IN THE FEDERAL CONSTITUTIONAL COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
Justice Syed Hasan Azhar Rizvi
Justice Muhammad Karim Khan Agha

C.P.L.A. No.1130-K of 2024
(Against the order dated 26.08.2024, passed by the High Court of Sindh, Circuit Court, Mirpurkhas in C.P. No.D-226 of 2024)

Lachman Das and others

… Petitioners

Versus

Province of Sindh through Secretary Education Department and others

… Respondents

For the Petitioners: Mr. Mushtaq Ahmed Memon, Senior ASC
Mr. Shahid Ali Ansari, ASC
Mr. K.A. Wahab, AOR

For the Respondents: Barrister Faizan Hussain Memon, Addl. AG, Sindh
alongwith Sajid Ali Rao, Focal Person (SELD)
Fazal Muhammad, DEO
M. Ismail, Head Master

Date of Hearing: 06.10.2026

JUDGMENT

Muhammad Karim Khan Agha, J.- Through the present petition for leave to appeal, the petitioners seek to challenge the order dated 26.08.2024 **("impugned order")** passed by a learned Division Bench of the High Court of Sindh, Circuit Court at Mirpurkhas, whereby Constitutional Petition No. D-226 of 2024, filed by petitioner No. 1, was dismissed. The case arises out of a property dispute extending over several decades, but the controversy presently before this Court is considerably narrower. At the centre of the dispute is a consent decree passed on 15.07.1980 in a suit for partition of jointly owned properties, including a building occupied by the Education Department, Government of Sindh, at Mirpurkhas. More than 33 years later, certain officials of the Education Department sought to set aside that decree through an application under section 12(2) of the Code of Civil Procedure 1908 **("CPC")**, alleging fraud and misrepresentation.

2. The relevant background is that Lachmandas son of Herchandrai, presently petitioner No. 1, instituted Suit No. 340 of 1979 before the Senior Civil Judge, Mirpurkhas, seeking partition of

certain properties, including the property bearing City Survey Nos. 756 to 759, Ward A, Mirpurkhas **("disputed property")**, claimed to be jointly owned by him and other members of his family, who are either the other petitioners before this Court or their predecessors-in-interest. In the said suit, petitioner No. 1 asserted his entitlement to a share in these properties under Hindu law and sought their partition by metes and bounds, along with consequential changes in the relevant revenue record. During the pendency of the suit, the parties submitted a compromise application under Order XXIII, Rule 3 of the CPC, in terms of which the disputed property, along with certain other properties, fell to the share of petitioner No. 1. The compromise was accepted by the trial court through order dated 15.07.1980, and a decree was directed to be prepared accordingly. The disputed property was being used for educational purposes by the Education Department, Government of Sindh.

3. On 28.11.2013, certain officials of the Education Department filed an application under section 12(2) of the CPC in the partition suit, challenging the compromise decree dated 15.07.1980 on the grounds of fraud and misrepresentation. They disputed the private ownership of the disputed property, alleging that it had been acquired by the Government of Bombay in 1930 for the construction of the Mirpurkhas Madressah High School and its hostel, and referred in this regard to Education Department Resolution No. 2618 dated 15.07.1932, concerning approval of an estimate for the proposed construction. It was further alleged that City Survey No. 556, Ward A, Mirpurkhas, had been fraudulently altered to City Survey No. 756, and that the areas of City Survey Nos. 757 to 760 had been added thereto through manipulation of the revenue record. According to the applicants, the compromise decree had thus been obtained through fraud and misrepresentation. The application was resisted, inter alia, on the grounds that the applicants lacked the requisite legal standing to institute the proceedings, that the application was barred by limitation, and that no case of fraud or misrepresentation had been made out. The Senior Civil Judge, Mirpurkhas, by order dated 10.02.2016, dismissed the application, holding that the applicants, being officials of the Education Department, were not competent in their own right to challenge a decree passed between private parties and had no cause of action to file the application. The court observed

that the Government of Sindh, if aggrieved by the decree, could itself have instituted appropriate proceedings. Having decided the preliminary issue of cause of action against the applicants, the trial court left the other preliminary issue of limitation undecided.

