IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Civil Revision No.S-54 of 2018

Applicant : Mst. Ishrat Gul d/o Abdul Ghafoor,
Through Mr. Tarique G. Haneef Mangi, Advocate.

Respondents : Nigar Ali and others,
Through Mr. Fidaullah Qureshi, Advocate.

Date of Hearing: **26.05.2025.**
Date of Judgment: **04.08.2025.**

JUDGMENT

Abdul Hamid Bhurgri, J, Through this Civil Revision, the applicant has challenged the impugned Judgement and Decree dated 15.01.2018 passed by the learned Additional District Judge (Hudood), Sukkur, whereby Civil Appeal No.142/2016, was allowed and suit of the applicant was dismissed by setting aside the Judgment dated 07.11.2016 and decree dated 10.11.2016 passed by the Court of learned IInd-Senior Civil Judge, Sukkur in old F.C Suit No.218/2006, New No.84/2015.

2. The applicant instituted a suit for pre-emption on 20.03.2006, asserting her right as a co-owner of the suit property (C.S. No. 227, Neem Ki Chari, Sukkur) against respondents who sold their adjacent property (C.S. No. 227/1) to respondent No.1. Upon learning of the sale on 03.03.2006, the applicant promptly performed the formal demands Talb-e-Muwasibat and Talb-e-Ishhad in the presence of witnesses. Despite expressing willingness to pay Rs. 80,000/-, respondent No.1 did not acknowledge her claim, leading to the filing of the suit asserting her status as Shafi-e-Jar (pre-emptor by adjacency).

3. Respondents denied the applicant's claims by submitting that C.S. No. 227 and 227/1 were partitioned long ago and that appellant never expressed intent to purchase at market value. They alleged the suit was based on a false narrative, with fabricated witnesses, and denied the occurrence of any valid Talbs. They contended the property remained un-partitioned, and the applicant lacked locus standi or authority from co-sharers to file the suit.

4. The trial court framed issues and took evidence. The applicant produced documents and examined witnesses. The respondents failed to lead any evidence, and their side was closed by order dated 12.02.2016. The trial Court decreed the suit filed by plaintiff/appellant vide Judgment

and Decree dated 07.11.2016 and 10.11.2016 respectively. Respondent No.1 filed appeal against the judgment and decree, which was allowed by Appellate Court hence this Revision has been preferred with prayer to set aside the Judgment of the appellate Court.

5. The applicant's counsel argued that the appellate court acted beyond its jurisdiction by not remanding the matter for cross-examination as prayed by respondent No.1 but dismissing the suit outright. It was urged that the appellate court failed to properly frame or address legal issues, and its findings were speculative. The applicant relied on case law, arguing that the judgment lacked legal soundness and warranted interference.

6. Conversely, the respondents' counsel submitted that both parties had filed a joint compromise on 16.09.2010, under which the applicant agreed to purchase the property at market value. Relying on Section 229, Chapter XIII of Muhammadan Law, it was argued that a pre-emptor forfeits the right to pre-emption upon entering a compromise or acquiescing. Thus, the appellate court's judgment was within the law, and the revision is liable to be dismissed.

7. Heard learned counsel for the parties and perused the impugned judgment of the appellate Court in the light of record and legal position.

8. The appellate Court had set aside the judgment of the trial court and while doing so had framed following points:-

> (1) Whether the Plaintiff (Respondent No.1 in this appeal) could not prove pre-emption suit (Haq-e-Shuffa) as warranted under law and the learned Trial Court of IInd; Senior Civil Judge, Sukkur erred at law & facts by decreeing it on no evidence as contended by the learned counsel for Appellant?
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> (2) Whether the Plaintiff proved requisite Talabs (Talb-i-Mowasibat & Talb-i-Ishhad as per law as contended by the counsel for respondent No.1?
>
> (3) Whether the Judgment & Decree passed by the learned Trial Court of IInd; Senior Civil Judge, Sukkur is not sustainable and warrant interference by this Court as contended by the learned counsel for Appellant?

9. The appellate Court adjudicated all three points collectively, on the premise that they were interrelated and warranted a joint determination.

