IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Civil Revision Application No.15 of 1997

Azizullah and others
v/s.
Mahewal and others

Mr. Riaz Hussain Khoso, Advocate for the Applicants.
Mr. Imdad Ali Mashori, Advocate for respondent No.1.
Mr. Liaquat Ali Shar, Additional Advocate General, Sindh.

Date of hearing: 17.09.2020
Date of Order: 28.09.2020

ORDER

Muhammad Junaid Ghaffar, J.: This Civil Revision Application is directed against Judgment dated 12.02.1997, passed in Civil Appeal No.07 of 1989, whereby Judgment dated 14.12.1988, passed in F.C. Suit No.231 of 1981 by the 2nd Senior Civil Judge, Larkana has been maintained, through which the Suit of private Respondents was decreed.

2. Learned Counsel for the Applicants has contended that the order of the Appellate Court is illegal and is not based on true appreciation of facts and law; that the Appellate Court failed to settle any point for determination as required under Order 41 Rule 31 C.P.C.; that except one issue, the Appellate Court has failed to give its own findings on the rest of the controversy, whereas even in respect of that issue, it has only accepted the finding of the Trial Court and has failed to give its own independent findings; that issue No.1 regarding filing of earlier Suit and its dismissal for want of evidence was crucial but the Appellate Court has failed to appreciate it; that the Suit of the private Respondents was otherwise barred under the Land Revenue Act, 1967, as they had abandoned the alternate remedy chosen by themselves in between and failed to continue with such alternate remedy; that the land in question was cancelled insofar as the private Respondents are concerned and was allotted to the present Applicants much before in time; that despite such short coming in the case of Respondents, the Trial Court as well as the Appellate Court have decreed the Suit, which is an illegality; that

the land in question was situated within 20 chains to Village Wahocha and was sanctioned / granted to the Applicants for extension of their village by the Colonization Officer, Sukkur Barrage against consideration duly paid and acknowledged; that in the alternative it is a fit case for remand by directing the Appellate Court to decide the appeal afresh after settling the points for determination. In support of his contention he has relied upon the cases reported as *2018 YLR 425 (Hafeez Ahmed and 8 others v/s. His Highness Mir Ali Murad Khan Talpur and 5 others), 2014 CLC 1334 (Zahid Hussain and 10 others v/s. Shamsuddin and 9 others), 2016 CLC 1372 (District Officer (Revenue) Thatta and another v/s. Karim Bux), 2019 CLC 2061 (Raja Khan v/s. Shah Nawaz and 10 others), 2017 CLC 1123 (Mst. Malookan v/s. Bacho Mal and 4 others), 2012 CLC 1274 (Allah Ditta and others v/s. Muhammad Sharif and others), 2012 CLC 912 (Moar through Legal Heir v/s. Member Board of Revenue, Sindh Hyderabad and others) and 2014 YLR 2528 (Mst. Reshman through Attorney v/s. Province of Sindh through Secretary, Board of Revenue, Karachi and others)*.

3. On the other hand, learned Counsel for the private Respondents has contended that Rule 31 of Order 41 C.P.C. is not absolute and mandatory, whereas in the instant matter the Appellate Court has formulated point for determination in respect of Issue No.2, which is the crucial point in respect of the ownership of the land of the Respondents; that the Applicants had failed to prove their allotment and ownership of the land through any proper evidence; that they have never challenged the grant of land to the Respondents, rather admitted it in the written statement; that they have failed to establish the fact that the land in question in their possession is not the one owned by Respondents; that the land could not have been granted to the Applicants by the Colonization Officer as it is a barrage land; that Respondents had paid the entire installments and the earlier order of cancellation was recalled much prior to the purported grant of the land to the Applicants; that the arguments now raised were neither taken in the Written Statement; nor even in the evidence of the Applicants; that there is no speaking order of the Land Revenue Authority in field which could have been appealed as it was only an intimation, this being without jurisdiction and lawful authority, therefore, the remedy before the Civil Court is competent; that firstly no land was available to be allotted to the Applicants and secondly even if it was so, the same was done without notice to the Respondents;

that no speaking order was ever passed; nor the land in favour of the Respondents was ever cancelled; that the objection regarding dismissal of earlier Suit is also misconceived as it is the case of the Respondents that this is a recurring cause as time and again the Applicants have encroached upon the land. *In support of his contentions, he has relied upon the case law reported as PLD 1970 Supreme Court 53 (Abdul Hakim and 2 others v/s. Saadullah Khan and 2 others), PLD 1967 Lahore 977 (Begum Zainab Tiwana v/s. Ch. Aziz Ahmed Warraich, District Judge, Lahore and others), PLD 1975 Quetta 52 (Dad v/s. Ramzan), 1983 CLC 308 (Shamsher v/s. Syed Ahsan Ali), 1985 SCMR 1732 (Lal Khan v/s. The Deputy Commissioner/Settlement Commissioner and others), 1984 CLC 2782 (Usman v/s. Labour Appellate Tribunal and another), PLD 1972 Karachi 507 (Municipal Committee of Shahdadpur v/s. Jumo Khan and another), PLD 1970 Karachi 125 (Messers Fairland Export Syndicate v/s. Messers Bengal Oil Mills Ltd. Karachi) and PLD 1968 Dacca 525 (Nehar Ali Biswas v/s. Nazam Negar Rashida Banu).*

4. Learned Additional Advocate General has contended that though the matter is between private parties; however, it is the case of the government that this property is owned by them and both the parties have failed to produce any document of title in their favour.