4. The dismissal order was challenged through Civil Revision Application No. 5 of 2016 before the District Judge, Mirpurkhas, in which the Province of Sindh was also arrayed as an applicant. By order dated 16.08.2016, the District Judge set aside the order of the trial court and remanded the matter for fresh decision, observing that the allegations of fraud and misrepresentation required adjudication after framing appropriate issues and affording the parties an opportunity to lead evidence. The revisional court considered that dismissal of the application on the preliminary issue of cause of action alone, without recording evidence, was unjustified. Aggrieved by the revisional order, petitioner No. 1 invoked the constitutional jurisdiction of the High Court, which, through the impugned order, declined to interfere with the order of remand. The High Court considered that the allegations of fraud and misrepresentation required examination through evidence and that interference with the revisional order was not warranted. The constitutional petition was accordingly dismissed, giving rise to the present petition for leave to appeal. The constitutional petition before the High Court was instituted by Lachman Das, the present petitioner No. 1, whereas the other petitioners before this Court were arrayed as respondents therein. They, or their predecessors-in-interest, were also defendants in the partition suit and parties to the decree challenged through the application under section 12(2) of the CPC. Being also aggrieved by the impugned order, they have joined petitioner No. 1 in instituting the present petition. The applicants under section 12(2) of the CPC are respondents before this Court.

5. Learned counsel for the petitioners contended that the High Court erred in declining to interfere with the revisional order, which had set aside a legally sustainable order of the trial court. It was submitted that the application under section 12(2) of the CPC had been instituted by officials of the Education Department who were neither juristic persons nor persons aggrieved by the consent decree and, therefore, lacked the requisite legal competence to maintain the

proceedings. The Provincial Government, which had not instituted the original application, could not overcome this defect merely by joining the subsequent revisional proceedings. Learned counsel further submitted that the application, having been filed more than 33 years after the consent decree, was hopelessly barred by limitation, particularly as the Education Department and its officials had long been aware of the decree and had acknowledged the ownership of the petitioners and their predecessors through tenancy agreements, payment of rent and, more significantly, in earlier judicial proceedings. It was argued that the Provincial Government, having consistently recognized the petitioners and their predecessors as landlords, could not subsequently dispute their title without first surrendering possession in accordance with Article 115 of the Qanun-e-Shahadat Order 1984. Learned counsel maintained that the allegations of fraud and misrepresentation did not, by themselves, necessitate the recording of evidence where the application suffered from fundamental defects of competence and limitation. It was further contended that the revisional court, without properly examining the preliminary grounds upon which the trial court had dismissed the application, erroneously remanded the matter for recording evidence, thereby reopening proceedings concluded several decades earlier. Learned counsel further submitted that, even leaving aside the question of competence of the original applicants, the material already available on record, particularly the judgments and orders passed in earlier judicial proceedings, was sufficient to determine the controversy without requiring the recording of evidence. The revisional court, therefore, ought to have decided the matter on the basis of the existing record rather than remanding it for recording evidence, and the High Court erred in declining to interfere with the revisional order.

6. Conversely, learned Additional Advocate General, Sindh, supported the impugned order and the revisional order, contending that the consent decree had been obtained through fraud, misrepresentation and concealment of material facts concerning the ownership of the disputed property. It was submitted that the property belonged to the Provincial Government and had been acquired and used for educational purposes since 1930, whereas the plaintiff of the said partition suit, in collusion with the revenue authorities, had manipulated the revenue record to include the government property in

the partition suit and subsequently obtained a compromise decree without impleading the Provincial Government or the concerned revenue authorities. Learned Law Officer maintained that the Provincial Government and its officials, being directly affected by the decree, were entitled to question its validity under section 12(2) of the CPC. It was further submitted that the omission to file the original application in the name of the Province through the Secretary of the concerned department was, at most, a procedural irregularity capable of being rectified by impleading the Provincial Government. As regards limitation, it was argued that the applicants had no knowledge of the partition proceedings or the consent decree when it was passed and that, in any event, a decree obtained through fraud and misrepresentation could not be protected merely by the passage of time. According to learned Law Officer, the civil court had dismissed the application on a preliminary objection without examining the serious allegations of fraud and misrepresentation or affording the parties an opportunity to lead evidence. The revisional court was, therefore, justified in setting aside that order and remanding the matter for determination on merits, and the High Court rightly declined to interfere with the exercise of revisional jurisdiction.

7. We have heard the learned counsel for the petitioners and the learned Law Officer and perused the record.

8. We may first address the objection concerning the competence of the original applicants who instituted the proceedings under section 12(2) of the CPC, as this was the sole ground on which the trial court dismissed the application. The question is whether the application, having been filed by officials of the Education Department rather than in the name of the Province of Sindh through the Secretary of the Education Department, was liable to be dismissed as incompetent, or whether the omission to name the Province constituted a defect capable of correction under the CPC. This question must be considered in the light of the particular circumstances of the case, namely, that the original application was instituted by the Provincial Government officials through a Provincial Government law officer for the protection of a claimed government interest, and that the Provincial Government itself subsequently joined the revisional proceedings.

