

**ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT
LARKANA**

Civil revision Application No. 83 of 2010

Appellants : Wazir Ali & 2 others, through
Mr. Ghulam Dastagir A. Shahani, Advocate.

Respondents : Province of Sindh & others, through
No. 1 to 3 Mr. Naimatullah Bhurgari, State Counsel

Respondents : Manzoor Ahmed & Zahid Ali, through
No. 4 & 5 Mr. Abdul Rehman Bhutto, Advocate.

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Date of hearing : 11.12.2017
Date of order : 11.12.2017
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ORDER

ZAFAR AHMED RAJPUT, J:- This Civil revision Application under Section 115 C.P.C. is directed against the judgment and decree, dated 13.12.2010, passed in Civil Appeal No. 48 of 2010 whereby the learned 2nd Additional District Judge, Shikarpur maintained the Judgment and Decree, dated 28.09.2010 & 04.10.2010 respectively, passed by the learned 1st Senior Civil Judge, Shikarpur in Civil Suit No. 55 of 2008.

2. Briefly stated facts of the case are that the respondents No. 4 & 5/ plaintiffs filed Civil Suit No. 55 of 2008 for declaration and permanent injunction against the applicants/defendants No. 4 to 6, alleging therein that a plot bearing C.S. No. 1/2, measuring 832.2 sq. yds., (*hereinafter the "Suit Plot"*) originally belonged to one Devo Mal, who migrated to India and the suit plot became an evacuee property, which has neither been allotted to any claimant nor sold out to any person through auction or otherwise. It is further alleged that the respondents No. 4 being in possession of the suit plot made an application to the then Deputy Settlement Commissioner, Shikarpur requesting him for its transfer

to him on the ground of possession with after an enquiry sent the particulars of property and occupants to the Gen Deputy Commissioner, Shikarpur; however, the same has yet not been transferred to him due to ban on disposal of evacuee properties. It is the case of the respondents No. 4 & 5 that the applicants/defendants No. 4 to 6 being very influential persons attempted on 04.10.2008 to dispossess them by force and illegal means from the suit plot; hence they instituted the suit with the following prayers:-

"a) Declare that the plaintiffs have every right to hold the suit property and that the defendants No 4 to 6 have absolutely no right over or any concern with it.

b) Restraining the defendants No. 2 and 4 to 6 from dispossessing the plaintiffs from the suit property by force or except in due course of law and or interfering with the possession and use of the plaintiffs in respect of suit property in any manner whatsoever.

3. The respondents/defendants No. 1 to 3 did not make their appearance, though served, and they were declared ex-parte by the trial Court; however, applicants/defendants No. 4 to 6 contest the suit by filing their written statement averting that an area of 3800 sq.ft. from Suit plot remained in their possession while one room admeasuring 20 x 16 (320 sq.ft.) was given by them to respondent No.4/plaintiff No.1, who is their brother-in-law and when they left for Dubai, Iran and Saudi Arabia in connection with their respective jobs, the respondent No.4/plaintiff No.1 taking the advantage of their absence occupied the plot illegally and made application to Deputy Settlement Commissioner, Shikarpur for allotment of the plot in his favour claiming falsely to be in its possession.

4. The learned trial Court out of the pleadings of the parties framed following issues:-

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1. *Whether suit is not maintainable?*
2. *Whether plaintiffs have legal right to possess suit plot and whether possession of the plaintiffs over suit pot is legal and valid?*
3. *Whether C.S. No. 1/2, measuring 832.2 sq. yds., was in possession of defendants No. 4 to 6 and only one room admeasuring 20 x 16 (320 sq.ft.) was given to the plaintiffs by the defendants and out of this area two portions were made as otaq and shop?*
4. *Whether settlement authorities have illegally shown the possession of plaintiff No.1 over (3800) sq.ft. vide their letter dated 19.04.1982?*
5. *Whether the plaintiffs are entitled for any relief?*
6. *What should the decree be?*

5. The learned trial Court after recording pro and contra evidence of the parties decided Issues No. 1 to 5 in favour of respondents No. 4 & 5/plaintiffs and decreed the suit with compensatory costs. The applicants/defendants No. 4 to 6 preferred Civil Appeal No. 48 of 2010 before the learned District Judge, Shikarpur, which was heard and dismissed by the learned 2nd Additional District Judge, Shikarpur vide judgment and decree, dated 13.12.2010. Being aggrieved, the applicants/defendants No. 4 to 6 have maintained this Revision Application.

6. I have heard the learned Counsel for the applicant and perused the record.

7. It appears that the learned appellate Court framed a formal point for determination i.e. "*whether the impugned Judgment and Decree warrants any interference by this Court*" and dismissed the Civil Appeal of applicants, without deliberating on all the issues involved in the matter, especially issues No.1 and 3 framed by the learned trial Court. Hence, violating the mandatory provisions of law, the appellate Court has committed material irregularity in exercise of jurisdiction while passing the impugned judgment and decree.



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8. It may be relevant to mention here that the expression "judgment" is defined in sub-section (9) of Section 2 of C.P.C. as "statement given by the judge of the grounds of a decree or order". This can be elaborated as "judicial decision of a Court or Judge". Order XLI, Rule 31 C.P.C. provides that judgment of an appellate Court shall state (i) the points for determination, (ii) the decision thereon, and (iii) the reasons for the decision. It is obvious in the case in hand that the judgment of the appellate Court is unjust and cannot be called decision upon the rights of the parties in the manners provided by law. The counsel for the respondents, while admitting lapse committed by the appellate Court, record their consent to remand the matter to appellat Court for a decision afresh.

9. Under the circumstances, this Civil Revisions Application is allowed. Consequently, the impugned judgment and decree passed by the appellate Court is set aside and the matter is remanded to the learned appellate Court with the direction to pass a de novo judgment and decree with the reasons upon points to be framed by the learned appellate Court in the appeal covering all the issues framed by the learned trial Court in accordance with law and after giving both the parties opportunity to advance their arguments. Since the matter pertains to the year 2008. The learned appellate Court is directed to decide the appeal expeditiously and preferably within two months from the date of first hearing of appeal.


JUDGE