

HCJDA-38

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Civil Revision No. 849 of 2011

Nazir Ahmad & another

versus

Muhammad Siddique

JUDGMENT

<i>Date of hearing</i>	<i>15.12.2023</i>
<i>Petitioners by</i>	<i>Mr. Fida Hussain Rana, learned Advocate.</i>
<i>Respondent by</i>	<i>Mr. Amir Wakeel Butt, Syed Hassan Ali Gillani and Sahibzada Saleem Raza (learned Advocates) along with Muhammad Siddique respondent in person.</i>

SULTAN TANVIR AHMAD, J:– Through this civil revision, filed under section 115 of the Code of Civil Procedure, 1908 (the ‘**Code**’), the revision-petitioners have assailed judgment and decree dated 01.03.2011 passed by the learned District Judge, Toba Tek Singh.

2. Muhammad Siddique, the respondent, instituted suit against revision-petitioners seeking declaration that he is owner of property measuring 4 *marla* falling in *khewet* Number 236 *khatooni* number 432/433, village 287/JB, tehsil and district Toba Tek Singh (the ‘**suit property**’), however, the revision-petitioners managed verbal mutation No. 1273 dated 21.04.2007 (the ‘**mutation**’) in their favour in connivance with revenue officials. The revision-petitioners have contested the suit and filed the written statement. Out of the divergent pleadings, the learned trial Court framed the following issues:-

1. *Whether plaintiff is owner in possession of the suit land? OPP*
2. *Whether defendants got mutation by way of sale No. 1273, dated 21.04.2008 related to suit land legally and lawfully? OPD*
3. *Whether defendants are in possession of the suit land? OPD*
4. *Whether no cause of action lies in the favour of the plaintiff and against the defendants and suit is liable to be dismissed? OPD*
5. *Whether plaintiff merely filed suit in hand just to annoy and harass the defendants and it is liable to be dismissed with special cost under section 35-A Civil Procedure Code, 1908? OPD*
6. *Relief?*

3. The parties led their respective evidence. The learned trial Court vide judgment and decree dated 27.01.2011 dismissed the suit. It was observed by the learned trial Court that evidence of *tehsildar* (DW-2) and *patwari* (DW-3) is sufficient to prove the *mutation*. The said judgment and decree was challenged through civil appeal No. 44-13 of 2011 dated 07.02.2011, which was accepted vide judgment dated 01.03.2011 and the suit of the respondent was decreed in his favour as per the prayer. Aggrieved from the same the present civil revision has been filed.

4. Mr. Fida Hussain Rana, learned counsel for the revision-petitioners has submitted that the learned Appellate Court fell to an error, while failing to give issue-wise findings, thus, violated Order XLI, Rule 31 of the *Code*. He has further brought it in the notice of the Court that application No. 01-2020 is pending for producing further evidence.

5. Mr. Amir Wakeel Butt, Syed Hassan Ali Gillani and Sahibzada Saleem Raza, learned counsel of the respondent have vehemently opposed the above contentions by stating that the decision of the learned Appellate Court contains reasons for setting aside the judgment of the learned trial Court, on the

points for determination, therefore, the objection raised as to failure to follow Order XLI, Rule 31 of the *Code* is not tenable. The learned counsel, while reading the evidence led by two sides, have stated that the respondent has proved his stance by leading confidence inspiring evidence, whereas, the revision-petitioners failed to support the *mutation* by producing any relevant witness and even those who claimed to have witnessed the transaction deposed in favour of the respondent; that the revision-petitioners are just delaying the proceedings by various means to blackmail the respondent; that the revision-petitioners are part of a group of land grabbers and they managed the *mutation* in collusion with the *patwari* appointed at the relevant time.

6. I have heard arguments of the learned counsel for the parties and perused the documents available on the record with their able assistance.

7. The revision-petitioners have setup the defence in their pleading on three foundations (i) oral bargain, (ii) agreement dated 10.04.2007 (the '*agreement*') and (iii) genuineness of the *mutation*. The written statement is silent about the names of the witnesses of oral bargain, the *agreement* as well as the place and time when the bargain took place. The defence is setup in preliminary objections, whereas, on merit paragraphs of the plaint are evasively denied by simply stating that the facts stated therein are incorrect.

