

Judgment Sheet
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Civil Rev. Application No.S-147 of 2019

Applicants : Ahmed and another
through Mr. Jamshed Ahmed
Faiz, Advocate

Respondent No.1 : Rehmat Ali & others deceased
through LRs through Mr. Mian
Abdul Salam Arain, Advocate

Respondents No.2&3 : The Assistant Commissioner,
Ghotki and another through Mr. Ahmed
Ali Shahani, AAG

Date of hearing : 15.01.2024

Date of Decision : 16.02.2024

J U D G M E N T

ARBAB ALI HAKRO, J: Through this Civil Revision Application under Section 115, the Civil Procedure Code 1908 ("**the Code**"), the applicants have impugned judgment and decree dated 25.6.2019 and 27.6.2019 respectively, passed by learned Additional District Judge-II, Ghotki ("**the appellate Court**") in Civil Appeal No.67 of 2010, whereby; the judgment and decree dated 21.9.2010 passed by learned Senior Civil Judge, Ghotki ("**the trial Court**") in F.C Suit No.46 of 1996, through which the suit of applicants was decreed has been set-aside by dismissing their suit.

2. In brief, the applicants/plaintiffs filed a suit for declaration and permanent injunction against the respondents/defendants. They asserted that applicant No.1 purchased agricultural land measuring 1-10 Acres from Survey No.183, situated in Deh Lалуwari, Taluka, and District Ghotki ("**suit land**"). This purchase was made from respondent No.1 through an oral statement before Assistant Mukhtiarkar for consideration of Rs.40,000/-, and the record of rights was mutated in his favour vide entry No.275 dated 25.6.1994. Subsequently, applicant

No.1 sold the suit land to his brother, applicant No.2, through a registered Sale Deed for a consideration of Rs.50,000/-. The record of rights was then mutated in favour of applicant No.2 vide entry No.306 dated 12.7.1995. It is also pleaded that applicant No.2 mortgaged the suit land with ADBP, now ZTBL, and mortgage entry No.320 dated 16.01.1996 was recorded after the purchase. Later, the Assistant Commissioner cancelled the original entry No.275 dated 25.6.1994 on the grounds that it had been deceitfully kept in village Form VII-B in February 1996. Consequently, the applicants filed a suit before the trial Court, seeking a declaration that applicant No.2 is the lawful owner of the suit land and that the note kept by the Assistant Commissioner, whereby he cancelled the entry, is illegal, void, and not binding upon the applicants.

3. Upon receiving the summons, Respondent No.1, Rehmat Ali, filed his written statement, denying the applicant's claim. He asserted that the applicants are members of a gang who habitually cheat and collude with Tapedar Muhammad Yousif Kalwar to forge entries in the record of rights. He denied having sold the suit land to applicant No.1 or having received any consideration and claimed that he was in possession of the suit land. He also cited the previous bad character of applicant No.2 in respect of manipulating records and forging entries in the revenue record. As proof, he annexed orders from the Revenue authorities, a confessional statement from applicant No.2, a judicial verdict from a Court of law in a civil suit regarding fraudulent mutation, and news clippings from various daily newspapers.

4. The trial Court framed issues, recorded pro and contra evidence of the parties, and decreed the suit vide judgment and decree dated 26.6.2003. Respondent No.1 challenged this Judgment and Decree by filing Civil Appeal No.63/2003 before District Judge Ghotki. This appeal was allowed vide Judgment and Decree dated 02.02.2007, and the matter was remanded to the trial Court to re-cast the issues. After remand, the trial Court proceeded with the suit and again decreed the

same vide Judgment and Decree dated 21.9.2010. Once again, respondent No.1 challenged the above Judgment and Decree dated 21.9.2010 by filing Civil Appeal No.67 of 2010 before the appellate Court. This appeal in the second round was allowed vide judgment and decree dated 22.3.2011, and the matter was again remanded to the trial Court. The Court was to decide the evidentiary value of secondary evidence and the reason for the non-production of primary evidence after summoning the original entries from concerned authorities. The applicants, being aggrieved and dissatisfied, challenged the above Judgment and Decree dated 22.3.2011 before this Court by filing Civil Revision No.S-88 of 2011. This was allowed, and with the consent of both parties, the matter was remitted to the appellate Court. The Court was directed to decide the appeal afresh and, if needed, may record additional evidence and pronounce judgment on the basis of oral as well as documentary evidence. On remand, the appellate Court, after doing the needful in the light of the judgment passed in Civil Revision No.S-88 of 2011, allowed the appeal and dismissed the suit of the applicants vide impugned Judgment and Decree dated 25.6.2019 and 27.6.2019. Hence, this Civil Revision.