10. The appellate Court allowed the appeal on two grounds. Firstly, that during the pendency of the suit, the parties filed a joint

statement before the trial Court on 16.09.2010, duly signed by their respective counsel, wherein the plaintiff/appellant agreed to purchase the suit property from defendant No.1 at market value. Pursuant to this, the trial Court called for a report from the City Surveyor, Sukkur, to ascertain the market value of the property. The appellate Court further noted that although the suit had been dismissed for non-prosecution, it was subsequently restored and decreed. The Court held that, at the time of dismissal, the matter was at the stage of hearing the Commissioner's report; however, no order was passed on the report, nor were any objections filed thereto. The appellate Court accordingly recorded its findings at paragraph 12 of the judgment as follows:

> *12. It is, therefore, pertinent to observe that according to Muhammadan law as embodied under its Section 229 Chapter XIII the right of pre-emption is lost if the pre-emptor enters into a compromise with the buyer or if he other-wise acquiesces. As such, under peculiar facts circumstances the pre-emption right agitated by the Plaintiff stood lost by ACQUIESCENCE.*

11. The other ground on the basis of which the appeal was allowed is contained in para No.13 of the judgment, which is reproduced as under:-

> *"13. It is an admitted legal position that by virtue of article 117 Qanun-e-Shahadat Order 1984 (PART III CHAPTER IX) the Plaintiff was under heavy burden to prove the facts pleaded in the plaint through credible evidence and such burden lied upon her as embodied U/A 118 as the evidence produced by her was also shaken in cross-examination but she failed to discharge her burden as warranted under law. As such, she failed to prove pre-requisites/talabs and pre-emption suit (Haq-e-Shuffa) as warranted under law and the learned Trial Court of IInd: Senior Civil Judge, Sukkur also mis-interpreted and mis-read evidence and thereby erred at law and facts by decreeing it and the impugned Judgment coupled with such Decree is not sustainable & warrants interference by this Court. As such, point No.1 is answered in Affirmative, point No.2 in negative and point No.3 in Affirmative".*

12. Upon perusal of the Appellate Court's judgment, this Court is of the considered view that the mandatory requirements of Order XLI Rule 31 CPC has not been complied with.

13. It is a settled principle of law that where an appellate court reverses the judgment or decree of the trial court, it is obligatory to comply strictly with the requirements of order XLI, Rule 31, of the Code of Civil Procedure. The appellate judgment must articulate the points for

determination, the decision on each point, and the reasons guiding those decisions, along with the relief granted. Failure to frame and resolve all material points or to give reasons for the decisions reached constitutes a material irregularity. In such circumstances, superior courts have set aside such appellate judgments and remitted the matter for fresh adjudication in compliance with the statutory mandate.

14. In support of compliance with Order XLI Rule 31 of the Code of Civil Procedure (CPC), guidance may be drawn from the judgments of the Honourable Supreme Court rendered in ***Raja Humayoon Sarfraz Khan v. Noor Muhammad (2007 SCMR 307), Gul Rehman v. Gul Nawaz Khan (2009 SCMR 589) and Pakistan Refinery Ltd Karachi v. Barrett Hodgson Pakistan (PVT) LTD and others, 2019 SCMR 1726.***

15. The Honourable Supreme Court has emphasized the duties imposed upon the appellate court under Order XLI Rule 31 CPC. In the aforementioned cases, the said provision has been categorically held to be mandatory in nature. It would thus be beneficial to reproduce the pertinent paragraph from the judgment to underscore the importance of this jurisdiction particularly that of the first appellate court, which is regarded as the ultimate arbiter of factual findings, as affirmed in the cited precedents. The Honourable Supreme Court in the case of ***Gul Rehman v. Gul Nawaz Khan (2009 SCMR 589)*** has observed as under:

> “8. Regarding duties of the Appellate Court, specially the first Appellate Court, learned Narayan, J, in paragraph 2 of Judgment in the case of Sailajananda Pandey and another (supra) has clearly stated that "it has been repeatedly pointed out that the legislature has entrusted a very important duty to the first appellate Court. It is for that Court to decide finally all questions of fact on which the disposal of the suit might depend and the appellate Court should not easily agree with the trial Court simply because it was not inclined to take much trouble over the case. If the lower Appellate Court does not examine the facts and the evidence for itself and does not even mention the points which the case raises, it will be certainly failing in its duty". In the instant case, a bare perusal of title judgment of the first appellate Court clearly reflects that it has not given due attention to the available evidence on record. Three important statements of witnesses i.e. Doulat Khan PW-2, Gul Nawaz, available on record and the appellate Court should have thrashed to a definite conclusion. The Judgment of the Appellate Court in hand is not a judgment in its true sense and it even admitted by the High Court that the first appellate Court has followed the path least resistant. The Appellate Court should have applied order XLI, rule 31, CPC

in stricto senso as it has got ample powers under Order XLI, rules 32 and 33, CPC."

