

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:

Raja Saeed Akram Khan, J.
Ghulam Mustafa Mughal, J.

Civil appeal No.07 of 2019
(PLA filed on 26.11.2018)

1. Mehmood Hussain,
2. Muhammad Sadique, sons of Barkat Ali,
caste Jatt, r/o Mozia Fifrila, Tehsil
Sehnsa, District Kotli.

.....APPELLANTS

VERSUS

1. Imam Din son of Jewan,
2. Zafar,
3. Shahid Iqbal, sons of Imam Din,
4. Mst. Phullan widow Ameer Qabil, caste
Jatt, r/o Mozia Fifrila, Tehsil Sehnsa,
District Kotli.

.....RESPONDENTS

(On appeal from the judgment and decree of
the High Court dated 28.09.2018 in civil
appeal No.07 of 2016)

FOR THE APPELLANTS: Ch.Manzoor Ahmed
Khan, Advocate.

FOR THE RESPONDENTS: Ex-parte

Date of hearing: 22.04.2019

JUDGMENT:

Raja Saeed Akram Khan:- The captioned appeal by leave of the Court has been directed against the judgment of the High Court dated 28.09.2018, whereby the appeal filed by the appellants, herein, has been dismissed.

2. The brief facts of the case are that the appellants, herein, filed a suit for perpetual injunction in respect of the land comprising survey No.332, measuring 3 *kanal* 8 *marla*, situate at village Fifrila, Tehsil Sehnsa, in the Court of Civil Judge, Sehnsa. In the suit, the claim of the appellants was that they have constructed a house over the suit land and the respondents want to trespass the suit land by

different means and if they are not restrained, the appellants, herein, will suffer irreparable loss. The trial Court after necessary proceedings vide its judgment and decree dated 27.03.2015 dismissed the suit for want of proof. The appellants, herein, feeling aggrieved filed an appeal in the Court of Additional District Judge, Sehnsa which was also dismissed and the second appeal before the High Court met the same fate vide impugned judgment and decree dated 28.09.2018, hence, this appeal by leave of the Court.

3. Ch. Manzoor Ahmed Khan, Advocate, the learned counsel for the appellants argued that the impugned judgment is against law and the facts of the case. He contended that the learned High Court has not appreciated the material made available on record and dismissed the appeal mere on the ground that

the Courts below have recorded the concurrent findings. In this regard, he drew the attention of this Court towards the impugned judgment and submitted that the same does not come within the purview of a judgment. He further added that the trial Court decided issue No.1 against the appellants, whereas, the first appellate Court while admitting the claim of the appellants decided the same in favour of the appellants and thereafter wrongly dismissed the appeal, therefore, the learned High Court was not justified in observing that there are concurrent findings recorded by the Courts below.

4. In the light of the ex-parte arguments advanced by the learned counsel for the appellants, we have examined the record as well as the impugned judgment. From the perusal of the record it transpires that the trial Court rejected the claim of the appellants that

the land measuring 17 *marla* under survey No.322 is in their possession and they have constructed a house over the same, whereas, on appeal, the learned Additional District Judge held that the conclusion arrived at by the trial Court in this regard is not correct as the possession of the land measuring 17 *marla* and construction of a house over the disputed land by the appellants is proved from the evidence brought on record. The impugned judgment shows that the learned High Court without appreciating the judgments of the Courts below held that the appellants failed to prove their possession over the suit land and also failed to point out misreading and non-reading of evidence in the judgments of the Courts below. The impugned judgment further postulates that the learned High Court has not discussed even a single piece of evidence and passed the judgment like a telegraphic order

which is incapable to resolve the controversy involved in the matter. For better appreciation the findings recorded by the High Court are reproduced here which read as under:-

“I have scrutinized the whole record produced by the plaintiffs/appellants as well as made available on file. From perusal of the same reveals that the revenue record annexed by the plaintiff/appellant herein did not support his version about his possession on the said land. Therefore, I am of the view that the appellants, herein, have failed to point out any material defect, illegality, misreading and non-reading of evidence in the impugned judgments and decrees which appeared to be passed in accordance with law.

It may be observed that it is a settled principle of law that concurrent findings of the Courts below cannot be disturbed, until and

unless any misreading, non-reading of record or evidence or misinterpretation of any law is established...”

It may be observed here that under law the judgment should be based on the material available on record and reasons must be an outcome of the said material and on the basis of such reasons conclusion should be drawn, but in the impugned judgment, these ingredients are missing, therefore, the same does not come within the purview of a judgment. Reference may be made to a case reported as *Hyderabad Development Authority through M.D. Civic Centre, Hyderabad v. Abdul Majeed and others* [PLD 2002 S.C. 84] wherein, it has been held that:-

“It would be advantageous to note that judicial pronouncement (judgment) by a Judicial Officer should be based on the

evidence/material available on record and reasons must be outcome of the evidence available on record and on the basis of such reasons conclusion should be drawn and if the order lacks of these ingredients it cannot be termed to be a judicial verdict (judgment in strict senso and at the best such pronouncement can be termed to be an administrative order incapable to settle controversy judicially between the parties.”

Similarly, in a case reported as *Ch.Muhammad Sadiq v. Mujahid Hussain Naqvi* [2008 SCR 406] while dealing with the proposition this Court has held as under:-

“9. It is the fundamental duty of the Court to consider all the contentions raised by the learned counsel for the parties. Any omission on the part of the Court would amount to failure to look into the disputed points and it is a vital

error which could not be ignored. A judgment should contain (i) the detailed facts of the case, (ii) points in dispute between the parties and (iv) opinion on the contentions raised by the learned counsel for the parties.”

After going through the impugned judgment, we agree with the argument of the learned counsel for the appellants that the impugned judgment does not come within the purview of the judgment, thus, the same is not maintainable. As from the bear reading of the impugned judgment it is obvious that the learned High Court has not appreciated the material brought on record, therefore, we are of the view that in the interest of justice the remand of the case is justified.

In view of the above, this appeal is accepted and the case is remanded to the High Court with the direction to decide the same

afresh in the light of the observations made in the preceding paragraph within a period of two months positively. No order as to costs.

JUDGE

JUDGE

Mirpur,
23.04.2019