5. At the outset, the counsel for the applicants argues that the appellate Court has acted unlawfully in its exercise of jurisdiction and has violated the provision of Order XLI Rule 33 of the Code. Counsel contends it was not within the appellate Court's purview to impose general, special, and compensatory costs under sections 35 and 35-A of the Code. The counsel further asserts that the appellate Court's findings were made without considering the material and documentary evidence on record. The initial burden of proof to establish the element of fraud was on the private respondents, and they failed to discharge this burden under the provisions of the Qanun-e-Shahadat Order, 1984. The counsel also argues that the appellate Court's decision regarding the non-examination of the attesting witnesses of the oral sale is flawed. Furthermore, the

counsel contends that the applicants have not committed fraud or perjury that would warrant initiating proceedings under Section 193 of the Cr.PC by the appellate Court. Lastly, the counsel requests that the Revision Application be allowed and the impugned judgment and decree of the appellate Court be set aside. He placed reliance on the case law reported as **PLD 1998 (Karachi) 348, 2003 YLR 1760 & 2003 YLR 1570**.

6. Conversely, the counsel for the respondents argues that the appellate Court has lawfully reassessed the evidence and that its findings do not suffer from any significant legal errors. The counsel further contends that the applicants have not exhausted the remedy for challenging the Order of the Revenue hierarchy under the Sindh Land Revenue Act, as the dispute regarding the entries in the Revenue record was the subject matter. The counsel also asserts that the applicants have failed to prove ownership of the suit land before the trial court. Therefore, the counsel argues that the impugned judgment and decree of the appellate Court do not require any interference under Section 115 of the Code. In support of his contentions, the counsel cites case law reported in **PLD 1963 Karachi 215, 2007 YLR 1770, PLD 2003 S.C 688, and 2007 SCMR 729**.

7. The learned A.A.G argues that the entries in the Revenue record of the applicants are forged and bogus, and no appeal has been preferred against the Order dated June 25, 1994, of Assistant Commissioner Ghotki. He further asserts that the suit is barred under Section 172 of the Land Revenue Act. He cites the case law reported as **2014 CLC 1334** to support his contentions.

8. The arguments have been heard at length, and the available record has been carefully evaluated with the able assistance of the learned counsel for the parties, including case law relied upon by them. To evaluate whether justice has been dispensed, it is imperative to analyze the findings of both the Courts below.

9. In the realm of jurisprudence, it is a well-established principle that in cases where there is a conflict of judgments, the findings of the Appellate Court are given precedence and due respect. This principle is rooted in the belief that the Appellate Court, having the advantage of hindsight, is in a better position to evaluate the evidence and the proceedings of the lower Court. If it can be demonstrated from the record that the Appellate Court's findings are not substantiated by evidence, then these findings may be called into question. Similarly, if the conclusions drawn by the Appellate Court are inconsistent with the material on record, doubts may be raised regarding the correctness of the judgment. Furthermore, the judgment of the Appellate Court may be scrutinized if it suffers from misreading or non-reading of evidence. Misreading of evidence refers to instances where the Court has incorrectly interpreted the evidence. In contrast, non-reading of evidence pertains to situations where the Court has overlooked or ignored crucial evidence. In essence, while the findings of the Appellate Court are generally preferred and respected, they are subject to scrutiny and must stand the test of evidence, logic, and law.