5. I have heard both the learned Counsel as well as learned Additional Advocate General. On perusal of the record it reflects that the Respondents / Plaintiffs filed a Suit for Declaration, Perpetual Injunction and Possession, praying therein that the Plaintiffs be declared as the lawful owners of the Suit property; restrain the Applicants / Defendants from interfering with their possession and put them in possession of the portion of the Suit property which now is in wrongful occupation of the Applicants / Defendants. It is also a matter of fact that before initiating instant proceedings the deceased father of the private Respondents had filed F.C. Suit No.28 of 1974, which apparently was dismissed on 23.06.1981 under Order 17 Rule 2 C.P.C. for want of evidence. It is not denied that such order was not challenged any further; nor was any attempt made to have it recalled. Thereafter in F.C. Suit No.231 of 1981 filed by the private Respondents it was contended that now there is a fresh cause of action as part of their possession had been encroached or taken over, and therefore the bar, if any, as contained in Order 9 Rule 8 C.P.C would not apply to them. In fact, the bar, if any, is contained in

Order 2 Rule 2 CPC read with section 11 CPC (*Resjudicata*). After filing of Written Statement, the learned Trial Court settled the following issues:

ISSUE NO.1:	Whether the Suit of barred by operation of order dated 23.06.1984 dismissing the Suit No.28 of 1974 U/o 9 rule 8 C.P.C.
ISSUE NO.2:	whether the plaintiffs are owners of the S.No.843 (2-11 acres) deh Muradi Taluka Warrah?
ISSUE NO.3:	Whether the Suit land is within 20 chains of the village?
ISSUE No.4:	Whether the plaintiff took possession of the Suit land as stated in the plaint?
ISSUE NO.5:	Whether the defendant No.1 was granted piece of land of S.No.843 for extension of the village?
ISSUE NO.6:	Whether the land granted to the defendant No.1 is the same, which was granted to the plaintiff?
ISSUE NO.7:	Whether the grant in favour of the defendant No.1 is null and void, malafide and of no legal effect?
ISSUE NO.8:	Whether the defendant No.1 made constructions and occupied the land at the time of grant and before Suit No.28 of 1974 was filed?
ISSUE NO.9:	Whether the Suit is not maintainable?
ISSUE NO.10:	Whether the Suit is undervalued and insufficiently stamped?
ISSUE NO.11:	Whether the plaintiffs are stopped from claiming any right in the property?
ISSUE NO.12:	Whether the Suit is barred by Sindh Revenue Jurisdiction Act?
ISSUE NO.13:	Whether the Suit is bad for non-joinder of necessary parties?
ISSUE NO.14:	Whether the order of grant in favour of Muhammad Saffar is void, illegal and without jurisdiction?
ISSUE NO.15:	Whether the Suit is time barred?
ISSUE NO.16:	What should the decree be?

6. After recording of evidence the learned Trial Court decided the issues in favour of private Respondents and passed the Judgment and Decree as above in their favour. Such order was impugned in Civil Appeal and the learned Appellate Court through impugned judgment has maintained the findings of the learned trial Court, whereby the Suit of private Respondents was decreed. On filing of this Civil Revision Application through orders dated 04.08.1997 and 18.08.1997, not only this Civil Revision Application was admitted for regular hearing with direction to prepare the paper book, but so also the proceedings before

the executing court were stayed subject to furnishing security in the sum of Rs.100,000/-, which has since been done on 22.09.1997. From such date this matter is pending and for one reason or the other, including illness of the then Counsel for the Applicants, demise thereafter and subsequent engagements of another Counsel.

7. The precise argument on which much stress has been laid by the Applicants' Counsel is premised on Order 41 Rule 31 C.P.C. and its implication. For ease of reference the said provision is reproduced hereunder:

> "31. The judgment of the Appellate Court shall be in writing and shall state -
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> a. the points for determination;
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> b. the decision thereon;
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> c. the reasons for the decision; and
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> d. where the decree appealed from is reversed or varied, the relief to which the appellant is entitled;
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> and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein."

