Judgment Sheet

IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA

Civil Revision No.S-06 of 2012

Applicant	:	Abdul Qadir s/o Muhammad Saleh through Mr.Shakeel Ahmed Abro, Advocate
Respondents No.1 to 7:		Amjad Hussain & 06 others through Mr.GhulamDastagir Shahani Advocate

Civil Revision No.S-07 of 2012

Applicant	:	Abdul Qadir s/o Muhammad Saleh through Mr.Shakeel Ahmed Abro, Advocate
Respondents No.1 to 7:		Amjad Hussain & 07 others through Mr.GhulamDastagir Shahani Advocate

Date of hearing	:	**25.5.2023 &26.5.2023**
Date of Decision	:	**26.06.2023**

JUDGMENT

ARBAB ALI HAKRO, J.-This Judgment shall dispose of instant CivilRevisionNo.S-06 of 2012 as well as connected Civil Revision No.S-07 of 2012, as both the Revision Applications have been filed by the same parties in respect of the same property.

2. Facts in brief are that the applicant has filed F.C. Suit No.64/2003 for Specific Performance of Contract and Permanent Injunction against the respondents, claiming that he purchased an agricultural land bearing Survey Nos.528(2-31), 642/2(1-19), 612(1-26), 611(3-17), 610(1-31), 176(1-13), 178(1-13), 190(2-09), 200(1-17), 201(1-11), 380(0-32), 512/2(0-31), 512(1-01), 695(1-29), 694(1-20), 60(0-33), 63(1-20), 154/2(0-15), 154/3(0-13), 154/4(2-20), 162(00-35), 660(1-35), 25(3-16), 117(1-27) and 116(0-37) total admeasuring 36-31 Acres situated in DehKhahiTapoBhirkan Taluka Lakhi District Shikarpur ("**the suit land**") from the respondent No.1 to 7, through their attorney Dr

Muhammad sultan s/o Hamid Hussain . An Agreement to Sell was entered into between the applicant and respondents, bearing witness to by the Judicial Magistrate Central Karachi. The suit land has been in possession of the plaintiff/applicant since 1977 through a lease agreement executed by respondent No. 8, acting in the capacity of attorney for respondent No. 1 to 7, in favourof the plaintiff's maternal uncle, Nafees Ahmed. This lease has been periodically extended on a yearly basis. In 1979, the applicant's maternal uncle passed away, resulting in the execution of another lease agreement by respondent No. 1 to 7 through their attorney in favour of the applicant's father, Muhammad Saleh, on 14.6.1979. In 1997, the applicant's father passed away, and subsequently, the applicant assumed possession of the land. However, due to their amicable relationship, there was no formal execution of a written lease agreement between them. In 2001, respondent No.8, the attorney of respondents No.1 to 7, agreed to sell as stated above. The suit land was sold for Rs.735,000/-. It is noteworthy that the applicant paid Rs.635,000/- in the presence of witnesses. A mutual agreement was reached between the parties involved in the transaction, stipulating that respondent No.8 shall obtain a clearance certificate from the Revenue authorities as a prerequisite for the execution of the registered Sale Deed. Furthermore, the applicant was required to submit the remaining sum of the consideration to respondent No.8 prior to the deed being presented before Sub-Registrar Shikarpur. Owing to an amicable relationship between the applicant and the respondents that have persisted since their ancestral roots, the applicant refrained from imposing the execution of the registered Sale Deed. However, upon approaching the respondents, the applicant was met with an indifferent attitude and reluctance to execute the registered Sale Deed, leading to the filing of a suit.

3. Respondent No.1 to 6 also filed F.C. Suit No.89 of 2006 for Possession and Mesne Profit against the applicant in respect of almost the same suit land, claiming that they are the exclusive owners of the suit land and record was duly mutated in their favour. The suit land was leased to the applicant's father through a lease agreement on 14.6.1979 for one year. Subsequently, following the lease term's expiration, the applicant's father-maintained employment with the respondents as a Hari and Kamdar until his passing in 1997. The respondents paid the land revenue, including the amount of Ushr, to the concerned department until 2004.Subsequently, the tract of the suit land was leased to DrShoukat Shah, pursuant to a lease agreement executed on 04.8.2003, for one year. Dr Shah had exclusive possession of the suit land and benefited from its yields. The applicant expressed dissatisfaction with this arrangement, resulting in the fabrication of a fictitious agreement to sell dated 11.12.2001. Subsequently, in 2003, the applicant unlawfully occupied the suit land and initiated legal proceedings for Specific Performance of Contract against the defendants, prompting them to file the present lawsuit.

