

FORM No. HCJD/C-121

ORDER SHEET

IN THE LAHORE HIGH COURT

MULTAN BENCH MULTAN

JUDICIAL DEPARTMENT

W.P. No.15728 of 2019

Mst. Bashiran Bibi **Versus** Addl. District Judge, Khanewal and
others

Sr. No. of order/ proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of parties of counsel, where necessary
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23.10.2025	Syed Tajammul Hussain Bukhari, Advocate for petitioner. Rana Mehboob Ali and Ch. Rashid Iqbal, Advocates for respondent Nos.3(a) to 3(h). <i>Nemo</i> for respondent Nos.4 and 5.
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This constitutional petition is directed against order dated 20.9.2019 of learned Addl. District Judge, Khanewal whereby appeal of respondent against order dated 28.4.2018 on application under section 12(2), C.P.C. (the “**application**”) was allowed, assailed order was set aside and the case was remanded to the learned Civil Judge to undertake further inquiry in terms of the remand order and to, thereafter, decide the said application in accordance with law.

2. Petitioner claiming herself to be owner of property subject matter of suit, filed the application to impugn decree dated 23.12.2008 passed in favour of respondent No.3, on the ground that same was result of fraud committed by respondent No.3. It was maintained that the petitioner had never entered into an agreement to sell in favour of respondent No.3 and that in the suit she never recorded any statement nor any compromise was made by her and that someone impersonating as her got a consenting statement recorded and that the petitioner having

never agreed to sell the property, the suit was fraudulently got decreed from the court. The application under section 12(2), C.P.C. was resisted by respondent No.3 through a contesting reply controverting the allegations made in the application. Issues were framed from divergent pleadings, parties produced evidence and after considering the evidence and hearing both sides, the application was allowed by learned Civil Judge Khanewal vide order dated 28.4.2018.

3. Order was challenged in civil appeal No. 45 of 2018 by respondent No.3 which was allowed by learned Addl. District Judge, Khanewal who remanded the matter to the trial court with the direction to summon Mst. Bashiran Bibi in person for comparison of signatures and, thereafter, to decide the application in accordance with law. This order of remand is subject-matter of present challenge.

4. Main argument raised against the impugned order is that the order of remand was not justified as the pre-conditions for remand of case did not operate and that evidence was produced by the parties through trial with full opportunity to both sides that comprised both oral and documentary evidence and that after indepth scrutiny thereof the learned Civil Judge had reached the conclusion that the decree was obtained by fraud and that evidence discussed and analysed by the trial court for concluding that decree was obtained by fraud, was sufficient to sustain such findings and that remand of case is not permissible just to give another opportunity of evidence to the parties who had lost the case before the trial court.

5. Learned counsel for the contesting respondents opposed the petition by submitting that the impugned order was fair and reasonable in the circumstances of the case and that Mst. Bashiran Bibi having not appeared as a witness in the application, it will be appropriate to record her statement and get a report for comparison of her signatures with the power of attorney.

6. It is settled rule that in the cases where evidence is produced and reasoned judgment has been recorded on its basis, case is not remanded for a de novo hearing to give any opportunity of additional evidence. In the instant case both sides produced oral and documentary evidence. The petitioner produced evidence which comprised AW1 to AW3 and documents Ex.A1 to Ex.A11 and also Mark-A and Mark-B while respondents' oral evidence comprised statement of RW1 and documents Ex.R1 to Ex.R10 and also Mark-R/A.

7. The oral and documentary evidence of parties was discussed by the trial court in detail and findings were recorded by ascribing persuasive probative content to material adduced but the witnesses or documents were not considered on merits. The learned Addl. District Judge remanded the case by observing that to reach a conclusion and to meet the ends of justice it was necessary that Mst. Bashiran Bibi shall appear for comparison of signatures whereafter the application shall be decided in accordance with law. It appears that the learned Addl. District Judge wanted to satisfy as to whether Mst. Bashiran Bibi owned her alleged statement of compromise in court. If it was so proper course for

the court was not to remand the case but to record the statement of Mst. Bashiran Bibi itself and to thereafter decide the appeal.

8. Under Order XLI, Rule 27, C.P.C. if the appellate court on hearing the case reached the conclusion that recording of additional evidence was necessary to reach the correct decision it could order for production of additional evidence and record the same itself or kept the appeal pending and remitted the file to the trial court for recording the statement and on return of the file with the compliance report to have decided the appeal itself by considering the additional evidence or any rebuttal thereto along with the evidence already available. Reference can be made to the case of Malik Raheem Bakhsh Awan v. Ejaz Mehmood and another (PLD 1990 Lah. 37) where it was observed as under:

“12 ... Under order 41 rule 27 of the Code of Civil Procedure, the appellate Court is required to decide the application for permission to produce additional evidence itself and record reasons for doing so. If it allows the application, it may record the evidence itself or direct the trial court to record the evidence and remit the memorandum thereof to the appellate court. However, under no law can an appellate court set aside the judgment and decree of the trial court and remand the case only for having the additional evidence recorded...”

Reference can also be made to Hassan Muhammad and another v. Allah Bakhsh and 8 others (1988 CLC 1611) wherein it was observed to the effect that rule 25 of Order XLI, C.P.C. was enacted to meet precisely the situation where the appellate court concludes that the trial court has omitted to frame or try any issue that appeared essential to right decision of the suit upon the merits then it may, if necessary, frame issue and refer the same for trial to the court

from whose decree the appeal is preferred and in such case shall direct the trial court to take the required additional evidence and the court shall then proceed to try such issue and shall return the evidence to the appellate court together with its findings thereon and the reasons therefor. It is plain that in view of noted provision the learned Addl. District Judge was not competent to direct the learned Civil Judge to return a fresh verdict on all the issues.

9. In view of the provisions of Order XLI, Rule 27, C.P.C. it is manifest that order of appellate court in so far as it relates to setting aside the whole judgment without reversing the findings on merits is violative of law and cannot sustain to the extent of remand of the case. For doing such exercise the appellate court itself was under obligation to undertake the same in view of the provision of Rule 28 of Order XLI, C.P.C.

10. In result, this constitutional petition is **allowed**, the order of appellate court dated 20.9.2019 is set aside to the extent of remand of case to the civil court and, in result, the appeal shall be deemed to be pending. The appellate court itself shall do the exercise of recording the statement of Mst. Bashiran Bibi for comparison of signatures with the disputed one and, thereafter, to decide the appeal in accordance with law on its own merits.

(RASAAL HASAN SYED)
JUDGE

Approved for reporting