IN THE HIGH COURT OF SINDH
AT HYDERABAD

Second Appeal 16 of 2020 :		Khadim Hussain & Others vs. Fida Hussain Dero
For the Appellant/s	:	Mr. Abdul Ghafoor Hakro Advocate
For the Respondent/s	:	Mr. Muhammad Arshad S. Pathan Advocate
Date of hearing	:	19.10.2023
Date of announcement	:	19.10.2023

JUDGMENT

Agha Faisal, J. This litigation is pending since 2012; when First Civil Suit 65 of 2012 ("Suit") was filed by the present respondent, against the appellants, before the Court of learned Senior Civil Judge, Tando Adam, for possession of land. The Suit was dismissed vide judgment dated 23.02.2018 ("Trial Court Judgment"). An appeal, being Civil Appeal 34 of 2018, was filed before the Court of learned Additional District Judge-I, Tando Adam and the same was allowed[1] vide judgment dated 06.01.2020 ("Impugned Judgment"). This second appeal is filed under Section 100 C.P.C and assails the appellate judgment.

2. Briefly stated, the respondent had filed a suit for possession, devoid of any prayer seeking declaration of title, and after leading of evidence and the appreciation thereof the Suit was dismissed *inter alia* on account of being time barred; unjustifiably seeking possession of property without having / seeking any declaration of title in respect thereof; failure to discharge the burden of proof and the absence of any demonstrable title to the property claimed. In appeal, the Trial Court Judgment was set aside in a *prima facie* perfunctory manner[2] and the matter was remanded for *summoning and the production of the original record to settle the controversy one way or the other in a satisfactory manner*. The order was rendered notwithstanding the record of the learned appellate court demonstrating that an application seeking sanction for additional

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[1] The Impugned Judgment records in the 6th line of paragraph 8, being the final paragraph, that the Court has no alternative but to allow the appeal, however, in the penultimate line of the same concluding paragraph the verbiage employed is "*disposed of*".

[2] It is noted that excluding the space dedicated to title and reproduction etc., the entire appeal is determined in two paragraphs.

evidence, preferred by the present respondent / then appellant, was dismissed by the very same court, however, subsequently the Trial Court Judgment was set aside for the same purpose.

3. Prior to initiating deliberation herein, it is considered illustrative to reproduce the operative constituents of the judgments under consideration herein:

Trial Court Judgment

16. The plaintiff is MPA and landlord and the Suit land is situated within his own constituency, therefore he was fully aware regarding the existence of the villages and the people who are residing therein. No any document has been produced to establish that the Suit land was legally allotted to the father of the vendors by any competent authority as the same was barren and its major portion was consisting upon villages Habib Sand and Arbab Chandio. It came on record that in the villages there are more than hundred houses, shops, Government Primary School, facilities of electricity and gas are available since last more than a decade. The Suit land belongs to the Government and how the vendors got transferable rights. The sale deeds and mutation entries are were based on the ownership/competency of the vendors under whom he is claiming his right, but the plaintiff failed to prove that the vendors were owners and authorized to sale out the suit land. The foundation has not been protected by the plaintiff therefore the whole superstructure raised thereon should be collapsed. Reliance is placed upon Case of Shamshair Ali (Ibid).

17. As depicts from the record that the plaintiff did not produce the marginal witnesses of the disputed sale deed to fulfill the mandatory requirement of Articles 17(2) and 79 of Qanun-e-Shahdat Order, 1984. Even the buyer (plaintiff) did not appear nor he produced the identifier therefore, the plaintiff completely failed to prove his title, hence, is not entitled to ask for the recovery of the possession under section 8 of the Specific Relief Act, 1877. In these circumstances, the sale deed on the basis of which, the plaintiff filed the suit, is otherwise not admissible in law. Reliance is placed on "Farzand Ali and another v. KhudaBakhash and others" (PLD 2015 SC 187).

