

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Civil Revision No. S- 41 of 2013

Date **Order with Signature of Hon'ble Judge**

Hearing of case

For hearing of main case

14.04.2023

M/s Abdul Qadir Shaikh and Abdul Basit Shaikh,
Advocates for the Applicants
Mr. Noor Hassan Malik, Assistant Advocate General
Sindh for Respondents No.4 to 9
Nemo for Respondents No.1 to 3

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J U D G M E N T

ZAFAR AHMED RAJPUT, J;- This Civil Revision Application is directed against the judgment and decree dated 08.10.2013 whereby the learned District Judge, Naushahro Feroze while dismissing Civil Appeal No.01/2007 (*Re- Salamoo alias Islamuddin vs. Fazaluddin and others*) maintained the judgment and decree dated 30.11.2006 and 04.12.2006, respectively, whereby the learned Senior Civil Judge, Naushahro Feroze dismissed Civil Suit No.51/2002 (*Re- Salamoo alias Islamuddin and others vs. Fazaluddin and others*) filed by the applicants.

2. At the very outset, learned counsel for the applicants points out that the applicants filed Civil Appeal No.01/2007 on 04.01.2007 before the learned Appellate Court; thereafter, on 21.04.2007 they filed an application under Order XLI, Rule 27, C.P.C read with Section 151, C.P.C for calling the Settlement Clerk concerned to verify as to whether the father of the applicants was claimant and owner of Custodian No.IB/110 and the same was granted to him by the Central Government or not. He also points out that on 06.08.2007, the counsel for the respondent No.3 filed counter-affidavit to the said application before the Appellate Court, but the same was neither decided prior to passing of the impugned judgment and decree by the Appellate Court nor same was touched in the impugned judgment, hence, the impugned judgment and decree passed by the Appellate Court is liable to be set aside with further order of remanding the case to Appellate Court to decide the same afresh after passing order on the said pending application for additional evidence.

3. Learned Assistant Advocate General submits that it is matter of record that the application of the applicants for additional evidence has not been decided by the Appellate Court before passing of the impugned judgment and decree.

4. Heard. Perused record.

5. Perusal of the record shows that the application under Order XLI, Rule 27, C.P.C filed by the applicants before the Appellate Court remained undecided. In the case of *Muhammad Azam v. Muhammad Abdullah through legal heirs (2009 SCMR 326)*, the Hon'ble Supreme Court has observed that High Court decided the revision application without taking into consideration the documents in question and without disposal of application for additional evidence as such case of defendants has been prejudiced. The Hon'ble Supreme Court remanded the case to the High Court for decision afresh on merits and in accordance with law after dealing with the application for additional evidence.

6. For the foregoing facts and reasons, I accept the instant Civil Revision Application and set aside the impugned judgment and decree passed by learned Appellate Court. Consequently, the case is remanded to learned Appellate Court with directions to decide Civil Appeal No.01/2007 afresh on merits after affording adequate opportunity to the parties to argue the pending application under Order XLI, Rule 27, C.P.C filed by the applicants. The respondents shall also be provided opportunity of rebuttal to the iota of additional evidence adduced by the applicants. Since the Civil Revision Application is very old of 2007, the learned Appellate Court is expected that it would decide the same afresh expeditiously in accordance with the law.

Judge

ARBROHI