4. Both the suits were contested by respective parties by filing their written statements.

5. In F.C. Suit No.64 of 2003, filed by the applicant, the trial Court, after recording both parties' *pro* and *contra* evidence, dismissed the same vide Judgment dated 29.3.2010 and Decree dated 05.4.2010. The applicant challenged the same in Civil Appeal No.18 of 2010 before the appellate Court; the same was also dismissed vide Judgment dated 17.11.2011 and Decree dated 21.11.2011 and maintained the above Judgment and Decree of the trial Court.

6. In F.C. Suit No.89 of 2006, filed by the respondents, the trial Court recorded the evidence of the respondents, while the

applicant failed to record his evidence; hence the trial Court closed his side of evidence vide Order dated 24.3.2010 and decreed the suit vide Judgment dated 29.3.2010 and Decree dated 05.4.2010, and the same was also challenged by the applicant in Civil Appeal No.17 of 2010, before the appellate Court, which was dismissed vide Judgment dated 17.11.2011 and Decree dated 21.11.2011 and maintained the above Judgment and Decree of the trial Court. Feeling aggrieved and dissatisfied, the applicant filed Civil Revisions Nos.06/2012 and 07/2012 before this Court.

7. At the very outset, the learned counsel for the applicant contended that the trial Court illegally relied upon the evidence of defendant No.8 in another suit; the defendant No.8 had not been examined; the applicant is in possession of the suit land, and such fact is mentioned in para No.5 of the Sale Agreement, but both Courts below have not considered that aspect of the case while passing the impugned judgments; the Court can take judicial notice of facts, but not of evidence; the Judgment passed by the appellate Court is bad in the eyes of the law; the power of appellate Court is to thresh out evidence, but the appellate Court failed to exercise power in terms of Section 107 of C.P.C; the Judgment of the appellate Court is in violation of Order XLI Rule 31 C.P.C.; the trial Court committed illegality by observing that the suit is barred u/Section 42 of the Specific Relief Act, 1877; the appellate Court has not considered the errors committed by the trial Court. In support of his contention, he relied upon **2009 SCMR 589, 2012 CLC 912, 2014 YLR 602, 2012 CLC 1274, 1987 CLC 1407, 2001 CLC 468, 2002 CLC 1361 and PLD 2003 S.C. 31.**

8. Conversely, learned counsel for the respondents contended that though F.C. Suit No.855/2004 was dismissed on the grounds of jurisdiction and cause of action vide Judgment dated 31.8.2005. The trial Court legally gave the findings by

considering the evidence recorded in the above suit, and such findings come in the ambit for determining the rights of parties. He further urged that the Sale Agreement and payment of consideration have not been proved, even applicant failed to deposit the alleged remaining sale consideration in Court. Thus, he is not entitled to a Specific Performance of Contract decree. He further submits that the description of the suit land is not adequately mentioned in the Sale Agreement, and the attorney's address is also incorrect in the alleged Sale Agreement. He also drew attention to the Order dated 24.3.2010, passed in F.C. Suit No.89/2006, through which the side of the defendant's evidence was closed. He further pointed out contradictions in oral evidence regarding the purchase of stamp paper produced by the applicant in his suit. Finally, he urged that the applicant had knowledge about the pendency of F.C. Suit No.89/2006, and he did not apply for re-calling the Order dated 24.3.2010. Both the Courts below lawfully relied on Article 111 and 112 of Qanun-e-Shahdat Order, 1984 and evidence of the Magistrate is very much relevant and Judgments and Decree of both the lower Courts did not suffer from infirmities, illegalities and irregularities; thus, Revision Applications are liable to be dismissed. In support of his contentions, he relied upon **1968 SCMR 214, PLD 1972 S.C. 25, 1990 CLC 428, 2011 CLC 309, 1997 CLC 176, 1999 MLD 2302, 1992 SCMR 2439, 2017 SCMR 2022, 2006 CLC 482, 2004 SCMR 1342, 1993 SCMR 356 and PLD 1954 BaghdadulJadeed 51.**

