

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT
LARKANA**

Civil Revision No. 04 of 2005

Applicant : United Bank Limited through Mr. Imdad Ali Mashori, Advocate.

Respondents 1-6 : Shoaib Ahmed and 05 others through Mr. Shakeel Ahmed Abro, Advocate.

Respondents 7-9 : M/s. Naimatullah Bhurgri & Ali Akber Kalhoru, State Counsel.

Dates of hearing : 28-01-2019, 31-01-2019, 18-02-2019 & 25-02-2019.

ORDER

Adnan Iqbal Chaudhry J. - The Applicant's Civil Suit for declaration relating to immovable property and for consequential relief of injunction was dismissed by the trial court. An appeal also failed; hence this Civil Revision.

2. The Applicant, United Bank Limited (UBL) filed F.C. Suit No.111/2017 (the Said Suit) in the Court of Ist Senior Civil Judge, Larkana for a declaration against the Respondents that UBL was entitled to retain possession of the Suit Land and to construct a sports complex thereon; for a declaration that the documents relied upon by the Respondents 1 to 6 to claim an adverse title to the Suit Land, are bogus; and for a permanent injunction to restrain the Respondents from interfering in UBL's possession of the Suit Land.

3. It was the case of UBL that the Suit Land, measuring 63,855 sq. feet, had been carved out from Survey Nos. 484, 485 and 488 of Deh, Taluka and District Larkana, and allotted by the erstwhile Municipal Corporation Larkana (predecessor of Respondent No.7) to UBL for the construction of a sports complex vide Allotment Order dated 09-07-1995; that possession was delivered to UBL under cover of a

certificate of possession dated 09-07-1995; that on 02-04-1996 the Municipal Corporation Larkana executed a lease of the Suit Land to UBL for a term of 99 years; and that the Respondents 1 to 6 were unlawfully claiming and interfering with a part of the Suit Land.

4. It was the case of the Respondents 1 to 6 that out of 63,855 sq. feet of the Suit Land, an area of 23,000 sq. feet was the property of the Respondents 1 to 4 who had purchased the same vide registered sale deeds in the year 1990 from M/s Muhammad Sharif and others who were the legal heirs of one Hussain Bux Khoso; that the said area of 23,000 sq. feet was duly mutated to the names of the Respondents 1 to 4; that pursuant to orders passed in an earlier F.C. Suit No.234/1992 filed by the Respondents 1 to 6 against the Municipal Corporation Larkana when the latter interfered with the construction of a petrol pump on the said land, the Survey Superintendent Larkana had submitted a report/sketch dated 16-01-1995 to show that out of the area of 63,855 sq. feet (the Suit Land), an area of 23,000 sq. feet was the property of the Respondents 1 to 4; that such report was accepted by the Administrator of Municipal Corporation Larkana; and that subsequently, on 15-04-1997, the said Administrator had decided that of the price received from UBL for the Suit Land, the price of 23,000 sq. feet shall be refunded to UBL, leading to the withdrawal of F.C. Suit No.234/1992.

5. The trial court dismissed the Said Suit vide judgment and decree dated 28-11-2001. Civil Appeal No.123/2001 filed by UBL was also dismissed by the Ist ADJ Larkana vide judgment dated 23-10-2004; hence this Revision.

6. The Respondent No.7 (the successor of the Municipal Corporation Larkana) had with its comments to this Revision filed certain documents which were not part of the evidence. Therefore, vide order dated 18-02-2019 counsel for both sides had sought time to examine the effect of such documents. Mr. Imdad Mashori, learned counsel for UBL returned to state that the matter should be remanded

to consider the said documents, while Mr. Shakeel Abro, learned counsel for the Respondents 1 to 6 submitted that nothing turned on the said documents. After perusing the said documents I agree with Mr. Abro that the documents filed by the Respondents No.7 with its comments do not bring to surface any fact that may improve the case of UBL. Therefore, I proceed to decide this Revision on the basis of evidence recorded by the trial court.