8. *Tehsildar* and *patwari* appeared as DW-2 and DW-3. The *mutation* (Exh.P4) is witnessed by Ali Muhammad Virk (*lambardar*) and Ashiq Ali son of Muhammad Tufail (*patidar*), who were never produced by the revision-petitioners. Somehow, Ali Muhammad Virk *lambardar* appeared from the respondent-side as PW-1 and he denied his signatures on the *mutation* as well as passing of the *mutation* in his presence. His evidence remained coherent during cross-

examination. There is no explanation on record for not producing the second preferred witness i.e. Ashiq Ali son of Muhammad Tufail (*patidar*). The Land Revenue Act, 1967 and the rules framed thereunder prefers mutation to be sanctioned in the presence of *lambardar* and respectable(s) of the relevant village, having clear rationale that such transactions have some inviolability and when require the aforementioned respectable(s) can depose accordingly.

9. As already observed the written statement is silent as to the witnesses of oral bargain. Later one Abdul Razaq (DW-5) was introduced to fill this gap, who also claimed to be tenant of the revision-petitioners but failed to produce any receipt of rent or payment of utility bills by him of the premises in question. He claimed that documents reflecting payments of rents or utility charges are at his home but never bothered to produce such documents until today.

10. Somehow, the *agreement*, one of the most crucial documents, is not produced during the trial or proceedings of appeal and then nine (09) years of this revision-petition. Thereafter, a miscellaneous application bearing No. 01 of 2020 was instituted, in the year 2020, seeking permission to produce the *agreement*. The same reflects Abid Yaseen and Zafar Yaseen as witnesses and Zulfiqar Ali as stamp-vendor. The names of the said persons are not only missing in the pleadings but there remained complete silence as to them for 13 years. The learned counsel has failed to utter a word to explain this position. The miscellaneous application and the accompanied *agreement* is not just an attempt to derail the proceedings and to fill in *lacuna* but at the same time it is an attempt to prolong the status quo as to the *suit property*.

11. In course of evidence, *Tehsildar* (DW-2) and Ghulam Murtaza-*patwari* (DW-3) stated that Ali Muhammad Virk identified the respondent and witnessed the *mutation*,

who already denied the event when he appeared as PW-1. *Tehsildar* or *patwari* during the trial could not explain the reasons for not bringing *pert-sarkar* with them. No application for comparison of signatures of *lambardar* (PW-1) on the *mutation* is instituted.

12. On the other hand, the respondent stood by his pleadings in examination-in-chief. He was cross-examined but his answers to all the questions put to him remained reasonable. He denied consideration and deposed that the revision-petitioners are part of gang of land grabbers. His statement is supported by PW-1 / the *lambardar*, through coherent evidence.

13. Learned counsel for the revision-petitioners stated that the learned Appellate Court fell to an error, while failing to give issue-wise findings. Order XLI, Rule 31 of the *Code* requires that the written judgment of the Appellate Court to 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. Undeniably, non-adherence of the said provision can be fatal and the same can only be ignored if there has been a substantial compliance of the provision. The Supreme Court of Pakistan in case titled “Pakistan Refinery Ltd., Karachi vs. Barrett Hodgson Pakistan (Pvt.) Ltd. and others” (2019 SCMR 1726) examined the said provision and observed that the rationale behind the provision is that not only the party losing the case but the next higher forum to know what weighed with the learned Court in deciding the *lis* against one party and in favour of the other. In “Ch. Abdul Kabeer vs. Mian Abdul Wahid and others” (1968 SCMR 464), “Mst. Roshi and others vs. Mst. Fateh and others” (1982 SCMR 542) as well as “Qadir Bakhsh (deceased) through L.Rs vs. Allah Dewaya and another” (2011 SCMR 1162) the Supreme

Court observed that *the question whether in a particular case there has been a substantial compliance with the provision of rule 31 would depend on the nature of the judgment which is under appeal. For example, if the finding on a question of fact has been arrived at on proper and legal evidence there could be no ground for interference.....But when important points of law are involved in the case the appellate court must indicate the points raised and reasons for its decision.*

14. Reverting to the judgment assailed before me. The learned Appellate Court recorded the points raised by the two sides and gave findings of facts on the basis of correct appreciation of evidence and law applicable thereupon. The reasonings rendered by the learned Appellate Court are though brief but they are pertinent. I have gone through the entire record very carefully and reached to a firm opinion that the learned Appellate Court has correctly allowed the suit. The contention that the points for determination have not been formulated in a sequential manner or issue-wise finding is not recorded, has lost force since the material questions have already been answered in substantial compliance.

15. The learned counsel for the revision-petitioners has failed to convince as to any infirmity in the impugned judgment warranting interference by this Court in revisional jurisdiction. Resultantly, the revision petition as well as application for additional evidence are dismissed. No order as to cost.

(Sultan Tanvir Ahmad)
Judge

Approved for reporting

Judge

Announced in open Court on

Judge