

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

**Civil Revision No. 265/2019**

Sajid Iqbal

Versus

Muhammad Arif and others.

Petitioner by: Mr. Manzoor Hussain, Advocate.

Respondents by: Ex-parte.

Date of decision: 07.10.2020.

**MOHSIN AKHTAR KAYANI J.** Through this Civil Revision, the petitioner has assailed the judgment dated 07.03.2019, passed by learned Additional District Judge-IV (East), Islamabad, whereby appeal filed by the respondents was allowed and judgment and decree dated 21.07.2018, passed by learned Civil Judge (East), Islamabad was set-aside and the matter was remanded back to learned Trial Court to decide afresh after impleading the other necessary parties.

2. Learned counsel for the petitioner contends that petitioner has filed a suit for Declaration and Perpetual Injunction with the claim that he is a lawful owner in possession of land measuring one Kanal, situated in Khasra No.407, Khatooni No. 308, Khewat No. 124 at Mouza Chatta Bakhtawar, Tehsil & District, Islamabad with specific boundaries, whereby respondents tried to dispossess the petitioner from the said property on 28.04.2016 by demolishing the wall. It has further been contended that the learned Trial Court after recording of evidence of the parties, passed judgment and decree in favour of the petitioner dated 21.07.2018, but the First Appellate Court has set-aside the judgment and decree and the matter was remanded back without any cogent reasons, although the overwhelming evidence is available on record. He further contends that the order of remand is not required in such type of cases,

where complete evidence was recorded and as such the learned First Appellate Court has exercised the jurisdiction not vested to it.

3. The respondents have been served through notices, but despite the service, they did not appear before this Court, resultantly, they have been proceeded against Ex-parte vide order dated 16.03.2020.

4. Arguments heard and record perused.

5. Perusal of record reveals that petitioner is aggrieved with the remand order dated 07.03.2019, passed by learned Additional District Judge-IV (East), Islamabad, whereby the First Appellate Court has passed the following observation:-

*“There is another important factor which has been ignored by the learned trial Court. Miss. Yasmeen Sindho Advocate was appointed as local commission by the learned trial Court, who inspected the property in dispute and submitted her report before the Court. The said report has been exhibit as ExP2 and is part of evidence. None of the parties challenged said report, hence it has attained finality. As per said report the land in dispute was laying open for last more than five year and none of the parties interfered in the land in dispute and dispute arose between the parties, when the defendants started construction. The learned trial Court/Civil Judge ignored the report and decree the suit of the plaintiff/respondent, which is against the law and facts of the case. However, the learned local commission has not given the measurement of the land in dispute, which is very necessary for the just disposal of the case. The impleadment of the other brothers and sisters or the subsequent purchaser is also necessary for the just decision of the case.*

*For what has been discussed above, the instant appeal is allowed, impugned judgment and decree dated 21.07.2018 is set-aside and suit is remanded to the learned trial Court for its decision afresh after impleading the other brothers and sisters of the plaintiff/respondent or subsequent purchasers being co-sharers and after proper measurement of the land in the dispute. Parties are directed to appear before the learned trial Court on 08.04.2019. Record of learned trial Court be returned along with a copy of this judgment for information and compliance. File be consigned to the record room after its due completion.”*

6. While considering the above referred observations, it is crystal clear that the respondents are also co-sharers, who are claiming the similar portion of the land and as such the land purchased by the petitioner through Exh.PW-1/1 disclosed that eight (08) Kanal land was purchased

by eight (08) different individuals including the present petitioner vide sale deed dated 27.01.1990, even Local Commission was appointed by the learned Trial Court, who has submitted a report Exh.PW-2/2, which was not challenged by the other side, but surprisingly the respondents have also purchased land through Exh.DW-1/1 vide sale deed dated 03.12.2015, which was previously owned by same vendor, who sold out the land to the petitioner. In such a disputed situation, the parties have to justify their possession qua the suit land, however, it has been observed from the record that electricity bill Exh.P3 and Local Commission report Exh.PW-2/2 justifies the prima facie case of the petitioner as the electricity meter was installed in the name of petitioner's brother and as such the report of the Local Commission has confirmed, in view of such overwhelming evidence, the requirement to remand the matter is not justiciable.

7. The powers of the Appellate Court to remand the matter in terms of order XLI Rule 23 CPC could only be exercised when any portion or issue was not adjudicated by the trial Court or the evidence available on record is not complete in any manner to decide the controversy between the parties, but in the instant case, the Appellate Court has directed the petitioner to implead all his brothers and sisters, who have jointly purchased the land alongwith him as well as the subsequent vendees and owners, subsequent purchaser being co-sharer after proper measurement of land in dispute, though the question of measurement is neither an issue in this case nor any partitioning of the land is required, hence the Appellate Court has not considered the principle governing the remand in a proper manner therefore, the jurisdiction so exercised by the First Appellate Court is considered to be illegal and it was not required to remand the matter. It was also not required to prepare the decree sheet in remand orders, which is also appended in this case.

8. For what has been discussed above, instant Civil Revision is **ALLOWED**. The impugned judgment and decree dated 07.03.2019, passed by learned Additional District Judge-IV (East), Islamabad is hereby set-aside. The appeal shall be deemed to be pending with the learned Appellate Court, however, the Court of learned Additional District Judge-IV (East), Islamabad has earlier adjudicated upon the appeal, therefore, propriety demands that instant matter be heard by learned District Judge (East), Islamabad after issuing notice to the respective parties and shall decide the same within period of two (02) months.

**(MOHSIN AKHTAR KAYANI)**  
**JUDGE**

Ramzan