9. In **Province of Punjab v Murree Brewery Company Limited** (2021 SCMR 305), the Supreme Court considered the maintainability of intra-court appeals filed by the Government of Punjab in the name of the Chief Secretary, Government of Punjab, through Secretary Excise and Taxation, instead of the Province of Punjab through Secretary Excise and Taxation, which had been dismissed by the High Court for non-compliance with section 79 of the CPC and Article 174 of the Constitution. The Supreme Court held that, as a matter of general principle, section 79 of the CPC is a mandatory provision, non-compliance with which may render proceedings invalid for want of a necessary party. However, where the Government itself files an appeal, albeit with a wrong description, the requirements of section 79 of the CPC amount to mere nomenclature, non-compliance with which does not render the appeal unmaintainable. The Court explained that the object and purpose of section 79 of the CPC is to ensure that the Government is properly represented and defended, and where that purpose is achieved, a misdescription, though constituting a contravention of the provision, is not fatal to the proceedings. The Court also referred to the distinction between misdescription or misnomer of a party and misjoinder or non-joinder of a party, observing that a misdescription may be corrected at any stage of the proceedings and is not fatal to their maintainability, whereas non-joinder of a necessary party may render the proceedings unsustainable. It was reiterated that section 79 of the CPC cannot be made a ground for a technical knockout. The Court further held that where there is a misdescription of parties, the Court may, either on its own accord or upon an application, exercise its powers under section 153 and Order I, Rule 10(2) of the CPC to strike out the name of any party improperly joined and add the appropriate party whose presence is necessary to do complete justice. In this regard, the Court observed that courts should take a proactive approach to matters involving misdescription of parties by exercising their powers under section 153, Order I, Rule 10 and Order XXVII-A of the CPC, the latter being applicable to appeals as well. Such misdescription, unless shown to be mala fide or left unremedied despite a direction to correct it, is not fatal to the proceedings, and courts should actively remedy the mistake by adding the Federal or Provincial Government as a party at any stage of the proceedings.

10. In **SDO/AM, Hasht Nagri Sub-Division, PESCO, Peshawar v Khawazan Zad** (PLD 2023 SC 174), the Supreme Court, while examining the procedural requirements concerning suits by or against corporations and appeals or revisions arising therefrom, held that any defect in the authority of a person to sign and verify pleadings or to institute or defend a suit on behalf of a corporation, including the signing or filing of a memorandum of appeal or revision petition, can be cured at any stage of the proceedings. The Court further observed that any defect or omission in signing and verifying, or presenting, pleadings or memorandum of appeal or revision petition does not affect the merits of the case or the jurisdiction of the court and is therefore taken to be such an irregularity which can be cured at any stage of the proceedings. The underlying principle is that procedural requirements are intended to facilitate the administration of justice and should not be applied so rigidly as to defeat substantive rights on account of defects capable of correction.

11. Applying the above principles to the present case, it is evident from the record that the application under section 12(2) of the CPC was filed by the Director Schools Education, Mirpurkhas Division, the Headmaster, Government Shah Waliullah High School, Mirpurkhas, and the Assistant District Education Officer, Mirpurkhas, through the Deputy District Attorney, who signed and presented the application in his official capacity as a law officer. The application specifically asserted that the property in question belonged to the Provincial Government and that the compromise decree had been obtained through fraud and misrepresentation to deprive the Provincial Government of its property. Thus, the applicants did not assert any personal right or interest in the property; rather, the proceedings were initiated in their official capacities to protect the claimed interest of the Provincial Government. The nomenclature employed in the cause title cannot, therefore, be treated as conclusive in the facts of the case. What is material is the substance of the proceedings, which shows that the application was intended to be filed on behalf of the Provincial Government and for the protection of its claimed rights in the disputed property. Although the Province of Sindh was not formally impleaded as an applicant, the omission was capable of correction by bringing the Provincial Government on record

under Order I, Rule 10(2) of the CPC. The application, therefore, ought not to have been dismissed solely on that ground without considering whether the defect could be rectified.