10. A careful examination of the impugned judgment reveals that the appellate Court has thoroughly reviewed the evidence presented by the parties, including additional evidence. This review also encompassed the Judgment and Decree of the trial Court. The appellate Court's meticulous scrutiny indicates a thoughtful and deliberate consideration of all the evidence in its entirety, not merely a cursory glance. The Court's findings were not arrived at hastily or arbitrarily but resulted from a careful application of mind. This process ensured that all aspects of the case were considered, leading to a just and equitable conclusion. The relevant findings of the impugned judgment, reproduced below for ease of reference, provide a clearer understanding of the appellate Court's reasoning: -

“POINT NO.(I)

13. As regards this point is concerned, it was duty of plaintiff Ahmed to have adduced oral and documentary

evidences to prove following points:-

a) *To have produced supporting evidence of Assistant Mukhtiarkar, Tapedar who allegedly recorded oral statement of Rehmat Ali in the book of statements and kept entry 275 dated 25.6.1994 in VF VII-B.*

b) *To have produced convincing evidence of witnesses and author of oral statement before whom Rehmat Ali sold suit property and received consideration?*

(c). *To have produced proof of payment of mutation fees in order to see that on the relevant date he had paid government fees for the change of khata in his name in shape of receipt or challan etc.*

14. *Unfortunately, **Ahmed** had badly failed to produce required evidence. The than Assistant Mukhtiarkar Iqbal Ahmed Mirani before whom oral statement was allegedly recorded has categorically deposed that entry bearing No.275 dated 25.6.1994 VF VII-B and Statement of Rehmat Ali in the book of Statements are false and forged on which his signature were managed. Both original documents i.e Form VII-B bearing entry no. 275 dated 25.6.1994 and book of Statements have been examined by this Court, exhibited and kept on record.*

15. *This Court has perused mutation entries with the assistance of Mr. Shabir Ahmed Abbasi LearnedMukhtiarkar& learned advocates from mutation entry no. 273 to 287. The entry no.273 has been kept in the name of Arbab, entry No.274 in the name of Alif Khan, entry no.275 disputed entry in congested hand writing in favour Ahmed, entry No.275/A in favour of ADBP, entry no.276 in the name of Sijawal (Pertinent to mention here that vide entry no. 276 allegedly Sijawal committed another fraud with the appellant in respect of his another land and litigation started from 1996 had ended vide order 26.5.2017 passed by Hon'able High Court of Sindh @ Sukkur in civil revision no 55/2012 in the favour of the appellant), entry No.276-A in the name of Maqsood, entry no.277 in the name of Fajir Ali, entry no.287 in the name of Muhammad Younis, entry no.279 in the name of Fateh Muhammad, entry No.280 and 281 in the name of ADBP, entry No.282 in the name of Gulstan, entry No.283 in the name of Jamshed. The perusal of above mutation entries clearly shows that disputed entry bearing No.275 in the name of Ahmed is written at the bottom of the page with congested hand writing and similarly bogus entry No.276 in the name of Sijawal is also written in congested hand writing by some different persons. It is astonishing to note that only two successive mutation entries after the disputed entries in fevour of Ahmed and Sijawal have been re-numbered as 275-A and 276-A while all other mutation entries are in proper sequence.*

16. *Coming to the very important document which is called register of statement (**Bayanan Jo Book**) on basis of which mutation entries are affected in village Form-VII-B, the same has been produced in original before this Court. The learned Mukhtiarkar Mr. Shabir Ahmed Abbasi submitted that in the book of statements from the page No.153 to 169*

oral statements of following persons were recorded by the Assistant Mukhtiarkar for the sale and change of foutikhatas.

(a). At the page no .153 Statement of Abdul Haque dated 20.05.1993 and on its over leaf Statement of Syed Hussain Shah dated 20.05.1993.

(b). At the page no.154 and Statement of Jahangeer dated 20.05.1993 and on its overleaf Statement of Saeed dated 20.05.1993

(c). At the page no. 155 and on its over leaf Statement of Ahmed Ali son of Hafiz Ghulam Hussain dated 20.05.1993. **Then at the bottom disputed Statement Rehmat Ali dated 25.06.1994!!!???**

(d). At the page no..156 Statement of Qazi Abdullah dated 20.05.1993 and on its over leaf statement of Abdul Sattar dated 20.05.1993.

(e). At the page no.157 Statement of Ghulam Mujtaba dated 20.05.1993 and on its over leaf Statement of Devdat dated 20.05.1993.

