

CERTIFICATE OF THE HIGH COURT OF SINDH, KARACHI

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IInd Appeal- 59 of 2024

Jumoo & others

Vs.

The Province of Sindh & others

HIGH COURT OF SINDH

Composition of Bench.

Single.

Mr. Justice Mohammad Karim Khan Agha

Dates of hearing : 06-08-2024

Decided on : 06-08-2024

(a) Judgment approved for Reporting

Yes



CERTIFICATE.

Certified that the judgment */Order is based upon or enunciates a principle of law */decides a question of law which is of first impression/distinguishes/. Over-rules/ reverses/ explains a previous decision.

* Strike out whichever is not applicable.

NOTE: - (i) This slip is only to be used when some action is to be taken.

(ii) If the slip is used, the Reader must attach it to the top of the first page of the judgment.

(iii) Reader must ask the Judge writing the Judgment whether the Judgment is approved for reporting.

(iv) Those directions which are not to be used should be deleted.

IN THE HIGH COURT OF SINDH AT KARACHI

Hnd Appeal No. 59 2024

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1. Jumoo Son of Aaroo Kourejo now deceased through his following legal representative/legal heirs;

a. Muhammad S/o Kangal (nephew)

Since died through his legal heirs.

- i. Saran Wd/o Muhammad Korejo
- ii. Rozeena D/o Kangal
- iii. Samina D/o Kangal
- iv. Rubina D/o Kangal
- v. Farzana D/o Kangal
- vi. Saddam Hussain S/o Kangal
- vii. Shahnawaz S/o Kangal
- viii. Shahjan S/o Kangal

Above Sr.No.a.ii to a.viii are minors through their Mother Saran Wd/o Muhammad Korajo, CNIC No.41401-1899580-9, R/o Goth Mohsin Korajo, Dakhana Gora Bari, Kortri Allah Rakhyo Shah, Tehsil Gorabar, District Thatta.

- b. Rasool Bux S/o Kangal (nephew).
- c. Rashid S/o Kangal (nephew).
- d. Mst. Aameena D/o Kangal (niece).
- e. Mst. Zeenat D/o Kangal (niece).
- f. Mst. Rehmat D/o Kangal (niece).
- g. Mst. Sanghar D/o Kangal (niece).
- h. Qasim S/o Hussain (nephew).
- i. Gulam D/o Hussain (niece).
- j. Amir Bux S/o Hussain (nephew).
- k. Siddique S/o Umar (nephew).
- l. Hanif S/o Umar (nephew).
- m. Mst. Haleema D/o Umar (niece).
- n. Sufan S/o Sulleman (nephew).
- o. Mst. Mariam D/o Sulleman (niece).
(a to g) brother's Sons/Daughters
and rest sister's Sons/Daughters.

2. Uris S/o Jumro

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ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
IInd Appeal No.59 of 2024

Date	Order with signature of Judges
FRESH CASE.	

1. For order on office objection a/w reply.
2. For order on CMA No.1854/2024
3. For hearing of main case.
4. For order on CMA No.1855/2024

Jumoo & OthersV.....Province of Sindh & Others.

06.08.2024.

Syed Hasan Jafri, Advocate for the Appellant.

Mohammad Karim Khan Agha, J. Jumoo, who is appellant in this case, has filed a suit regarding a dispute in connection with ownership of a land against the respondent. The suit bearing No.42 of 2016 proceeded in the Court of Sr. Civil Judge, Thatta and in that suit plaintiff failed to produce any evidence despite being given sufficient opportunity. This led to the findings that the suit had not been proven and as such it was dismissed under Order XVII Rule 3 CPC vide judgment dated 20.03.2021. The appellant, originally petitioner, filed an appeal before the Court of Addl. District & Sessions Judge / Model Criminal Trial Court, Thatta which through a detailed judgment upheld the earlier order and dismissed the appeal vide judgment dated 30.11.2021. Hence he has filed this IInd appeal.

2. Learned counsel for the appellant has contended that the appeal should not have been dismissed on merits and no evidence was led by the appellant so that the judgment be set-aside and the case be remanded to the trial Court so that the appellant/plaintiff be given an opportunity to lead his evidence and then the case be decided on merits.