18. Keeping in view the above position I am of the humble opinion that the plaintiff is miserably failed to prove his ownership over the disputed land, which happens to be valuable state land, consequently the issue No.1 is replied in negative.

19. Burden to prove the issue was upon the plaintiff. As discussed above the plaintiff did not produce any grant order of the suit land in favor of the vendors. The entries in record of rights by themselves do not confer any right, title and interest in favor of party and are essentially meant for fiscal purposes, and collection of revenue, therefore such mutation entries of record-of-rights are of no help to the plaintiff. It is worth to add here that Mukhtiarkar Revenue, Tando Adam has produced revenue record. According to Khasra form as Ex:29/C and Ex:29/D the suit land was property of Government of Pakistan. A careful recital of the field books (Ex:29/L-1 to Ex:29/L-25 shows that the suit land never remained under cultivation rather field book of year 2006/2007 (Ex:29/L-17) shows that the suit land is under village. Hence I am of the humble opinion that the plaintiff has miserably failed to prove ownership and valid title of the vendors. The plaintiff did not examine the vendors and marginal witnesses of the sale deed therefore he failed to discharge his burden to prove the issue under discussion. Therefore, the issue is replied in negative…

22. The plaintiff has claimed that the defendants started residing in the Suit land in the year 2011 after his permission. On the contrary plaintiff`s own witness has deposed that the defendants are residing in the Suit land from year 1993. The defendants have produced revenue record vizKhasra form, field books, sanctioning of electricity and gas schemes to the village Arbab Chandio, through concerned officers. Such public record is convincing and reliable, produced from the proper custody hence the same is not rebutted.

23. From the careful examination of the record it appears that villages Habib Sand and Arbab Chandio are adjacent to each other. As per PW-4 there are 100 houses in the village but from the convincing evidence of the defendant`s witnesses it appears number of houses in the village/suit land is more than 100. Villagers belongs to different communities such as Bagri, Lashari, Mari, Chandio etc. There is one Government School and two masjids in the villages. Some villagers are holders of domicile and PRCs. Record of National Data Base and Registration Authority (NADRA) (Ex-27/F to Ex-27/L) produced by DW-1 the Officer of NADRA reveals that the defendant No.5 and inhabitants of the village obtained CNICs in the years 2004 and 2006 wherein their address is recorded as Village Arbab Ali Chandio.

24. Per record of HESCO electricity facility and connections were supplied to the defendants in the year 2009, even the defendants have produced such paid bills of the electricity and gas. Demand notices issued by the SDO HESCO are on record. The defendants have produced convincing and reliable evidence of the point of their possession. On the other hand the plaintiff failed to produce any witness regarding his claim of delivery of possession to him by the vendors and his claim of alleged permission given to the defendants for installing tents in the Suit land. As highlighted in foregoing issues as per revenue record the Suit land was uncultivable, and under village from last 02 or more decades. Therefore I have no hesitation to hold that the vendors were not in possession of the Suit land hence they could not deliver possession thereof to the plaintiff…

27. A careful scanning of the record depicts that the defendants and other inhabitants of the village are residing in the disputed land since last many years after constructing pacca houses, shops etc. The inhabitants including the defendants are holding their CNICs which were issued in the year 2004 and 2006 wherein their address is recorded as Village Arbab Ali Chandio. Record/voters lists

(Ex-37/B-1 to Ex-37/B-27) produced by the officer of the Election commission shows that the defendants, their family members and other inhabitants, ladies as well, of the village Arbab Chandio are registered voters. The electricity connections were supplied to the defendants and other villagers in the year 2009. Evidence of the defendants is convincing and reliable, thus the issue is replied in negative…

29. Though the defendants and other inhabitants are residing in the Suit land since long and public functionaries have sanctioned electricity and gas schemes, but it does not mean that they became lawful owners of the land. The Suit land happens to be valuable public property. The village is neither sanctioned nor regularized and no any material existed indicating that the land had been entered into the village directory maintained by the Provincial Government. The possession of the defendants and other villagers who are living on the land by constructing pacca houses since long, without any hindrance, is protected. Possession of long period does confer title, thus concerned Government agencies/ functionaries may evict the defendants with due course of law or regularize the village, construction of the houses and shops etc.