(f). At the page no. 158 Statement of Muhammad Shahban dated 20.05.1993 and on its overleaf Statement of Abdul Razaque dated 20.05.1993.

(g). At the page no.159 Statement of Muhammad Saleh dated 20.05.1993 and on its over leaf Statement of Syed Mehboob Ali Shah dated 20.05.1993.

(h) At page no.160 Statement of Bibi Jameelan dated 20.05.1993 and on over leaf Statement of Ameer Bux dated 20.05.1993

(I). At page no.161 and on its over leaf Statement of Shakeel Ahmed dated 20.05.1993.

(j) At page no.162 Statement of Devdat dated 20.05.1993 and on its over leaf Statement of Mirza Khan dated 22.05.1993.

(k) At page no.163 Statement of Wahid Bux dated 22.05.1993 and on its over leaf Statement of Abdul Rasheed.

(l) At the page no.164 Statement of Ali Nawaz dated 24.05.1993 and on its overleaf Statement of Jan Muhammad dated 24.05.1993.

(m) At the page no.166 Statement of Muhammad Sarwar dated 26.05.1993 and on its overleaf statement of Faiz Mohammad dated 26-5-1993.

(n) At the page No. 167 Statement of Wahid Bux dated 26.05.1993 and on its overleaf statement of Gul Mohammad dated 30-05-1996.

(o) At page No. 168 statement of Mst; Zainab dated 30.05.1993 and on its over leaf statement of Gulam Ysaseen dated 30-05-1993 and on,

(p) At page No.169 statement of Allah Wadhayo dated 30-05-1993 and on the over leaf statement of Sulleman dated 01.06.1993 was recorded y the assistant Mukhtirkar, Ghotki.

17. The perusal of original record of the book of statement recorded by Assistant Mukhtiarkar shows that above statements of vendors have been recorded in sequence and date wise. This Court is astonished to note that how statement of Rehmat Ali was recorded on 25.6.1994 in between those statements which were already recorded from 20.05.1993 to

01.06.1993 .lie has no legs to stand upon. It is said "you can run with a lie but you can't hide from the truth. It will one day catch you" This fraudulent act played by Ahmed is gospel truth of fraud and forgery in the criminal conspiracy with revenue staff. As regard earlier frauds played by plaintiff, the appellant Rehmat Ali has produced a number of CTC of orders of revenue officers, judgment of civil Court, confessional statement of Sijawal, news clippings etc and the both brothers namely Sajwal and Ahmed have not challenged in cross examination. Per record, neither both brothers have specifically denied their earlier frauds and pronouncements of judicial verdicts against them nor produced any documents to disprove the contentions of appellant. Under the law, certified true copies of public record will be presumed genuine and correct until and unless it is proved otherwise and piece of evidence not challenged in cross examination will be presumed as correct and previous bad character is relevant.

18. As regards oral evidence adduced by both brothers to prove sale, it is matter of record that neither they examined scribe of disputed entry nor examined attesting witness Abdul Jabbar or nor produced proof of mutation fee which was kept in his favour in VF VII-B which is mandatory. They examined PW Muhammad Yaqoob (exh 59) who deposed that on 25.6.1994, appellant Rehmat Ali sold out suit property to Ahmed within his presence and presence of co-witness Allah Wassayo. He deposed that he signed on the such statement and Rehmat Ali also put his LTI on it. He further deposed that statement was reduced into writing by Tapedar Mohammad Yousif Kalwar thereafter parties were produced before Assistant Mukhtiarkar who verified and signed on it. This Court has perused the alleged statement (Exh 1/A R&Ps of the appellate Court) and found that one Allah Wassayo and Abdul Jabbar have acted as a witness. No where name of this witness is appearing in the alleged statement as a witness nor there is his signature or thump impression. Mr. Soomardas learned advocate has no word to justify this witness. In such a situation the evidence of PW Muhammedyaqoob becomes false and fabricated on the face of fit for which this witness is liable to be prosecuted for the offence of giving false & fabricated evidence in the judicial proceedings. Coming to the oral evidence of Plaintiff Ahmed (Exh 52) testimony of co-plaintiff Sijawal (Exh 56) and deposition of PW Allah Wassayo same becomes bundle of lies before the documentary evidence which has been specifically discussed hereinabove. The perjurer Ahmed, Sijawal and his witnesses are liable to be prosecuted for having committed offence of forgery, cheating and giving false and fabricated evidence in the judicial proceedings.

