

# IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

## Civil Revision Application No.S-122 of 2024

Applicants : Mukhtiar Ali (since dead) through his legal heirs, *through* Mr. Atta Hussain Chandio, Advocate.

Respondents : Mst. Abida Parveen and others *through* Mr.Zamir Ali Shah, Advocate and Mr. Abdul Waris Bhutto, Assistant Advocate General, Sindh.

Date of Hearing : 02.10.2025.

Date of Decision : 09.10.2025.

### JUDGMENT

**Ali Haider 'Ada'.J:-** Through this Civil Revision Application, the applicants have assailed the judgment and decree dated 26.08.2024, passed by the learned Additional District Judge-II, Kamber, in Civil Appeals No. 26-A of 2023 and 40-A of 2023, whereby the learned appellate court remanded back the matter to the trial court for re-trial. Being aggrieved and dissatisfied by the said judgment and decree, the applicants have preferred the instant Civil Revision Application, challenging the legality, propriety, and correctness of the impugned remand order passed by the appellate court.

2. The brief facts of the case are that one Mukhtiar Ali initially instituted the civil suit. During the pendency of the proceedings, he passed away, and his legal heirs were brought on record and contested the matter. The suit was filed for declaration, cancellation of sale deeds and revenue entries, and permanent injunction against Mst. Abida Parveen (daughter of the plaintiff Mukhtiar Ali) and others. The claim of the plaintiff, Mukhtiar Ali, was that he was the lawful owner of immovable properties bearing Survey Nos. 355, 356, and 357, situated in City Kamber, having a total area of 2048-4 square feet (hereinafter referred to as the "suit property"). He had purchased these properties on different occasions. Out of the said suit property, he gave possession of 800 square feet to Respondent No.1, Mst. Abida Parveen, his daughter, merely for residential purposes. Similarly, he handed over another portion to his son, Imdad Ali, also for residential use. It is specifically claimed that he did not charge or collect any

rent from either of them. Subsequently, Respondent No.1, Mst. Abida Parveen, allegedly rented out the suit property to Respondent No.2, Mst. Shahida Shamim. In August 2018, the plaintiff, Mukhtiar Ali, demanded possession of the suit property from Respondent No.2, who refused, asserting that she had purchased the property from Respondent No.1. Thereafter, Respondent No.2 is stated to have sold the suit property to Respondents No.3 and 4 through a registered sale deed. Upon inquiry through revenue authorities, it came to the knowledge of the plaintiff that a registered sale deed dated 1997 existed, allegedly executed by Mukhtiar Ali in favor of Respondent No.1, Mst. Abida Parveen, whereby the suit property had purportedly been sold to her. Based on this sale deed, Respondent No.1 subsequently sold the property to other respondents through successive registered sale deeds. In view of this development, the plaintiff instituted the civil suit seeking a declaration of ownership, cancellation of the aforementioned sale deeds and related revenue entries, and a decree of permanent injunction restraining the defendants from creating any further third-party interest in the suit property.

3. That after the filing of the civil suit before the learned Senior Civil Judge, Kamber (hereinafter referred to as the trial Court), Respondent No.1 filed her written statement wherein, while admitting the ownership of the plaintiff over the suit property, she specifically pleaded that the plaintiff, being her father, had lawfully sold the suit property to her through a registered sale deed in the year of 1997. It was further contended that the property was subsequently mutated in her name and thereafter legally sold to other parties. Most of the other respondents also adopted a similar stance in their respective written statements, asserting that they had derived valid title through subsequent transactions originating from Respondent No.1.