9. The arguments have undergone meticulous examination, and the available evidence has been thoroughly evaluated. In order to determine the extent to which justice was administered in a comprehensive and satisfactory manner, it is essential to conduct a thorough analysis of the findings that have been contemporaneously documented by the Courts below.

10. Upon perusing the verdict of the trial Court delivered in F. C Suit No 64 of 2003, it is evident that the trial Court placed substantial reliance on the deposition provided by a Magistrate, as it was documented in F.C. Suit No 855/2004. However, the admissibility of such evidence is disputed under legal provisions, given that the aforementioned Magistrate was not subject to cross-examination by the counsel representing the applicant, Abdul Qadir. Even otherwise, specific clauses are provided Under Article 47 of Qanun-e-Shahadat Order, 1984, which speaks as follows: -

> ***Article 47****. Relevancy of specific evidence for proving, in subsequent proceedings, the truth of facts therein stated. Evidence given by a witness in a judicial proceeding, or before any person authorised by law to take it, isrelevant for proving, in a subsequent judicial proceeding, or a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable.*
>
> ***Provided that--***
>
> *The proceeding was between the same parties or representatives in interest; the adverse party in the first proceeding had the right opportunity to cross-examine; the questions in issue were substantially the same in the first as in the second proceeding.*

11. This Article prescribed the conditions under which secondary evidence of the testimony of a witness in the former proceedings, civil or criminal, is admissible in subsequent proceedings or in a later stage of the same proceeding where the question in controversy in both proceedings is identical and where the witness is dead or cannot be found or is incapable of giving

evidence. Before such evidence can be made admissible, the following conditions are necessary to be complied with;

a. That the earlier evidence was taken in judicial proceedings;
b. That the former proceeding was between the same parties,
c. That the party against whom deposition is tendered had a right and full opportunity of cross-examination the deponent when the deposition was taken;
d. That the issues involved are the same or substantially the same in both proceedings;
e. That the witness is incapable of being called at the subsequent proceeding on account of death, or incapability of giving evidence or being kept out of way by the other side or an unreasonable amount of delay or expenses.

12. The above conditions show that the use of such evidence is limited by three provisions.

i. If the proceeding was between the same parties or their representatives in interest;
ii. If the adverse party in the first proceeding had the right and opportunity to cross-examination; and
iii. If the question in issue were substantially the same in the first as in the second proceeding;

13. The learned trial Court before such evidence admissible had not complied with the above conditions, and prior to using such evidence, it was mandatory to prove strictly that the witness whose evidence is being admitted and considered is incapable of giving evidence.

14. It is imperative that the trial court ascertain the adequacy of evidence before taking judicial notice thereof. Regrettably, the trial court failed in this regard as it neglected to take into account the dismissal of F.C. Suit No.855/2004 by way of Judgment dated 31.8.2005, citing grounds of maintainability and

being barred under Section 20 of C.P.C. The relief claimed in the above suit was for cancellation of the Sale Agreement dated 11.12.2001, being a forged, fictitious document. It is worth noting that the said suit was instituted in the jurisdiction of Karachi, despite the suit's land being within the jurisdiction of Shikarpur District. For logical analysis, it is imperative for the trial court's observation to have been taken into account when relying on the evidence, according to the aforementioned Article. Furthermore, it was obligatory for the Court to determine whether the jurisdictional Court had taken judicial notice of the evidence in question. Moreover, it should be noted that the aforementioned Article does not apply to the present scenario as outlined in F.C. Suit No.64 of 2003. It is essential to highlight that Article 47 of the Order cited exclusively pertains to situations where a person who has previously provided testimony or submitted any relevant documentation in a preceding litigation involving the same parties is deceased or unavailable due to significant delay or associated expenses. Therefore, it is imperative to recognise that the circumstances do not align with the provisions of the aforementioned Article.