30. Burden to prove the issue was upon the plaintiff, as discussed in the foregoing issues the plaintiff failed to prove his claim of owner ship over the suit land. The sale deed is not proved as per law. Nothing is on record to establish that the Suit land was ever cultivated. Rather the Khasra forms and field books produced by the Mukhtiarkar Tando Adam (Ex-29) proves that it was barren (Ghairabad) and under village. The plaintiff failed to produce any receipt of payment of land revenue (Dhal) to prove his claim of cultivation of the suit land. The plaintiff failed to bring any iota of evidence to discharge burden of proof the issue at hand, hence the issue is replied in negative.

31. Burden to prove the issue was upon the defendants. In order to prove the issue the defendants have produced revenue record through Mukhatiarkar concerned (DW-4) as Ex-29. Perusal of the record shows that 18 acres and 21 ghunta are situated in R.S No. 125 and about 01 acre falls in R.S No. 557. As per revenue record the whole suit land remained uncultivated from 1963 till today except only one acre of RS. No. 557, which was cultivated only once in the year 1982-83. It is an admitted position that major portion (12 acre or more) of the Suit land is under the village which is established from around 1993, hence issue is replied accordingly.

32. It manifests from the record that the plaintiff did not produce the marginal witnesses of the disputed sale deed to fulfill the mandatory requirement of Articles 17(2) and 79 of Qanun-e-Shahdat Order, 1984. Even the buyer (plaintiff) did not turn up in the witness box to take oath, nor he produced the vendors, their identifier therefore, the plaintiff completely failed to prove his title, hence, is not entitled to ask for the recovery of the possession under section 8 of the Specific Relief Act, 1877. In these circumstances, the sale deed on the basis of which, the plaintiff filed the suit, is otherwise not admissible in law. Reliance is placed on "Farzand Ali and another v. KhudaBakhash and others" (PLD 2015 SC 187).

33. The plaintiff failed produce record of any grant order/title document in favor his predecessors-in-interest, the suit land is barren. Khasra forms (Ex-29/C and Ex-29/D) shows that the Suit land was property of Government of Pakistan. The village is old one and there are more than hundred pacca houses and shops are available in the disputed land, around 1000 inhabitants are living in their houses. There is no denial to the fact that about pacca houses shops are existing in the major portion of the disputed land. Even the plaintiff did not implead all the inhabitants of the village for the reasons best known to him and has sued only 25 villagers. Benefit of S.41 of Transfer of Property Act, 1882 is not available to one who had acquired a title from an unauthorized and incompetent person. The foundation has not been protected by the plaintiff therefore the whole superstructure raised thereon should be collapsed. Reliance is placed upon Case of Shamshair Ali (Ibid)…

35. In case of GHULAM HUSSAIN and 2 others Versus RAMZAN and 2 others reported as 2011 Y L R 1324 [Lahore] Honourable Lahore High Court has held as under:-

> "One of the plaintiffs admitted in his cross-examination that 3/4 rooms were constructed by the defendants. No written or oral evidence had been produced by the plaintiffs confirming such fact that defendants were tenants/lessees, rather, evidence produced by the plaintiffs showed that defendants were in possession of the disputed property since long and they had constructed their houses on the said land. One of the plaintiffs admitted in his statement that in his village there was no tenant and landlord. Such very admission of the plaintiff was sufficient to negate his claim against the defendants. Plaintiffs had also failed to rebut the assertion of defendants that they were in possession of suit land for the last 50 years and as such suit was prima facie barred by time."