4. Upon completion of the pleadings, the learned trial Court has framed the following issues:

*Whether the suit of plaintiff is maintainable under the law?*

*Whether an area of 800 square feet from C.S Nos 355, 356 and 357 situated in Kamber City was rented out by the plaintiff to defendant No.2 in year 2006 upon the insistence of defendant No.1 ( plaintiff's daughter), being the plaintiff its owner thereof ?*

*Whether the sale deed Nos 832 dated 11.04.1997, 716 dated 08.11.2005 and 1154 dated 30.10.2018 revenue entries dated 18.12.1985, 23.03.1986 and 22.11.1997 are illegal based on fraud committed by the defendant No.1 to 5 and are liable to be cancelled ?*

*Whether the plaintiff is owner of suit property and is entitled to the relief claimed?*

*What should the decree be?*

5. The plaintiff side led its evidence by examining Imdad Ali, son of the plaintiff Mukhtiar Ali, who appeared as a witness and deposed on behalf of the legal heirs. In his examination-in-chief, he categorically denied the execution of any sale deed by the plaintiff in favor of Respondent No.1 in the year 1997. During his cross-examination by the counsel for Respondent No.1, the said witness was confronted with a registered sale deed purportedly executed in 1997, wherein it was mentioned that the plaintiff had allegedly sold an area of 800 square feet from the suit property to Respondent No.1. The witness, however, challenged the validity and authenticity of the said document, arguing that even if the sale deed is presumed to have been executed, it pertains only to a portion of the suit property 839 square feet. He further deposed that Respondent No.1, despite this limited area being mentioned in the alleged sale deed, went on to sell the entire suit property, which exceeds 2048-4 square feet, to third parties. This, according to the plaintiff's side, casts serious doubt on the genuineness and legality of the sale deed itself, as Respondent No.1 transferred more property than what she allegedly acquired under the disputed sale deed. Consequently, the execution and effect of the sale deed dated 1997 were seriously questioned and sought to be declared void and ineffective in the eyes of law. The plaintiff side subsequently produced a witness, namely Gulzar Ali, City Surveyor from the office of the concerned Mukhtiarkar. Although he had initially been debarred from filing a written statement due to his position as an official witness, the trial court summoned him, having been named in the list of witnesses. Gulzar Ali was examined-in-chief on 21.09.2022, during which he produced relevant official documents pertaining to the suit property. However, his cross-examination was reserved for a subsequent date. He was recalled for cross-examination on 07.10.2022. On that date, the plaintiff himself conducted the cross-examination of the said witness. However, the trial court recorded the cross-examination as "Nil" vide its short order dated 07.10.2022, effectively noting that no substantive cross-examination took place. It is significant to note that during his examination-in-chief, the said official witness produced material documents from the revenue record, which were relied upon by the plaintiff to support his claim of ownership and to challenge the validity of the impugned sale deed and subsequent transactions. The plaintiff also examined Muhammad Muzamil, an official from the office of the Sub-Registrar. He appeared as a witness on behalf

of the plaintiff and produced certain relevant documents pertaining to the registration of the alleged sale deeds in question. His examination-in-chief was duly recorded; however, as per the court's short order dated 07.10.2022, his cross-examination was recorded as "Nil." It is noteworthy that, similar to the previous official witness, Muhammad Muzamil was cross-examined by the plaintiff himself, and not by the counsel for the defendants. The documents produced by this witness were relied upon by the plaintiff to substantiate his claim that the sale deed dated 1997 was either fabricated or executed under questionable circumstances, and that the subsequent transactions based on it were without lawful authority.

6. Thereafter, the defendants led their evidence, and their witnesses were duly examined and cross-examined by the learned counsel for the plaintiff. Upon conclusion of the evidence from both sides and after hearing the arguments advanced by the respective parties, the learned trial court proceeded to decide the matter on merits.

