

ORDER SHEET

THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Civil Revision Appln. No. S-11 of 2024

Date	Order with signature of Judge
1.	For order on C.M.A. No. 297/2024. (Urgency Application)
2.	For order on office objection.
3.	For order on C.M.A. No. 141/2024. (Exemption Application)
4.	For order on C.M.A. No. 142/2024. (Exemption Application)
5.	For hearing of main case.

28-03-2024

M/s Ahmed Raza Shah and Abdul Rehman Bhutto, advocates for the applicants.

.....

1. Urgency is allowed.
2. Office objection is deferred.
3. Exemption is granted subject to all just legal exceptions.
4. & 5. This civil revision has been filed against the Judgment dated 31.10.2023 and Decree dated 07.11.2023, passed by the VI-Additional District Judge, Larkana, in Civil Appeal No.65/2023 (available on pages 123-133 of the Revision file), setting aside the Judgment and Decree dated 26.01.2023, passed by the III-Senior Civil Judge, Larkana (“trial court”), in F.C Suit No.21/2021 (available on pages 93-109 of the Revision file).

Learned counsel for the applicants according to the evidence available on record before the trial court, the core ingredients of pre-emption had not been met by the plaintiff/respondent No.1 (“Abdul Waheed Buriro”) and as a consequence, the trial court had dismissed his suit. He contended that the appellate court’s judgment reversing the judgment passed by the trial court is based on misreading and non-reading of evidence of F.C Suit No.21/2021.

He argued that the Plaintiff’s first demand was made to defendant No.2/applicant no.2 (“Abdul Aziz”) alone and not to the

remaining co-owners, whereas the Suit Land was in the joint ownership of all four (4) applicants. He further argued that concerning the Talb-i-Ishad, once again, plaintiff/respondent No.1, a demand was made to Abdul Aziz. alone, and the plaintiff had conceded that the remaining co-owners of the Suit Land were not present. He argued that after the plaintiff admitted that the co-owners were away from the village on each occasion, plaintiff/respondent No.1 made his demand to Abdul Aziz, the plaintiff/respondent no.1 had no case for preemption. He argued that pre-emption was incomplete without the presence of all the owners of the Suit Land. Abdul Aziz alone could not convey the Suit Land. He relied on the cross-examination of the plaintiff/respondent No.1 reproduced in paragraph 12 of the impugned Judgment.

Counsel further contended that plaintiff/respondent No.1 claimed that he found out about the sale of the Suit Land sometime in March 2021. However, the Plaint did not disclose the date of such knowledge. Counsel contended that the “jumping demand” was considerably delayed which has consequences. He urged that in the circumstances, plaintiff/respondent No.1 claim for preemption could not be sustained.

He further argued that plaintiff/respondent No.1, had admitted in his evidence that ten (10) days prior to filing of F.C Suit No.21/2021, he had met with Allah Bakhsh and Muhammad Ayoob who informed him that they were the new Owners but in the evidence of Muhammad Ayoob (available on page No.59 of the Revision file), he had categorically denied that he was the owner of the suit property. Therefore, Counsel contended that in the circumstances, the appellate court's judgment directing respondent No.5 (Allah Bux) and respondent No.6 (“Muhammad Ayoob) to hand over the possession at the market value of the Suit Land amounted to a material irregularity.

He urged that respondent nos.5 and 6 admittedly not the owners of the Suit Land had nothing to convey to the plaintiff/respondent no.1.

The points raised by the applicants merit consideration. Issue notice to the Additional Advocate General, Sindh, and private respondents by all modes of service except publication. Meanwhile, the operation of the impugned Judgment dated 31.10.2023 and Decree dated 07.11.2023 passed by the appellate court is temporarily suspended until the next hearing date.

To come up on 18.04.2024 at 11.00 a.m.

Judge

Abdul Salam/P.A ****