7. Both the Court below held that the area of 23,000 sq. feet claimed by the Respondents 1 to 4 was based on registered sale deeds, whereas the lease relied upon by UBL to claim 63,855 sq. feet was an unregistered document which could not affect any transfer of property to UBL. It was further held that by Certificate of Possession dated 13-06-1998 (Exhibit No.60/E) and letter dated 29-05-1998 (Exhibit No.60/G), both issued on behalf of the Municipal Corporation Larkana, through whom UBL claimed the Suit Land, had conceded that an area of 23,000 sq. feet owned by the Respondents 1 to 4 had been wrongly allotted to UBL, which documents had gone un-rebutted.

8. Mr. Imdad Ali Mashori, learned counsel for UBL submitted *inter alia* that the area of the sale deeds relied upon by the Respondents 1 to 4 added-up only to 17,979 sq. feet and not 23,000 sq. feet, thus a mis-reading of evidence. He submitted that while three of the four sale deeds produced by the Respondents 1 to 4 related to Survey No.487 of Deh Larkana, the Suit Land claimed by UBL was not from Survey No.487 but from Survey No.484, 485 and 488; that the only sale deed produced by the Respondents 1 to 4 with regards to Survey No.485 stated the area of the land to be 11 ghuntas which works out to 11,979 square feet (@ 1089 square feet to 1 ghunta). He submitted that in any case the sale deeds of the Respondents 1 to 4 were doubtful and notwithstanding that those were registered documents, those could not have been accepted without proof of their execution, genuineness and authenticity. As to the title of the Municipal Corporation Larkana to 63,855 sq. feet, learned counsel

submitted that UBL did not need to prove the same as it was an admitted fact. He submitted that even if UBL's lease of the Suit Land was an unregistered document, it could still be taken as evidence of UBL's possession of the Suit Land. It was strenuously argued by learned counsel that since the Appellate Court did not frame points for determination while deciding the appeal as required by Order XLI Rule 31 CPC, that was sufficient ground to remand the case as held in *Gul Rehman v. Gul Nawaz Khan* (2009 SCMR 589).

9. Mr. Shakeel Ahmed Abro, learned counsel for the Respondents 1 to 6 submitted that the Allotment Order and the Certificate of Possession relied upon by UBL to claim the Suit Land were not authentic inasmuch as those did not bear any stamp/seal of the Municipal Corporation Larkana; that the lease relied upon by UBL in respect of the Suit Land was an unregistered document, contrary to section 107 of the Transfer of Property Act, 1882 and section 17 of the Registration Act, 1908, and therefore, in view of section 49 of the Registration Act, 1908, the said lease had no evidentiary value, nor did it entitle UBL to a declaration of title. Mr. Abro submitted that the allotment of the Suit Land to UBL overlapped the land of the Respondents 1 to 4; that such fact stood proved by the Certificate of Possession dated 13-06-1998 (Exhibit No.60/E) and the letter dated 29-05-1998 (Exhibit No.60/G) both of which were issued by the Administrator, Municipal Corporation Larkana and were within the knowledge of UBL. As regards the requirement of Order XLI Rule 31 CPC, Mr. Abro submitted that such requirement was mandatory only in cases where the Appellate Court reversed the findings of the trial court as laid down in *Muhammad Iftikhar v. Nazakat Ali* (2010 SCMR 1868).

10. Heard the learned counsel and perused the record.

Adverting first to the argument of Mr. Imdad Mashori that the case calls for a remand on the failure of the Appellate Court to frame points for determination under Order XLI Rule 31 CPC. While it is correct that the judgment of the Appellate Court does not formally list

points for determination, the judgment shows that the Appellate Court had in fact reappraised the evidence, applied its own mind to the case and gave reasons before siding with the trial court. Therefore, the question is whether Order XLI Rule 31 CPC mandates that the judgment of the Appellate Court should formally list points for determination in all cases, and whether its failure to do so renders the judgment defective.

