

Form No: HCJD/C-121
JUDGEMENT SHEET.
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD.

Regular First Appeal No.95 of 2018

Obaid-ur-Rehman

Vs.

Mustaeeda Aziz and 03 others.

Appellant by : **Mr. Muhammad Ishtiaq
Ahmed Raja, Advocate.**

Respondents by : **Mr. Tariq Mehmood Mirza,
Advocate for respondents
No.1 & 2.
Mr. Abdul Shakoore Paracha,
Advocate for respondent
No.3.
Respondent No.4 proceeded
Ex-parte.**

Date of Decision : **25.02.2020.**

AAMER FAROOQ, J. - The appellant namely Obaid-ur-Rehman filed a suit for possession through partition and rendition of accounts alongwith payment of rent and profits. In the suit it was claimed that House No.09, Street No.04, Sector F-8/3, Islamabad was owned by his father namely Aziz-ur-Rehman, who died on 29.10.1983 and at the time left behind legal heirs including appellant, respondents No.1 and 2 and his widow, who subsequently died on 09.07.1991. It was claimed that the construction on the house was raised by the deceased father from the money sent by the appellant from abroad and subsequently respondent No.1 started living in the house. The suit was contested by respondents No.1 and 2 and the claim regarding

rendition of accounts and payment of rent was resisted. Out of the divergent pleadings, issues were framed by the learned Trial Court on 13.06.2000, however, subsequently additional issues were framed again on 11.06.2003. The learned Trial Court finally framed consolidated issues on 25.06.2005. The parties led their respective evidence; the learned Trial Court on conclusion of the trial rendered findings allowing the claim of the appellant to the extent of possession through partition, however, dismissed claim for rendition of accounts and payment of rent and profit, vide judgment and decree dated 17.04.2018.

2. Learned counsel for the appellant primarily submitted that the issue-wise finding has not been rendered by the learned Trial Court as was required under Order XX Rule 5 C.P.C. In this behalf, it was contended that while rendering findings the learned Trial Court has taken the first issues as framed being the only issues and not the consolidated issues. It was submitted that under the facts and circumstances and in light of the said position, the Court was required to render issue-wise finding.

3. Learned counsel for the respondents, *inter-alia*, contended that the judgment and decree does not suffer from any error of law or fact warranting interference.

4. Arguments advanced by learned counsel for the parties have been heard and the documents placed on record examined with their able assistance.

5. The facts, leading to filing of the present appeal, have been mentioned hereinabove, hence need not be repeated.

6. As mentioned in the preceding paragraph that the learned Trial Court framed issues twice and then consolidated the same, however, while handing down the judgment the findings have been rendered in light of the issues framed on 13.06.2000 and not the consolidated issues. Under Order XX Rule 5 C.P.C. the learned Trial Court while deciding the matter has to render findings on each and every issue. For the sake of brevity the relevant provision of law is reproduced below:-

“Order XX Rule 5 CPC. Court to state its decision on each issue. In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefore, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit.”

Admittedly, the learned Trial Court has not done so as was required under the law. The effect of not complying with Order XX Rule 5 C.P.C. was discussed in the judgment of the Hon'ble Supreme Court of Pakistan reported as "*Pakistan Refinery Ltd. Vs. Barrett Hodgson Pakistan (Pvt.) Ltd.*" (**2019 SCMR 1726**), wherein it was observed 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'etre 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.”

7. In the judgment impugned before this Court though crux of the matter has been decided but not according to the consolidated issues as were framed by the learned Trial Court, hence it would be appropriate that the matter be remanded to the learned Trial Court for rewriting of the judgment and rendering its findings in accordance with the consolidated issues framed on 25.06.2005. In this behalf, it is observed no finding has been rendered on the issue regarding non-payment of rent/profit though as such the claim to the extent was turned down while deciding another issue.

8. For what has been stated above, the instant appeal is **allowed** and the judgment and decree dated 17.04.2018 is **set-aside**; consequently, the suit of the appellant would be deemed to be pending and the learned Trial Court shall rewrite the judgment by handing down the findings on all the issues framed by it. It is expected that the learned Trial Court shall do the needful within sixty (60) days from the date of receipt of this judgment. Since the learned Judge earlier seized of the matter has expressed his opinion, it would be appropriate if the matter is entrusted to another learned Judge. This judgment shall be placed before Senior Civil Judge (West), Islamabad for the needful.

~~(GHULAM AZAM QAMBRANI)~~
JUDGE

(AAMER FAROOQ)
JUDGE