19. As regard to the question of possession over suit property at the time of fraudulent sale is concerned, it stand proved through two sources. One source is in shape of judicial verdict i.e judgment dated: 04-05-2000 recorded in Civil suit No. 15/1996 between Rehmat Ali v. Ahmed whereby suit filed by Rehmat Ali over the same property was decreed

as prayed in the prayer clause “a” of the plaint. In his case (Exh. No. 96) the appellant Rehmat Ali had prayed in respect of suit property which is as under:-

(a) To restrain the defendants by way of permanent injunction from dispossessing the plaintiff from the suit land or interfering in possession and enjoyment of the plaintiff by any way himself or through their agents attorneys and persons.”

Above suit was between the same parties over the same subject matter before the competent Court which was decreed by the competent civil Court vide decree dated: 04-05-2000 (Exh. 97) in following words;

“It is ordered that suit of plaintiff with regard to the grant of permanent injunction as prayed by the plaintiff in prayer clause “A” is hereby decreed-...”

*The decree had attended its finality therefore this finding of competent Court is binding on the both parties and their successors. Under the doctrine of **res judicata** it can't be re-agitated. The second source is documentary and oral evidence adduced by the appellant before the learned trial court. The appellant had produced **Deh Jo Form IX-B**, (exh 101 to 105) bill for Rabi crop 1994-95 (exh 106). These un rebutted official documents shows that appellant was in possession of suit land and was paying tax to the government. For these reasons point under discussion is answered as not proved.*

POINT NO.II.

20. Sometime conduct speaks the intention of its doer. In this case, Ahmed after managing fraudulent entry in back dates immediately sold out suit property to his brother Sijawal through registered sale deed and Sijawal immediately got it mortgaged with the bank. Their act of transfer and mortgage do not seems to be genuine. Generally, it is believed that land purchased through oral statement is not safe as compared to purchase through registered sale deed. It is also believed that if property is resold to the new buyer through registered deed and subsequently mortgaged with bank in lue of loan than transaction remains safe. In this case, it appears from the orders dated 26-05-1996 Exh. 71, certified true copy of judgment dated: 15-05-2000, recorded in FCS No. 58/1992 at Exh. No. 94, CTC of Judgment dated 04-05-2000 between appellant Rehmat Ali v. Ahmed and Sijawal recorded in Civil Suit No. 15 of 1996, Certified true copy of statement of Sijawal at Exh. 72 wherein Sijawal had confessed his guilt before Assistant Commissioner for his fraudulent act, Order dated: 10-09-1996 recorded by Assistant Commissioner in ROR appeal of 1996 between appellant and Sijawal and others and finally from the Order passed by Honorable, High Court in Civil revision bearing no. 55/2012, filed by Sijawal against the appellant, it clearly

stands proved that Ahmed & Sijawal in collusion with field staff had forged mutation entries in the Revenue record played fraud with the appellant. Co-plaintiff Sajawal is not a bona fide purchaser of suit property in possession. There is no evidence that he paid consideration to Ahmed. It is well settled law that subsequent buyer has to swim and sink with previous owner. The basic entry in name is Ahmed is based on fraud and forgery and subsequent sale is also based on malafide therefore it is held that Sajawal is not a bona fide buyer of suit property. He is mastermind of all frauds played by him with appellant. As already has been held in point no. 1 that previous owner Ahmed was not himself in possession therefore he cannot transfer what he does not possess. This point is, therefore, answered as not proved.

21. Now, let us have a look upon the findings on the issues given by learned trial court in the impugned judgment. As regard issues framed at Serial. No. 1, 2 & 3 are concerned, It is stated that these Issues are legal and technical. The learned trial court's findings on above issues are valid and does not require any reversion expect with further note that the suit filed by Sijawal is maintainable as he had sought declaration to the extent that he is bona fide and lawful buyer of suit property by virtue of registered deed. In fact, after the fraudulent sale in favour of Sijawal, Ahmed's right stood extinguished. If there would have been no subsequent sale than suit of Ahmed was not maintainable; but after the subsequent sale in favour of Sijawal, the suit of co-plaintiff Sijawal for declaration becomes maintainable. Similarly, disputed mutation entry shows value of land to be Rs. 40,000.00 and alleged sale deed shows worth Rs. 50,000.00 hence court fees is not applicable.