Perusal of the aforesaid provision reflects that the Appellate Court before passing its Judgment has to settle points for determination. This in the instant matter per learned Counsel for the Applicants has been violated, whereas, according to learned Counsel for Respondents, the main dispute as contained in Issue No.2 has been discussed as a point for determination which amounts to substantial compliance of this provision. By now it is settled that an Appellate Court must record points for determination in respect of all important questions involved in a case, barring the one which have been abandoned by the parties, and the precise reason for such exercise is to enable the Court to give a correct decision and so also it can be seen that the Appellate Court has dealt with all such disputes between the parties. Once such points for determination are settled, then the Court is required to give finding on all. There is a series of case law on this subject and for ready reference reliance may be placed on the cases reported as ***Mst. Resham v Province of Sindh (2014 YLR 2528), Allah Ditta and others v Muhammad Sharif (2012 CLC 1274 and Moar v Member Board of Revenue (2012 CLC 912).***

7. However, again such rule is not absolute in that if the Appellate Court in terms of Order XLI Rule 31 though fails to settle specific points for determination; but on the basis of material available on record and after going through the Record & Proceedings of the trial Court has given its cogent findings attending to the controversy and the objections so raised then it can suffice and the provision is deemed to be duly attended to. If the Appellate Court in each and every case, has not framed points for determination, it is not that such judgment would be liable to be set aside on that ground alone, whereas, it becomes immaterial, more so, when all the questions raised have been answered by the Appellate Court. It is, but sufficient, that the Appellate Court answers the material questions in its judgment and even if no points are framed for determination it would not *ipso facto* render the judgment illegal or without lawful authority subject to that the point or controversy has been attended to and decided on the basis of evidence available before the Court. This could only sustain when the judgment is itself without reasoning and also fails to determine the points for determination and not when it is a reasoned judgment attending to all the relevant issues / pertinent controversy between the parties. For such proposition reliance may be placed on the cases reported as ***Muhammad Iftikhar v. Nazakat Ali*** (2010 SCMR 1868), ***Hafiz Ali Ahmad v. Muhammad Abad and others*** PLD 1999 Karachi 354, ***Ghulam Samdani and others v. Faqir Khan*** PLD 2007 Peshawar 14, ***Abdulllah and 11 others v. Muhammad Haroon and 8 others*** 2010 CLC 14 and ***Muhammad Azam v. Mst. Khursheed Begum and 9 others*** 2013 Y L R 454.

8. In the present case there were sixteen (16) issues settled by the Trial Court and on which the finding was given and out of those 16 at least five to six issues were very crucial issues, including the first and foremost issue No.1 as to very maintainability of the Suit. As noted above the Respondents father had earlier filed F.C. Suit No.28 of 1974 for Declaration, Perpetual Injunction and possession, whereas, perusal of the plaint in that Suit reflects that his plea was identical on all fours, as in the subsequent Suit, except in respect of some alleged encroachment of 11 ghuntas and it was contended that this resulted in accrual of a fresh cause of action and therefore, the present Suit was itself not barred. The earlier Suit was admittedly dismissed in terms of Order 17 Rule 2 CPC for want of evidence vide order dated 23.6.1981

and was never assailed any further. Though the issue has been settled that whether it was barred under Order 9 Rule 8; however, that is not material inasmuch as another Issue No.9 in a generic manner was settled and resultantly it covered all legal points for consideration that as to whether the Suit was barred or not. The learned trial Court has decided this issue in favor of the Respondents by holding that since in the plaint it is averred that Respondents / Defendant has started interfering with plaintiff's possession and actually made some construction on a portion of it by occupying 11 ghuntas; therefore, a fresh cause of action has accrued. The very maintainability of the Suit of private Respondents in the present form after dismissal of an earlier Suit filed by the deceased father of the private Respondents in fact required deeper appreciation of the material in hand including the examination of plaint in both the Suits in juxtaposition as the parties are at variance in respect of the accrual of any fresh cause of action. Unfortunately, the learned Appellate Court has not only failed to discuss and decide this very important, crucial and most relevant issue but in fact has not dealt with any of the other issues and the real controversy, but has instead only given its reasoning on issue No.2 only. Not only that the reasoning in respect of this issue even is merely reproduction of the observations of the Trial Court instead of giving its own independent findings. The Appellate Court has though given a lengthy judgment, but the entire judgment is reproduction of the contentions of the parties' issue wise. Once it was finished, the Appellate Court instead of giving its own findings on all such discussion, has touched upon only on issue No.2 and the conclusion on it too is in a very careless and a slipshod manner, whereas, the other issues have not been dealt with.

9. This lack of attention, interest and callous attitude on the part of the Appellate Court on this issue and in respect of other issues as well, has rendered the impugned judgment as a nullity in the eyes of law. Though a considerable time has elapsed since passing of such judgment and it appears to be very unfair to remand the matter after setting it aside, but there is no other option before this Court as this jurisdiction is a civil revision jurisdiction and in that this Court cannot take upon itself the jurisdiction conferred on the Appellate Court. Such an adventure may have lasting effect on the rights of the contesting parties *leaving them*

without appropriate remedy as is available before an Appellate Court as against this Court in a Civil Revision under section 115 CPC.

10. Therefore, reluctantly and with a very heavy heart, but in the interest of justice, I may observe that the impugned Judgment of the Appellate Court is liable to set aside and it is so ordered accordingly. The matter is remanded to the learned Appellate Court with clear directions to decide the Appeal within a maximum period of 60 days of the date of receipt of this order and keeping in view the discussion hereinabove as well as the implication of order 41 rule 31 C.P.C. which must include the real issues and dispute between the parties including the very issue of maintainability of the Suit.

11. With these observations, this Civil Revision Application is allowed as above.

Dated: 28.09.2020

JUDGE
28.09.2020

Manzoor