12. It is also significant that when the order passed on the application under section 12(2) of the CPC was challenged in revision under section 115 of the CPC, the Government of Sindh itself, being aggrieved by the order, joined the proceedings in the name of Province of Sindh through the Secretary, Education Department, as applicant No. 1. The revision application also specifically raised the contention that the defect arising from non-impleadment of the concerned Secretary was capable of correction under Order I, Rule 10 of the CPC. Thus, even if the omission to name the Province of Sindh through the Secretary, Education Department, in the original application were treated as a defect requiring rectification, the Provincial Government had itself come before the revisional court and was pursuing the very proceedings originally instituted by its functionaries for the protection of the property claimed to belong to the Provincial Government. The learned District Judge entertained the revision and set aside the order of the trial court, though without expressly addressing the effect of the Provincial Government having joined the proceedings at that stage. In considering the legal effect of this procedural omission, it is useful to recall the observations of Kaikaus, J., in **Imtiaz Ahmad v Ghulam Ali** (PLD 1963 SC 382), that the proper place of procedure in any system of administration of justice is to help, and not to thwart, the grant of rights to the people, and any system which, by giving effect to form rather than substance, defeats substantive rights is defective to that extent. Viewed in the light of this principle, and having regard to the subsequent participation of the Provincial Government in the revisional proceedings, the omission to implead the Province of Sindh in the original application was a defect capable of correction and did not warrant dismissal of the application solely on that ground.

13. We may now examine whether the revisional court was justified in setting aside the order of the trial court and remanding the matter for framing of issues and recording of evidence. The learned District Judge observed that the application under section 12(2) of the CPC called for adjudication on the allegations of fraud, misrepresentation and want of jurisdiction, whereas the trial court had

framed issues only concerning cause of action and limitation. It was held that, in the absence of issues concerning fraud and misrepresentation, dismissal of the application on the point of cause of action alone, without recording evidence of either party, was unjustified. The trial court was accordingly directed to re-cast the issues, afford the parties a fair opportunity to lead evidence and decide the application on merits. The High Court endorsed this approach, observing that the dismissal of the application without addressing the allegations of fraud or misrepresentation and without recording evidence was unjustified. It was further held that the order of the revisional court did not call for any interference. It is, however, significant that neither the revisional court nor the High Court examined whether the nature of the allegations raised in the application actually required the recording of evidence. Both courts proceeded on the assumption that, since allegations of fraud and misrepresentation had been raised, issues ought to be framed and evidence recorded, without considering whether those allegations could be determined on the basis of the material already available on record.

14. In this regard, the legal position is well settled. The Supreme Court in **Hafiz Malik Kamran Akbar v Muhammad Shafi (deceased) through LRs** (PLD 2024 SC 262) held that, for determining the grounds of alleged fraud, misrepresentation or want of jurisdiction raised in an application under section 12(2) of the CPC, the Court is not obligated in each and every case to frame issues mandatorily in order to record evidence of the parties and follow the procedure prescribed for the trial of a suit. Rather, it rests upon the satisfaction of the Court to structure its proceedings and, after analysing the nature of the allegations, to decide whether the case is fit for framing of issues and recording of evidence, without which the allegations cannot be decided. The Supreme Court also referred to **Ghulam Muhammad v M Ahmad Khan** (1993 SCMR 662), wherein it was held that although determination of allegations of fraud and misrepresentation usually involves investigation into questions of fact, it is not in every case that the Court is under an obligation to frame issues, record evidence and follow the procedure prescribed for deciding a suit, for otherwise the purpose of providing the remedy through a simple application would be defeated. The matter is left to

the satisfaction of the Court, which, keeping in view the nature of the allegations, may adopt such mode for disposal as the circumstances of the case may require in consonance with justice. Reference was also made to **Amiran Bibi v Muhammad Ramazan** (1999 SCMR 1334), wherein it was recognized that although an inquiry should ordinarily be held where allegations of fraud and misrepresentation involve investigation into questions of fact, it is not a requirement of law that the Court must in all circumstances frame issues, record evidence and follow the procedure prescribed for deciding a suit. Whether issues need to be framed and evidence recorded depends upon the facts and circumstances of each case and the requirements of justice. The Supreme Court further referred to **Amina Bibi v Nasrullah** (2000 SCMR 296), wherein the same principle was applied and the application under section 12(2) of the CPC was held liable to dismissal without framing issues or recording evidence, having regard to the facts and circumstances of the case, the material available on record and the judicial orders passed during the earlier litigation.

15. It follows from the above that the mere raising of allegations of fraud or misrepresentation in an application under section 12(2) of the CPC does not necessarily require the Court to frame issues and record evidence. Whether such a course is necessary depends upon the nature of the allegations and the material already available on record. Where the controversy can be resolved on the basis of the existing record, particularly judgments and orders passed in earlier judicial proceedings, the recording of further evidence may not be necessary. The revisional court was, therefore, required to consider whether the allegations raised in the application could be determined on the basis of the admitted or otherwise established material already available on record before directing a fresh inquiry through the recording of evidence. The High Court, while examining the legality of the revisional order in its constitutional jurisdiction, was likewise required to consider this aspect. We may, therefore, examine the material available on record to determine whether the order of remand was justified in the circumstances of the present case.

