

**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**  
**Civil Revision Application No. S-112 of 2014**

Applicant : *Chelo Mal*, through  
Mr. Kalander Bux Phulpoto, Advocate

Respondents 1&2 : *Badal Mal and others (Nemo)*

Respondents 3&4 : *Deputy Commissioner, Khairpur & others,*  
through Mr. Noor Hassan Malik, Assistant  
Advocate General

Dated of hearing : 09.09.2022  
Date of order : 16.09.2022

**ORDER**

**ZAFAR AHMED RAJPUT. J.-.** Applicant herein filed Civil Suit No.41/2007 (*Old No.191/2000*) (*Re- Chelo Mal vs. Badal Mal and others*) before the Court of Senior Civil Judge-II, Khairpur for declaration, cancellation and recovery with following prayers:-

- a) *That it may be declared that the alleged agreement dated 18.07.1998 is prima-facie, illegal, void, ab-initio, nullity in the eyes of law, without consent of the plaintiff and no binding upon him.*
- b) *That this this Honourable Court may be pleased to cancel the alleged agreement dated 18.07.1998 and order the defendant No.1 to deliver up the alleged agreement dated 18.07.1998.*
- c) *That the defendant No.1 may be directed to pay Rs.19,50,000/- to the plaintiff.*
- d) *That any other relief which is available to the plaintiff may be granted.*
- e) *That the costs be allowed.*

2. Respondent No.1 contested the suit by filing his written statement, while respondents 2 to 4 were declared ex-parte by the trial Court, vide order dated 12.03.2008, and out of divergent pleadings of the parties, trial Court framed the following issues:-

1. *Whether the prize bond of Rs.25000/- bearing No.056017 for winning the prize of Rs.2500,000/- (twenty five lacs) ordinarily belonged to the plaintiff, if yes, whether the plaintiff on 16.2.1998 kept the aid bond with defendant No.1 and brought cotton seed with undertaking to pay prize of cotton seed on the next day and the defendant No.1 would return prize bond to the plaintiff?*
2. *Whether the defendant No.1 malafidely did not return the said prize bond and won prize money of Rs.25,00,000/-?*
3. *Whether the plaintiff approached to defendant No.1 for the prize amount and on his refusal he made application to Commissioner Sukkur which was forwarded to the then D.C Khairpur, if yes, whether D.C Khairpur was under influence of defendant No.1 and under compulsion got executed agreement in favour of defendant No.1 and Rs.550,000/- were paid to the plaintiff. If yes, what is it's effect?*
4. *Whether the suit is not maintainable and without any cause of action?*
5. *Whether the plaintiff is entitled to the relief claimed?*
6. *What should the decree be?*

3. The learned trial Court recorded the evidence of the applicant/plaintiff. The respondent/defendant No.1 failed to lead evidence; hence, his side for evidence was closed by the trial Court, vide order dated 16.09.2009; thereafter, the learned trial Court decreed the suit of the applicant / plaintiff as prayed against respondent No.1, vide judgment dated 18.09.2009. The respondent No.1 preferred Civil Appeal No.109/2009 (*Re- Badal Mal vs. Chelo Mal and others*), which was allowed by the Court of 2<sup>nd</sup> Additional District Judge, Khairpur, vide judgment dated 09.12.2009, and matter was remanded to trial Court with direction to record evidence of the respondent No.1. After remand of the said suit, the learned trial Court examined the attorney of respondent No.1, namely, Ashok Kumar and again decreed the suit of the applicant against respondent No.1, vide judgment dated 01.02.2010 & decree dated 09.02.2010. Against that, the respondent No.1 preferred Civil Appeal No.59 of 2010 which was heard and allowed by the learned 2<sup>nd</sup> Additional District Judge, Khairpur, vide judgment dated 12.05.2014, by proposing an issue i.e. "*Whether plaintiff/*

respondent had purchased the prize bond or the said prize bond of Rs.25000/- was purchased by defendant No.1?" remanded the case to trial Court with direction to decide the same afresh within two months after framing the aforesaid issue and giving opportunity to both the parties to lead their evidence on the said issue. It is against these judgment & decree that the instant civil revision application has been preferred by the applicant/plaintiff.

4. It may not be out of place to mention here that after institution of the instant civil revision application, the notices were issued to the respondents, but they failed to make their appearance before this court; consequently, vide order dated 20.01.2022, they were served through daily Kawash dated 07.02.2022 and on 17.02.2022 service against them was held good by this Court; however, they chose to remain absent.

5. Heard learned counsel for the applicant as well as learned AAG Sindh and perused the material available on record.

6. It is matter of record that the pleadings of the parties were in their knowledge and applicant and respondent No.1 led evidence of their own choice in accordance with their pleadings. At no stage of trial, the respondent No.1 raised objection of non-framing of proper issue. Even otherwise as observed by the Honourable Supreme Court in the case of Muhammad Ibrahim (deceased) through L.Rs and another vs. Taza Gul and others (2020 SCMR 2033) "a pleading is ever in the mind of a party and the party has to prove the case pleaded by it through oral as well as documentary evidence, therefore, framing of any specific issue or non-framing thereof does not prejudice the case of the party in any manner unless the party claiming a fresh issue had raised his voice at the time of framing of issues and claiming specific prejudice for non-framing of the issue and prima-facie its claim is borne out from the record and in the upper fora the party was continuously raising this issue".

7. In the instant case, the issue proposed by the appellate Court is already covered from the aforementioned Issue No.1 framed by the trial Court. It is not a legal defect if any specific issue was not framed and/if the language of existing issues is not in accordance with the wishes of any of the parties.

8. For what has been discussed above, it is obvious that the impugned judgment of the appellate Court is unjust and based on material irregularity; therefore, the same is set aside and Civil Appeal No.59/2010 is remanded to the appellate Court with the direction to pass a de novo judgment and decree on merit in accordance with law after giving both the parties notices and opportunity to advance their arguments. Since the matter pertains to the year 2000, the appellate Court is expected for expeditious disposal of said Civil Appeal preferably within a period of three (03) months from the date of the receipt of this order.

The Civil Revision Application stands disposed of in the above terms.

**Judge**

ARBROHI