15. So far as the application of Section 20 of the C.P.C is concerned, it would be conducive to examine the provisions of Sections 16& 20 of the C.P.C, which are reproduced as under:-

> *"16. Suits to be instituted where subject matter situate. Subject to the pecuniary or other limitations prescribed by any law, suits:*
> *a) for the recovery of immoveable property with or without rent or profits,*
> *(b) for the partition of Immoveable property,*
> *(c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immoveable property,*
> *(d) for the determination of any other right to or interest in immoveable property,*
> *(e) for compensation for wrong to immoveable*

property,

(f) for the recovery of moveable property actually under distraint or attachment,

shall be instituted in the Court within the local limits of whose jurisdiction the property is situate, or, in the case of suits referred to in clause (c), at the place where the cause of action has wholly or partly arisen:

Provided that a suit to obtain relief respecting, or compensation for wrong to, immoveable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate or, in the case of suit referred to in clause (c), at the place where the cause of action has wholly or partly arisen, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

***Explanation**.In this section "property" means property situate in Pakistan.*

"20. Other suits to be instituted where defendants reside or cause of action arises. Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction:

a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain ; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution ; or

(c) the cause of action, wholly or in part, arises.

> ***Explanation I***. *Where a person has permanent dwelling at one place and also a temporary residence at another place, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence.*
>
> ***Explanation II****.A corporation shall be deemed to carry on business at its sole or principal office in Pakistan or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place".*

16. Bare reading of the aforesaid provisions of law shows that the Section 16 of the C.P.C relates to the jurisdiction of the Court in respect of the Suits where the immovable property is situated. However, Section 20 of the C.P.C would not be applicable to a case falling under Section 16 of the C.P.C. Whereas, the Section 20of the C.P.C enacts the rule as to the forums in all cases not falling within the limits of Sections 16 to 19, of the C.P.C, as is made clear by the opening words "*Subject to the limitations aforesaid*" appearing in Section 20of the C.PC. Thus, mere attestation of the Agreement at Karachi does not confer jurisdiction to the Courts at Karachi to entertain the Suit, wherein the subject matter is situated in District Shikarpur. In such circumstances, Section 20 of the Code 1908 is not applicable to the facts and circumstances of these matters.

17.The trial Court further held that the deposition of the judicial Magistrate placed on record through a statement by the counsel for the respondents/defendants and judicial notice can be taken of such judicial document in the light of provisions of Articles111 and 112 of Qanun-e-Shahdat Order, 1984.

18. Article 111 consistsof two parts. Part-I of the Article 111 of Order *ibid* deal with "Relevancy of facts",i.e. facts which are relevant or inconsistent but relevant as provided in Article *ibid*, what facts may and what facts may not be proved in civil and

criminal cases. Part II deals with facts which need not be proved. All facts in the issue and relevant facts must be proved by evidence, either oral or documentary. To this Rule, there are two exceptions as provided in Part I, i.e. (i) facts judicially noticeable and (ii) facts admitted. Article 111 provides that no facts of which a Court will take judicial notice need to be proved. Article 112 QSO provides a list of acts of which the Court must take judicial notice. There is a marked difference between the relevancy of facts and the mode of proof. An objection to the relevancy of evidence can be taken at any time, even at appellate stage; when such an objection is based and found sustainable, the Court is bound to exclude irrelevant pieces of evidence from consideration. Mode of proof, on the other hand,is a procedural matter; if no objection is taken when evidence is led, it should be deemed to have been waived. When a document, which otherwise is relevant, is tendered in evidence, the party failing to object to the mode of proof cannot be heard to say at a later stage that the document was not proved according to law.

19. Nonetheless, the underlined Articles pertain to the judicial notice of admitted fact and evidence that has been admitted as unfavourable. As a result, the aforementioned Articles do not apply to the present case. Instead, only Article 47 of the same legal code is pertinent, provided that the requisite conditions are met and the Court is satisfied with said conditions.

