IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Revision Application No. S-39 of 2010

Applicants:	Motan & others through Mr. Daim Ali Bhanbhro, Advocate junior associate of Mr. Mukesh Kumar G. Karara, Advocate for applicants
Respondent No. 5(a):	Through Mr. Achar Khan Gabol, Advocate
Respondents No. 1 to 4:	Through Mr. Noor Hassan Malik, Assistant Advocate General
Date of hearing:	11.11.2021
Date of decision:	11.11.2021

O R D E R

KHADIM HUSSAIN TUNIO, J.- Through present revision application, the applicants have impugned the judgment dated 23.12.2002 and decree dated 04.01.2003, passed by the learned Senior Civil Judge, Ghotki in FC Suit No. 175/1992 *(Re- Motan and others Vs. P.O Sindh and others)* as well as impugned judgment and decree dated 14.01.2010, passed by learned 1st Additional District Judge, Ghotki, in Civil Appeal No.17/2003 *(Re- Motan and others Vs. P.O Sindh and others)*, hence this revision application.

2. Brief facts of the present revision application are that the plaintiffs being farmers were residing in Deh Khahi Daro, Taluka and District Ghotki and were in possession of about 8-33 acres of land in lot No. 1 of Deh Khahi Daro *(hereinafter referred to as the suit land)*. As per the plaintiff's case, an area of 64-00 acres out of U.A No. 01 of Deh Khahi Daro, Taluka and District Ghotki was put in open auction during the year 1966-67 and was purchased by one Muhammad Ali son of Ali Bux, who after taking possession of the land, found the lands short by 11-00 acres. He, therefore, moved an application to the Colonization Officer Guddu Barrage Sukkur and his request was turned down by the defendant No. 4 vide order dated 07.09.1967 on the ground that the area demanded by the auction purchaser was lying at a considerable distance from the plot in dispute and was also

beyond the sketch and moreover, the same land had been included in the schedule for disposal. Then, said Muhammad Ali filed an appeal before the then Director, Guddu Barrage Project of defunct ADC who, vide order dated 07.09.1969, directed the defendant No. 4 for submitting proposal for deficit area of 11-00 acres and by that process the grant of 64 acres was made available to Muhammad Ali at the site, which then sold the same to Himat Ali and others and said T.O Forms were prepared by the Assistant Colonization Officer Ghotki and issued under the office letter dated 20.10.1981 thus the status of the land was converted from *non-qabooli* into *qabooli* land. Thereafter, Himat Ali sold the said lands to one Ghulam Muhammad and thereafter Ghulam Muhammad sold out an acre out of the said land to the plaintiff No.1 and 1-20 acres to one Allah Dino and the remaining area of 61-20 acres of the said land was subsequently sold out by said Ghulam Muhammad and others to the defendants No.5 to 16 who moved an application before the defendant No. 4, requesting therein for the grant of excess land out of UA No.1 of Deh Khahi Dero, Taluka and District Ghotki included in their lot and the defendant No. 4 after hearing the parties calling the report from Assistant Colonization Officer Ghotki rejected the request of defendant No. 5 to 16 and passed an order that the remaining area which is in the possession of the plaintiffs and other persons will be disposed of in open Katcheri in accordance with the new land grant policy vide order dated 07.01.1990. Defendant No. 5 to 16, being aggrieved and dissatisfied with the above order, filed an appeal before the defendant No.3, who vide order dated 13.05.1991 set aside the order of defendant No.4 and allowed the appeal of the defendant No.5 to 16 by including 8-33 acres (suit land) into their auction lot and turned down the request of the plaintiff. The plaintiffs, being aggrieved and dissatisfied with the order of the defendant No.3 of dated 13.05.1991, filed a revision petition bearing No. SROR-154 of 1991 against private defendants before the defendant No. 2 who without considering the legal proposition and their plea of plaintiff vide order dated 23.09.1992.

3. Out of the pleadings of parties, following issues were framed by the learned trial Court:

1. Whether the suit is hit by provisions of Section 42 and 56 of the Specific Relief Act, if so its effect?
2. Whether order dated 23.09.1993 and 13.05.1991 passed by the defendants No.2 & 3 respectively are illegal, void and malafide, if so its effect?
3. What should be decree be?

4. In support of their case, applicant/plaintiff Motan examined himself at Ex.72 and produced various documents in his evidence, thereafter, learned counsel for plaintiffs closed their side; vide statement dated 16.02.1999. On the other hand, defendant No. 5 Sawan examined himself at Ex.96 and DW-2 Peeral at Ex.97 who produced several documents in their evidence. Afterwards, defendant's side was closed; vide statement at Ex.98.

5. After hearing both the parties, the learned two Courts below dismissed the suit as well as appeal of the applicants/plaintiffs.

