in the exercise of its original or appellate jurisdiction; *but, where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal.*"

10. Under r. 33 of O. XLI of the CPC, the appellate court is fully empowered to pass any decree appropriate in favour or against any party without limitation. The said provision reads as follows:

> "**33. Power of Court of Appeal.** The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties although such respondents or parties may not have filed any appeal or objection.
>
> Provided that the Appellate Court shall not make any order under section 35A, in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order."

11. Consequently, the learned appellate court was not only entitled to pass any order in the appeal but also upon any application in which an interlocutory order had been passed. The order had by no means attained finality as a first appeal was indeed filed which reopened it before the learned Additional District Judge.

12. Anyhow, upon a perusal of the roznamcha entries, I find no force in the claim that the same are not relevant and could not have been produced at a later stage. It will be seen that the entire case of the parties was dependent upon who, among Mst. Zaibunnisa and Zeeshan Ahmed, died first. This was the crux of the case and was brought into issue by the Applicant himself in his written statement (see paras 2 and 4; Exh-22; pp. 151 to 161 of the R&Ps of the Trial Court). Subsequenlty, the learned Trial Court framed five issues on 07.03.2024 and Issues Nos. 2 and 3 are directly concerned with the same subject matter and read as follows:

> "2. Whether Zeeshan Ahmed Jamali S/o deceased Mst. Zaib-un-Nisa had survived and died after the death of his mother and whether Zeeshan Ahmed Jamali being nearer excluded the plaintiff being remote?
>
> 3. Whether the Plaintiff (Respondent No.1) is one of the legal heirs of deceased Mst. Zaib-un-Nisa being her sister and whether she is entitled to inherit from moveable and immoveable property of deceased Mst. Zaib-un-Nisa?"

13. As such, it seems to me that the roznamcha entries tending to answer these issues were highly consequential on the decision on merits of the case. The said entries attract Art. 49 of the Qanun-e-Shahadat Order, 1984, according to which they are relevant facts and can be considered in evidence. They are public documents and no rebuttal has been made as to their genuineness and even learned Mr. Abid Hussain Chang faithfully discharged his duty to the Court in stating that he could not deny the correctness of the said entries. Apart from this, under Art. 92 of the QSO, the following presumption is raised:

> "**92. Presumption as to genuineness of documents kept under any law. –** The Court shall presume the genuineness of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody."

14. The roznamcha entries are of course documents maintained by law, specifically under Art. 167 of the Police Order, 2002, which provides for maintenance of daily diary at every police station. They are maintained by every police station for maintaining contemporaneous records of routine working of the station. The procedure for maintaining the daily diary is provided in r. 22.48 of the Police Rules, 1934, and nothing has been alleged to show that such procedure was not followed either in counter-affidavits of the Applicant (which for all purposes and intents were the relevant opportunity to raise such an objection) or in the memo of revision filed before this Court. Consequently, the roznamcha entries *prima facie* attract presumption of genuineness under Art. 92 of the QSO and require further consideration. I have gone through the Order dated 27.09.2024 from which it is clear that the learned Senior Civil Judge has failed to provide any reason whatsoever as to why the roznamcha entries should not have been admitted into evidence.

15. Under r. 27 of O. XLI of the CPC, the appellate court is fully empowered to take additional evidence under two situations: (i) where the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or (ii) where the appellate court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause. However, it must provide reasons for taking additional evidence. Under r. 28 of O. XLI of the CPC, the appellate court can take such evidence itself or direct the lower court to take such evidence and send it to the appellate court upon taking it. In **Moazam Majeed Bajwa v Tariq Munawar and others (2012 MLD 417)**, the case before the Lahore High Court was in relation to an application under rules 1 and 2 of O. XIII of the CPC which had been declined by the lower court. The Court held that the term "good cause" used within the provision is broader than "sufficient case" used elsewhere and the production of public documents is to be construed liberally; that the concept of "filling gaps" is no longer available in law in relation to public documents (with reference to **Zar Wali Shah v Yousuf Ali Shah (1992 SCMR 1778)**, subsequently affirmed in **Ghulam Ahmad Chaudhry v Akbar Hussain through Legal Heirs and another (PLD 2002 SC 615)**; that public documents the genuineness of which is beyond dispute should be admitted even where parties have failed to show good cause. Apart from this, it is settled law that public documents produced from lawful official custody are admissible in evidence without

proof: **Nasir Khan v Muhammad Latif Kamboo and others (2010 YLR 962 (Karachi (DB)) (para 7)**, **Muhammad Younus Arain and others v State through DPG NAB and another (PLD 2022 Sindh 222 (DB))** and **Muhammad Nawaz and another v District and Sessions Judge, Sialkot and 15 others (2008 CLC 1653 (para 4))**.