7. The learned trial court, had passed judgment and decree whereby the suit of the plaintiff was decreed as prayed, granting the reliefs sought in the plaint, including declaration, cancellation of the impugned sale deeds and revenue entries, and permanent injunction. Being aggrieved by the judgment and decree passed by the learned trial court in favour of the plaintiff, the respondents preferred a civil appeal before the learned Additional District Judge-II, Kamber. Upon hearing both sides, the learned appellate court has set aside the judgment and decree of the trial court. The appellate court remanded the case back to the trial court for re-trial, with the following directions:

*To allow the appellants (Respondent side) to cross examine the Respondent (plaintiff side) witnesses including official witnesses i-e Gulzar Ali and Muhammad Muzamil belonged to the office of Mukhtiarkar concerned and Sub registrar respectively.*

*If marginal witness of the sale deeds are alive then than such witnesses be summoned and their evidence may be recorded with chance of cross examination.*

*The additional issue be framed regarding the execution of sale deed between Abida Parveen (Respondent No.1) and Mukhtiar Ali (Plaintiff) further additional issue be framed regarding execution of sale deed or not.*

*Additional issue also is framed regarding the relation of landlord and tenant between the plaintiff and respondent No.1, if so than what are the legal consequences of maintainability of suit.*

*Respondent be allowed to produce valid and legal documents in their favour the list thereof shall be submitted after framing the issue along with list of witnesses within one month.*

*After completing the suit be decided afresh.*

*The cost of Rs.10,000 per appellant(respondent be affixed).*

*To decide the suit within three months.*

8. Being aggrieved and dissatisfied with the judgment and decree passed by the learned appellate court, whereby the judgment and decree of the trial court were set aside and the matter was remanded for re-trial, the applicants (legal heirs of the plaintiff) have filed the instant Civil Revision Application. Through this revision, the applicants have challenged and called into question the legality, propriety, and correctness of the impugned judgment and decree of the appellate court, with a specific prayer to restore and maintain the judgment and decree passed by the learned trial court, and to set aside the remand order and judgment of the appellate court in its entirety.

9. Learned counsel for the applicants submitted that the learned appellate court passed the impugned judgment and decree without properly appreciating the material available on the record. It was contended that the appellate court failed to consider a crucial aspect of the case, that Respondent No.1, by virtue of the alleged sale deed dated 1997, was only shown to be the owner of 839 square feet of the suit property, yet she went on to sell the entire area measuring 2048-4 square feet, without any legal title or supporting documentary evidence. He further argued that the plaintiff side had produced marginal witnesses of the disputed sale deed to question its authenticity, and that the learned appellate court, by remanding the matter, in effect attempted to fill the lacuna in the evidence of the respondents, which is impermissible under the law. Moreover, learned counsel maintained that the ownership of the plaintiff over the suit property was not in dispute, and therefore the learned trial court rightly decreed the suit based on the available evidence. It was further submitted that the findings of the appellate court were beyond the scope of the appeal and amounted to a re-appraisal of settled facts without lawful justification, thus rendering the remand order illegal and liable to be set aside. In support of his contentions, the learned counsel placed reliance upon the following case law: 2020 SCMR 300, PLD 2003 Peshawar 40, PLD 2013 Sindh 513, 2005 CLC 83, 2021 SCMR 1986, 2012 YLR 1598, 2010 SCMR 1630, 2016 YLR 1233, 2021 CLC 584.

10. On the other hand, learned counsel for the respondents supported the impugned judgment of the appellate court and contended that the remand was justified on multiple legal grounds. He argued that the opportunity of cross-examination had not been properly afforded in accordance with law. In particular, he pointed out that the plaintiff himself conducted the cross-examination of his own witness, which is contrary to the principle enshrined in Article 150 of the Qanun-e-Shahadat Order, 1984, which governs the mode and manner of examining witnesses. He further argued that the cross-examination of the witnesses produced by the defendant/respondent side was recorded as “nil” through a short order, without proper recording of proceedings, which amounts to denial of fair trial as guaranteed under the law. Additionally, it was submitted that the learned trial court failed to frame an essential issue regarding limitation, as the sale deed being challenged by the plaintiff was executed in the year 1997, while the civil suit was instituted in 2020 after more than two decades. The failure to frame this issue, according to the respondents' counsel, vitiates the entire trial. The learned counsel for the respondents prayed for dismissal of the instant civil revision application and for directions to be issued to the learned trial court to proceed in accordance with the remand order passed by the appellate court.