20. While passing the impugned Judgment, the appellate Court has neither given any independent finding of its own regarding the issues settled by the trial court nor discussed the evidence of parties. On the contrary, its' discussion is based on the consolidation of suits, which was not a subject issue in the appeal. The relevant finding of the appellate Court is as under: -

"Considering the submissions of learned counsel for respective parties and have gone through the material available on record and carefully gone through the R &Ps of the learned trial court and to say that suit No. 64/2003, which was filed by the present appellant against respondents in the year 2003 and subsequently in the year 2006, present respondents filed civil suit No. 89/2006 for possession and mesne profits. Learned counsel for the appellant argued that the trial Court failed to consolidate both suits, and he shifted the burden upon the trial court about not making both suits amalgamated. In this context, I would submit that there is also the liability and lawful duty of learned advocates appearing on behalf of parties to apprise the Court by making an application as per law for consolidation of the suit, which was not done so by either side. Therefore, both suits proceeded by learned trial court separately. At this juncture, the maxim can rely upon that vigilant bus non dormientibus, Jura Subvenicent (meaning law helps those who are vigilant and not those who sleep over their rights.) When suit No. 89/2006 was filed on 09/10.2006, whereas suit No 64/2003 was already in progress and the side of the plaintiff was closed, and the matter came up for evidence of the defendant side; therefore, it can be said that the trial court not committed any error for amalgamation of suit No. 89/2006.

"Appraisal of evidence of either side reveals that learned trial court with great care and cautions scrutinized the evidence of both sides which led by them in their pro and contra version and it was duty of the appellant's counsel to record his objection that first learned trial court recorded statement of attorney of defendant and kept on record documents which exhibited by attorney of defendants and on 19.8.2009, when statement of attorney of defendant namely Inayatullah was recorded by learned judge counsel for appellant was not present and thus matter adjourned

for cross-examination. On 13.10.2009 when counsel of the appellant conducted cross examination, he before starting of the cross-examination, not recorded his objection before learned trial court that such and such document wrongly exhibited and law does not permit to exhibit such documents. When any objections from the hands of appellant's counsel did not appear, therefore, learned trial court proceeded the same, therefore, after closing side from the ends of defendants counsel, matter came up for arguments and learned trial court after hearing advocates of both parties, pronounced the Judgment and dismiss the suit."

21. Considering the above findings of the Appellate Court, it is necessary to observe whether the findings of the Appellate Court are in consonance with theprovision of Order XLI, Rule 31, C.P.C. or otherwise. Being relevant are reproduced hereunder:-

"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".

22. Object of the provision*ibid* is to provide a pavement to the Appellate Court for writing a good, characteristic and self-explanatory judgment. The appellate Court is under a legal obligation to decide the dispute in the manner prescribed under Rule 31 of Order XLI, C.P.C, which was the mandatory provision of law; otherwise,the judgment would not be in accordance with settled principles of law. This provision of law entrusts a very important duty to Appellate Court to decide finally all questions of facts and law involved because the judgment of Trial Court disappears and merges with the judgment of Appellate Court, and

there remains in existence only one judgment, i.e. of Appellate Court.The Appellate Court, as the ultimate arbiter of factual matters, is tasked with comprehensively reassessing all oral and documentary evidence presented by the parties on a per-issue basis. Furthermore, it is obliged to render its independent determinations to the legal and factual disputes raised by the parties. The judgment of the Appellate Court should not demonstrate a lack of consciousness. Application of judicial mind to the facts of the case, points for determination and reason for the decision of Court, failure would render it not judgment in the eye of law. It is necessary for the appellate Court to refer to each and every piece of evidence and to re-assess evidence of parties, examine finding record by the trial Court and give reasons for upholding or reversing same. Besides, first appellate Court is legally bound to apply its own independent mind and should not countersign the findings of trial Court and give findings issue-wise and thresh out the findings of trial Court by setting out point for determination involved in the Case. The characteristics of a good judgment are that it must be self-evident, self-explanatory and must contain reasons that justifythe conclusion arrived at, and those reasons should be such that a disinterested reader could find them convincing or at least reasonable. In the instant matter, a lack of consciousness is apparent in the discussion of the appellate Court.