6. Learned counsel for the applicants submits that the learned 1st appellate Court failed to consider oral as well as documentary evidence of the applicant's side; that the findings of appellate court are entirely based on misreading and non-reading of evidence of the witnesses of the plaintiff; that the learned appellate Court has failed to consider all the points for determination before dismissing the applicant's appeal.

7. Conversely, learned A.A.G and learned counsel for the respondent did not object to the setting aside of the judgment passed by the learned appellate court and the remand of the case.

8. I have heard the learned counsel for the parties and perused the record.

9. From the perusal of judgment and decree passed by the learned trial court, it appears that from the pleadings of the parties, issues

were framed by the trial Court and then the same were dealt-with by it in its judgment dated 23.12.2002, but the learned appellate court did not record an issue-wise finding by framing proper points for determination and merely agreed with the impugned judgment before it, and therefore has committed a gross illegality in not complying with the mandatory provisions of Order XLI, Rule 31, CPC. In this context, it would be appropriate, rather advantageous, to refer the provisions of Order XLI, Rule 31 of the Code of Civil Procedure, 1908, which reads as follows:-

> "**R.31. Contents, date and signature of Judgment.**
> The judgment of the Appellate Court shall be in writing and shall state—
> (a) the points for determination;
> (b) the decision thereon;
> (c) the reasons for the decision; and
> (d) where the decree appealed form is reversed or varied, the relief to which the appellant is entitled;
> And shall at the time it is pronounced be signed and dated by the judge or by the judges concurring therein."

10. From a bare reading of Rule 31 of Order XLI, CPC, it reveals that the word ***"shall"*** used in it manifestly makes such provision mandatory in nature, hence the appellate Court while writing the judgment has to necessarily follow the prescribed procedure in its letter and spirit. The purpose of insisting upon points for determination is to judicially determine all the legal and factual controversies, which are agitated or have come out from the judgment of the lower/trial court. The reading of sub-rules (b) and (c) of the said rule further explains that judgment of the appellate Court has been confined to such framed points for determination hence proper framing of points of determination cannot be denied because in absence whereof there can be no purpose of sub-rules (b) and (c) of the said rule, resulting in making the judgment of Appellate Court not-sustainable under the law. Needless to further add here that although the provision is silent as to how the ***points for determination*** would be framed, as has been defined in Order XIV, Rule 1(3) of the Code, the object of ***point for determination*** seems to

be same as that of **issues**, hence while framing/forming the point for determination the appellate Court should keep in view all the agitated grounds or those which appear from the record. It has never been a requirement of the law and procedure that there must be a number of points for determination, but an attempt should be made to achieve the objective and spirit of the legislature by framing/forming proper point(s) for determination which cover all the legal and factual issues, either agitated or appearing from the record, so that one cannot come with a plea of prejudice as a result of departure from mandatory requirement of law. The Hon'ble Apex Court, in a similar case reported as ***Gul Rehman v. Gul Nawaz Khan (2009 SCMR 589)*** has been pleased to observe that:-

> "***The judgment of the appellate Court in hand is not a judgment in its true sense*** and it is 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, C.P.C. in stricto senso as it has got ample powers under Order XLI, rules 32 and 33, C.P.C.***
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> We are convinced that the first appellate Court, which is ultimate Court of facts, has not done its legal duty.
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> 9. Learned counsel for the respondent mainly opposed remand relying on Order XLI, rule 23, C.P.C. and stated that neither the case has been decided on preliminary points nor other facts are available on record to justify the remand of the case. In this regard, he placed reliance on the cases of Arshad Ameen v. Messrs Swiss Bakery and others, 1993 SCMR 216 and Muhammad Dervaish Al-Gilani and 14 others v. Muhammad Sharif and others, 1997 SCMR 524, but the precedent case-law is not applicable to the present case as in these two cases appeal was filed before the High Court and in the instant case revision had been filed before the High Court. The High Court, if it was of the opinion that the first Appellate Court has not adhered to Order XLI, rule 31, C.P.C. should have sent the case back to the appellate Court with some directions and should not have decided the case in revisional jurisdiction as the scope of revision, to some extent, is limited. ***In the case in hand the appellate Court has given cursory judgment mainly depending on the decision of the trial Court although sufficient material in the shape of evidence was available before it. The judgment of the first appellate Court is itself a big reason for remand of the case.***"

11. Keeping in view the above position, facts and circumstances of this case, the appellate Court has failed to frame relevant and proper points for determination; hence it has caused prejudice to the

applicant. I, therefore, deem it to be a fit case for remand to the appellate Court with directions to frame relevant points in compliance of Order XLI, Rule 31, C.P.C. For the foregoing reasons, this revision application was allowed and the matter was remanded to the learned appellate Court vide short order dated 11.11.2021. Above are the reasons for such short order.

J U D G E

Ghulam Muhammad / Stenographer