THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Civil Revision No. 27 of 2018

Applicants	:	Haji Ghano Khan Jatoi and 14 others through M/s. Syed Zakir Hussain Shah and Syed Tahir Abbas Shah Advocates.
Respondents 1&3	:	District Forest Officer Afforestation Division, Larkana, and Range Forest Officer, Larkana through Mr. Aijaz Ahmed Bhatti, Advocate alongwith Mr. Karim Bux Mangrio, Range Forest Officer, Larkana and Mr. Iftikhar Ahmed Arain D.F.O. 'A' Larkana.
Respondent 2&4	:	Conservator of Forest, Afforestation Circle, Larkana, and Government of Sindh through Mr. Munawar Ali Wasi, Assistant A.G., Mr. Abid Hussain Qadri & Ms. Nisho Fatima State Counsel.
Dates of hearing	:	18-01-2019 & 04-03-2019.

O R D E R

Adnan Iqbal Chaudhry J. – The Suit of the Applicants *inter alia* for declaration of title to land against the Forest Department was decreed by the trial court but dismissed by the appellate court; hence this Civil Revision.

2. The land subject matter of this case is an area of 473-20 acres or thereabouts in deh Faridabad, Taluka Dokri, District Larkana. The background to the Applicants' Suit was that in exercise of powers and in proceedings under section 164 Sindh Land Revenue Act, 1967, the Board of Revenue Sindh had, vide order dated 15-11-1995, annulled certain orders passed by Revenue Officers and cancelled

the consequent entries made in the Revenue record in the years 1987 to 1995 in favor of the plaintiffs, with the consequence that the entries of the Forest Department to the subject land were restored. That order dated 15-11-1995 passed by the Board of Revenue was challenged by the Applicants/plaintiffs by F.C. Suit No.143/1995 (new F.C. Suit No.157/2000) before the III-Senior Civil Judge, Larkana, praying *inter alia* for declaration of their title to the subject land by way of inheritance from (i) Minhon Khan, (ii) Karim Bux, and (iii) Chakar.

3. The Applicant/plaintiff No.1 (Haji Karam Khan) had claimed that he had inherited agricultural land bearing Survey No.s 310 to 324 and 327 to 329 measuring 95-25 acres in deh Faridabad from his father, Minhon Khan, who had passed away in the year 1910. Per the plaintiff No.1, he and his sister, Nawab Khatoon, had also inherited 88-20 acres and 44-10 acres respectively in Survey No. 325 of deh Faridabad from their mother, Azmat Khatoon (who had passed away in 1940), and who had inherited 132-20 acres in Survey No.325 from her father, Chakar, who had passed away in the year 1920; and that subsequently, in the year 1992, the plaintiff No.1 had sold his 88-20 acres in Survey No.325 to the defendant No.14 (Shahid Iqbal), and Nawab Khatoon had sold her 44-10 acres in Survey No.325 to the plaintiff No.8 (son of plaintiff No.1) by an oral sale recorded by the concerned Mukhtiarkar in the year 1987.

The Applicants/plaintiffs 2 to 7 had claimed that they had inherited agricultural land bearing Survey No.326 (257-15 acres) in deh Faridabad from their father, Haji Khair Muhammad, who had inherited the same from his father, Karim Bux.

The Applicant/plaintiff No.9, Haji Gahano Khan, was the son of the plaintiff No.1. Haji Gahano Khan claimed to be the Attorney and Sub-Attorney of the plaintiffs 1 to 7 and claimed to have purchased around 233-35 acres in Survey No.326 of deh Faridabad from the plaintiffs 2 to 7 vide a statement of sale dated 15-09-1987.

4. It was the case of the plaintiffs that their predecessors-in-title, namely Minhon Khan, Karim Bux and Chakar, had filed respectively Civil Suit No. 646/**1889**, Civil Suit No. 70/**1891** and Civil Suit No. 1426/**1894** against the Forest Department before the 'Subordinate Civil Court Larkana' to challenge Notification No.3409 dated 01-06-**1887** published in the Bombay Government Gazette dated 02-06-1887 under section 19 of the Indian Forest Act, 1878 whereby their agricultural land in deh Faridabad, Taluka Labdarya (present day Taluka Dokri), District Shikarpur (presently part of District Larkana) had been declared a 'Reserved Forest'; that the said Civil Suit No. 646/1889, Civil Suit No. 70/1891 and Civil Suit No. 1426/1894 had been decreed *ex-parte* against the Forest Department and in favor of Minhon Khan, Karim Bux and Chakar respectively vide decrees dated 30-06-**1890**, 19-02-**1892** and 07-06-**1895** whereby they had been declared to be owners of the subject land and such land had been ordered to be excluded from the Forest Notification No.3409 dated 01-06-1887.

