

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Ch. Muhammad Ibrahim Zia, C.J.

Civil PLA No.256 of 2018
Civil Misc. No. 140 of 2018
(Filed on 27.11.2018)

Muhammad Saleem s/o Alif Din, Caste Jatt r/o
House No.81, Sector B/4, Miprur.

.....PETITIONER

VERSUS

1. Raja Saleem Akhtar Khan s/o Shah Nawaz Khan, Caste Rajput, r/o Jhangarh Lehri, Tehsil and District Mirpur.
2. Tehsildar/Assistant Collector First Class, Mirpur.
3. Patwari Constituency Lehri.

.....RESPONDENTS

4. Raja Asim Javed s/o Raja Javed Akhtar Khan, Caste Rajput, r/o Jhangarh Lehri, Tehsil and District Mirpur.

.... PROFORMA RESPONDENT

[On appeal from the judgment of the High Court
dated 18.10.2018 in Civil Appeal No.170/2015]

FOR THE PETITIONER: Mr. Babar Ali Khan,
Advocate.

FOR THE RESPONDENTS: Nemo.

Date of hearing: 19.03.2019

ORDER:

Ch. Muhammad Ibrahim Zia, C.J.– The captioned petition for leave to appeal has arisen out of judgment of the High Court dated 18.10.2018, whereby the case has been remanded to the trial Court.

2. The facts forming the background of instant petition are that the plaintiff-petitioner filed a suit for specific performance against the defendant-respondents in the Court of Additional District Judge, Mirpur. It was alleged that the land bearing survey No.841, measuring 56 kanal situated at Mozia Lehri, District Mirpur was purchased by him from respondent No.1 through oral deed on 28.05.2007 in lieu of Rs.1,70,00,000/. The whole amount was paid on the same date which stood credited to account of respondent No.1. It was alleged that after receiving the aforesaid amount respondent No.1 instead of executing the sale-deed, executed the gift-deed in favour of proforma respondent.

However, when the matter came into knowledge of petitioner, the proforma-respondent re-gifted the land to respondent No.1 so that the sale-deed could be executed. Afterwards, respondent No.1 executed sale-deed on 24.12.2007 to the extent of land measuring 35 kanal with the promise to transfer remaining land measuring 21 kanal. It was alleged that now respondent No.1 is not willing to execute sale-deed to the extent of remaining land. The suit was contested from other side. At the conclusion of the proceedings, the learned trial Court vide judgment and decree dated 28.10.2015 passed the decree for recovery of Rs.52,00,000/- with cost of the suit in favour of petitioner, herein. The petitioner filed an appeal before the High Court. Respondent No.1 filed cross objections. The learned High Court while accepting the cross objections filed by respondent No.1, set-aside the judgment and decree dated 28.10.2015 and remanded the case to the trial

Court for deciding the controversy between the parties on merit in accordance with law.

3. Mr. Babar Ali Khan, Advocate, the learned counsel for the petitioner after narration of necessary facts submitted that the impugned judgment of the learned High Court is against the law and facts. Neither the cross objections were filed in the Court, nor any notice of the same was given to the petitioner. The petitioner, herein, withdrew his appeal and thereafter, the cross objections were filed and after withdrawal of the appeal no proceedings can be conducted on such cross objections. On this ground, the impugned judgment has been passed which is against the law and facts, hence, not maintainable. The sole ground advanced in the impugned judgment is also against the law because the trial Court is competent to grant any type of decree as in the plaint the petitioner, herein, has categorically prayed for any alternate relief, thus, the impugned

judgment is against the law. These are important legal propositions justifying grant of leave.

4. I have considered the arguments of the learned counsel for the petitioner and examined the record made available. The arguments advanced on behalf of the learned counsel for the petitioner do not find support from the record. The petitioner himself has annexed the copies of interim orders of the learned High Court with the petition for leave to appeal which speak that on filing of appeal, notices were issued to the respondents. On 1st March, 2016, only notice served to respondent No. 2 was received, whereas, fresh notices were issued for appearance of respondents No. 1 to 3 and the next date of hearing was fixed as 18.04.2016. Before this date, the respondents filed cross objections on 12.03.2016 and the Court ordered that the same shall be placed before the Court on the date fixed for hearing in the appeal. On date of hearing i.e. 18.04.2016, the following order was passed.

"کونسل اپیلانٹ حاضر۔ ریسپانڈنٹس کی جانب سے محمد یونس آڑوی ایڈووکیٹ نے وکالت نامہ، و تنقیح نمبر 1 تا 7 پر cross objections بھی پیش کئے ہیں۔ ریکارڈ موصول نہیں ہوا۔ مکرر طلب کیا جا کر مسئلہ بتقرر 14.05.2016 پیش ہو۔ کورٹ فیس 15000 داخل ہوئی ہے"

Thus, it appears that the cross objections were filed in the knowledge of the petitioner, therefore, the argument that neither he got knowledge before withdrawal of the appeal nor notice was issued, is baseless and against the law.

5. So far as the argument advanced by the learned counsel for the petitioner that the Court is competent to grant any relief, is concerned, it also has no nexus as in para 7 of the impugned judgment, the learned High Court has expressly brought on record the reasons that the remedy claimed in original plaint was abandoned in the amended plaint, thus, relating to such remedy, prima-facie the observation of the High Court does not suffer from any illegality or infirmity.

6. The other argument of the learned counsel for the petitioner that after withdrawal of

the appeal, no proceedings can be conducted on cross objections, also has no substance because the statutory provisions of Order XLI of Rule 22 of Code of Civil Procedure, 1908, is very much clear. Sub-Rule (4) of the same is reproduced as follows:-

“Where, in any case in which any respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and determined after such notice to the other parties as the Court thinks fit.”

No question of law is involved in this petition, therefore, finding no force, this petition for leave to appeal alongwith application for interim relief stands dismissed.

CHIEF JUSTICE

Mirpur,
...03.2019