36. It was a core issue regarding maintainability of the Suit. Burden to prove the issue was upon the plaintiff. The Suit is titled as for declaration and possession. In the prayer clause of the plaint the plaintiff seeks declaration to the effect that the defendants have no legal right, title/status, character and interest over the suit land and they are in illegal occupation. This being declaration in negative form therefore it cannot be granted. In cases reported as 2002 YLR 1473 and 1999 CLC 1719 Honourable High Court of Sindh has held that declaration in negative form is seldom granted and that too in rare and special circumstances. In the present case there is no any rare and special circumstance.

37. As referred above it is crystal clear that there are more than 100 pacca houses, shops etc are constructed on more than 12 acres of the suit land and people of different communities are living there since last more than 24 years. The plaintiff claims that he purchased the suit land in the year 2011, which seems implausible. Title of the plaintiff is disputed by the defendants but the plaintiff did not seek declaration of title in his favor.

38. By now it is well settled principle of jurisprudence that Suit for possession without asking for declaration as to title is not maintainable and cannot be decreed. Without clear title suit for possession could not be filed. Reliance is place upon case of PROVINCE OF THE PUNJAB through Collector, Sheikhupura Vs Syed GHAZANFAR ALI SHAH reported as 2017 SCMR 172 Supreme Court, Case of Sultan Mehmood Shah through L.Rs and others reported as 2005 SCMR 1872, and Case of Raboo reported as 2010 MLD 166 Karachi.

39. Keeping in view the above position, while relying upon the above cited authorities of Honorable Superior Courts I am of the considered opinion that the Suit in hand is not maintainable.

> 40. The crux of the discussion is that Suit is not maintainable and barred by time and law, the plaintiff has no right or interest in the Suit land, which happens to be valuable state land. The title of the plaintiff or his predecessors-in-interest is disputed, he failed to prove his claim, and thus he is not entitled for any relief. Consequently the suit is dismissed with no order as to costs."

Impugned Judgment

> "7. Per Sale Deed (Exh.19) the vendors, who are the LRs of Hussain alias Asad Bin Abdullah, had sold survey No.125 and 557 to the plaintiff/ appellant. The official record so produced in evidence by Official witness in respect of the suit land in the shape of Form ALIF (Exh.29/E to 29/K) pertaining to year 1980 to 1994 shows name of the Khatedar of the suit land as deceased Hussain alias Asad Bin Abdullah (The predecessor in interest of the vendors). The learned Counsel for the appellant has contended that the suit land was Government property and Central Government of Pakistan in the year 1972 allotted it to Hussain alias Asad Bin Abdullah, the predecessor in interest of the Vendors, as claimant in his claim and the vendors, who inherited the suit land, sold it to the appellant/ plaintiff but the official witnesses produced incomplete record of the suit land before the learned trial court and the learned trial court did not take pain to call the complete record and the Issues No.1, 2, 3 4 and 11 in vacuum which has seriously prejudiced the plaintiff/ appellant. I have perused the document annexed with the memo of appeal and the official record Form ALIF (Exh.29/E to 29/K) so exhibited in evidence which shows that the complete official record of the suit land being an State land allotted to Hassan alias Asad Bin Abdullah (the predecessor in interest of the vendors of the sale deed) was not produced in evidence. No official in whose possession the record of allotment of the State land to the predecessor in interest of the vendors in his claim is has been called/ examined by the learned trial court. No doubt needful had not been done by the appellant / plaintiff at trial for summoning the complete official record of the suit land but the learned trial court also did not done its job in order to confirm the status of the suit land, the title and the competency of the of the vendors to sale out the suit land to the plaintiff. It is not correct approach of learned trial court to sit and watch as to who commits a mistake and who does not from amongst the contesting litigants and one who commits a mistake in procedural matters or commits mistake in summoning the official record, as the in the case in hand, should be deprived of his right claimed even if he is entitled to it.
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> 8. In the light of the above discussion I am of the humble view that the material on record of the trial court is insufficient to examine the Issues decided by the learned trial court and decide the appeal on merits. The need has arisen for summoning and the production of the original record to settle the controversy one way or the other in a satisfactory manner. I find no alternative but to allow the appeal and remand the suit to the learned trial court with directions to call the official record of allotment of the State land in claim to the predecessor in interest of the vendors, DakhalKharij Register and the old revenue entries of the suit land pertaining to year 1972 from the concerned departments with opportunity to the parties to cross examine the said witness and then decided the suit within shortest possible time. Parties are saddled to bear their own costs. The parties are directed to appear before the learned trial court on 18.01.2020 without claiming any court motion notice. Appeal disposed of, accordingly."