3. This appeal has been filed under Section 100 CPC which is set out below for ease of reference:-

“100. Second appeal.--(1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to a High Court on any of the following grounds, namely:

- (a) the decision being contrary to law or to some usage having the force of law;
- (b) the decision having failed to determine some material issue of law or usage having the force of law;
- (c) a substantial error or defect in the procedure provided by this Code or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon merits."

4. Section 101 CPC is also set out below for ease of reference:-

"Section 101 - Second appeal on no other grounds:
No second appeal shall lie except on the grounds mentioned in section 100."

5. It is clear that under Section 100 CPC an appeal to this Court lies only if there is an error in law in the impugned judgment.

6. Order XVII Rule 3 CPC under which the suit was dismissed is set out below for ease of reference:-

"Order XVII Rule 3: Court may proceed notwithstanding either party fails to produce evidence, etc. - Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the Court may, notwithstanding such default, proceed to decide the suit forthwith."

7. From perusal of order dated 20.03.2021 it is clear that the trial Court has rightly applied Order XVII Rule 3 CPC. For ease of reference paragraph 6, 7 & 8 of the impugned judgment are set out below:-

"06. I have considered the contentions of learned Advocate for Defendants and perused the material on record. Perusal reveals that in the instant suit, issues were framed on 09.02.2018, but Plaintiffs failed to lead evidence till 05.03.2019 when, Suit was dismissed for non-prosecution vide order dated 05.03.2019 reading as under:

"Suit called, Attorney of Plaintiff is present. Junior counsel of Plaintiff is present. Counsel for Defendant No.17 is present. The matter was fixed for evidence of

Plaintiff but he failed to adduce his evidence. The perusal of case file transpires that issues in this matter had been settled on 09-02-2017 and after disposal of all interlocutory applications Plaintiff On 01-02-2018 was directed to adduce evidence and thereafter today is eighth date of hearing but the Plaintiff is miserably failed to adduce his evidence from which it can be safely held that the Plaintiff is not interested to proceed the matter but only to linger on the same; resultantly the Suit of the Plaintiff is dismissed in non-prosecution. Order accordingly."

07. Subsequently, pursuant to application under Order IX Rule 9 C.P.C., and on the objection of Advocate for Defendant No.17, vide order dated 06.08.2020, Suit was restored to its original stage of Plaintiff evidence, but since 06-08-2020 Plaintiffs failed to come forward to lead their evidence, though, all interlocutor applications filed by them in the intervening period of 06-08-2020 to 20-03-2021 were promptly allowed on the no objection of learned Advocate for Defendant No.17, with sole object to decide the matter on merits. The defiant conduct of the Plaintiffs are evident from the orders dated 08-09-2020, 14-09-2020, 12-10-2024, which for brevity sake, are not incorporated in the instant judgment as well persistent adjournment applications placed on record at Exhibit No. 84, 85, & 86 of the third part of the R&Ps. Even today, learned Advocate for Plaintiffs filed adjournment application, which in the given situation is without substance and is dismissed.

08. From the conduct of Plaintiff narrated in preceding paras, it is apparent that Plaintiffs have indulged into exploiting rules & procedures tantamount to abuse of process of Court and intentionally avoiding to lead evidence, therefore, Court has no alternate except to pronounce judgment under Order XVII Rule 3 CPC."

8. This finding clearly shows that the Order XVII Rule 3 CPC was applied by the trial Court as the plaintiff for whatever reasons best known to himself failed to produce his evidence which led to the aforesaid order dismissing the suit.

9. On appeal, once again an elaborate judgment dated 30.11.2023 was passed by the Addl. District Judge Thatta in Civil Suit No.19/2021 which upheld the earlier order of the Trial Court as there was found to be no legal infirmity in the same.

10. Again findings in the judgment dated 30.11.2023 it is quite clearly mentioned why the Order XVII Rule 3 CPC was applicable to this case and that it was rightly found by upholding the trial court's judgment and dismissing the suit.

11. I have also gone through both the judgments and material on record and found that both of the said judgments are well reasoned and fully in accordance with the law and that the appellant has not been able to point out any legal infirmity in the dismissal of his suit.

12. As such the appeal is dismissed in limine alongwith listed applications.