IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:
MR. JUSTICE MIAN SAQIB NISAR, HACJ
MR. JUSTICE IQBAL HAMEEDUR RAHMAN
MR. JUSTICE TARIQ PARVEZ

CIVIL APPEAL NO.1471 OF 2015
(Against the judgment dated 29.6.2015 of the Peshawar High Court, Abbottabad Bench, Abbottabad passed in RFA No.30-A/2012)

Zahid Zaman Khan etc.

...Appellant(s)

VERSUS

Khan Afsar etc.

...Respondent(s)

For the appellant(s): Haji Ghulam Basit, ASC

For the respondent(s): Mr. Abdul Rashid Awan, ASC
Mr. M. S. Khattak, AOR

Amicus curiae: Mr. Najam-ul-Hassan Kazmi, Sr. ASC

Date of hearing: 02.02.2016

...

JUDGMENT

MIAN SAQIB NISAR, J.- In this appeal with the leave of the court we are required to resolve the primary question as to **what should be the forum of appeal where the value of the suit as fixed in the plaint has been changed by the court?** Ancillary to the above, there are some other connected questions which are duly reflected in the leave granting order *(LGO)* and shall be accordingly addressed.

2. In this context, the brief facts of the case are that the appellants filed a suit *(bearing No.167/1 of 2007)* for declaration to the effect that they are the owners in possession of the suit land with further relief seeking protection of their possession. Respondent No.1 *(the respondent)* also filed a suit *(bearing No.166/1 of 2007)* *qua* the same land for declaration, possession and permanent injunction etc. against the

appellants on the basis of his entitlement to the property. It is pertinent to mention that the appellants had valued their suit for the purposes of court fee and jurisdiction at Rs.200/- whilst the respondent valued his suit at Rs.900/-. The learned Trial Judge consolidated the suits on 26.4.2008. An additional issue was framed in the suit of the respondent *qua* the valuation of that suit for the purposes of court fee and jurisdiction. *Vide* single judgment dated 31.1.2012 the Trial court dismissed the suit of the appellants and decreed that of the respondent. With respect to the additional issue about the valuation, the court held:-

> *"To prove the facts mentioned in the additional issue, plaintiffs produced eight witnesses and according to their statements the market value of the suit property is approximately 30 Lac rupees and as the defendant No.1 in his connected suit also sought the relief of possession in alternate, therefore, he is directed to affix the proper courfee within thirty days. Hence, the issue is decided accordingly".*

Consequently, the respondent paid an amount of Rs.15,000/- *(fifteen thousand)* as court fee and the said valuation of the suit for the purposes of jurisdiction, as determined by the court, was also reflected in the decree passed in favour of the respondent.

3. The appellants filed one regular first appeal *(RFA No.30-A/2012)* before the learned Peshawar High Court challenging the judgment and both the decrees. The respondent raised a preliminary objection to the effect that for the purposes of determining the forum of appeal the valuation given in the plaint would be relevant and not the one determined by the learned Trial Court, and since the value of the suits fixed by both the plaintiffs *(appellants and respondent No.1)* was

below the pecuniary jurisdiction of the High Court, therefore, the appeal was not competent before the High Court. The respondent relied on a judgment of the learned Peshawar High Court dated 24.4.2015 passed in RFA No.41/2002. The learned High Court allowed this objection *vide* impugned judgment, holding:-

> *"I am of the view that the preliminary objection raised by the learned counsel for the respondents holds the field. Therefore, the instant appeal is held not competent before this Court. Consequently, office is directed to return the appeal to the appellants for its presentation before the proper forum by retaining photocopies thereof".*

Hence the present appeal *(with leave of the court)*.

4. Leave in this case was granted on 4.11.2015 to consider the following propositions:-

i. Where the value of the suit for the purposes of jurisdiction fixed in the plaint has been altered *(increased)* by the civil court *(trial court)*, what shall be the forum of appeal in view of the provisions of Section 18(1)(a)(b) of the Civil Courts Ordinance, 1962;

ii. Whether in the suits which are consolidated the trial court is obliged to pass separate decrees in each of the suits or a single decree shall be sufficient pursuant to a common judgment disposing of such suits; and

iii. If two *(or more)* consolidated suits have different jurisdictional valuation and are decided through a common judgment but separate decrees have been drawn, what shall be the forum of appeal in relation to such suits/decrees; whether in such a situation the aggrieved party is obliged to file separate *(RFA)* appeals before District Court and the High Court as per the valuation of the suits, but the High Court where the appeal is competently filed against the common judgment and a decree which is pending can, in order to avoid conflict of

judgments, withdraw the appeal filed/pending in the District Court and decide the same.