4. Per appellants' learned counsel, the Suit was determined on the basis of evidence led before the learned trial court and the Impugned Judgment unduly provided an opportunity to the respondent to better his case, which stood dismissed on maintainability as well as merit. It was demonstrated that, during the pendency of appeal, the present respondent preferred an application under Order XLI Rule 27 CPC for production of additional evidence, however, the same was dismissed by the learned appellate court vide order dated 23.05.2019. Learned counsel submitted that on the one hand the appellate court dismissed the application for production of additional evidence and on the other hand set aside the Trial Court Judgment for the very same purpose; such an inconsistency ought not to be sustained in law. It was articulated that, without prejudice to the foregoing, it can be seen, *inter alia* from paragraphs 30 and 31 of the Trial Court Judgment as well as paragraph 7 of the Impugned Judgment that the pertinent official record had already been exhibited before and taken into account by the learned trial court, therefore, the rationale for seeking official record was not only unjustified but also devoid of any delineation of what was to be obtained. The learned counsel concluded that this matter squarely falls within the purview of Section 100 CPC, hence, this appeal

may be allowed and the Impugned Judgment be set aside on account of its manifest dissonance with the law.

5. Per respondent's learned counsel, the Impugned Judgment had rightly been rendered within the four corners of the law and no interference was merited in such regard in the present proceedings. Learned counsel averred that the appellants had no title, *locus standi* and/or any lawful nexus with the land in question and, therefore, any assertion of rights in respect thereof is contrary to the law. It was added that the respondent produced all the required evidence before the learned trial court, however, the same was not appreciated in its proper perspective, therefore, the Impugned Judgment had been rightly rendered to remedy the wrong caused to the respondent. It was stated that the matter had been remanded on account of the evidence adduced having been insufficient, therefore, it was only just and proper for the record to be sought in order for the correct judgment to be arrived at. It was concluded that the present appeal is devoid of merit, hence, may be dismissed.

6. Heard and perused. The scope of a second appeal is circumscribed per Section 100 CPC[3] and Section 101 CPC[4] mandates that no second appeal shall lie except on the grounds mentioned as aforesaid. In order to consider whether the appellants' case merits relief herein, the point framed for determination, in compliance with the requirements of Order XLI Rule 31 CPC, is w*hether the setting aside of the Trial Court Judgment to provide another opportunity to an unsuccessful plaintiff to make up any omission, or remedy any lacuna in his case, could be sanctioned; especially when an application for additional evidence was itself dismissed by the learned appellate court in the very appellate proceedings*.

7. The Trial Court Judgment demonstrates that it was rendered on the basis of the evidence adduced there before; including the official revenue record adduced by the concerned Mukhtiarkar. The burden of proof was on the plaintiff, respondent herein, and the same was required to be discharged on a balance of probabilities for the suit to succeed. The record demonstrates that the learned trial court appreciated the evidence and concluded that plaintiff / present respondent remained unable to

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[3] 100. (l) Save where otherwise expressly provided- in the body of this Code or by any ocher law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to a High Court on any of the following grounds, namely:
(a) the decision being contrary to law or to some usage having the force of law;
(b) the decision having failed to determine some material issue of law or usage having the force of law;
(c) a substantial error or defect in the procedure provided by this Code or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon the merits.

