

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Civil Rev. Application No.S-239 of 2019

Date of hearing: 22.04.2021
Date of decision: 22.04.2021

Applicants: Hafiz Ahmed Raza and others,
through Mr. Jamshed Ahmed Faiz,
Advocate

Respondents No.3 & 4: Jawad Hussain and another, through
Mr. Jam M. Jamshed Akhtar,
Advocate.

Respondents No.5 to 8: Tapedar Deh Chhijan, through
Mr. Shahryar Imdad Awan, AAG.

Respondents No.1 & 2: Nemo.

ORDER

KHADIM HUSSAIN TUNIO, J- Through instant civil revision application filed under Section 115 CPC, the applicants have impugned the order dated 21.11.2019, passed by the learned IIIrd Additional District Judge, Mirpur Mathelo, in Civil Appeal No. 68 of 2013, 'Re-Hafiz Ahmed Raza versus Muhammad Anwar and others' whereby the learned Judge dismissed the application u/o 41 rule 27 r/w order 13 Rule 2 CPC, refusing permission for the production of documents mentioned in the said application.

2. Precisely, facts leading to the filing of instant revision application are that the applicants filed a suit for declaration, cancellation of documents and permanent injunction involving suit land of S. No. 289/1 being 0-84 *paisas* share after the same was allegedly usurped by the defendants owing to technicalities in *Foti Khata Badal* whereafter defendants No. 1 & 2 got the khata of the suit land in their names and then purchased the same in the name of their sons. During the pendency of appeal, the applicants had filed an application for admitting documents attached in the said application which was dismissed, hence the said appeal.

3. Learned counsel for the applicants has primarily contended that the documents are public record and are relevant to the facts of the case and are certified copies of said records; that the said documents were misplaced in the past, however after being recently re-found are required to be produced; that the documents are material and same will help in coming to a just conclusion.

4. After arguing the matter at some length, learned counsel for the respondents raised no objection to the production of said documents subject to costs. Learned AAG also recorded no objection in the matter.

5. I have considered the arguments advanced by the parties and perused the record.

6. It is a matter of record that under provisions of Order XLI, rule 27, this Court is fully competent to direct additional evidence for a just and proper determination of the issues even without the application by parties. Power to allow additional evidence is always discretionary in nature and the exercise of such discretion depends on the facts of each case. The object behind exercise of such discretion is to faster the ends of justice, preserve the rights of parties and to right a wrong and keeping this object in view, it may in equity set-aside or intervene in the circumstances of the case. While there is a general rule that parties to a *lis* are not entitled to produce additional evidence, but if the Appellate Court requires any document to be produced or any witness to be examined to pronounce judgment or for any other substantial cause, it can always do so after recording evidence. It is pertinent to note here that the proposed documents were public record and are also relevant to the case. It was argued by the counsel for applicants that the same were previously misplaced owing to no mistake of their own and only recently recovered, hence being material, needing production. This court concedes to such an argument raised by the counsel as all parties are to be afforded full opportunity to adduce their evidence. Such discretionary power could have been exercised by the learned appellate court, however the learned Judge failed to do so even though it was not denuded of its power to summon all necessary documents on its own accord. Learned trial Court

failed to observe the dicta laid down in the case of *Zar Wali Shah v. Yousaf Ali Shah (1992 SCMR 1778)*, wherein the bar against filling of gaps was no more available in the Pakistan jurisprudence and law and Courts and other forums were now required to record/admit evidence. Relevant portion of the respective judgment is reproduced herein below for ready reference:

“The concept of bar against filling the gaps is no more available in the present Pakistan jurisprudence and the law; including, the precedent law on Islamic principles; which are being made applicable progressively to the proceedings before the Courts and other forums which are required to record/admit evidence.”

7. Moreover, in the case of *Master Moosa Khan and three others v. Abdul Haque and another (1993 SCMR 1304)*, the Hon’ble Apex Court was pleased to observe that as long as substantial justice can be done and there is no serious technical or legal impediment, the decision of controversies on merits stands at a much higher level than the disposal on the basis of legal technicalities and technical bars. Not only this, it is an incorrect exercise to just sit and watch as to who commits a mistake and who does not and whoever does, from amongst the contesting litigants, in a procedural matter should be deprived of the right claimed; even if he is entitled to it.

8. Conclusively, instant civil revision application, by consent of the parties’ counsel, was allowed and the impugned order dated 21.11.2019 was set aside subject to the cost of Rs. 20,000/- with directions to the appellant Court to either take additional evidence or direct trial Court to take the same within 30 days subject to right of rebuttal to the respondents and send the same file back to the appellate Court for disposal in accordance with law.

These are the reasons of my short order dated 22.04.2021.

JUDGE

Suleman Khan/PA