5. It was the case of the defendants 1 to 3, the Forest Department, that the subject land continued to be a 'Reserved Forest' under the Forest Notification No.3409 dated 01-06-1887; that the plaintiffs acting in collusion with the Additional Deputy Commissioner Larkana, the Assistant Commissioner Larkana and the Mukhtiarkar Dokri had fabricated documents/reports and made false entries in the Revenue record to supersede the entries of the Forest Department; that the said manipulation was managed by the plaintiff No.9, Haji Gahano Khan, in the year 1986-1987; and that the certified copies of the decrees dated 30-06-1890, 19-02-1892 and 07-06-1895 relied upon by the plaintiffs were forged and fabricated.

6. After recording evidence the trial court decreed F.C. Suit No. 157/2000 vide judgment dated 23-12-2003, decreeing that the subject land was the property of the plaintiffs and was not a Reserved Forest. However, on Civil Appeal No. 92/2017 filed by the Forest

Department, F.C. Suit No. 157/2000 was dismissed vide judgment dated 01-02-2018.

7. Mr. Zakir Husain Shah, learned counsel for the Applicants/plaintiffs submitted that Civil Appeal No. 92/2017 filed by the Forest Department was incompetent; that only the Government of Sindh was competent to file an appeal to claim Forest Land, which it never did; that the Forest Officer was not authorized under Order XXVII Rule 1 CPC to file an appeal on behalf of the Government of Sindh; that in view of the case of *Iftikhar-Ud-Din Haider Gardezi v. Central Bank of India Ltd., Lahore* (1996 SCMR 669), the judgment of the appellate court merits setting-aside on the ground that it does not comply with the requirements of Order XLI Rule 31 CPC as the appellate court did not state points for determination and did not discuss all the issues; that the entries in the Revenue record in favor of the plaintiffs had been made on the basis of decrees dated 30-06-1890, 19-02-1892 and 07-06-1895 passed by a court of competent jurisdiction in favor of the plaintiffs' predecessors-in-title and such entries attracted the presumption of correctness under section 52 of the Sindh Land Revenue Act, 1967; that in view of section 53 of the Sindh Land Revenue Act, 1967, the Board of Revenue did not have jurisdiction to decide the title of the plaintiffs; and that the judgment of the appellate court was contradictory, conjecture and did not give reasons for overturning the judgment and decree passed by the trial court.

8. Mr. Aijaz Ahmed Bhatti, learned counsel for the Forest Department (Respondents/defendants 1 to 3) submitted that the Forest Notification No.3409 dated 01-06-1887, under which the subject land had been declared a Reserved Forest, had carried forward to the Forest Act, 1927 and is still intact, and for that he placed reliance on an order dated 27-10-2008 passed by the Supreme Court of Pakistan in Civil Petition No. 172-K of 2006 titled *Muhammad Waris v. Chief Conservator of Forest, Sindh*. He submitted that the trial court had erred in discarding the Forest Notification

No.3409 dated 01-06-1887 on the ground that the same was only an attested copy. He submitted that the decrees dated 30-06-1890, 19-02-1892 and 07-06-1895 relied upon by the plaintiffs, which were *ex-parte*, were clearly fake, as a 'Subordinate Civil Court Larkana' did not exist at the time; the decree of Suit No. 70/1891, mentions 'Larkana Division' which Division did not exist at the time; the description of forest officers in the said decrees was all wrong; that the documents filed with the comments of the Forest Department will show that the real title of Civil Suit No. 646/1889 was *'Mano Sing v. Ahmed Khan Lashari'* and not *'Minhon v. Deputy Conservator of Forests'* as alleged by the plaintiffs; and that the real title of Civil Suit No.70/1891 was *'Sero Mal v. Nawab'* and not *'Karim Bux v. Deputy Conservator of Forests'* as alleged by the plaintiffs. He submitted that entries made in the Revenue record in favor of the plaintiffs were false, made in collusion with Revenue officials and such falsification had been set right by the Board of Revenue vide order dated 15-11-1995 which was passed competently under section 164 of the Sindh Land Revenue Act, 1967.

9. On rebuttal, Mr. Zakir Hussain Shah, learned counsel for the Applicants/plaintiffs submitted that minor discrepancies pointed out by the Forest Department in the certified copies of the decrees can be explained by the fact that such certified copies were Sindhi translations of the decrees existing in the English language.