11. Conversely, the learned Assistant Advocate General, Sindh, has supported the impugned decree and judgment of the appellate Court, and has adopted the arguments advanced by the learned counsel for the respondent side.

12. Heard the arguments of learned counsel for the parties, perused the material available on record, and considered the relevant provisions of law.

13. Before proceeding further, it is essential to examine the judgment and decree passed by the learned trial court. It is observed that although the trial court framed an issue regarding the legality of the impugned sale deeds, it failed to properly address a critical aspect, that whether the date of knowledge as claimed by the plaintiff had been proved through cogent evidence. The question of limitation is essentially linked with the date of knowledge, especially in cases where old sale deeds are challenged. In the present case, the plaintiff sought cancellation of a registered sale deed executed in the year 1997, but the suit was instituted in 2020. Therefore, it was incumbent upon the trial court to frame a specific issue regarding limitation and to allow parties to lead evidence on that point. However, the learned trial court, without framing such an issue and without calling for specific evidence on the aspect of date of knowledge,

proceeded to accept the plaintiff's version as correct; a presumption which is legally untenable. The failure to frame an essential issue regarding limitation has materially affected the proceedings. It is a settled principle of civil jurisprudence that it is the primary duty of the court to frame proper and necessary issues so that the parties are aware of the precise controversy and can lead evidence accordingly. Framing of issues is not a mere formality; it lays the foundation for a fair trial. For proper guidance and legal clarity, reference is made to **Order XIV, Rules 1, 2, and 3 of the Code of Civil Procedure, 1908**, which deal with the settlement of issues and the determination of suits. The said provisions are reproduced as under:

**1. Framing of issues.**– (1) *Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.*

(2) *Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.*

(3) *Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue.*

(4) *Issues are of two kinds: (a) issues of fact, (b) issues of law.*

(5) *At the first hearing of the suit the Court shall, after reading the plaint and the written statements, if any, and after such examination of the parties as may appear necessary, ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.*

(6) *Nothing in this rule requires the Court to frame and record issues where the defendant at the first hearing of the suit makes no defence.*

**2. Issues of law and of fact.**– *Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined.*

**3. Materials from which issues may be framed.**– *The Court may frame the issues from all or any of the following materials:–*

(a) *allegations made on oath by the parties, or by any persons present on their behalf, or made by the pleaders of such parties;*

(b) *allegations made in the pleadings or in answers to interrogatories delivered in the suit;*

(c) *the contents of documents produced by either party.*

In view of the above, there appears to be a clear legal flaw on the part of the learned trial court in the conduct of proceedings. Not only did the trial court fail to frame a necessary issue regarding limitation particularly in light of the

plaintiff's challenge to a sale deed executed in 1997 while the suit was filed in 2020 but it also presumed the date of knowledge claimed by the plaintiff to be correct, without requiring proper evidence on that crucial aspect. Such an omission amounts to a denial of fair adjudication on a material point of law. Support is drawn from the case of **Lahore Development Authority through Director General vs Arif Manzoor Qureshi and others 2006 SCMR 1530**.

14. Furthermore, the right of cross-examination is a fundamental right of the parties in adversarial proceedings. It is a key component of the right to a fair trial, enshrined both in procedural law and constitutional principles. However, in the present case, it is evident that the learned trial court did not afford a proper opportunity for cross-examination of key witnesses. The deposition sheets do not clearly reflect the circumstances under which the cross-examination was recorded as "Nil." There is no detailed or speaking order explaining why the opportunity to cross-examine was either waived or denied, nor is there any indication of consent or satisfaction of the parties on record. The mere mention of a short order showing cross-examination as "Nil" is insufficient, especially when such a step prejudices the rights of a party. In the absence of a valid explanation or judicial reasoning, such recording raises serious concerns about procedural fairness and adherence to due process.

