

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

Civil Revision Application No.S-92 of 2016

Applicant: Ghulam Shabir through Mr. Shevak Ram
Valeeha, Advocate.

Respondent: Madarsa Darul Fazl Halani through Mr. J.K
Jarwar, Advocate.

Date of hearing: 04.11.2021
Date of decision: 04.11.2021

ORDER

KHADIM HUSSAIN TUNIO, J- Through captioned civil revision application, the applicant has impugned the judgment and decree dated 31.05.2010 passed by the court of IIIrd Civil Judge Kandiaro in Old T.C Suit No. 35/2006 and new T.C Suit No. 79/2008 (*Re- Madarsa Darul Fazal Halani v. Ghulam Shabir*) and has also impugned the judgment and decree dated 06.09.2016 passed by the Court of Additional District Judge Kandiaro in Civil Appeal No. 58/2010 (*Re- Ghulam Shabir v. Madarsa Darul Fazal Halani*).

2. Precisely, facts of the instant revision application are that the respondent/plaintiff filed T.C Suit No. 79/2008 for declaration, procession, mesne profits and injunction, pleading therein that one Gul Sher donated three shops and one residential house on the back side of the shops to Madarsa Darul Fazul Halani through a written deed as charity and thereafter he died. He also gave a share of 25 paisa i.e three residential rooms from his remaining property to the applicant/defendant through another document wherein it was expressly mentioned that the said rooms would be part and parcel of the shops. Said rooms were acquired by the Government for construction of a new highway carriage and the applicant/defendant was compensated for it. A civil suit for possession of the three shops was filed which was decided in favour of the Madarsa. The defendant sought permission for construction of a hotel on the suit plot from the Madarsa and undertook to pay its rent and the Madarsa allowed the same under the condition that when the time came, the applicant/defendant would vacate the place and hand the possession over

to the Madarsa. The applicant/defendant failed to hand over possession of the suit property when approached by the Madarsa and thereafter the respondent/plaintiff filed the suit.

3. After notice, the applicant/defendant filed his written statement wherein he denied the allegations of the respondent/plaintiff. He claimed for the said property to be Government property and that the applicant/defendant was in peaceful possession of the same since his father who was running business over the suit property and the respondent/plaintiff never claimed right or title over the suit property.

4. From the pleadings of the parties, learned trial Court framed the following issues needing consideration:-

1. Whether the suit is maintainable under the law?
2. Whether defendant is tenant of plaintiff in respect of suit property?
3. Whether plaintiff is entitled for mesne profit if yes on what rate and for what period.
4. Whether plaintiff is entitled for recovery of possession of suit property under the law?
5. Whether suit property is Government property if yes what is its effect?
6. Whether plaintiff is entitled for relief claimed by him under the law?
7. What should the decree be?

5. After hearing the learned counsel for the parties and perusing the evidence adduced, the learned trial court partly decreed the suit.

6. Learned counsel for the applicant has contended that the impugned judgment and decree dated 31.05.2010 passed by the trial Court and judgment dated 06.09.2016 by the appellate Court were passed on emotional basis and are against settled law; that the above judgments and decree are neither warranted by law nor by the equity and facts of the case; that the learned Appellate Court has failed to record its findings on all the issues framed by the learned trial Court which is a mandatory practice under Order XLI Rule 31 of the Civil Procedure Code.

7. Learned counsel for the respondent on the other hand supported the impugned judgment and contended that the same does not

call for any interference.

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 on 08.02.2007. The trial court in its judgment dated 31.05.2010 has dealt with these issues but the learned appellate court does not appear to have recorded an issue wise finding, whereby it has committed gross illegality in not complying with the mandatory provisions of Order XLI, Rule 31, CPC. In this context, it would be proper, 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 from 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 the bare reading of Rule 31 of Order XLI, CPC, it appears 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 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 a Judgment of Appellate Court as not-sustainable under the law. I can further add here that though 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, however, 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 which appear from the record. It has never been requirement of the law and procedure that here must be number of points for determination; but attempt should be made to achieve the objective and spirit 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 in result of departure from mandatory requirement of law.

11. The impugned judgment of the learned appellate Court clearly shows that the learned appellate Court has not determined the points for determination properly, which could be said to have covered all the factual and legal points, agitated or borne out from reading of the judgment of the trial Court, though it was mandatory requirement of the law under Order XLI, Rule 31, CPC. The learned appellate Court for deciding the appeal formulated following two points for determination:-

"(i). Whether the impugned judgment and decree are in accordance with law?

(ii). What should the decree be?"

12. Relevant portion of the impugned judgment is reproduced herein below for ease of reference as well:-

“There is no denying that Gulsher donated his three shops and a residential house situated on the back side of the shops and 25 paisa share from his remaining property to the plaintiff/respondent and appellant/defendant respectively through deeds executed on 04.1.1993. The defendant/appellant has admitted to have received compensation of the land utilized by the Government while constructing new Highway Carriage. It is a case of respondent/plaintiff that the appellant/respondent was allowed to construct the Hotel over the suit plot on the basis of his undertaking to pay its monthly rent at the rate of Rs:500/- per month. The plaintiff/respondent proved the same by producing trustworthy and reliable oral as well as documentary evidence while appellant/defendant failed to adduce reliable evidence in support of his claim. There was no need for respondent/plaintiff to

file rent case in case of non-handing over the possession of the suit plot to him by the defendant/appellant on the basis of his undertaking to pay rent of the same when the defendant/appellant has not claimed any malafide of respondent/plaintiff in filing the same. The learned trial court has delivered the judgment and decree after appreciating the evidence brought by the parties in support of its findings which are also based on sound reasonings. The appellant/defendant's counsel has also not pointed out any patent illegality/error committed by the learned trial court while passing the same, I am therefore, of the view that the learned trial court has rightly partly decreed the suit through impugned judgment and decree which, therefore, do not call any interference by this court. This point No:1 is, therefore, answered in affirmative. In view of my findings on the point No:1, I dismiss this appeal with no order as to costs while holding it meritless. Let the decree be prepared accordingly.”

13. Bare perusal of the impugned judgment passed by the learned appellate Court shows that the main issues relating to the grant of land to the applicant through land grant policy and oral and documentary evidence produced by the applicant during trial have not been properly dealt by the learned appellate Court and no such point for determination was framed by the learned appellate Court, thus there is a departure from mandatory requirement of law within spirit of Rule 31 of the Order XLI of CPC, which departure cannot be approved.

14. In view of hereinabove 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.

15. For the foregoing detailed reasons, this civil revision application was allowed by me and the matter was remanded to the learned appellate Court vide short order dated 04.11.2021. Above are the reasons for such short order.

JUDGE