16. In a number of cases it has been held that the High Court, in its revisional jurisdiction under s. 115 of the CPC, has the power to admit additional evidence in exceptional cases where the same is necessary to clarify the factual record and to determine whether the subordinate courts acted with illegality or material irregularity. Reference may be made to **Shamshad Bibi and others v Riasat Ali and others (PLD 2023 SC 643 (para 5)))**, **Ghulam Muhammad and another v Muhammad Aslam and others (PLD 1993 SC 336 (para 9))**, **Mohabbat v Asadullah Khan and others (PLD 1989 SC 112)** and **Ahmad Ashraf v University of the Punjab (1988 SCMR 1782 (5 judges))**. In **Ghulam Muhammad**, the Supreme Court had observed as follows:

> "9. Upshot of the discussion on the point briefly stated is that under Order XLI, Rule 27, CPC, appellate Court is competent to record additional evidence but if that Court acts illegally or with material irregularity and on that account factual error is committed then in revision additional evidence can be admitted in a fit and proper case for clarification if it is essential for just decision of the case."

In **Ahmad Ashraf**, five judges of the Supreme Court sat to decide whether the High Court can admit additional evidence at the stage of revision under s. 115 of the CPC, and it observed that "orginarily at the stage of civil revision there is no question of leading additional evidence but there may be exceptional cases like the one before us where the interest of the justice and the requirement of the Court in adjudicating on the matter that such additional evidence should be recorded."

17. In the present case, the Applicant has prayed for restoring the Judgment and Decree of the learned Trial Court which was on the merits of the suit. Thus, in order to see whether the learned Trial Court's consideration of the merits of the case was correct and beyond the scope of revision under s. 115 of the CPC, it is necessary for this Court to have the entire evidence before it. However, the entire evidence will only be before the Court once the roznamcha entries tending to hit Issues Nos. 2 and 3 of

the trial are brought on the record as evidence. Therefore, without touching or in any manner prejudicing the merits of the case, I exercise my jurisdiction under r. 27 of O. XLI of the CPC *suo motu* and in the following manner and terms:

i) The Station House Officer, Police Station Nooriabad is summoned either himself or through any authorised officer to produce the following roznamcha entries in original:

(1) Entry No. 15 dated 19.12.2021 at 18:00 hours;
(2) Entry No. 16 dated 19.12.2021 at 18:30 hours; and
(3) Entry No. 18 dated 19.12.2021 at 20:30 hours.

He shall produce the original roznamcha register from which the attested copies of the original entries shall be seen and kept on the record while the original shall thereupon be returned. If any authorized official is appearing he shall also produce an authority letter from the SHO PS Nooriabad.

ii) The entries as aforesaid shall be produced on oath and the parties shall have the opportunity to cross-examine and rebut. The regular procedure for recording additional evidence shall be followed.

iii) The Incharge of the Trauma Centre, Nooriabad, either himself or through any competent official, is summoned to produce the entire record concerning the movement of any injured/dead bodies from and into the Trauma Center relating to the road accident that took place on 19.12.2021 in relation to Mst. Zaibunnisa and Zeeshan Ahmed.

iv) For the purposes of taking the evidence, Mr. Asif Jatoi, the learned Additional Registrar of this Court/Senior Civil Judge is appointed as Commissioner. He shall undertake the exercise on 04.11.2026 at 11:00 am and all the parties and their learned Counsel shall ensure presence before him. If any party does not appear on the said date, the cross-examination shall be marked as “nil.”

v) The learned Additional Registrar shall immediately, upon completing this exercise, furnish the entire additional evidence

taken as above in chambers for the perusal and record of the Court.

vi) Copies of this order be communicated to the learned DPG Sindh for information and ensuring compliance. Copies also to all learned Counsel along with intimation notices to ensure their presence. Notices also to all the parties through all modes including electronic modes but not publication.

Meanwhile, the matter is treated as part heard. Re-list on **10.11.2026** at **10:00 a.m.** for further arguments.

JUDGE

Abdullahchanna/PS

Approved for reporting