15. Furthermore, **Article 133 and Article 134 of the Qanun-e-Shahadat Order, 1984**, provides a clear and mandatory mechanism for the cross-examination of witnesses. It is a settled principle of evidence law that after the examination-in-chief of a witness, the adverse party must be afforded a fair and full opportunity to cross-examine that witness, and, if necessary, the witness may also be re-examined. This procedure is not merely a formality but a substantive right of the opposing party, the denial of which renders the testimony legally incomplete and potentially inadmissible. In addition to the Qanun-e-Shahadat, the Code of Civil Procedure, 1908, also outlines a well-defined process for leading evidence and recording statements. In particular, **Order XVIII Rules 1, 2, and 3 CPC** prescribe the stages of examination-in-chief, cross-examination, and re-examination of witnesses.

16. In the instant case, however, the trial court failed to follow this prescribed mechanism. As noted earlier, the deposition sheets do not reflect any lawful basis or judicial reasoning as to why cross-examination was recorded as "Nil" nor does the record disclose whether the adverse party had waived its right, or if the witness was discharged in accordance with law. The absence of this procedural



compliance constitutes a violation of the principles of natural justice and fair trial. For ready reference, the relevant provisions are reproduced below:

**133. Order of examinations.**– (1) *Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.*

(2) *The examination and cross-examination must relate to relevant facts but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.*

(3) *The re-examination shall be directed to the explanation of matters referred to in cross-examination; and, if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine that matter.*

**134. Cross-examination of person called to produce a document.**– *A person summoned to produce a document does not become a witness by the mere fact that he produces it and cannot be cross-examined unless and until he is called as a witness.*

### **Order XVIII**

**1. Right to begin.**– *The plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin.*

**2. Statement and production of evidence.**– (1) *On the day fixed for the hearing of the suit or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.*

(2) *The other party shall then state his case and produce his evidence (if any) and may then address the Court generally on the whole case.*

**3. Evidence where several issues.**– *Where there are several issues, the burden of proving some of which lies on the other party, the party beginning may, at his option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party; and, in the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence, and the other party may then reply specially on the evidence so produced by the party beginning; but the party beginning will then be entitled to reply generally on the whole case.*

17. In light of the foregoing discussion, it is evident that the trial court committed a material illegality by not ensuring that the right to cross-examination was properly exercised and recorded in accordance with law. The deposition notes are vague and do not clearly reflect whether the adverse party was afforded a meaningful opportunity to cross-examine the witnesses. In the absence of a detailed or speaking order justifying the recording of “cross-examination: Nil,” this omission constitutes a serious procedural irregularity.

Failure to observe such essential procedural safeguards renders the trial court's findings legally flawed and liable to be interfered with by the Revisional jurisdiction of this Court. Support is drawn from the case of **Muhammad Bashir vs Rukhsar and others PLD 2020 SC 334**.

18. Furthermore, it is also evident from the record that the learned trial court has allowed the plaintiff to cross-examine his own witnesses, namely the official witnesses from the Mukhtiarkar's office and the office of the Sub-Registrar, who had been summoned through the plaintiff's own list of witnesses. Under Article 150 of the Qanun-e-Shahadat Order, 1984, a party may cross-examine its own witness upon declaring the witness hostile and after fulfilling certain legal conditions including showing that the witness has resiled from their earlier statement or has exhibited hostility or bias. However, in the instant case, the learned trial court neither declared the witnesses hostile nor recorded any reasons or circumstances justifying such treatment of the witness. The plaintiff was allowed to cross-examine his own witnesses as a matter of course, without any application, judicial determination, or due process. Simultaneously, the trial court denied the defendants a fair opportunity to cross-examine the same or other witnesses. It is well-settled that fair trial is a fundamental right, expressly guaranteed under Article 10-A of the Constitution of the Islamic Republic of Pakistan, which ensures that every person is entitled to a fair, impartial, and transparent adjudication of disputes. Support is drawn from the case of **Federation of Pakistan through Secretary Finance Islamabad vs E-Movers (Pvt) limited 2022 SCMR 1021**. For clarity the article 10-A of the Constitution of the Islamic Republic of Pakistan is read as under:

*10-A. Right to fair trial. For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process.*

19. Now, referring to the appellate court's judgment and decree, it is to be judicially scrutinized whether the directions issued therein while setting aside the decree and judgment of the trial court and remanding the matter for re-trial were lawful, within the scope of appellate jurisdiction, and relevant to the controversy in hand. Each direction must be assessed independently to determine whether it conforms to the established principles of civil jurisprudence, procedural law, and the facts of the case. The appellate court, while setting aside the trial court's judgment, issued specific directions to be followed by the trial court upon remand. The first direction given by the appellate court is as follows:

*To allow the appellants (Respondent side) to cross examine the Respondent (plaintiff side) witnesses including official witnesses i-e Gulzar Ali and Muhammad Muzamil belonged to the office of Mukhtiarkar concerned and Sub registrar respectively.*

20. As already discussed in the preceding paragraphs, the observations made by the learned appellate court regarding denial of the right to cross-examination are well-founded and legally justified. The record clearly reflects that the defendant/respondent side was not afforded a proper and reasonable opportunity to cross-examine the witnesses produced by the plaintiff, particularly the official witnesses from the revenue and registration departments. In this context, the appellate court rightly observed that the defendants must be given a reasonable and effective opportunity to cross-examine the plaintiff's witnesses. Therefore, the first direction issued by the appellate court requiring the trial court to allow the defendants to cross-examine the witnesses is found to be correct, lawful, and within the scope of appellate jurisdiction.

21. Second, the findings of the appellate court regarding the direction that:

*If marginal witness of the sale deeds are alive then than such witnesses be summoned and their evidence may be recorded with chance of cross examination.*

The second finding or direction of the learned appellate court pertains to the examination of evidence, particularly in relation to the marginal witnesses of the disputed sale deeds. On this aspect, it is a well-established principle of law that it is the duty of the parties themselves to prove their respective claims by producing the relevant evidence. The court is not obligated, to fill in the lacunae or deficiencies in the evidence on behalf of any party. If a party, despite having the opportunity, chooses not to examine a marginal witness or fails to produce material evidence, the court may draw an adverse presumption under the relevant law. Accordingly, the appellate court's second direction, to the extent that it obligates the trial court to compel the examination of specific witnesses or re-open the evidentiary record beyond what is necessary for procedural fairness, exceeds its lawful jurisdiction and undermines the principle that a party must succeed or fail on the strength of its own case.

22. So far, the another direction of the appellate court regarding the additional issue that:

*The additional issue be framed regarding the execution of sale deed between Abida Parveen (Respondent No.1) and Mukhtiar Ali (Plaintiff) further additional issue be framed regarding execution of sale deed or not.*

Another significant direction issued by the learned appellate court was regarding the necessity of framing an additional issue on the execution of the sale deed. Upon scrutiny, this observation appears to be legally justified and within the proper jurisdiction of the appellate court. It is a settled principle of civil procedure that where a party challenges a registered document (such as a sale deed), and that challenge is brought after a considerable lapse of time, the question of limitation becomes a mixed question of law and fact. In such cases, it is essential for the trial court to frame a specific issue to determine: Whether the suit is barred by limitation, and whether the plaintiff acquired knowledge of the sale deed within the timeframe prescribed under the Limitation Act, 1908. In such circumstances, it was incumbent upon the trial court to frame an issue specifically addressing the bar of limitation, and to allow both parties to lead evidence on the date of knowledge, as claimed by the plaintiff.