In the case of *Gul Rehman v. Gul Nawaz Khan* (2009 SCMR 589) relied upon by Mr. Mashori, the Supreme Court found that the first Appellate Court had given only a cursory judgment relying primarily on the judgment of the trial court and thus it was held that such judgment was not in compliance with Order XLI Rule 31 CPC.

In the case of *Muhammad Iftikhar v. Nazakat Ali* (2010 SCMR 1868) cited by Mr. Shakeel Abro, it was held by the Supreme Court that where the Appellate Court does not reverse the findings of the trial court, a decision on each issue may not be distinctly recorded as long as the provision of Order XLI Rule 31 CPC is complied with in substance. The same point is more eloquently discussed by the Supreme Court in *Roshi v. Fateh* (1982 SCMR 542) as follows:

“We agree that the judgment of the learned Additional District Judge is not altogether satisfactory and it would have been more appropriate for him to have himself discussed the merits of the evidence respectively led by the parties. But as this Court has observed in *Ch. Abdul Kabeer v. Mian Abdul Wahid* and others (1968 SCMR 464) that “a non-compliance with the strict provision of Rule 31 of Order XLI of Civil Procedure Code, 1908 may not vitiate the judgment and make it a nullity and the irregularity may be ignored if there has been substantial compliance with it The question whether in a particular case there has been a substantial compliance with the provisions of Rule 31, would depend on the nature of the judgment which is under appeal. For example, if the finding on a question of fact has been arrived at on proper and legal evidence, there could thus be no ground for interference under section 100 of the Code of Civil Procedure and, therefore, there would be no necessity for strict compliance with Rule 31. But, when important points of law are involved in the case, the Appellate Court must indicate the points raised and the reasons, for its decision”. The question involved in the instant case was purely a question of fact and we feel that although the learned Additional District Judge may

have failed strictly to comply with the provisions of Order XLI, Rule 31 C.P.C. there has been a substantial compliance therewith. Hence the judgment of the learned Additional District Judge was not a nullity and affirming the finding of the trial Court that Sada was not a Shia being concurrent finding could not be interfered with in second appeal.”

Again, in the case of *Zaitoon Bibi v. Dilawar Muhammad* (2004 SCMR 877), it was held that: “where the Appellate Court decides to affirm the findings of the trial court, it would be sufficient compliance with the provisions of law if the evidence is essentially discussed and findings recorded. At any rate it would not amount to violation of law, if some issues are discussed and decided together. Real question for deciding an appeal should be whether a party has been prejudiced and there has been gross miscarriage of justice.”

After going through the case-law discussed above, the argument that the matter calls for a remand merely for the reason that the first Appellate Court did not formally list points for determination, carries no weight when the Appellate Court had in fact reappraised the evidence, applied itself to the case and had given reasons for its decision before concurring with the trial court.

11. To claim title/right to 63,855 sq. feet, UBL had produced an Allotment Order dated 09-07-1995 (Exhibit No.53/E) issued by the Administrator, Municipal Corporation Larkana, allotting the Suit Land to UBL; a Certificate of Possession dated 09-07-1995 (Exhibit No.53/F); and an unregistered Indenture of Lease dated 02-04-1996 (Exhibit No.53/G) executed by Municipal Corporation Larkana.

On the other hand, to claim title to 23,000 sq. feet, the Respondents 1 to 4 had produced four registered sale deeds one each executed in favor of the Respondents 1 to 4 by Muhammad Sharif and others (legal heirs of Hussain Bux Khose). Three of the said sale deeds, dated 18-01-1990, were for land measuring 2000 sq. feet, 250 sq. yards (2250 sq. feet) and 1750 sq. feet respectively, all out of Survey No.487 Deh Larkana; while one dated 17-01-1990 was for 11

ghuntas (11,979 square feet) out of 1-33 acres of Survey No.485, Deh Larkana (Exhibit No.s 60/B/1 to 60/B/4).

