

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Civil Revision No. S-45 of 2012

For hearing of main case:

Mr. Abdul Rasheed Kalwar, Advocate for the applicant.
Mr. Jamshed Ahmed Faiz, Advocate for the respondent No.1 (a).
Mr. Ali Raza Baloch, Assistant Advocate General.

Date of hearing: 03.10.2022

ZAFAR AHMED RAJPUT, J:- This Civil Revision Application, under section 115 C.P.C., is directed against the judgment and decree dated 22.03.2012, whereby the learned II-Additional District Judge, Ghotki while dismissing Civil Appeal No.38/2011, maintained the judgment dated 30.05.2011 and decree drawn on 31.05.2011, thereby the learned Senior Civil Judge, Ghotki dismissed F.C. Suit No.58 of 2010 filed by the applicant against the respondents for specific performance of contract and permanent injunction in respect of agricultural land bearing S. No. 91 (4-26 acres), situated in Deh Pano Khalso, Taluka & District Ghotki.

2. At very outset, the learned counsel for the applicant and respondent No.1 (a) while inviting attention of this Court towards the judgment of the Appellate Court contend that the learned Appellate Court has not decided the controversy between the parties in accordance with law, as it failed to observe mandatory requirement of framing points for determination as required under Order XLI, rule 31, C.P.C., and dismissed the civil appeal of the applicant, and since the impugned judgment and decree passed by the learned Appellate Court are tangibly unjust and based on material irregularity in the exercise of the jurisdiction, the same are not sustainable in eyes of law.

3. It may be observed 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”. It may be elaborated as “judicial decision of a Court or Judge”. The provisions of Order XX, rule 5, C.P.C., apply to the judgment of a trial Court. Order XX, rule 4 (2) of C.P.C provides that the judgments of the Courts shall contain a concise statement of the case, the points for determination, the decision thereon and the reasons for such decision. Further, Order XX, rule 5 of C.P.C. speaks that in suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefor, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit. Hence, the judgment of the trial should contain (i) a concise statement of the case, (ii) point for determination i.e. the issues, (iii) the decision or finding of the court issue-wise, if the issues are not inter-linked, and (iv) the reasons for the decision. The judgment should not only state the finding of the court but also the evidence and how it supports the findings. It is incumbent upon the trial court where issues have been framed and evidence recorded, the court should give a reasoned judgment even though it may be an ex-parte judgment. The court shall act with material irregularity and illegality if it gives no reasons for its decision with regard to issue/ point for determination. So far the judgment of appellate Court is concerned, it is governed by Order XLI, rule 31, C.P.C., which provides that the judgment of an appellate Court shall state (i) the points for determination, (ii) the decision thereon, and (iii) the reasons for the decision. In the case of Allahyar and Others v. Jiand and others (2010 CLC 1931), by referring the case of Syed Iftikhar-ud-din Haider Gardezi and 9 Others v. Central Bank of India Ltd. Lahore and 2 others (1996 SCMR 669), Juma Khan v. Mst. Shamim and 3 others (1992 CLC 1022) and Malik Muhammad Tufail and another v. Messrs Fauji Fertilizer Co. Ltd, through Attorney-General and Marketing Manager (2000 CLC 1838), this Court has held that the provisions of Order XLI, rule 31, C.P.C. are mandatory in nature and the Appellate Court cannot dispose of an

Appeal without following the provisions of the said Statute and framing points for determination.

4. It appears from perusal of the impugned judgment of the Appellate Court, that the Court without framing points for determination dismissed the applicant's appeal and, thus, violated the mandatory provisions of law.

5. For what has been discussed above, it is obvious 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, as such, is based on material irregularity in the exercise of the jurisdiction by the Appellate Court; therefore, the same is set aside and the case being Civil Appeal No.38/2011 is remanded to the Appellate Court with the direction to pass a de novo judgment and decree by framing points for determination in accordance with Order XX, rule 4 (2) and 5 of C.P.C., and after giving both the parties opportunity to advance their arguments, pass the fresh judgment and decree preferably within two months from the date of the receipt of this Order. The first date of hearing is fixed before the said Appellate Court on 25.10.2022 with the consent of learned counsel for the parties. With these observations, this Civil Revision Application is allowed with no order as to costs.

JUDGE

Abdul Basit