

Mosque, who are secretly trying to create the said trust behind the back of the plaintiff's society with malafide intention, subsequently it transpire that defendant No.2 to 9 managed to form so called Macca Masjid Trust on 19.1.1991 which enlightened on 28.1.1990 when they terminated the Imam namely M. appointed by the society. The election of the executive committee of the society and sub-committee of the mosque used to be held regularly without any discrimination about belief, maslak or faith.

3. The core issue, involved, is with reference to non-framing of the '***point of determination***' i.e non-compliance to mandatory requirement of provision of Order XVI rule 31 CPC. I would take no exception to legal position that framing of point for determination is *mandatory* in nature, however, the purpose thereof is to have a *reasonable* and *legal* response from the appellate Court to available material for stamping or reversing the judgment of trial court. I would take guidance from the judgment, relied upon by learned counsel for appellant as 2009 SCMR 589. The relevant portions thereof are as follows:-

“8. ... In the instant case, a bare perusal of the judgment of the first appellate Court clearly reflects that it has not given due attention to the available evidence on record...

9. ...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.*

(underlining is for emphasis)

Admittedly, appellate court has failed to determine '***the point of determination***' which, otherwise, is mandatory requirement within meaning of Order 41 rule 31 CPC. Issue No.3, 5, 6 as referred were discussed by the trial court in very detailed manner except issue of applicability of section 92 CPC.

4. At this juncture it would be conducive to refer Para E, F, G and H of appeal wherein plea was taken:-

“E. that the trial court has failed to appreciate that there has been no complaint whatsoever of mismanagement or misappropriation against the trust or any of the trustees.

F. That the trial court has erred in holding that the suit is not under valued. The very contents of the plaint itself showed the suit to have been grossly under valued and also that the present respondent NO.1 had avoided to pay the court fee stamps as required under section 7(v) of the Court Fees Act read with section 8 of the Suits Valuation Act which are the provisions applicable to the present case.

G. That the trial court has not taken into consideration the fact that the property in a mosque vests in Almighty Allah being the religious waqf while the beneficiaries are namazees; and that the trust in dispute is created for their benefit.

H. That the trial court has passed its judgment mainly on photo--state copies of documents placed on record by the plaintiffs which are neither produced as required under law nor the same are admissible.”

5. All these grounds were not answered and discussed by the appellate court separately which, otherwise, is requirement of procedural law because in appeal the whole case stands reopens. I would also add that plea of *prejudice* because of failure is also there which appears to be having substance because without referral to record (evidence) a **‘legal conclusion’** can’t find its satisfaction because in law it is not the **‘conclusion’** but the **legal reasoning / justification** for such **conclusion** matters. A referral to evidence would always require an explanation to *legal question*, arising out of such referral which is termed as **‘point of determination’**. This is, *prima facie*, reason because of which adherence to such requirement is made as **mandatory**. Needless to mention that appellate court failed to discuss all the issues nor point of determination, covering all *issues*, is there hence impugned judgment is not in accordance with law.

6. In consequence to above legal position, the impugned judgment of appellate Court is set aside. Case is remanded back to the appellate court to decide the case after framing all the points of determination and providing opportunity of hearing to the parties, preferably within three months.

Sd/-
J u d g e