5. In answering the first question, we need to see whether the trial court has the authority in law to change the valuation of the suit for the purposes of court fee and jurisdiction and to direct the plaintiff to pay the court fee according to the valuation so determined by the court. In this context two situations may arise; firstly where a suit's valuation by the plaintiff is challenged by the defendant on the basis of the relevant law, i.e. the Court Fees Act, 1870 *(the Court Fees Act)* and Suit Valuation Act 1887 *(the Suit Valuation Act)*, an issue is framed and evidence recorded. The court is obliged to determine and fix the correct valuation for the purposes of court fees and jurisdiction *(see 1980 CLC 589)* and direct the plaintiff to make good the deficiency of the court fee. The plaintiff is bound to do so and failure to so do would entail the consequences under Order VII Rule 11 of the Code of Civil Procedure, 1908 *(CPC)*. In the event that the value of the suit so determined exceeds the pecuniary jurisdiction of the court, it *(the court)* shall send the matter to the District Judge for its transfer and entrustment to the court of competent jurisdiction. Secondly, in the cases where the defendant(s) is proceeded against ex-parte and there is no challenge to the valuation fixed in the plaint but where the court forms an impression that the suit is seemingly collusive and might have been filed to affect third party rights and/or is ostensibly undervalued, the Court is duty bound to determine and fix the value after holding such inquiry and collecting such material as may be deemed expedient by the court. It would then direct the plaintiff to make good the deficiency of the court fee. It may emphatically be stated that the law enjoins a duty upon the Court to settle questions about its

jurisdiction, because subject to certain exceptions, any decision rendered by the court having no jurisdiction stands vitiated on that account alone. We are fortified in our view by a judgment reported as **Ch. Nazir Ahmed Vs. Abdul Karim and another (PLD 1990 SC 42)**, the relevant portion reads as under:-

> *"It is well settled that the Court is bound to ascertain the deficiency in the court-fee affixed on the plaint and then give time to the plaintiffs to make up the deficiency and if he complies with the order within time, the defect in the plaint is deemed to have been removed from the date it had originally filed in Court."*

Adverting now to the proposition itself, for the purposes of determining the forum of appeal the provisions of Section 18(1) of the Civil Courts Ordinance, 1962 *(the Ordinance)* are relevant which are reproduced hereunder:-

> *"**18. Appeals from Civil Judges.—** (1) Save as aforesaid, an appeal from a decree or order of a Civil Judge, shall lie --*
>
> *(a) to the High Court if the value of the original suit in which the decree or order was made exceeds twenty five hundred thousand rupees.*
>
> *(b) to the District Judge in any other case."*

Section 18 *ibid* applies to regular first appeal(s) from the decree or order of the Civil Judge. For the purposes of this proposition the most important words of the section are *"**the value of the original suit**"*. Obviously the value of the original suit initially is the one which has been fixed by the plaintiff in his plaint, but where the court in either of

the two situations outlined above has increased the valuation, the determination made by the court shall be *"**the value of the original suit**"* and the value initially fixed by the plaintiff shall cease to exist, and shall for all intents and purposes on account of the judicial determination stand substituted *(by the valuation of the court)*. It would be absurd if, even after the court having made a judicial determination to increase the value, the initial value which was found to be wrong by the court were to be given precedence over the courts' determination and the forum of appeal were to be settled on that basis *(i.e. the plaintiff's valuation)*. We hold that the value determined by the court shall finally and exclusively be taken into account in terms of Section 18(1)(a) and (b) of the Ordinance as *"**the value of the original suit**"*. Reliance may be placed upon **Zafeer Gul Vs. Dr. Riaz Ali (2015 SCMR 1691)** wherein it has been held:-

> *"**Till final determination by the court**, the valuation shown in the plaint was to be deemed as proper value of the suit property for the purpose of availing the remedy of appeal qua determining the forum of appeal."*
>
> *(Emphasis supplied)*

Similarly in **Babu Jan Muhammad and others Vs. Dr. Abdul Ghafoor and others (PLD 1966 SC 461)**, the facts were that the ADJ hearing an appeal rejected an objection as to the valuation of the plaint and came to the conclusion that the value of the suit for the purposes of jurisdiction should be the value placed on the suit property by the plaintiffs and he thus arrived at the conclusion that the correct value for jurisdiction was in excess of Rs. 5,000 *(as an amount of land revenue was liable to be added)* on the plaintiffs own valuation and consequently the appeal lay before the High Court, holding that *"if the plaintiff chooses to value his suit absolutely wrongly in utter disregard of the rules*

obtaining on the subject, even then such a valuation is to be treated as the correct valuation for the purposes of determining the forum of appeal". The next day, the appellants presented their appeal in the High Court, which dismissed it *in limine*.This Court, examining the facts held as below:-

