

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Ch. Muhammad Ibrahim Zia, C.J.
Ghulam Mustafa Mughal, J.

Civil Appeal No.54 of 2019
(PLA filed on 09.02.2019)

1. Muhammad Yasin,
2. Abdul Khaliq,
3. Muhammad Azam, sons,
4. Naeem Akhtar, daughter,
5. Noor jahan, widow of Muhammad s/o Khushi
Muhammad r/o Palak, Tehsil and District
Mirpur.

.....APPELLANTS

VERSUS

1. Sohbat Ali s/o Jumma,
2. Muhammad Aslam alias Shabbir,
3. Muhammad Jahangir, sons,
4. Mehfooz Akhtar,
5. Yasmin Akhtar,
6. Shaheen Bibi daughters of Muhammad Zaman
r/o Palak, Tehsil and District Mirpur.
7. Tehsildar/Assistant Collector, Tehsil Mirpur.

.....RESPONDENTS

8. Rahim Dad, son,

9. Naseem Akhtar, daughter of Muhammad r/o Palak, Tehsil and District Mirpur.

..... PROFORMA-RESPONDENT

[On appeal from the judgment of the of
the High Court dated 26.12.2018 in Civil
Appeal No. 269/2008]

FOR THE APPELLANTS: Mr. M. Khalil Ghazi,
Advocate.

FOR THE RESPONDENTS: Mr. Zaffar Iqbal,
Advocate.

Date of hearing: 20.01.2020.

JUDGMENT:

Ch. Muhammad Ibrahim Zia, C.J.– This appeal by leave of the Court has been filed against the judgment of the High Court dated 26.12.2018, whereby the appeal filed by the appellants, herein, has been dismissed.

2. The succinct facts forming the background of the case are that the predecessor-in-interest of the appellants and proforma-respondents, herein, filed a suit for declaration against Mst. Rajoo and

others in the Court of Senior Civil Judge, Mirpur, on 27.11.1998, stating therein that he is owner in possession of the suit land since his forefathers, however, the defendants, with the connivance of the revenue officials have succeeded to get recorded the entries in the revenue record in their favour, which are inoperative and ineffective on the rights of the plaintiff. In alternate the plaintiff prayed that the adverse possession of the plaintiff has ripen, therefore, a declaratory decree be passed in his favour. The respondents, herein, also filed a suit for possession on the basis of ownership and title, against the appellants, herein, in the same Court on 28.12.1998, stating therein that the suit land is in their ownership and the same was handed over to the defendant/appellants on "*Ghalla Batai*". After necessary proceedings, the learned trial Court through consolidated judgment and decree dated 16.03.2007, decreed the suit for declaration, filed on behalf of the appellants and dismissed the cross suit filed for possession of the

suit land. Feeling aggrieved from the aforesaid judgment and decree, the respondents preferred an appeal before the District Judge, Mirpur on 10.04.2007. The appeal was accepted vide judgment and decree dated 15.08.2008 and the suit filed by the appellants was dismissed. Against the said judgment and decree, the appellants filed an appeal before the High Court. The learned High Court after necessary proceedings dismissed the appeal through impugned judgment, hence, this appeal by leave of the Court.

3. Mr. Muhammad Khalil Ghazi, Advocate, the learned counsel for the appellants argued the case at some length. He discussed the contents of the complaints and evidence produced by both the parties. He seriously objected to the judgments passed by the appellate Courts on the ground that both the Courts have not bothered to decide the appeals according to law. Neither the judgments have been recorded issue-wise nor the vital points have been formulated for disposal of the appeals.

Both the judgments consist of few lines being telegraphic and without legal reasons. He submitted that the appellate Courts have passed the judgments merely on the basis of disputed entries of the revenue record which have already been challenged by the appellants in their suit and stood negated through evidence brought on record. He further argued that the respondents in the counter suit have clearly taken the plea that they have given the land to the appellants on tenancy (غلہ بٹائی) but this assertion stood negated from the evidence produced by the appellants. The appellants by producing legal evidence proved that they are in possession of the land as owners since decades. The appellate Courts have neither appreciated the evidence nor recorded the reasons for reversing the judgment of the trial Court which is based upon proper appreciation of the evidence. He submitted that the judgments of first and second appellate Courts are also against the principle of law enunciated by this Court that in case of

dispossession or dispute of title the suit for possession has to be filed within a period of 12 years otherwise the same will be deemed barred under the provisions of Article 142 of the Limitation Act, 1908. In this context, he referred to the case reported as *Muhammad Anwar Khan & others vs. Muhammad Sarwar Khan & others* [2017 SCR 733] and submitted that the appellants have proved their suit, therefore, while setting aside the judgments passed by the appellate Courts the judgment and decree of the trial Court be restored. As alternate he submitted that as the judgments of both the first and second appellate Courts are not judgments in the eye of law, therefore, the matter be remanded for decision after hearing the parties.