The Honourable Supreme Court of Pakistan in the case of ***Pakistan Refinery Ltd Karachi v. Barrett Hodgson Pakistan (PVT) LTD and others, 2019 SCMR 1726*** has held as under:-

> *"7. The issue raised in the instant lis has serious implications. Whether it is the trial court or the court of appeal the lis before either of the two has to be decided with due application of mind which should be a writ large on the face of the judgment. Else the rule providing for a reasoned judgment would be reduced to a dead letter. A judgment delivered by the trial Court would not be a judgment in the real sense of the word if it does not conform to the requirements of Rule 5 of Order XX of the C.P.C. Similarly, a judgment delivered by the first court of appeal and final court of fact would not be a judgment if it does not conform to the requirements of Rule 31 Order XLI of the C.P.C. The rationale or raison d'etre behind these provisions is that not only the party loosing the case but the next higher forum may also understand what weighed with the court in deciding the lis against it. Such exercise cannot be dispensed with even in the cases of affirmative judgments otherwise who would know that arguments addressed were accepted or rejected with due application of mind. A perusal of the impugned judgment would reveal that the Division Bench of the High Court did not state the points of determination, decision thereon and reasons therefor. What led the Division Bench of the High Court to affirm the finding handed down by the learned Single Judge of the High Court has neither been adverted nor alluded to. Arguments of the learned counsel for the parties have been reproduced in the impugned judgment but whose arguments merited acceptance and whose arguments merited rejection have been eluded altogether. The judgment against this background cannot be said to have been rendered in substantial compliance with Rule 31 of Order XLI, C.P.C. We, therefore, do not agree with the argument of the learned Sr. ASC for the respondent that the impugned judgment has been handed down in substantial compliance with Rule 31 of Order XLI, C.P.C. The judgments rendered in the cases of Girilanandini Devi and others v. Bijendra Narain Choudhry and Mst. Roshi and others v. Mst. Fateh and others (supra) are, therefore, not applicable to the case in hand. Even otherwise, we would not encourage an argument of such tenor which would tend to pass the buck of responsibility to the next higher forum and require the latter to do what is the exclusive domain of the first court of appeal and final court of fact and set at naught the parameters prescribed for exercise of jurisdiction at different levels of hierarchy. An argument with such implications would rather hamper than advance the cause of justice when even an executive authority under section 24-A of the General Clauses Act is required to record reasons for making the order or issuing the direction. Having thus considered, we don't think the impugned judgment*

conforms to the requirements of Rule 31 of Order XLI, C.P.C. by any stretch of imagination. It thus cannot be maintained".

16. The appellate Court has surprisingly held that under Section 229, Chapter XIII of Muhammadan Law, the right of pre-emption is lost if the pre-emptor enters into compromise with the buyer. The learned appellate court fell into serious legal error in holding that the plaintiff/appellant (pre-emptor) had waived his right of pre-emption merely because compromise negotiations had taken place between the parties, which ultimately did not materialize. Such reasoning is legally untenable and contrary to the settled principles of Muhammadan Law.

17. Under the principles of Islamic jurisprudence, the right of pre-emption is not extinguished by mere negotiations or efforts towards settlement. Waiver or abandonment of the right of pre-emption must be established by clear, unequivocal, and intentional conduct, which is inconsistent with the assertion of the right.

18. It is a cardinal principle of justice, affirmed in numerous judgments of the superior courts, that judicial orders affecting rights must be reasoned and must reflect conscious application of mind. A non-speaking judgment which summarily reverses the trial court's decision without addressing its reasoning or evaluating the evidence is not sustainable in the eyes of law. The judgment does not frame or decide the core legal issues, nor does it reflect any analysis of facts, evidence, or pleadings, rendering it a non-speaking Judgment liable to be set aside on this ground alone.

19. In view of above discussion, instant Civil Revision is ***allowed*** with no order as to costs, setting aside the impugned Judgement and Decree dated 15.01.2018 passed by the learned Additional District Judge (Hudood), Sukkur and the matter is remanded to the learned appellate court for fresh decision in accordance with law after evaluating the evidence and deciding the issues with reasons.

Judge

A.R Brohi/PS