

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

*Civil Revision Application No.S-39 of 2016*

**Applicant:** Rasool Bux Chachar.

**Respondents:** Abdul Ghaffar & others, through Mr. Abdul Ghani Bijarani and Mr. Sajid Mahessar, Advocate.

**Date of hearing:** 06.12.2018

**Date of decision:** 06.12.2018

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

**KHADIM HUSSAIN TUNIO, J.-** Through instant civil revision application applicant has challenged the judgment dated 18.08.2016 passed by the learned District Judge, Kashmore at Kandhkot in Civil Appeal No.46 of 2016, whereby the appeal filed by the applicant was dismissed and the impugned order dated 27.06.2016, passed by the learned Senior Civil Judge, Kandhkot was maintained.

2. Precisely, facts of the instant revision application are that the appellant Rasool Bux filed a civil suit for declaration, partition, cancellation and injunction before the learned Senior Civil Judge Kandhkot. Allegedly, he had purchased an area of 71780 sq. feet from survey No. 382 from the respondent Abdul Ghaffar by way of agreement of sell and he had received the possession of his property. The respondent ensured the appellant that he would honour the transaction and execute a registered sale deed in his favour. The appellant approached him multiple times, but he kept the appellant on false hopes. Thereafter, prior to filing the suit, the respondent tried to forcefully dispossess the

appellant from the suit property; hence the applicant filed the suit.

3. None appeared on the behalf of the applicant to address the Court. However, learned counsel for the respondents supported the impugned orders while submitting that the suit of the applicant/plaintiff was not maintainable at law; that the applicant/plaintiff has not purchased the property in dispute from its lawful owner; that the respondent/defendant No.1 was not competent to sell the suit property to the applicant/plaintiff.

4. I have given due consideration to the submissions made by the learned counsels for the respondents and perused the record carefully. From the perusal of record, it transpires that the applicant filed suit for declaration, specific performance of contract and permanent injunction. From the perusal of record, it further contemplates that the applicant has pleaded that he has purchased the suit property from the respondent/defendant No.1 through agreement to sell dated 22.12.2014 who handed over its possessions to applicant/plaintiff which is in *muhaq* which too has been admitted by the Respondent/defendant No. 1. The learned two Courts below have given undue weight to report furnished by the Mukhtiarkar, being Commissioner, appointed by the Senior Civil Judge Kandhkot. Furthermore, statement of the Mukhtiarkar has been recorded by the Senior Civil Judge before the framing of the issues. No opportunity of cross-examination was provided to the parties. The factual controversy involved in the matter requires evidence.

5. It is pertinent to mention here that the rejection of plaint in the meaning of Order VII, Rule 11, CPC, and dismissal of the suit on the ground of its maintainability on the factual pleas are totally different things. Very basis of the suit disappears by the rejection of the plaint, while dismissal of the suit comes to an end. When factual controversy is involved in the matter, the plaint cannot be rejected, despite the fact that the plaintiffs may not succeed in establishing averments made in the plaint. Thus, the same could not be decided while deciding in an application under Order VII, Rule 11, C.P.C, as the factual controversy should have been resolved in the light of evidence adduced by the respective parties in support of their claim.

6. I have heard the respective parties and have examined the available record. At the very outset, it would be significant to make a distinction that while exercising revisional jurisdiction this Court cannot disturb the 'factual controversy' resolved by subordinate Courts unless it is surfaced that impugned judgments are the result of non-reading, misreading and violation of legal principles. It is settled principle of law that when the revision is purely confined to examine legality of exercise by two Courts below in interpreting a 'legal issue/question', then said principle will not operate as confining the 'revisional jurisdiction' of this Court because very purpose of 'revision jurisdiction' is meant to correct an illegality. An order of rejection of plaint under Order VII, R.11, C.P.C, is a pure question of law hence even if same has been stamped by appellate Court yet this Court can competently

examine and disturb the same because the factual controversy shall have effect on the parties of lis alone but a decision on law has binding effect upon all. Thus, I am not convinced with plea of learned counsel for respondents regarding maintainability of petition solely on the account of concurrent findings of two Courts below.

7. In view of the above position and discussion, impugned orders dated 27.06.2016 and 18.08.2016, passed by both the Courts below being illegal, improper, and not sustainable in law were set aside and the matter was remanded back to the Senior Civil Judge Kandhkot vide short order dated 06.12.2018 in the following terms:-

*“Heard arguments. For the reasons to follow, this civil revision application is allowed and the impugned judgment dated 18.8.2016 passed by the learned District Judge, Kashmore at Kandhkot in civil Appeal No.46/2016 Re: Rasool Bux Chachar v. Abdul Ghaffar and others, whereby order dated 27.6.2016 passed by Senior Civil Judge, Kandhkot on application under Order 7, Rule 11, CPC filed by the respondents was allowed and plaint of the suit was rejected, is set aside and the matter is remanded to the trial Court with directions to allow the parties to file their written statements, frame factual as well as legal issues from the pleadings of the parties, record evidence and decide the matter fully in accordance with law, after providing opportunity of hearing to the parties, within 09 months thereof and submit compliance report to this Court through the Additional Registrar.”*

Above are the reasons for said short order.

**JUDGE**