

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

MR. JUSTICE AMIN-UD-DIN KHAN

MR. JUSTICE MUHAMMAD ALI MAZHAR

AFR

Civil Appeal No. 273 of 2015

(Against the order dated 11.07.2014 passed by the High Court of Baluchistan, in Civil Revision No. 281 of 2006)

Moulvi Din Muhammad

...Appellant(s)

Versus

Bibi Shakira and others

...Respondent(s)

For the Appellant(s):

Mr. Tariq Mahmood, Sr. ASC
Syed Rifaqat Hussain Shah, AOR

For Respondent No.3:

Mr. Liaquat Ali Tareen, ASC

Respondent Nos. 1 - 2:

Nemo.

Date of Hearing:

02.11.2021

ORDER

AMIN-UD-DIN KHAN, J.- In this case leave to appeal was granted vide order dated 07.04.2015, which is reproduced hereunder for ready reference:

It is contended by the learned counsel for the Petitioner that the learned High court has transgressed its jurisdiction and violated the settled law with reference to Order VI Rule 17 CPC and remanded the case. It is also added that the written statement, which had been admittedly filed by an attorney and the power of attorney has never been cancelled or challenged.

2. The aforesaid contentions raised by the learned counsel require consideration. Leave is granted, *inter alia*, to consider the same.

CMA NO.7064 of 2014:

Notice. Till the next date of hearing, further proceedings before the learned Trial Court shall remain suspended.

2. No one appeared on behalf of respondents No. 1 and 2. They are proceeded against ex-parte.

3. We have heard the learned counsel available for the Appellant and Respondent No.3 and perused the record of the case with their able assistance.

4. The Appellant is defendant No. 2 in the suit for declaration filed by Respondents No. 1 and 2 mainly against the Appellant and predecessor of Respondent No.3 who was the original owner of the land, from whom Respondents No.1 and 2/plaintiffs as well as the Appellant/defendant No. 2 claim to have acquired title to the suit property. The plaint was rejected by the trial court vide order dated 03.06.2006. Appeal thereagainst was dismissed vide judgment dated 08.09.2006. The Respondents No. 1 and 2/plaintiffs then filed Civil Revision Petition before the High Court. During the pendency of the Civil Revision Petition, defendant No.1, the original owner of the suit property passed away. His legal heirs were impleaded as respondents No. 1-A to 1-H in the Civil Revision. They submitted an application under section 151 CPC with a prayer for submission of a fresh written statement before the learned trial court. The High Court, considering their defence, allowed the Revision Petition and remanded the case permitting them to file a fresh written statement with the following directions to the trial court:

For the above reasons, the petition is accepted with no order as to costs, after setting aside the impugned orders and decrees dated 03.06.2006 passed by the learned Senior Civil Judge, Pishin and dated 08.09.2006 passed by the Additional District Judge, Pishin, the suit is remanded to the trial court with directions to avail the written statement afresh from the respondent No. 1-A to 1-H (i.e. legal heirs of late Syed Alamgir), to decide the application under Order VI Rule 17 CPC on its own merits, to frame the issues of facts as well as law, to proceed with the trial and to decide the suit in accordance with law expeditiously preferably within a period of three months.

The plaintiffs were fighting for survival of their *lis* as their plaint had been rejected and their appeal dismissed, the High Court astonishingly directed the trial court to grant opportunity to respondent No. 1-A to 1-H (legal heirs of late Syed Alamgir) to file afresh written statement and to decide the application of the plaintiffs under Order VI Rule 17 CPC.

5. The prime question for our consideration is: when the plaint has been rejected by the trial court on the ground that it did not disclose cause of action, whether filing of an application by the legal heirs of defendant No. 1 for permission to file afresh written statement was a valid ground with the learned High Court for setting aside the order of rejection of plaint and dismissal of appeal. We are of the considered opinion that there was no occasion for the learned High Court to dilate upon the application filed by the legal heirs of defendant No. 1 for permission to file afresh written statement as well as on the application of the plaintiffs for amendment of the plaint when the plaintiffs were fighting for survival of their *lis* and were under obligation to convince the revisional court/High Court in that their plaint did disclose a cause of action, and it had wrongly been rejected by the trial court. The High Court was not obliged to go into the questions discussed in the impugned judgment/remand order, which is not legally sustainable, we see that even amendment sought was nothing to do with the matter in issue before the learned High Court. The appeal is, therefore, allowed and the impugned judgment/remand order is set aside. Resultantly, the Civil Revision No. 281 of 2006 titled "Abdul Malik and others versus Syed Jahanzeb etc." will be deemed pending before the learned High Court, which shall be decided on its own merits.

Judge

Judge,

Islamabad, the
2nd of November, 2021
(Mazhar Javed Bhatti)

APPROVED FOR REPORTING