[4] 101. No second appeal shall lie except on the grounds mentioned in section 100.

discharge the evidential burden, hence, proceeded to dismiss the Suit; on maintainability as well as merit. In appeal, an application under Order XLI Rule 27 CPC was preferred, by the appellant therein / present respondent, seeking leave of Court for production of additional evidence and the record shows that the learned appellate Court found no merit in the application and dismissed the same vide order dated 31.05.2019 ("Dismissal Order"). It is considered illustrative to reproduce the operative constituents of the aforesaid order:

> "The suit was filed by the applicant in the year 2012 and was decided in the year 2018. Proper opportunity to lead evidence was afforded to the plaintiff by the trial Court. The documents which the appellant / plaintiff seek to produce by way of additional evidence were in existence at the time of recording of his evidence. No application for additional evidence was filed during the trial. In the grounds of appeal no case for additional evidence has been set out. So also in the application in hand no good cause is shown by appellant / plaintiff for not producing the listed documents earlier either with their pleadings or during evidence, particularly when all listed documents were always in his possession and custody. No cogent reason or justification has been advanced by the applicant as to why documentary evidence had not been produced at the stage of proceedings of recording evidence. It is settled law that power of an appellate Court to require any (additional) document or examination of witnesses enabling it to pronounce its judgment does not mean that the Court shall provide a delinquent with a chance to make up for his omission and fill up the lacuna of his case and allow additional evidence particularly in the circumstances when in the grounds of appeal a case for additional evidence had been set out. Party, if not having availed opportunity to produce evidence in trial Court, could not be allowed at appellate stage to improve upon or fill up lacunas or omissions in his case. Provisions of O.XLI R 27 CPC are not intended to allow an unsuccessful litigant in lower Court to patch up weak part of his case and fill up omission in Court of appeal. The applicant was careless and at proper time failed to take necessary steps while recording evidence. He had knowledge that listed documents had not been placed on record but no efforts were made to bring the same on record as exhibits. His case therefore could not be reopened at appellate stage in the garb of production of additional evidence. Application dismissed. No order as to costs."
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> (Underline added for emphasis)

7. At the risk of repetition, it is observed that the learned appellate court had in itself dismissed the possibility of additional evidence in the very case itself while holding, *inter alia*, that no case for additional evidence was made out; the law did not sanction provision of a chance to a party to make up its omission or fill up a lacuna, particularly in circumstances where in the grounds for appeal no case for additional evidence had been set out; O.XLI R 27 CPC[5] is not intended to allow an unsuccessful plaintiff to patch up weak part of his case and fill up omission in the appellate court; and the appellant's / present respondent's case could not be resurrected in the garb of production of additional evidence. It is noted with much trepidation that while the appellate court rejected the application for additional evidence, predicated upon the rationale cited supra, it proceeded to allow the appeal in utter unjustified disregard of the Dismissal Order. It also merits mention that the Impugned Judgment makes no reference to the Dismissal Order at all.

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[5] 27. (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary in the appellate Court, But if a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted or, b) The Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, The Appellate Court may allow such evidence or document to be produced or witness to be examined. (2) Wherever additional evidence is allowed to be produced by an Appellate Court the Court shall record the reason for its admission.

8. The record speaks that the learned appellate court neither sanctioned the production of additional evidence, per Order XLI Rule 27 nor framed any additional / divergent issues, per Order XLI Rule 25 CPC[6], however, proceeded to set aside the Trial Court Judgment while declaring the evidence before the learned trial court to have been insufficient. Insufficiency of evidence may lead to dismissal of a suit, however, it is not comprehended as to how the same could be made the basis for providing the plaintiff with another opportunity to resurrect his case. While it was well within the appellate court's domain to allow additional evidence to be led there before or frame further issues for the learned trial Court, however, it is apparent that the same was not done and the undisturbed rationale for the same is evident from the Dismissal Order. While the said order remained in the field, the justification for rendering the Impugned Judgment is perhaps irreconcilable *inter se*.

