

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

C.P No.D-3634 of 2022

BEFORE

Mr. Justice Muhammad Junaid Ghaffar

Mr. Justice Adnan-ul-Karim Memon

Petitioner : Manzoor Ahmed through Sulleman Dahri,
Advocate

Respondents : Abdul Shakoor & other through Mr. Adeel
Baig Panhwar, Advocate

Date of hearing : 22.03.2023

Date of Judgment : 22.03.2023

JUDGMENT

Muhammad Junaid Ghaffar, J:- Through this petition, the petitioner has impugned order dated 03.12.2022 passed in Civil Revision Application No.64 of 2022 by 2nd Additional District Judge / (MCAC) Sanghar, whereby the Revision application has been dismissed and order dated 26.10.2022 passed by 1st Senior Civil Judge, Sanghar in F.C Suit No.102 of 2012 has been maintained through which the said Court has refused to accept the written statement of the present petitioner.

2. Heard both the learned counsel(s) for the parties and perused record. It appears that initially a consolidated judgment was passed on 07.08.2021 in F.C Suit No.80 of 2012 and 102 of 2012 by the 2nd Senior Civil Judge, Sanghar, whereby Suit No.80 of 2012 was dismissed and Suit No.102 of 2012 was decreed. Being aggrieved, an appeal was preferred and the Appellate Court through its judgment dated 31.03.2022 set-aside the judgment of the trial Court with certain directions and the operative part of the said judgment of the Appellate Court which is relevant for the present purposes reads as under:

“20) I have minutely gone through the case law submitted by the learned advocate Mr. Mirza Fawad Ahmed and I do not find any clue therein that the provision of order 20 Rule 5 CPC can be overlooked by passing judgment in a civil suit. I have also noted that the evidence of certain witnesses such as Rasool Bux has not been discussed in the issue No. 05 which needs to be discussed properly to highlight the controversy

between the parties. Both the advocates of appellant and respondents have filed the case law of Sindh High Court 1985 CLC 2263 (Karachi), 2004 CLC 370 (Karachi), PLD 2014 Sindh 78. The ratio decidendi of this case, the identical issues can be discussed together. Whereas in the case in hand, the issue Nos. 5, 7 & 8 are material issues touching the core of the controversy between the parties, therefore, in my humble view it was proper to meet the provision of civil procedure code are authentic particularity in a case of agricultural land in which the share of the parties is settled un-divided required to be discussed exclusively issue wise. I have also noted that plaintiff/respondent No.1 Abdul Shakoor of F.C Suit No.102/2012 filed suit for Declaration, Cancellation, Possession, Mesne Profit and Permanent Injunction challenging the sale agreement dated 02.12.2011 and Receipt of Rs.13,80,000/- and praying therein to declare the said documents be cancelled, the said sale agreement and receipt of Rs.13,80,000/- were executed by his brother Manzoor Ahmed and plaintiff/respondent No.1 Abdul Shakoor in favour of defendant/appellant Ali Nawaz, but the plaintiff/respondent No.1 Abdul Shakoor not made/joined his brother Manzoor Ahmed as necessary party, hence in this regard the learned trial court has failed to frame the following issue:-

“Whether the suit is non-maintainable for non-joining parties”.

21) *The learned trial court is directed to amend the above issue and to join all necessary parties in this suit and then record the finding of the available evidence on the record which is in my humble view is sufficient and there is no need to record further evidence which has already been come on record only need to be placed in the relevant issues so that the controversy can be effectively resolved between the parties and the litigation come to an end between the parties, hence in view of above the point No. 01 is decided as affirmative”.*

3. Pursuant to the above judgment, the present petitioner approached the trial Court with his written statement which was refused to be accepted and being aggrieved he preferred a Revision which also stands dismissed; hence this petition.

4. The precise reason which appears to have prevailed upon the two Courts below is that the Appellate Court in its judgment dated 31.03.2022 had though permitted joining of the present petitioner as a defendant in the suit, and also framed an additional issue; however, the matter was to be decided on the basis of available evidence and therefore, the written statement filed was discarded. This, in our considered view, does not appear to be the correct appreciation of law, inasmuch as ordinarily, as and when a party is joined as a defendant in terms of Order 1 Rule 10 CPC, the said defendant is entitled to file his written statement and even lead evidence. Though the said order of the Appellate Court to this extent was not impugned any further; however, impliedly when the present petitioner was joined as a defendant, and an additional issue was also framed, the right to defend the said suit vested in the petitioner as an inherent right as otherwise if a decree is passed against the said defendant, it may have to be set-aside on this ground alone. The right of a person who has been joined by the Court as a defendant cannot be taken away on the ground that matter is an old one and

considerable time has lapsed as recorded in the impugned order of the Revisional Court. Such right cannot be altered and or taken away by the Court in this manner. If the intention of the Court was not to permit any further evidence, even in respect of the additional issue, then the Court ought not to have joined the present petitioner as the defendant in one of the pending suits. This approach appears to be against the mandate of law and cannot be sustained. Per settled law when a party is added, the Suit would be deemed pending against the said party from the date of such joining¹, and in that case the right to defend the Suit cannot be taken away. At the same time, we may observe that permission to file such written statement does not ipso facto permits the Petitioner or require the trial Court to record the entire evidence once again. As noted the earlier order dated 31.3.2022 was never challenged any further, therefore, in the facts and circumstances of this case, the petitioner cannot be permitted to lead evidence afresh on other issues; rather, it is but proper for the parties to lead evidence only in respect of the stand taken in the fresh written statement so filed by the Petitioner, and that too only in respect of the additional issue framed in Appeal. More so, when the two Suits are already consolidated. It is clarified that the trial Court need not record the entire evidence afresh but permit the petitioner to file his written statement as above and lead evidence, if any, to the extent as above.

5. Accordingly, this petition is **allowed** in the above terms; both impugned orders dated 03.12.2022 and 26.12.2022 are set-aside; the trial Court shall proceed further as noted hereinabove in accordance with law.

JUDGE

JUDGE

Hafiz Fahad

¹ Muhammad Yakoob v Ali Shah (1994 MLD 1843)