16. Turning to the material available on record, we find that the application under section 12(2) of the CPC was based principally on the assertion that the property occupied by Government Shah

Waliullah High School, Mirpurkhas, belonged to the Provincial Government and had been fraudulently included in the compromise between private parties, resulting in the decree dated 15.07.1980. The document relied upon in support of the government claim was Resolution No. 2618 dated 15.07.1932, issued by the Education Department of the then Government of Bombay. The Government of Sindh also placed on record Resolution No. 2618 dated 03.04.1925, issued by the same department. A perusal of the latter resolution shows that it primarily concerned the taking over of the Mirpurkhas Madressah, then administered by the District Local Board, for its conversion into a Government High School, together with arrangements relating to its administration, staffing and expenditure. The accompanying correspondence and financial statements also contain references to payment of rent for the school building. Similarly, the resolution dated 15.07.1932 merely accorded administrative approval for the construction of a new building for the educational institution. Neither resolution identifies the disputed property by its city survey number, nor does either expressly provide for its acquisition, transfer or vesting in the Government. These documents may, therefore, establish the historical involvement of the Provincial Government in the administration and development of the educational institution, but do not, by themselves, establish government ownership of the disputed property. No other document establishing acquisition or ownership of the disputed property by the Provincial Government was brought on record. Nor was any material produced to lend credence to the allegation that the actual survey number of the disputed property was 556 rather than 756.

17. The petitioner, on the other hand, placed on record certain sanads issued in 1928 in favour of one Dewan Tehal Ram Basarmal relating to City Survey Nos. 756 to 760. The sanads were issued under section 133 of the Bombay Land Revenue Code 1879, pursuant to a survey of lands within Mirpurkhas City ordered by the Government of Bombay for the purposes of settling the land and assessing tax thereon and ascertaining and maintaining a record of ownership and other rights in such lands. These sanads, issued in favour of Dewan Tehal Ram Basarmal, relate to pieces of land bearing register No. 756, 757, 758, 759 and 760, measuring approximately 616, 89, 319, 156 and 163 square yards, respectively, situated in Ward A of Mirpurkhas

City. They recognise his possession over the aforesaid plots, together with transferable and inheritable rights therein, subject to the conditions stipulated in the respective sanads.

18. As regards the legal effect of such sanads, the High Court of Sindh in **Major Akbar Hamid Lodhi v Abdul Karim** (1998 CLC 546) held that a sanad issued under section 133 of the Sindh Land Revenue Code 1879, after due inquiry, sets out the nature of the tenure and the proprietary rights vested in the holder and constitutes prima facie evidence of title. The Court further observed that such a sanad affects rights between the government and the person to whom it is granted and is not, strictly speaking, a document of title between private litigating parties. The High Court of Bombay in **Ulawappa Basawaneppa Hugar v Gadigewa Hugar** (AIR 1925 Bom 477) held, "when a sanad is given under Section 133 of the Bombay Land Revenue Code 1879, after due inquiry, in the form in Schedule H, the sanad itself is a document of title." Subsequently, in **Sea Enterprises v Collector, District Raigad** (Writ Petition No. 4453 of 1988, decided on 28.07.2006), the High Court of Bombay, relying on **Ulawappa (supra)**, held that a purchaser deriving title from a holder of a sanad issued under section 133 of the Bombay Land Revenue Code 1879, recognising transferable and heritable occupancy rights, was the lawful title holder.

19. The petitioner also placed on record a registered agreement dated 26.06.1934, which describes Tehal Ram Basarmal as landlord or lessor and the District Local Board, Tharparkar, as tenant or lessee, and provides for the construction of a building for use as a hostel of the Mirpurkhas Madressah High School on a rented plot, comprising Survey Nos. 756 to 760, Ward A, situated at Gharibabad, Sub-District Mirpurkhas, District Tharparkar. Further, the registered sale deed dated 20.11.1942 records that Tehal Ram Basarmal sold the property comprising Survey Nos. 756 to 760, Ward A, Mirpurkhas, measuring approximately 1,343 square yards, together with the structures standing thereon, to Seth Herchandrai and Seth Dhanrajmal, both sons of Seth Manumal, for a consideration of Rs. 87,500, and delivered possession thereof to them. The deed further records that the property was being used as a boarding house of the Madressah High School, Mirpurkhas, under a tenancy arrangement

entered into by the vendor with the school authorities for a period of five years, which had since expired. It also provides that the purchasers would thereafter be entitled to let out the property and that their names would be entered in the city survey record in equal shares. Notably, Seth Herchandrai was the father of petitioner No. 1, Lachmandas, and Seth Dhanrajmal was his paternal uncle. Both were arrayed as defendants in the partition suit instituted by petitioner No. 1 in 1979, in which the disputed property fell to his share under the compromise accepted by the trial court on 15.07.1980.