9. It is noted that the Suit was between the private parties and no state functionary was impleaded therein by the then plaintiff / present respondent. While it was the prerogative of the respondent to implead whosoever considered necessary for adjudication of his grievance, however, no benefit could be accrued in his favour for failure to implead an entity. The Impugned Judgment mandates the production of unspecified record from the state functionaries, notwithstanding the fact that they were neither impleaded in the suit nor cited / called upon as witness by the respondent. Even otherwise, the learned appellate court has perhaps failed to appreciate that the official revenue record was in fact exhibited, as noted above, and it was the Mukhtiarkar himself that adduced the same. The learned appellate court appears to have erred in disregarding the official record, and the findings thereon. The learned appellate court also appears to have been unable to distinguish the official record or identify any infirmity therewith and appears to have erred in remanding the matter for additional evidence without even identifying the same or the specific need thereof.

10. The respondent's learned counsel admitted the insufficiency of evidence before the trial court. The Suit was filed by the present respondent and it was for him to satisfy the trial court with regard to the maintainability and / or merit thereof. The Suit was to be, and apparently was, determined on the basis of the plaintiff's (present respondent's)

[6] 25. Where the court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact which appears to the Appellate Court essential to the right decision of the suit upon the merits the Appellate Court may if necessary, frame issues, and refer the same for trial to the Court from whose decree the appeal is preferred and in such case shall direct such Court to take the additional evidence required.

submissions and in the manifest absence of a counter suit, no case could be made out to benefit the plaintiff / present respondent on account of averments related to the nexus of any defendant / appellant herein, or lack thereof, with the suit property. It is also imperative to denote that the Suit was dismissed on account of maintainability and merit and the Impugned Judgment made no effort to justify as to how the impediment of maintainability could be surmounted by the judgment rendered.

11. It is settled law that a second appeal does not ordinarily disturb findings of fact[7] supported by evidence on record[8], however, it is well within this Court's remit to examine whether there exists proper material to support the findings[9]. Section 103 CPC duly empowers this Court, if the evidence on the record is sufficient, to determine any issue of fact necessary for the disposal of the appeal, which has not been determined by the lower appellate Court or which has been wrongly determined by such Court; by reason of any illegality, omission, error or defect. The Impugned Judgment *inter alia* appears to be an unsubstantiated decision contrary to the law[10]; not based upon judicial consideration of evidence adduced; rendered in misreading[11] or disregard[12] of evidence; and rested on surmises[13].

12. It is considered view of this Court that ordinarily a remand order ought not to be considered as being adverse to either party, however, the same is not an absolute rule and in the present facts and circumstances the learned counsel for the appellants has demonstrated the same as being unjustifiably adverse to the appellants and meriting remedy squarely within the parameters of Section 100 CPC.

13. In view thereof, the point framed for determination is answered in the negative, in favour of the appellants and against the respondent. As a consequence, this appeal is allowed with costs and the Impugned Judgment dated 06.01.2020 rendered by the Court of learned Additional District Judge-I, Tando Adam in Civil Appeal 34 of 2018 is hereby set aside.

JUDGE

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[7] *PLD 1969 Supreme Court 617; 2015 MLD 1605.*

[8] *PLD 2007 Supreme Court 27; 1986 SCMR 1814; 2012 MLD 1697; 1988 MLD 937.*

[9] *2004 SCMR 1342.*

[10] *PLD 1981 Supreme Court 17; PLD 1981 Supreme Court 42; PLD 1977 Supreme Court 397.*

[11] *PLD 1984 Supreme Court 291.*

[12] *2004 SCMR 1571; PLD 1969 Supreme Court 617.*

[13] *PLJ 1974 Supreme Court 2; 1984 CLC 869.*