> ***The learned Judges in the High Court appear to have thought that the plaintiffs were so plainly in error in their valuation of the suit for jurisdiction that they could not be allowed the benefit of the time spent in the Additional District Judge's Court, which led to the decision that the jurisdictional value was understated. They appear to have ignored the fact that it was not for the plaintiffs to vary the valuation in the plaint when it came to taking the matter in appeal against refusal of the Senior Civil Judge to restore the suit****. The plaintiffs were bound by the valuation they had thus stated, in a suit of which the Senior Civil Judge had become seized, with the consequence that that valuation could not be altered by themselves, unless with the permission of the Senior Civil Judge. Equally, when they came to appeal against the adverse order of the Senior Civil Judge, they could not choose a forum on the basis of an altered valuation to be conceived, or made by themselves. In other words, it was essential that they should take their appeal to the District Judge, since the valuation of the suit for jurisdiction was below Rs. 5,000, **and it was only after that Court had decided the matter definitely that they became entitled to go to the High Court as the proper Court of appeal.**"*
>
> *(Emphasis supplied)*

In the case reported as **Sana Ullah Vs. Muhammad Akhtar and 11 others (1979 CLC 578)** the learned Lahore High Court after considering quite a few precedents from the sub-continent came to the following conclusion:-

> *"I am also of the view that the forum of appeal will be determined in a case where the valuation is not changed by the Court, by the value as fixed by the plaintiff but in a case where such a valuation has been changed by the Court after determining the real market value of the property, it will be that valuation which will be deemed to be the value of the original suit within the meaning of section 18 because the word 'value' means the value of the subject-matter of the suit. I am also of the view that in such a case whether the plaintiff contests the valuation arrived at by the Court or acquiesced in it, in either case the form for appeal will be determined by the valuation so found."*

The findings of **Nazir Ahmad and another vs. Muhammad Tahir (PLD 1992 Lahore 89)**, **Muhammad Sharif Vs. Nawab Din and another (PLD 1957 (W.P.) Lahore 283)**, **Suleman and others vs. Pir Baksh and others (2012 CLC 1457)**, **Ilahi Baksh Vs. Bilqees Begum (PLD 1985 SC 393)**, **Muhammad Nawaz Vs. Sher Muhammad (PLD 1987 SC 284)** and **Abdul Majid and others Vs. Muhammad Walayat Khan through his Legal Heirs (1987 SCMR 1139)** are to the same effect and reliance has been placed on some of these cases in **Babu Jan Muhammad and others Vs. Dr. Abdul Ghafoor and others (PLD 1966 SC 461)**. Learned counsel for the respondents however has placed reliance upon **Muhammad Nawaz Vs. Sher Muhammad (PLJ 1987 SC 262)** and **Muhammad Ayub vs. Obaidullah (1999 SCMR 394)** but on a close reading of these two dicta, we are of the opinion that they do not depart from the ratio of the judgments that the fora of appeal are to be determined on the basis of the valuation fixed by the court. Even otherwise the case of **Muhammad Ayub** is a leave refusing order and cannot be held to be the enunciation of law by this Court.

6. In conclusion, we hold that the judicial determination of the value of a suit for the purposes of court fee and jurisdiction by a judicial forum shall have precedence over the valuation made by the plaintiff and it shall be such valuation which shall be taken into account while determining the forum of appeal from a decree passed in such a suit. In other words, the judicial determination shall be the ***"value of the original suit"*** in terms of Section 18(1)(a) of the Ordinance.

7. With respect to question No.2; 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[1]. 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. Reverting to the proposition, there is no provision in the CPC where the court is obliged to prepare a separate decree in the consolidated suits. However, let us consider the importance of a decree that follows a judgment. Section 33 of CPC stipulates that:-

> *"**33. Judgment and decree.**--The Court, after the case has been heard, shall pronounce judgment, and on such judgment a decree shall follow."*

As is evident, a judgment is followed by a decree in a case. But where a common judgment is delivered disposing off two or more suits, how

[1] PLD 2006 SC 1262 and 1981 CLC 443

many decrees are to be drawn up in such a case? In this respect it is important to keep in mind the principle that is embodied in the case of **H. M. Saya & Co., Karachi Vs. Wazir Ali Industries Ltd., Karachi and another (PLD 1969 SC 65)** that the Court ought not to act on the principle that every procedure is to be taken as prohibited unless it is expressly provided for. The Court should proceed on the principle that every procedure which furthers administration of justice is permissible even if there is no express provision permitting the same. Order XX Rule 6 of the CPC provides for the contents of a decree including necessary particulars *inter alia,* the number of the suit, the names and descriptions of the parties, the particulars of the claim, the relief granted or any other determination of the suit. In the circumstances it would be more appropriate that separate decrees are drawn up for each of the consolidated suits.