20. The record also contains an earlier judicial decision concerning the ownership of the building and the tenancy relationship between the parties. In Civil Suit No. 99 of 1960, instituted by Seth Herchandrai against, inter alia, the Government of West Pakistan, Education Department, and the Deputy Commissioner, Tharparkar, for recovery of arrears of rent in respect of the building housing the school and bearing City Survey No. 756, formerly comprising Survey Nos. 756 to 760, Ward A, Mirpurkhas, the trial court delivered judgment on 20.12.1961. The suit was contested by the Provincial Government, and the trial court specifically framed the issue, "Whether the plaintiff is not owner of the suit premises?" In deciding that issue, the trial court examined the evidence concerning the purchase of the building in 1942, the city survey record, and the testimony of Seth Herchandrai and his brother Dhanrajmal, the latter having disclaimed any ownership interest in the property. It also considered documents establishing that the defendants had acknowledged Seth Herchandrai as owner and had paid rent to him. Upon consideration of this evidence, the trial court expressly concluded that Seth Herchandrai alone was the owner of the building and that the defendants were estopped under section 116 of the Evidence Act from challenging his title as landlord. The suit was accordingly decreed against the Provincial Government and the Deputy Commissioner for recovery of arrears of rent. It is also significant that the Government of Sindh has neither asserted that the aforesaid judgment was challenged in appeal nor claimed that it was subsequently set aside or otherwise reversed by any competent court.

21. Subsequently, Lachmandas, petitioner No. 1, instituted Suit No. 340 of 1979 for partition of family properties, including the

disputed property. Seth Herchandrai and Seth Dhanrajmal, the purchasers under the registered sale deed of 1942, were among the defendants. As already noted, the suit was disposed of on the basis of a compromise accepted by the trial court on 15.07.1980, whereby the disputed property was given to Lachmandas. The Government of Sindh was not a party to those proceedings.

22. The record also contains official correspondence and rent proceedings spanning the period from 1956 to 2013, which shed further light on the competing claims of ownership and the occupation of the disputed building by educational institutions under arrangements for payment of rent. The official correspondence includes, among others, a letter dated 23.08.1956 from the Chief Officer, District Local Board, Tharparkar, acknowledging Seth Herchandrai as owner of the building occupied for educational purposes, and an order dated 02.04.1980 issued by the District Education Officer, Tharparkar, sanctioning enhancement of rent in respect of the property bearing Survey Nos. 756 to 760, occupied by Shah Waliullah High and Primary Schools, Mirpurkhas, and describing Seth Herchandrai as its owner. Subsequently, in Rent Applications Nos. 2 and 3 of 1995, instituted by Lachmandas against the concerned educational authorities and the Government of Sindh in respect of the same property, the respondents, in their written objections, expressly referred to Suit No. 340 of 1979 concerning disputes among the co-sharers of the property and further objected that no notice of change of ownership had been served upon them as required under section 18 of the Sindh Rented Premises Ordinance. They also stated that negotiations for purchase of the building were underway. The parties subsequently agreed to arrangements for payment of rent, which were recorded in orders dated 30.05.1996. Although the Education Department later asserted governmental ownership and directed withholding of rent by letter dated 27.02.2001, it expressly withdrew that direction by letter dated 30.11.2004, after examining a report of the Mukhtiarkar and City Survey Officer, Mirpurkhas, which disclosed no evidence of governmental ownership, and directed payment of rent to Lachmandas, together with arrears from 2001. Nevertheless, in the written replies filed in Rent Applications Nos. 9 and 10 of 2013, instituted by Lachmandas concerning the portions occupied by Shah Waliullah Government

Primary and High Schools, the educational authorities again disputed private ownership and asserted governmental title, while acknowledging that rent had been paid under departmental directions. It is significant that the genuineness or authenticity of any of the aforesaid documents produced by the petitioners was not specifically disputed by the respondents. In the concise statement filed before this Court, respondent No. 4 essentially reiterated the allegation that City Survey No. 556 had been fraudulently altered to 756 in collusion with the revenue authorities, without specifically questioning the authenticity of the documents relied upon by the petitioners. Nor was any objection with regard to the genuineness or authenticity of the aforesaid documents raised by the learned Law Officer during arguments.