22. As regards Issue no. 4, 5, 6 and 7 are concerned, it is held that findings given by learned trial court are erroneous and based non-reading and mis-reading and non production of material documents and non-appreciation of available evidence in view of the detailed discussion held by this Court in point No. 1 and 2 of this judgment, therefore, same are not sustainable in law consequently stands set-aside. This Court is very much conscious that under Order XX Rule 5 CPC, the Court has to give findings on each issue separately, but in this case, issues are absolutely of same nature which have been separately framed. The points of determination framed by this Court for the purpose of decision of appeal fully covers very purpose of these issues. Regarding case laws submitted by parties it is held that in instant matter mainly question of fact is involved hence mostly case laws are not relevant.”

11. The above findings reveal that the appellate Court arrived at a significant conclusion through a meticulous, conscientious, and lawful evaluation of the evidence and official revenue records pertaining to the alleged entries. The entries, allegedly manipulated by the

applicants in collusion with the Revenue officials, were scrutinized. The appellate Court allowed the appeal and rightly concluded that entry No.275 dated 25.6.1994, made in favour of applicant No.1 Ahmed, along with the statements of respondent No.1, Rehmat Ali, in the book of statements, were palpably false. These entries and statements were not just erroneous but were deemed forged, fabricated, and concocted, indicating a deliberate attempt to misrepresent the facts. This finding was not made lightly but resulted from carefully evaluating the record. After this comprehensive review, the appellate Court rightly held that the appellants had committed fraud against the respondents.

12. The applicants' counsel unable to identify any flaws or illegalities in the appellate Court's findings, including any misinterpretation or omission of evidence. This is particularly relevant to the alleged entries and testimony of Assistant Mukhtiarkar Iqbal Ahmed Mirani, who is said to have recorded the oral statement. Mirani unequivocally stated that entry No.275 dated 25.6.1994 and Rehmat's (respondent No.1) statement in the Book of Statements are false and forged, with manipulated signatures. The applicants could not provide an attesting witness regarding the alleged sale or any other documentary evidence to substantiate that they have purchased the suit land through an alleged Statement of Sale. It is a well-established principle that re-evaluating evidence is generally undesirable in revision proceedings. The trial court failed to understand the legal and factual aspects of the case when it was decreed. At the same time, the appellate Court correctly dismissed the suit through a well-reasoned judgment without committing any illegality. As already discussed above, in case of conflicting decisions, the appellate Court's findings should be given weight and respected unless it is clear from the record that such findings are not evidence-based and are materially illegal. Reliance is placed on the case of Rao Abdul Rehman (Deceased) through legal heirs vs

Muhammad Afzal (deceased) through legal heirs and others(2023 SCMR 815), wherein the Supreme Court of Pakistan has held as under: -

"12. In the case of Amjad Ikram v. Mst. Asiya Kausar (2015 SCMR 1), the Court held that in case of inconsistency between the Trial Court and the Appellate Court, the findings of the latter must be given preference in the absence of any cogent reason to the contrary as has been held by this Court in the judgments reported, as Madan Gopal and 4 others v. Maran Bepari and 3 others (PLD 1969 SC 617) and Muhammad Nawaz through LRs. v. Haji Muhammad Baran Khan through LRs. and others (2013 SCMR 1300)."