An appeal lies against the decree and **it is the decree which is executed**. Additionally, for the purposes of appeal, the contents of the memorandum must state the grounds of objection to a decree. The requirement of a decree cannot be dispensed with and has to be filed along with the memo of appeal and it is for this reason that where an appeal is admitted without a copy of the decree, time may be granted by the court in appropriate cases to file the decree sheet[2]. In the judgment reported as **Siraj Din and 11 others Vs. Rajada (1992 SCMR 979)** the circumstances were that two consolidated suits were disposed off through a common judgment which was challenged through an appeal before the District Judge. The decree sheet in one of the suits was appended with the memorandum of appeal. When the appeal was allowed the aggrieved party sought to file a second appeal

[2] *See inter alia, 2004 SCMR 707; 1988 SCMR 892.*

on the basis that the earlier appeal challenged only one decree *(the second appeal was accompanied by an application for condonation of delay)*; the said second appeal was dismissed. This Court granted leave to consider whether filing of one appeal against the consolidated judgment in two consolidated suits relating to same or similar subject, had not satisfied the requirement of law and if not, whether mere technical controversy should not have been resolved in favour of the petitioners. This Court found that "*On a question of fact we also find that two separate decrees in the two suits were in fact prepared*". This Court further held that there was no question of treating the earlier appeal as confined to one suit as the substance of the appeal showed that it was a composite attack on both suits. The point to note here is that this Court considered the preparation of two decrees in the consolidated judgment to be unremarkable and indeed the tenor of the judgment is to the effect that it was a failing of the appellate court not to require the party to attach the second decree at an earlier stage. We direct all the trial courts of the country that where two or more suits have been consolidated and disposed of through a common judgment, that separate decree sheets with all the material particulars as per the requirements of Order XX of the CPC must be drawn up. This direction shall be for the future and consequence of non-compliance thereof shall be considered in appropriate cases.

8. Adverting to the third question; it is settled law that a consolidated appeal is permissible against a consolidated judgment before the appellate forum provided that it has the pecuniary jurisdiction to hear the appeal against the decrees according to their valuation i.e. the valuation of the original suit. The appellants are required in law to specifically challenge both the decrees and also to

affix the requisite court fee in the same manner as they would be so obliged to affix if separate appeals were filed. This brings us to the matter of those appeals in which the decrees passed have different valuations i.e. the one falling within the jurisdiction of the High Court and the other in the jurisdiction of the District Court; obviously no consolidated appeal can be filed. In such a situation the appellants are required in law to file two appeals according to the value of the original suit i.e. one before the District Judge and the other before the High Court. The learned High Court, however, while exercising its power under Section 24 of the CPC if a case is made out within the purview of the section *ibid* may, in order to avoid delay in the disposal of the matter and conflicting decisions, transfer the appeal filed before the District Judge to the High Court and decide the same along with the appeal which had been competently filed before the High Court.

9. In light of the above, this appeal is partly allowed. The impugned judgment of the High Court, to the extent of the appeal in which the decree passed in favour of the respondent has been challenged and the memo of appeal has been returned is set aside. It is held that such appeal was competent before the High Court. However, to the extent of the other decree i.e. the one through which the suit of the appellants was held not competent, obviously the appellants are required to file fresh appeal before the District Judge. However as they had challenged that decree in the memo of appeal and appended the decree sheet therewith, as per the impugned order of the High Court, such certified copy of the decree sheet be returned to the appellants by the court within three days upon the production of the certified copy of this judgment. After having obtained the certified copy of the consolidated judgment and affixing therewith the

decree sheet so returned to the appellants, a fresh appeal may be filed before the District Judge with the appropriate application seeking condonation of delay which *(application)* shall be decided by the District Court on its own merits.

Before parting we must acknowledge the valuable assistance provided to us by the learned *amicus*.

JUDGE

JUDGE

JUDGE

Announced in open Court
on **24.2.2016** at **Islamabad**
Approved For Reporting
Waqas Naseer / *

JUDGE