23. In the case of **Pakistan Refinery Ltd. Karachi v. Barrett Hodgson Pakistan (Pvt.) Ltd. and others(2019 SCMR 1726**), wherein Hon'ble Apex Court has been held as follows:-

> *"A judgment delivered by the trial Court would not be a judgment in the real sense of the word if it does not conform to the requirements of Rule 5 of Order XX of the C.P.C. Similarly, a judgment delivered by the first*

> *Court of appeal and final Court of fact would not be a judgment if it does not conform to the requirements of Rule 31, Order XLI of the C.P.C. The rationale or raison d'eter behind these provisions is that not only the party losing the case but the next higher forum may also understand what weighed with the Court in deciding the lis against it. Such exercise cannot be dispensed with even in the cases of affirmative judgments otherwise who would know that arguments addressed were accepted or rejected with due application of mind".*

24. Upon examination of the trial court's verdict in F.C Suit No.89 of 2006, which the respondents initiated, it is discernible that the decision was made in exparte due to the applicant’s failure to adduce evidence. The appeal filed against the above Judgment lacks an independent determination by the appellate Court regarding the matters resolved by the trial court and an analysis of the evidence submitted by the parties. On the contrary, its' findings are based on the non-adducing of evidence by the applicant and his conduct. The appeal is a valuable right of the parties. The entire case presented by the parties is subject to scrutiny and evaluation with respect to both factual basis and legal principles by the appellate Court. Hence, it is essential that the appellate Court's decision reflects that its conclusions are underpinned by a coherent rationale on every aspect of the issues to be resolved. Simply concurring with the conclusions established by the trial court serves as an indication that the appellate Court has failed to develop its own autonomous decisions.

25. For the foregoing reasons, instant Revision Applications are allowed. Consequently, impugned judgments and decrees of both the Courts below are set aside. It is an admitted position that the subject matter of the two suits is the same, and the two suits are adjudicated separately. There is the likelihood of

conflict of Judgments since the subject matter of the two suits is the same; therefore, in the interest of justice, it is proper that they may be consolidated, proceeded and heard together. In so far as the consolidation of suits is concerned, the same is the prerogative of the Court, which is to be exercised on the dictate of the justice. The finding of the Appellate Court with regard to the non-consolidation of the suits is not a concrete finding but is based on presumptions and conjectures. The Appellate Court has completely ignored the inherent powers of the Court(s) to consolidate the suits instituted by the same parties on the same property, and for this purpose, the consent of the parties is not the scheme of the law.The Apex Court, in the case of **Zahid Zaman Khan v. Khan Afsar(PLD 2016 SC 409)**, laid down the principles for consolidation of the suits, and it was observed as follows:-

> *"It is settled law that it is the inherent power of the Court to consolidate suits and the purpose behind it is to avoid multiplicity of litigation and to prevent abuse of the process of law and Court and to avoid conflicting judgments. No hard and fast rule forming the basis of consolidation can be definitive and it depends upon the facts and the points of law involved in each and every case, obviously where the Court is persuaded that the interests of justice so demand, consolidation can be ordered, provided no prejudice is caused to any litigant and there is no bar in the way of the courts to consolidate the suits".*

26. Similar observation was made by the apex Court in the case **Muhammad Yaqoob vs.Behram Khan (2006 SCMR 1262)** as under: -

> *"It is well settled by a long chain of authorities that the consolidation of the suits can be ordered by the Court in exercise of the inherent powers. The consent of the parties is not the condition precedent for exercise of such powers. The purpose of consolidation is to avoid*

> *multiplicity of litigation to eliminate award of contradictory judgments and to prevent the abuse of the process of the court".*

27. In view of the above, both the suits are remanded back to the trial Court with the direction to consolidate and frameconsolidated issues arising out of divergent pleadings of the parties, conduct the trial in accordance with the law to avoid conflicting judgments and decide both the Suits on merits on the basis of the available evidence at earliest. Parties are left to bear their own costs.

JUDGE