23. The appellate court also directed that an additional issue be framed regarding the existence of a landlord-tenant relationship between the plaintiff and Respondent No.1, and further, that its legal consequences on the maintainability of the suit be considered. In this regard, it is clarified that the said issue had already been framed as Issue No.02 by the learned trial court, which reads as follows:

*“Whether there exists any relationship of landlord and tenant between the plaintiff and defendant No.1?”*

Therefore, the direction of the appellate court to frame an additional issue on a matter already addressed by the trial court appears to be unnecessary. Hence, this particular direction lacks proper justification.

24. Furthermore, the appellate court directed that only the respondents be allowed to produce valid and legal documents, and to submit a list of documents and witnesses within one month after framing of the additional issue. This direction appears procedurally flawed for two reasons: Firstly; it violates the principle of equal treatment of parties. If additional issues are framed, both sides the plaintiff and the defendants should be equally directed to submit their respective lists of witnesses and documents, Secondly; the direction to allow one month for submission of such lists, without recording any specific reasons for deviation from procedural law, appears to contradict **Order XVI Rule 1 of the Code of Civil Procedure, 1908**, which provides that:

*[1. Summons to attend to give evidence or produce documents.– (1) Not later than seven days after the settlement of issues, the parties shall present in*

*Court [certificate of readiness to produce evidence, along with a] list of witnesses whom they propose to call [or produce] either to give evidence or to produce documents.*

Thus, while the appellate court may, in the interest of justice, extend the time period for submission of witness lists, such discretion must be exercised judicially and uniformly for all parties. A direction that benefits only one party, without lawful justification, amounts to procedural inequity and is liable to be interfered with.

25. The final portion of the appellate court's judgment directed that the suit be decided afresh after complying with the earlier procedural directions, with an order that costs of Rs.10,000 per appellant be imposed on the respondent(s), and that the matter be concluded within a period of three months. These directions, when viewed in light of the appellate court's jurisdiction under **Section 107 read with Order XLI Rule 23 of the Code of Civil Procedure, 1908**, fall within the scope of lawful remand where procedural irregularities have materially affected the outcome of the trial. The appellate court is empowered to remand a matter when it finds that the suit was decided without proper framing of issues, denial of cross-examination, or non-compliance with the mandatory procedural requirements. The direction regarding costs is a discretionary matter, and in this case, appears to be intended to ensure seriousness in conduct and discourage delay. No apparent illegality exists in such imposition. The timeline of three months for concluding the matter is also consistent with the principle of expeditious disposal of cases, particularly when the matter is being remanded after a prior round of litigation. Accordingly, these final directions of the appellate court do not suffer from any legal infirmity and are within the scope of its appellate powers.

26. Consequently, in view of the foregoing reasons and discussions, and in the exercise of judicial scrutiny within the scope of revisional jurisdiction, this Civil Revision Application stands dismissed, as the applicant, being aggrieved by the order of remand and dissatisfied with the observations made therein. However, the judgment and decree of the appellate court are modified to the extent indicated below, with further directions accordingly.

a). The trial Court shall frame issues regarding the execution of the sale deed between the parties, including the question of limitation. Following the framing of issues, both parties shall be at liberty to file their list of

witnesses and documents within seven days in accordance with the prescribed procedural rules.

b). The respondent/defendant shall be afforded the opportunity to cross-examine the witnesses of the plaintiff including official witnesses. Additionally, the question of whether the plaintiff has a right to cross-examine its own witnesses shall be decided after inviting and hearing objections from either party, the trial Court shall decide this point before commencement of the cross-examination of the plaintiff's witnesses.

c). The trial Court shall proceed to decide the matter afresh, without being influenced by its previous findings on relevant points, and the trial shall be concluded within three months from the date of this order. The cost imposed by the appellate Court against the respondent shall remain intact.

27. In view of the above directions, the instant Civil Revision Application is hereby disposed of accordingly.

***JUDGE***