10. Heard the learned counsel and perused the record.

Adverting first to Mr. Zakir Hussain's objection that by reason of Order XXVII Rule 1 CPC, Civil Appeal No. 92/2017 was filed incompetently by the Forest Department as only the Government of Sindh was competent to file such appeal – firstly, Order XXVII Rule 1 CPC deals with pleadings in a suit, not an appeal; and secondly the memo of appeal shows that the Government of Sindh was one of the appellants and the memo had been signed by a Provincial law officer. Nonetheless, I fail to see any force in the objection when the

plaintiffs themselves had arrayed forest officers as defendants in the Suit below.

11. To reiterate, by Notification No.3409 dated 01-06-**1887** published in the Bombay Government Gazette dated 02-06-1887 under section 19 of the Indian Forest Act, 1878, the subject land along with other land, had been declared a 'Reserved Forest', but it was the plaintiffs' case that by decrees dated 30-06-**1890**, 19-02-**1892** and 07-06-**1895** passed by the 'Subordinate Civil Court Larkana' in Civil Suit No. 646/1889, Civil Suit No. 70/1891 and Civil Suit No. 1426/1894, the plaintiffs' predecessors-in-title, namely Minhon Khan, Karim Bux and Chakar, had been declared to be owners of the subject land which land was ordered to be excluded from the Forest Notification No.3409 dated 01-06-1887. Given that the said decrees relied upon by the plaintiffs had themselves recognized the Forest Notification No.3409 dated 01-06-1887, the existence thereof was never in dispute, and that much had been accepted by the learned counsel for the Applicants/plaintiffs during the course of his arguments. An extract of the same Forest Notification No.3409 dated 01-06-1887 was produced in evidence in F.C. Suit No.157/2000 by the Forest Department, duly certified by the Divisional Forest Officer Afforestation, Division Larkana, in terms of Article 89(1) of the Qanoon-e-Shahadat Order, 1984 (page 439 of that extract was placed later on the record of this Revision). There is nothing on the record to show that the said Forest Notification No.3409 dated 01-06-1887 was ever superseded by a notification under section 26 of the Indian Forest Act, 1878 or by a notification under section 27 of the Forest Act, 1927 to de-notify the Reserved Forest. Also, it has been observed by the Supreme Court of Pakistan in an order dated 27-10-2008 passed in Civil Petition No. 172-K of 2006 (*Muhammad Waris v. Chief Conservator of Forest, Sindh*) that on the enactment of the Forest Act, 1927, the notifications issued under the Indian Forest Act, 1878 did not cease to hold the field by virtue of section 6 of the General Clauses Act, 1897. Therefore, the observation of the trial

court that the said Forest Notification No.3409 dated 01-06-1887 did not carry any evidentiary value, especially when the case of the plaintiffs themselves proceeded from such Notification, was clearly a misreading of the record.

12. Though the trial court had observed that the plaintiffs "*produced number of documents before the Court in proof of their ownership as well as possession over the suit survey numbers*", but those "*number of documents*" were neither discussed nor relied upon by the trial court and F.C. Suit No. 157/2000 was decreed in favor of the plaintiffs primarily on the strength of the decrees dated 30-06-1890, 19-02-1892 and 07-06-1895 (hereinafter 'the decrees in question') said to have been passed in favor of the plaintiffs' predecessors-in-title (Minhon Khan, Karim Bux and Chakar). Thus, the said decrees passed in the years 1890, 1892 and 1895 were the sheet-anchor of the plaintiffs' case. Though it was the case of the Forest Department that the decrees in question were forgeries, the trial court held the decrees to be proved/genuine on the basis of certified copies of such decrees said to have been produced in evidence by the plaintiffs as Exhibit 94-D, 94-M and 94-P, and on the basis of the deposition of Abdul Razzaq, who had signed the certified copies of the said decrees as the erstwhile COC of the 1st Senior Civil Judge Larkana, and who had stated that he had done so after verifying the record.

13. The appellate court found the certified copies of the decrees in question to be unreliable for the reason *inter alia* that those were not accompanied by copies of judgments, and for the reason that Aftab Ahmed, the Record Keeper of the 1st Senior Civil Judge Larkana, who had been summoned by the Forest Department to produce the case files of Civil Suit No. 646/1889, Civil Suit No. 70/1891 and Civil Suit No. 1426/1894 in which the decrees in question had been purportedly passed, had deposed that he had spent two months trying to find the case files but could not find the same in the record; and that he had made efforts to trace the suit institution registers for the years 1889 and 1894 but those registers were also not traceable.