23. Having examined the material available on record, we now consider whether the allegations of fraud and misrepresentation raised in the application under section 12(2) of the CPC could be determined on the basis of that material or required the recording of further evidence. The main allegation was that the disputed property belonged to the Provincial Government and that the parties to the partition suit, acting in collusion with the revenue authorities, had manipulated the city survey record to include government property in the partition suit and obtain a compromise decree in respect thereof. More particularly, it was alleged that City Survey No. 556, measuring 616 square yards and originally recorded in the name of Tehal Ram Basarmal, had been tampered with and changed to Survey No. 756, and that the areas of Survey Nos. 757, 758, 759 and 760 had been added thereto. It was further alleged that alterations had been made in the revenue record concerning the names of the recorded holders, including an entry dated 20.11.1942, and that these manipulated entries had been relied upon in Civil Suit No. 99 of 1960 and subsequently in the partition suit of 1979. The applicants also asserted that the property had been acquired by the Government of Bombay in 1930 for the establishment of the Mirpurkhas Madressah High School and its hostel, referring in this regard to an Education Department resolution of 15.07.1932. It was alleged that the Provincial Government had been deliberately omitted from the partition proceedings, notwithstanding its longstanding possession of the property and the operation of Shah

Waliullah High School therein, and that the compromise decree had consequently been obtained through fraud and misrepresentation.

24. The allegations of fraud and misrepresentation, however, find no support in the material available on record. The five sanads issued under section 133 of the Bombay Land Revenue Code 1879, independently identify Survey Nos. 756 to 760, Ward A, Mirpurkhas, and record the possession and transferable and inheritable rights of Dewan Tehal Ram Basarmal therein. The registered agreement of 1934 identifies the same survey numbers and describes the District Local Board, Tharparkar, as lessee, while the registered sale deed of 1942 records the transfer of the property, measuring approximately 1,343 square yards, to Seth Herchandrai and Seth Dhanrajmal. **These documents precede the partition suit proceedings and provide an independent explanation for the description of the property and the entries concerning its successive holders. The allegation that the property was fraudulently brought within the partition proceedings through alteration of Survey No. 556 to Survey No. 756, or through the addition of Survey Nos. 757 to 760, is not supported by any material on record**. Nor does the Education Department resolution of 1932, concerning the proposed construction of educational buildings, by itself establish that the property had been acquired by the Provincial Government in 1930. No acquisition award, conveyance or other instrument establishing the alleged transfer of ownership to the Provincial Government has been identified in the application. **More importantly, the Provincial Government itself contested Civil Suit No. 99 of 1960, in which the ownership of the disputed building was expressly put in issue and determined in favour of Seth Herchandrai by judgment dated 20.12.1961. The Provincial Government has neither asserted that the said judgment was challenged in appeal nor claimed that it was subsequently set aside or reversed by any competent court**. The subsequent conduct of the educational authorities, including their acknowledgment of private ownership, participation in rent proceedings, agreement to payment of rent and, particularly, the withdrawal in 2004 of the departmental assertion of governmental ownership after examination of the report of the revenue authorities, is also inconsistent with the allegation that the private claim originated in a fraudulent manipulation of the record. **The non-impleadment of**

the Provincial Government in the partition suit of 1979 cannot, in these circumstances, by itself establish fraud or misrepresentation, particularly when the suit concerned partition among persons claiming through the registered sale deed of 1942 and the Provincial Government had already contested the ownership of the building in earlier judicial proceedings. The mere fact that the building continued to be occupied by a government school does not establish governmental ownership, since such occupation is equally consistent with the tenancy reflected in multiple documents. **The allegations of fraud and misrepresentation thus appear to rest essentially upon a renewed assertion of governmental title, without any supporting material to establish that the compromise decree dated 15.07.1980 was procured through fraud or misrepresentation in the proceedings before the trial court. The existing documentary record was, therefore, sufficient to resolve the allegations raised in the application under section 12(2) of the CPC, rendering the recording of further evidence unnecessary**.

25. An objection was also raised that the application under section 12(2) of the CPC was barred by limitation, having been instituted on 28.11.2013, more than thirty-three years after the compromise decree dated 15.07.1980. The respondents sought to explain the delay by asserting that they were not a party to the partition suit and that they came to know of the decree only when copies thereof were filed in Rent Applications Nos. 9 and 10 of 2013. This explanation, however, is contradicted by the earlier judicial record. In the written objections filed in Rent Applications Nos. 2 and 3 of 1995, the Government of Sindh and its educational authorities themselves expressly referred to Suit No. 340 of 1979 concerning disputes among the co-sharers of the property and also raised an objection that no notice of change of ownership had been served upon them as required under section 18 of the Sindh Rented Premises Ordinance. **This shows that the respondents were aware, at least as early as 1995, of the partition suit and of a change of ownership as a result of the decree passed in that suit. The respondents thus had knowledge of the proceedings of the partition suit and the competing claims of ownership long before 2013. In these circumstances, the explanation offered by the**

respondents as to when they acquired knowledge of the decree is completely unsatisfactory and devoid of merits.