13. During the arguments, the counsel for the applicants expressed concern that the appellate Court lacks the authority under Sections 35 and 35-A of the Code to impose compensatory costs of Rs. 500,000 on the applicants. The language of the impugned judgment suggests that the appellate Court has acted under Sections 35 and 35-A of the Code in imposing a compensatory cost on the applicants. However, according to Section 35-A subsection (2) of the Code, the maximum compensatory cost limit is twenty-five thousand rupees. Earlier the maximum amount of the compensatory cost was Rs.5,000/- but it was substituted with twenty five thousand through an amendment introduced through Civil Laws (Reforms) Act, 1994 (Act XIV of 1994). In this case, the appellate Court has imposed a compensation of five lac rupees on the applicants, exceeding the maximum limit prescribed by law. Furthermore, as stipulated in Section 35-A read with Order XLI Rule 33 of the Code, the appellate Court is precluded from granting compensatory costs. In fact, this Section of the law empowers only the trial court to award compensatory costs to the successful party against the defeated party, provided the claim or defence is found to be false or vexatious, and the successful party has raised this plea at the earliest stage of the suit. In support of this, reference can be made to a case law reported in 2001 SCMR 1680, which held that the Court of Appeal is not legally competent to award punitive or compensatory costs under Section 35-A read with Order XLI Rule 33 of the Code. The Proviso to Order XLI Rule 33, of the Code, 1908 provides that:

“Provided that the Appellate Court shall not make any order under section 35A, in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order”.

14. In the case of S.I.T.E vs. Mst.Qamar Hilal and others(2002 MLD 1569), upon a difference of opinion between two my Lords’ Mr. Justice Rana Bhagwan Das and Mr. Justice Ghulam Nabi Soomro, wherein my Lord Mr. Justice Ghulam Nabi Soomro, had dismissed the appeals with no order as to costs, whereas my Lord Mr. Justice Rana Bhagwan Das, has dismissed the appeals with costs. However, a Referee Judge had determined the question of whether the appeals ought to warrant dismissal with or without costs and has held as follows: -

“10. In para. 3 of his opinion Rana Bhagwan Das, J. has found the appeals to be absolutely frivolous and had observed that the same did not even deserve admission. The learned Judge has observed that on such account i.e. appeals being absolutely vexatious, he was inclined to award special costs against the appeals, however, he declined to do so as he observed that "perhaps special compensatory costs cannot be awarded in an appeal". To the latter extent the learned Judge is absolutely correct (see paras. 5 and 6 supra). However, once the learned Judge had found the appeals to be absolutely vexatious/ frivolous, with due respect and utmost humility, no costs could have been awarded for such reasons as done by him since that amounts to awarding costs under section 35-A; which deals with costs for vexatious and frivolous defences/claims; and which clearly falls outside the jurisdiction of the Appellate Court, as already discussed above. I am afraid the law on this point is quite inadequate. There appears to be every conceivable reasons to equip the Appellate Court with the powers to award costs, under section 35-A for frivolous and vexatious appeals. However, till such time an amendment is introduced the Courts will have to abide by the express mandate of law.”

15. The decision of the Referee Judge, as mentioned above, was contested through Civil Petition No. 43-K of 2000, before the Supreme Court of Pakistan. It was affirmed in this context that the award of compensatory costs in an appeal would clearly fall outside the jurisdiction of the appellate court. Consequently, leave to appeal was denied as per the order dated 18.8.2000.

16. Regarding the appellate Court's direction to initiate criminal proceedings under Section 195 Cr.PC, it is important to note that Section 193 PPC pertains to the offence of perjury, which involves making false statements or presenting false evidence in a judicial proceeding. If a party is found to have committed perjury during a civil proceeding, the Court can initiate criminal proceedings against that party under Section 193 PPC. This is done to ensure the integrity of the judicial process and deter parties from making false statements or presenting false evidence in Court. However, it's important to note that prosecution for perjury should only be launched when it is expedient in the interest of justice, not to satisfy private vengeance. Under section 476, of the Criminal Procedure Code, 1898 a prosecution is not to be launched as a matter of course for an and every offence alleged to have been committed in the course of judicial proceedings. A necessary requirement for such an action is that it must be taken in public interest and not allowed to be used as a handle in the hand of one party to wreak a private vengeance or satisfy a private grudge against the other party. Therefore, the appellate Court has rightly exercised its discretion by initiating criminal proceedings against the applicants in view of the peculiar facts and circumstances.

17. For the foregoing reasons, the impugned judgment and decree dated 25.6.2019 and 27.6.2019 are maintained, while in respect of the cost of Rs.500,000/- is set aside. Consequently, the instant Revision application is **disposed of** accordingly. Parties are left to bear their costs.

JUDGE