The appellate court was thus of the view that it remained un-explained as to how the plaintiffs had obtained certified copies of decrees 100 years old in the year 1988-1989 when the case files of such decrees were no-where to be found.

14. The documents produced by the plaintiffs as certified copies of the decrees dated 30-06-1890, 19-02-1892 and 07-06-1895 (Exhibit 94-D, 94-M and 94-P) show that these had been issued in the years 1988-1989. These documents are not in the language of the Court (English) but are in hand-written Sindhi, with a note at the end that these are translations of decrees drawn-up in English. While making his rebuttal, Mr. Zakir Hussain, learned counsel for the Applicants/plaintiffs had also accepted that the said documents were translations. In other words, the documents produced by the plaintiffs as Exhibit 94-D, 94-M and 94-P were not at all "copies" of the decrees in question. Article 74 of the Qanoon-e-Shahadat Order, 1984 does not enlist a translation as secondary evidence of a document. Even under the Sindh Civil Court Rules (Rules 319 to 336), translations and certified copies are issued by the office of the Court as distinct documents. Therefore, Exhibit 94-D, 94-M and 94-P which were relied upon by the trial Court as certified copies of the decrees in question were not even "copies" let alone "certified copies" within the meaning of Article 87 of the Qanoon-e-Shahadat Order, 1984. Consequently, the question of presumption as to genuineness of certified copies under Article 90 of the Qanoon-e-Shahadat Order, 1984, which in any case is a rebuttable presumption, did not even arise. In the absence of certified copies of the decrees in question, the translations produced by the plaintiffs as Exhibit 94-D, 94-M and 94-P had no evidentiary value. There was no other evidence brought by the plaintiffs to show the existence of Civil Suit No. 646/1889, Civil Suit No. 70/1891 and Civil Suit No. 1426/1894. Neither the plaints of the said suits nor the judgments passed therein were produced. Thus the decrees in question, which were the sheet-anchor of the plaintiffs' case, were never proved

either by secondary evidence or by circumstantial evidence. In fact, if anything, the translations of the decrees in question gave more reason to doubt the same. The translation of the decree in 'Case No. 646/1889' bears the date 30-06-1890 as the date the decree was signed, but does not state the date on which the judgment was pronounced. The translation of the decree in 'Case No. 70/1891' is also followed by describing the case as "Application No. 834/1892", and though this translation states the date of pronouncement of judgment as 19-02-1892, it does not state the date on which the decree was signed. Further the said translation describes the Court as "Subordinate Civil Court, Division Larkana" when Larkana was never a 'Division' in the year 1892. Again, the translation in 'Case No. 1426/1894' bears the date of 07-06-1895 but does not state whether that is the date of pronouncement of judgment or the date the decree was signed.

15. The decrees in question and the case files of those decrees remained elusive. Aftab Ahmed, the Record Keeper of the 1st Senior Civil Judge Larkana, who had been summoned by the Forest Department to produce the case files of the decrees in question, had deposed that the case files were no-where to be found in the record. The observation of the appellate court that the trial court had ignored such evidence, is correct. Even Abdul Razzak, the ex-COC of the 1st Senior Civil Judge Larkana, on whose evidence the trial court had relied, had acknowledged on cross-examination that an inquiry had been conducted by the District Judge as to the where-abouts of such files but the same could not be located.

16. Though Mr. Zakir Hussain, learned counsel for the Applicants/plaintiff could not demonstrate any mis-reading or non-reading of the evidence by the appellate court, he laid great emphasis on the argument that the appellate court had not complied with the provisions of Order XLI Rule 31 CPC and that was ground sufficient to remand the matter.

The import of Order XLI Rule 31 CPC had been discussed by the Supreme Court of Pakistan in the case of *Roshi v. Fateh* (1982 SCMR 542) as follows:

> "We agree that the judgment of the learned Additional District Judge is not altogether satisfactory and it would have been more appropriate for him to have himself discussed the merits of the evidence respectively led by the parties. But as this Court has observed in *Ch. Abdul Kabeer v. Mian Abdul Wahid* and others (1968 SCMR 464) that "a non-compliance with the strict provision of Rule 31 of Order XLI of Civil Procedure Code, 1908 may not vitiate the judgment and make it a nullity and the irregularity may be ignored if there has been substantial compliance with it . . . . . The question whether in a particular case there has been a substantial compliance with the provisions of Rule 31, would depend on the nature of the judgment which is under appeal. For example, if the finding on a question of fact has been arrived at on proper and legal evidence, there could thus be no ground for interference under section 100 of the Code of Civil Procedure and, therefore, there would be no necessity for strict compliance with Rule 31. But, when important points of law are involved in the case, the Appellate Court must indicate the points raised and the reasons, for its decision". The question involved in the instant case was purely a question of fact and we feel that although the learned Additional District Judge may have failed strictly to comply with the provisions of Order XLI, Rule 31 C.P.C. there has been a substantial compliance therewith. Hence the judgment of the learned Additional District Judge was not a nullity and affirming the finding of the trial Court that Sada was not a Shia being concurrent finding could not be interfered with in second appeal."

In *Iftikhar-Ud-Din Haider Gardezi v. Central Bank of India Ltd., Lahore* (1996 SCMR 669) cited by Mr. Zakir Hussain, there too it was observed that "The Civil Courts had to decide the disputes issue-wise as far as it would be practicable in the given situation in each case." However, in the facts of that case, since the appellate court had not discussed a substantial part of the evidence, it was held that the judgment did not comply with Order XLI Rule 31 CPC.

As noted in para 12 above, when the matter came up in appeal, the central question/issue before the appellate court was whether the decrees in question had been proved. That question was discussed sufficiently by the appellate court along with the underlying evidence, and even though the judgment of the appellate

court does not strictly comply with the provisions of Order XLI Rule 31 CPC, in my view it does not fail the test of 'substantial compliance' laid down by the Supreme Court in the case of *Roshi v. Fateh (supra).*

17. There is yet another aspect of the matter. The Indian Forest Act, 1878, which was the law in force at the time the decrees in question are said to have been passed, had provided a code for objecting to and challenging notifications issued under the said Act. Section 4 of the said Act envisaged a notification in the official gazette to propose land as reserved forest, thereby also appointing a Forest Settlement Officer to inquire into and determine any rights alleged to exist in favor of any person in the proposed reserved forest. Thereafter, section 6 of the said Act required the Forest Settlement Officer to publish a proclamation requiring every person claiming any right in the land to submit a claim to the Forest Settlement Officer for the purposes of an inquiry. Section 8 of the said Act empowered the Forest Settlement Officer to exercise powers of a Civil Court. Under section 9 of the said Act, a right in respect of which no claim was made to the Forest Settlement Officer within the stipulated period, was extinguished unless before the notification under section 19 was published, the person claiming satisfied the Forest Settlement Officer that he had sufficient cause for not preferring such a claim within the period fixed. Section 10 of the said Act required the Forest Settlement Officer to pass an order for accepting or rejecting the claim, which was then appealable under section 16 of the Act to a designated officer of the Revenue Department. Section 17 of the said Act provided that the order passed by the appellate authority was final, subject to a revision by the Local Government. Finally, on the lapse of the period provided for preferring claims, or on the disposal of such claims and appeals there from, a notification under section 19 of the Act was published in the Official Gazette specifying the boundary marks and limits of

the forest and declaring the same to be a reserved forest from the date fixed, where after it was deemed to be a reserved forest.

Notification No.3409 dated 01-06-1887 that was allegedly challenged by Minhon Khan, Karim Bux and Chakar (the plaintiffs' predecessors-in-title) via Civil Suit No. 646/1889, Civil Suit No. 70/1891 and Civil Suit No. 1426/1894, was a notification under section 19 of the Indian Forest Act, 1878. If Minhon Khan, Karim Bux and Chakar were owners of the subject land, there is nothing to show that they had ever made a claim to the Forest Settlement Officer under section 6 of the Indian Forest Act, 1878 so as to save their right from the extinguishment provided under section 9 of the said Act. The Indian Forest Act, 1878 was special law that had prescribed a special forum to address claims to land proposed as forests. There is no explanation as to how and in what circumstances a civil court could have exercised jurisdiction to deal with the said matter. However, since that legal question as to a civil court's jurisdiction was not raised before the courts below (although it was noticed by the Board of Revenue in its order dated 15-11-1995), and since I have concluded that the decrees in question were never proved, I leave that legal question to be addressed in a case more appropriate.

18. The upshot of the above discussion is that the judgment and decree dated 01-02-2018 passed by the IV-Additional District Judge, Larkana in Civil Appeal No. 92/2017 does not call for any interference. Consequently, this Revision application is dismissed along with the pending application.

J U D G E

Dated: 29-08-2019