26. An application under section 12(2) of the CPC is governed by Article 181 of the First Schedule to the Limitation Act 1908, which prescribes a period of three years from the date when the right to apply accrues. It has been held in **Bashir Ahmed v Muhammad Hussain** (PLD 2019 SC 504) that the period of limitation for filing an application under section 12(2) of the CPC is three years under Article 181 of the First Schedule to the Limitation Act 1908, commencing from the date when the right to apply accrues to the aggrieved applicant, which ordinarily would be the date of the impugned decision. Where, however, the aggrieved person has, by means of fraud, been kept from knowledge of the decision, the commencement of the period of limitation may be postponed, under section 18 of the Limitation Act, to the date when the fraud first became known to that person. **A vague assertion regarding the date of knowledge would be of no legal avail, as allegations of fraud or concealment must be specifically pleaded with clear particulars. In the present case, the respondents asserted in paragraph 19 of their application that they came to know of the compromise decree when copies thereof were filed by Lachmandas in Rent Applications Nos. 9 and 10 of 2013. However, neither the precise date of such knowledge nor the circumstances in which the alleged fraudulent manipulation of the revenue record was discovered were disclosed. More importantly, as already noted, the respondents had expressly referred to Suit No. 340 of 1979 in their written objections filed in successive rent proceedings of 1995 and had also raised an objection concerning the absence of notice of change of ownership. It indicates that the respondents in 1995 were aware not only of the partition suit but also of a change in ownership resulting from the decree passed in those proceedings**. The mere assertion of knowledge of the decree in 2013 was, therefore, insufficient, in the circumstances of the case, to establish an entitlement to the benefit of section 18 of the Limitation Act. In these circumstances, the respondents failed to establish that the alleged fraud remained concealed from them until 2013 despite the exercise of reasonable diligence.

27. Against this background, the revisional court was not justified in setting aside the order of the trial court and directing the recording of evidence merely because allegations of fraud and misrepresentation had been raised. As already discussed, the material available on record included official records and correspondence, as well as earlier judicial decisions, particularly the judgment concerning ownership of the disputed property. The revisional court was required to examine whether such material was sufficient to determine the allegations and, if not, to identify the material factual questions which necessitated the recording of evidence. **Instead, it proceeded on the assumption that allegations of fraud and misrepresentation invariably required the framing of issues and recording of evidence, without examining whether the nature of those allegations actually warranted such a course. The order of revisional court was, therefore, not based upon a proper application of the principles governing proceedings under section 12(2) of the CPC**.

28. The **High Court**, while exercising its constitutional jurisdiction, was required to examine whether the revisional court had exercised its jurisdiction in accordance with the principles governing proceedings under section 12(2) of the CPC. The High Court, however, declined to interfere substantially on the ground that allegations of fraud and misrepresentation required evidence, without examining whether the revisional court had identified any material factual controversy necessitating such evidence. In doing so, the High Court failed to address the legal infirmity in the revisional order. **The material already available on record was sufficient to determine whether the allegations of fraud and misrepresentation furnished any basis for interference with the compromise decree. In these circumstances, the order of revisional court served no legally justified purpose, and the High Court erred in declining to interfere with it**.

29. **For the foregoing reasons, we are of the view that the allegations of fraud and misrepresentation raised in the application under section 12(2) of the CPC are not supported by the material available on record. The application was also barred by limitation, the plea of discovery of fraud in 2013 being**

insufficient in the circumstances of the case to justify its institution after more than thirty-three years. Although the trial court was not justified in dismissing the application solely on the ground of competence of the applicants, its dismissal was nevertheless sustainable on the grounds discussed above. The revisional court, therefore, erred in setting aside that order and remanding the matter for recording evidence, and the High Court failed to correct that error in the exercise of its constitutional jurisdiction. Accordingly, this petition is converted into an appeal and allowed. Consequently, the constitutional petition filed before the High Court by petitioner No. 1 stands allowed. The impugned order of the High Court and the revisional order of the District Judge are set aside. The order of the trial court dismissing the application under section 12(2) of the CPC is restored for the reasons recorded in this judgment.

30. These are the reasons of our short order of even date.

Judge

Judge

Karachi:
06.10.2026
Approved for reporting
(Muhammad Ahmad)