

**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**

**Civil Revision No. S – 102 of 2009**

**Sachedino and others.....Applicants**

**Versus**

**Gajjan and others.....Respondents**

Date of Hearing: **31-01-2022**

Date of Decision: **31-01-2022**

Mr. Tariq G. Hanif Mangi, Advocate for the Applicants.  
Mr. Soomar Das R. Parmani, Advocate for the Respondents.  
Mr. Ahmed Ali Shahani, Assistant A.G- Sindh.

**J U D G M E N T**

**Muhammad Junaid Ghaffar, J.** – Through this Civil Revision, the Applicants have impugned Judgment dated 23.06.2009, passed by Additional District Judge-I, Ghotki in Civil Appeal No.06 of 2006 (*Gajjan Kalwar v. Sachedino and others*), whereby the Judgment and Decree dated 22.12.2000, passed by Civil Judge, Ghotki in 3<sup>rd</sup> Class Suit No. 04 of 1998 (*Sachedino and another v. Gajjan*) through which the Suit of the Applicants was decreed has been set aside and matter has been remanded to the trial court.

**2.** The Appellate Court has not decided the controversy on merits, but has remanded the matter to the Trial Court and the relevant findings are as under:

“I have perused the impugned Judgment and decree and have gone through the averments of the parties so also case law relied upon.

It is established legal position that in the case of pre-emption the demands have been made and such evidence is available on the record but the trial court has failed to frame the legal issues of demands of pre-emption. Though the trial court was required under the law to frame proper and legal issues on the basic point of demands. The trial court has decided the matter without framing the issues on the point of demands which is foundation of the case, and dispose of the matter by giving incorrect findings and failed to care that the he is violating the requirement of law.

The upshot of my above discussion is that trial court has not framed proper issues on the point of demands, hence the

impugned Judgment and decree cannot be sustained as basic requirement of the law, has been violated, hence the Judgment and decree cannot be treated as Judgment on merits, therefore, it is liable to be reversed.

I, therefore, set-aside Judgment and decree and remand back Suit No.4/1998 to the learned Civil Judge Ghotki with directions to hear counsel of both parties and frame proper issues and the opportunity of evidence be given to the parties subject to cross examination then arguments be heard and Judgment be passed on merits. Learned Civil Judge, Ghotki is allowed two months time to dispose of the matter. The Civil Appeal No. /2001 stands disposed of accordingly”.

**3.** After perusal of the aforesaid findings, it appears that the Appellate Court without dilating upon the merits of the case has simply remanded the matter by setting aside the judgment and Decree of the Trial Court only on the ground that some issues were not framed. In that case the Appellate Court ought to have decided the same on merits on the basis of evidence on record after settling points for determination on its own, instead of remanding the same. While confronted both learned Counsel for the Applica’s as well as Respondents concede that the matter be remanded to the Appellate court to decide the same on merits by itself instead of remanding to the Trial Court as the entire evidence and R&Ps were available before the Appellate Court.

**4.** In view of such position and by consent, impugned Judgment dated 23.06.2009, passed by the Appellate Court is hereby set aside and the matter is remanded to the Appellate Court, who shall decide the Civil Appeal on merits after going through the evidence and material available on record. Since this is an old matter, let Civil Appeal be decided by the Appellate Court preferably within a period of 90-days from today. Let copy of this Judgment be sent to the Appellate Court for compliance.

**J U D G E**

Ahmad