

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

R. A No.30 of 2002

Date

Order with signature(s) of Judge(s)

For Hearing of main case.

06.04.2016

Mr. K. B. Bhutto along with Syed Sikandar advocates for the Applicants.
M/s. Jhamat Jethanand and Suresh Kumar, advocates for the Respondents

This Revision is directed against the judgment of Ist Additional District Judge, Thatta, whereby Civil Appeal No.24/2001 was allowed and the decree of suit No.101/1997 in favour of Applicants by Ist Senior Civil Judge, Sujawal was set-aside and suit was dismissed. The dispute between the parties was regarding the ownership of agricultural land bearing Survey No.81, admeasuring 10-35 acres at Deh Miranpur, Taluqa Mirpur Bathoro, District Thatta and both the parties have claimed to be in possession of the same. The learned trial Court framed the following issues:-

- i) Whether suit is not maintainable?
- ii) Whether suit is barred by law?
- iii) Whether the plaintiffs are the owner of the suit land?
- iv) Whether order dated 30.10.1997 passed by the Assistant Commissioner Sujawal is illegal?
- v) Whether the plaintiff is in possession of the suit land?
- vi) Whether plaintiff is entitled to decree prayer for?
- vii) What should the decree be?

All the issues were decided in favour of the Applicants and the suit was decreed as prayed.

2. However, the learned appellate court without framing any point for determination and even discussing the issues separately by an haphazard judgment set-aside the judgment of trial Court. There is hardly any discussion on any of the documents produced by the parties in evidence in the trial. Learned counsel for the respondents has stated that certain issues which ought to have been raised before the trial court were either not raised or the issues framed by the trial court were not properly framed to determine the exact propositions of dispute between the parties. During the course of arguments and examination of file I have noticed that certain relevant documents have not been placed on the record by either side despite there is discussion about those documents in the court orders including proceedings of suit filed by the respondents before initiating an appeal against the findings of Mukhtiarkar dated 27.12.1995. Even memo of appeal was not filed to appreciate the appeal was within time or not.

3. In view of the above facts, the Revision is allowed and the appeal is remanded to the Court of Additional District Judge, Sujawal for a fresh decision after recasting the proper issues between the parties in consultation of the counsel before recording evidence, if any. The documents which ought to have been placed on record by the parties, if not filed on remand, the Court should ask them to place on record the complete pleadings of earlier litigation between the same parties so that if there is any impact of such litigation which has not come on record, it may also be examined by the

learned appellate court. Parties are also free to lead any evidence before the appellate court in addition to the evidence adduced by them earlier before the trial court, if so desire.

In the above terms instant revision application stands disposed of. Parties are in court since 1997 and, therefore, the District Judge is directed to treat this case on remand as urgent and decide on merit as soon as possible.

JUDGE

MAK/PS