12. The Indenture of Lease dated 02-04-1996 (Exhibit No.53/G) relied upon by UBL was an unregistered document which was required to register compulsorily under section 17(1) of the Registration Act, 1908 read with section 107 of the Transfer of Property Act, 1882. Though Mr. Imdad Mashori, learned counsel for UBL contended that the said lease was exempt from section 17(1) of the Registration Act, he could not refer to any notification issued by the Provincial Government under the proviso to section 17(1) of the Registration Act to claim such exemption. In any case, the said lease having been executed for a period exceeding 5 years, it would not fall within the proviso to section 17(1) of the Registration Act, 1908. Consequently, in view of section 49 of the Registration Act, the said lease did not operate to create or assign any right, title or interest in the Suit Land. However, that alone is not a ground to non-suit UBL, nor have the Courts below done so, inasmuch as UBL could still fall-back on the Allotment Order dated 09-07-1995 (Exhibit No.53/E) and the Certificate of Possession dated 09-07-1995 (Exhibit No.53/F) for claiming a 'right' in the Suit Land. It has been held by a learned Division Bench of this Court in *Abdul Razzak Khamosh v. Abbas Ali* (PLD 2004 Kar 269) that the words "right to any property" in section 42 of the Specific Relief Act, 1877 are not confined to 'title' to property.

13. Per UBL, the area of 63,855 sq. feet allotted to it was from Survey No.s 484, 485 and 488 of Deh Larkana. Per the Respondents 1 to 4, their land of 23,000 sq. feet was from Survey No.s 485 and 487 of Deh Larkana. Therefore the Survey number common to both sides was Survey No.485, Deh Larkana. Per Exhibit No.60/B/4, the total area of Survey No.485 was 1-33 acres out of which the Respondent No.4 had purchased 11 ghuntas (11,979 sq. feet). Per the boundaries of land set-out in the sale deeds of the Respondents 1 to 4 (Exhibit No.s 60/B/1 to 60/B/4), the lay-out of the land of the Respondents 1

to 4 was such that the land of the Respondent No.4 in Survey No.485 was adjacent to the land of the Respondents 1 to 3 in Survey No.487. Per the Respondents 1 to 4, the cumulative area of their respective lands was 23,000 sq. feet and it was this area in Survey No.485 and 487 that was overlapped by the land allotted to UBL. It was pleaded by the Respondents 1 to 4 that out of Survey No.485, the land of Municipal Corporation Larkana was 1 acre (43,560 sq. feet) only. This much was not disputed by UBL and is also supported from the comments of the Respondents No.7 (successor of the Municipal Corporation Larkana). Therefore, without prejudice to its other land in Survey No.484 and 488, the land that was available with Municipal Corporation Larkana in Survey No.485 for allotment to UBL did not exceed 1 acre (43,560 sq. feet). In other words the dispute between the parties was essentially on boundaries of their respective lands as the Respondents 1 to 4 took no issue to any other land being claimed by UBL except for 23,000 sq. feet.

14. While evidence of UBL had not shed any light on the boundaries or demarcation of the subject land, the Respondents 1 to 6 had produced a Certificate of Possession dated 13-06-1998 (Exhibit No.60/E) issued to them by the Administrator, Municipal Corporation Larkana, stating that:

“It is certified that after measurement and demarcation made by the Survey Superintendent Larkana, District Larkana, the area measuring 23,000 sq. feet out of total area measuring 63,855 sq. feet is correctly owned by M/s Mohammad Shoaib s/o Qurban Ali Shaikh and Mrs. Razia Begum w/o Qurban Ali Shaikh & others.

*The vacant possession of the area measuring 23,000 square feet is physically handed over today the 13th of June 1998 to the above named owners of the above said area with the boundaries mentioned as under:-
.....”*

Further, the Respondents 1 to 6 had produced a letter dated 29-05-1998 also addressed by Administrator Municipal Corporation Larkana to UBL (Exhibit No.60/G) which read as under:

To,
The Assistant Vice President,
United Bank Limited, Larkana.

