

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

R.A. No. 256 of 2011

DATE	ORDER WITH SIGNATURE OF JUDGE
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- 1. For hearing of CMA-2181 of 2016.
- 2. For hearing of CMA-996 of 2011.
- 3. For hearing of main case.

15.01.2021

Mr. Arbab Ali Hakro, Advocate for the applicants.

Mr. Sunder Das, Advocate for respondent No.1.
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To be very precise, learned appellate Court has failed to discharge its duties in accordance with Order XLI Rule 25 C.P.C. by omitting to examine and decide the issues framed and decided by the trial Court and without commenting on issues had set aside the impugned judgment passed by the trial Court. The findings contained in para-14 of the impugned judgment are perverse and contrary to law, which are reproduced below:-

“ For what has been discussed above, I am not satisfied from the decision passed by trial Court for the reason stated above, therefore, in the interest of justice without touching the merits and demerits of the case and while set-aside the impugned judgment and decree of trial Court and matter is remanded back with direction to trial Court to frame the additional issue suggested by this Court after providing opportunity to the parties to adduce their additional evidence. The trial Court then to decide the matter afresh within the a period of two months. The respondents / plaintiffs No.1 to 5 are directed to supply proper address of defendant No.3 / respondent No.8 to the trial Court on the first date of hearing, failure thereof shall prove the collusion in between respondents / plaintiffs No.1 to 5 and defendant No.3 / respondent No.8 as it apparent that they are bloodily related and they must know their actual abode.

Besides the above, issue proposed by the appellate Court should have been decided by the appellate Court itself after going through the evidence. This suit was filed way-back in 2001 and instant revision is pending for almost 09 years.

Be that as it may, by consent of the respondent’s counsel, the impugned judgment is set aside and the case is remanded to the Court of VIIth Additional District Judge, Hyderabad for deciding the appeal on merits by

examining the entire R&Ps of civil suit to ascertain the correctness and propriety of the impugned judgment in the said appeal. After 19 years the case should not be remanded and if there is no evidence on the proposed issue even then the suit should not be remanded and the appellate Court should be ready to record the evidence itself to avoid further delay in decision of the case on merit. The issue proposed in the impugned judgment may be reexamined by the appellate Court whether same have been rightly framed and whether decision on that proposed issue would have any adverse inference on the other issues. It goes without saying that by merely agitating collusiveness in plaintiffs' suit, the merits of the case could not be affected.

In view of above, this revision application is allowed and the appeal is remanded to the first appellate Court.

Learned counsel informed that at present the appellate Court (VIIth Additional District Judge, Hyderabad) is lying vacant; therefore, the matter may be placed before the learned District Judge, Hyderabad on 19.01.2021, on which date both the parties shall appear before the Court of learned District Judge, Hyderabad and it would be better that District Judge to hear this case himself and if the case is assigned to any other Court having jurisdiction, the parties shall go before the said Court on the same day, who shall decide the case within a period of thirty (30) days from the date of receipt of this order because it is an old matter. If any party seek adjournment same could be granted subject to cost of Rs.5000/-; however, if both parties seek adjournment by consent then cost should be imposed on both parties in equal share i.e. Rs.2500/-. Progress report should be submitted before this Court after fifteen days and the judgment should be announced within 30 days' period.

JUDGE