

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**

[Appellate Jurisdiction]

**PRESENT:**

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

Civil Appeal No. 11 of 2019  
(PLA Filed on 17.12.2018)

1. Aqsad Mehmood,
2. Saeed Mehmood sonso of Muhammad Azam,
3. Muhammad Azam s/o Abdul Khaliq,
4. Muhammad Latif s/o Ghulab Din caste Sheikh r/o Bandi, Tehsil Khuiratta District Kotli,
5. Muhammad Daood,
6. Muhammad Mehboob,
7. Shapal,
8. Muhammad Shahjahan, sons of Munshi, caste Narma r/o Bandli, Tehsil Khuiratta District Kotli.

.... APPELLANTS

**VERSUS**

1. Muhammad Javed s/o Walayat, caste Sheikh r/o Bandli Colony, presently residing in House No. 202 Street No. 10 Shah Khalid Colony Airport Road Rawalpindi,
2. Sultana Bibi, widow,
3. Muhammad Yasin,
4. Muhammad Younas, sons,
5. Fazeelat Bibi daughter of Walayat caste Sheikh r/o House No. 202 Street No. 10 Shah Khalid Colony Airport Road Rawalpindi.

..... RESPONDENTS

(On appeal from the judgment of the High Court dated  
7.11.2018 in Civil Appeal No. 106 of 2012)

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FOR THE APPELLANTS: Mr. Mehboob Ellahi,  
Advocate.

FOR THE RESPONDENTS: Sardar Muhammad Azam  
Khan, Advocate.

*Date of hearing:* 22.1.2020.

**JUDGMENT:**

***Ghulam Mustafa Mughal, J—*** The captioned appeal by leave of the Court arises out of the judgment dated 7.11.2018 passed by the Azad Jammu & Kashmir High Court in civil appeal No. 106 of 2012.

2. The brief facts forming the background of the captioned appeal are that Muhammad Javed, respondent No.1, herein, filed a suit for possession in the Court of Civil Judge Court No.1, Kotli against appellants, herein, in respect of land bearing *khata* No.364, measuring 6 kanal 13 marla and *khata* No. 288 to 292, measuring 14 kanal in all measuring 20 kanal 13 marla situated in village Bandli, Tehsil and

District Kotli. It was prayed that sale-deed dated 18.8.2004 and gift-deed dated 4.5.2004 may be declared violative of the judgment of the Supreme Court dated 29.11.1988. The suit was contested by the defendants by filing written statement, whereby they refuted the stand taken in the plaint. The learned Civil Judge vide judgment and decree dated 30.11.2011 dismissed the suit.

3. Mr. Mehbood Ellahi, the learned Advocate appearing for the appellants argued that Muhammad Javed, respondent, herein, challenged the legality and correctness of the sale-deed dated 18.4.2004 and gift-deed dated 4.5.2004 without filing the copies of the documents along with the plaint, thus the suit was not maintainable and has rightly been dismissed by the learned trial Court. He further argued that after compromise decree in favour of the father of the respondent, herein, on 29.11.1988 Walayat Khan filed an application for execution of decree before the Additional

Sub-Judge Kotli, but the same was dismissed for non-prosecution on 31.12.1990, hence, no suit could have been filed on the basis of the judgment and compromise decree passed by this Court on 29.11.1988. He argued that right accrued through decree dated 29.11.1988 waived by the predecessor of the respondents, herein, by not pressing the execution application on the basis of some compromise. The learned Advocate further argued that the learned trial Court has dismissed the suit and the judgment was maintained by District Judge but the learned High Court has remanded the case without any justification. The learned Advocate in alternative argued that remand was not desirable because all the material was available before the learned High Court, hence, it was enjoined upon the High learned Court to decide the case itself.

4.           Conversely, Sardar Muhammad Azam Khan, the learned Advocate appearing for the respondents submitted that the learned trial

Court has dismissed the suit filed by the respondents without any justification and contrary to the judgment and decree passed by this Court on 29.11.1988 despite the fact that in pursuance of the said judgment, mutation No. 357 was also entered in the revenue record. The learned Advocate argued that filing of the application on behalf of decree holder was fictitious and bogus as Walayat was present on 31.12.1990 before the Executory Court but statement of the decree holder was not recorded, which on the face of it is indicative of fraud and forgery. He argued that as a matter of fact no execution application was filed by Walayat Khan. The learned Advocate next argued that learned District Judge has erroneously disallowed the application for additional evidence, hence, the learned High Court has rightly remanded the case for decision on merit after recording the evidence.

5. We have heard the learned Advocates representing the parties and have gone through

the record of the case. Mr. Mehboob Ellahi the learned Advocate appearing for the appellants has rightly argued that the remand in routine is not desirable. It is also correct that when evidence is available on the record and no further investigation for coming to just decision of the case is required then an appellate Court should not remand the case to the lower Court because it is vested with the same powers to decide the controversy and pass such an order which could have been passed by the trial Court as is proved by section 107, CPC. It is also noticed that in this case the application for additional evidence was also rejected by the learned Additional District Judge. A perusal of the record reveals that in this case remand of the case is not unjustified. We have ourselves made an attempt to resolve the controversy but the important documents which are necessary for the decision of the case have not been brought on the record. In previous round of litigation, in the case titled *Walayat vs. Allah*

*Rakha and another* (Civil Appeal No. 37/88), this Court has issued a compromise decree in light of the compromise between the parties. As a result of the decree, the father of the respondents, herein, has been declared owner of the land measuring 20 kanal 13 marla i.e. from Khata No. 364min, measuring 6 kanal 13 marla and from Khata No. 288 to 292 measuring 14 kanal situated in village Badli. On the basis of this decree, mutation No. 357 has also been entered in the revenue record. The record further reveals that an application for execution of decree was made by Walayat in the Court of Additional Sub-Judge Kotli on 14.4.1989, which was not pressed and dismissed as such on 31.12.1990. On the aforesaid date, Walayat was also present before the Court but the statement of his attorney was recorded by the Court. The judgment of the trial Court as well as the District Judge is silent about this execution application and its impact on the suit. Sardar Muhammad Azam Khan the learned Advocate

appearing for the respondents has refused to accept the filing of execution application because mutation was attested and the decree was implemented, hence, filing of execution application as well as its dismissal on the ground of non-prosecution is collusive. This fact can also be taken in the plaint while amending the same. Moreover, an attempt has been made to dig-out as to whether the sale-deed followed by the gift-deed was executed in respect of *khata* numbers, which have been declared in the ownership of Walayat, now in the ownership of Javed, appellant, herein. The Advocates representing the parties could not satisfy us, thus an inquiry in this regard is necessary and the plaintiff may challenge these documents, if the same have already not been challenged by amending the plaint. Moreover, the learned trial Court has observed in the judgment that the documents have not been placed on record, therefore, no opinion can be expressed about these documents. It is unfortunate, it was the



duty of the Court to direct the plaintiff to place the copies of the documents on the record and thereafter resolve the controversy while considering these documents. This lapse committed by the learned trial Court has resulted in miscarriage of justice and further litigation as well as remand of the case. It may be stated that Courts are ultimate hope of the peoples. Their genuine claim may not be thrown out mere on the ground of technicalities. If plaint is ambiguous or some clarity is required the Court is vested with ample powers to direct the plaintiff or defendant, as the case may be, to amend the plaint etc.

In view of the above, finding no force in this appeal it is hereby dismissed with no order as to costs. The trial Court is directed to dispose of the case within a period of 6 months as a lot of time has already been consumed in litigation.

JUDGE

JUDGE

Mirpur.  
23.1.2020.