Subject: - ALLOTMENT OF LAND TO THE UNITED BANK LIMITED LARKANA FOR CONSTRUCTION OF SPORTS COMPLEX AT LARKANA.

The Municipal Land measuring 63,855 sq. ft. situated in Shaikh Zayed Colony, Larkana (along Ratodero Larkana Road) was allotted to the United Bank Limited, Larkana for construction of Sports Complex at Larkana at the rate of Rs.30/- per sq. feet.

A piece of land/Land measuring 23,000 sq. ft. out of total area measuring 63,855 sq. ft. is under dispute with M/s Mohammad Shuaib S/o Qurban Ali Shaikh and others who have filed F.C. Suit No.234 of 1992 claiming the above area/land as their own property.

03. That area under dispute was demarcated by the Survey Superintendent, Larkana division, Larkana in presence of the parties i.e. representatives of Larkana Municipal Corporation and M/s. Mohammad Shuaib S/o Qurban Ali Shaikh and others and it was finally reported by the Survey Superintendent to the Hon'ble civil court that the area under dispute is within the boundaries of land/Land purchased by the plaintiff and hence it belongs to M/s. Muhammad Shuaib Shaikh and others. The cost of disputed land measuring 23,000 sq. ft. amounting to Rs.6,90,000/- only is to be refunded to the United Bank Limited.

04. That possession of the Land measuring 23,000 sq. ft. is to be handed over to M/s. Mohammad Shuaib S/o Qurban Ali Shaikh and others as per report of Survey Superintendent, Larkana Division, Larkana and amount of the above area is being refunded to you.

05. This is for your information.

ADMINISTRATOR
LARKANA MUNICIPAL CORPORATION"

It was contended by UBL that they had never received the above letter dated 29-05-1998 from the Municipal Corporation Larkana and that UBL had remained unaware of the above documents. Nevertheless, the above documents (Exhibit No.60/E and Exhibit No.60/G), that had been issued on behalf of the Municipal Corporation Larkana itself, were evidence of the fact that a demarcation had been carried out earlier to discover that the allotment of 63,855 sq. feet to UBL had overlapped the land of the Respondents 1 to 4. At the trial, no objection was taken by UBL to the production of said documents, nor were those documents rebutted by

any other evidence. Given such evidence, both the Courts below could not but dismiss the Said Suit.

15. There is however one observation made in the impugned judgments that requires interference. It was contended by Mr. Imdad Mashori, learned counsel for UBL that the sale deeds produced by the Respondents 1 to 4 in support of their title do not add up to an area 23,000 sq. feet. A perusal of the said sale deeds shows that the cumulative area covered by those sale deeds comes to 17,979 sq. feet only. Mr. Shakeel Abro when confronted with this fact had no answer except to say that such point had not been pleaded by UBL in the plaint. No evidence was brought by the Respondents 1 to 4 to show that they owned any other land in the adjoining area that added up to 23,000 sq. feet. In the absence of a document to show conveyance of the additional 5,021 sq. feet to the Respondents 1 to 4, the acknowledgment of the Municipal Corporation Larkana in Exhibit No.60/E and Exhibit No.60/G that the Respondents 1 to 4 were owners of 23,000 sq. feet is no evidence of title of the additional 5,021 sq. feet. Having observed so, that still does not turn the case in favor of UBL nor entitle it to the relief prayed for when the evidence is that the allotment of 63,855 sq. feet to UBL had overlapped the entire land being claimed by the Respondents 1 to 4 including the area of 17,979 sq. feet proved to be of the Respondents 1 to 4.

16. In view of the foregoing, this Civil Revision is dismissed, however, the finding in the impugned judgments that the defendants/Respondents 1 to 4 are owners of land over and above 17,979 sq. feet is set aside. Needless to state that this order shall not be construed as preventing the successor of the Municipal Corporation Larkana from leasing the undisputed land to UBL in accordance with law.

J U D G E

Dated: 09-08-2019