4. Conversely, Mr. Zaffar Iqbal, Advocate, the learned counsel for the respondents forcefully defended the impugned judgments and submitted that both the first and second appellate Courts after proper appreciation of the record and evidence formulated the opinions and passed the judgments.

He submitted that it is not necessary for the appellate Courts to record the findings on each and every issue rather the vital propositions have to be attended and decided. He further submitted that undisputedly, according to the entries recorded in the revenue record the defendant-respondents are owners of the disputed land and the appellants could not succeed to prove their plaint. The record produced by the appellants is also supportive to the version of the respondents. There is no illegality or irregularity in the impugned judgments, calling for any interference. Both the appellate Courts have rightly decided the appeals, hence, this appeal is liable to be dismissed.

5. We have heard the learned counsel for the parties and gone through the record. The careful examination of the judgment of the trial Court reveals that the findings recorded by the learned trial Court on material issues are based upon deep appreciation of the evidence, well-reasoned and detailed one, whereas, the judgments passed by

the appellate Courts, excluding the arguments of counsel for the parties, consist of just few lines. Neither the appellate Courts have formulated the points for decision nor specifically discussed the material issues decided by the trial Court rather just in few lines the whole conclusion has been drawn while relying merely on the copies of the revenue record the correctness of which has been challenged by the appellants in their suit. Same like, the respondents in their counter suit specifically claimed that they had handed over the possession of the land to the appellants on tenancy. The appellate Courts have also not considered the complaints of the parties or evidence brought on record in this regard as to whether any evidence has been produced by the respondents to prove their specific version or not. In our considered view both the appellate Courts while deciding the appeals have not recorded the legally required issue-wise judgments or while formulating the disputed points for resolution in the appeals, thus, the judgments

are not in accordance with the principle of administration of justice.

6. Under the statutory provisions of Order XLI, Rule 31, CPC, the mandatory requirements of the judgment of the Appellate Court, have been enumerated. For convenience Rule 31 of Order XLI, CPC is reproduced as under:-

"31. Contents, date and signature of judgment.--- The judgment of the Appellate Court shall be in a writing and shall state—

- (a) the points for determination;
- (b) the decision thereon;
- (c) the reasons for the decision; and
- (d) where the decree appealed from is reversed or varied, the relief which the appellant is entitled;

and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein."

The perusal of the judgment passed by the first appellate Court in this case reveals that the points for determination have not been formulated while reversing the judgment of the trial Court. Not only according to the aforesaid reproduced

statutory provisions but also according to the principle of law laid down by the superior Courts if the appellate Court concurs with the findings of the trial Court the detailed reasons are not required but the reversal of the judgment of the trial Court can only be done after meeting with the reasoning advanced by the trial Court. In this regard, reliance can be placed on the case reported as *Syed Ayub Ali Shah vs. Mst. Rabia Begum* [2013 CLC 419] wherein it has been held that:-

“...The appellate Court if at all had to reverse the findings of the trial Court, that could be done only after meeting with the reasoning of the trial Court whereas in this case the appellate Court did not advert to the reasoning of the trial Court in the impugned judgment. If any reference is needed, PLD 1969 SC 617 and 2003 MLD 1280 could be looked into.”

Same like in the case reported as *Punjab Industrial Development Board vs. United Sugar Mills Limited* [2007 SCMR 1394], it has been held by the apex Court of Pakistan that “...Appellate Court has to decide the appeal after independent application of mind and mere reproduction of the judgment of

the Trial Court and thereafter dismissing the appeal would not be in consonance with the law." Reliance in this regard can also be placed on the case reported as *Murad vs. Syed Muhammad & others* [2012 YLR 2115] wherein it has been held that:-

"...Particularly, in a case where a decree is reversed, the appellate Court is bound to reappraise the evidence with reference to the issues by forwarding cogent reasons in support of its findings. The judgment impugned herein is absolutely lacking the prerequisites of Order XLI, Rule 31, C.P.C. It is painfully noted that the appellate Court reversed findings by short order, which cannot be termed a judgment."

Further reference can also be made to the case reported as *Shams ud Din vs. Ali Jan* [1984 CLC 1456].

7. Although, in the impugned judgment the learned High Court has also mentioned that the remand of the case will be a futile exercise but in our opinion the Courts have to do justice and merely just to avoid the remand of the case, the injustice with the parties or departure from law is not permissible. In view of the proposed conclusion

we do not deem it necessary to discuss the merits of the case as it may affect the case of either party.

8. The learned counsel for the appellants has also referred to the case reported as *Muhammad Anwar Khan & others vs. Muhammad Sarwar Khan & others* [2017 SCR 733]. Although, the principle of law laid down in this judgment is relevant but it is also settled principle of law that the principle of law enunciated by the superior Courts has to be applied in the light of peculiar facts and circumstances of each case. In view of the above stated reasons, as the appellate Courts below have failed to analyze, appreciate and examine the evidence in detail and record reasons for reversing the judgment of the trial Court, which is based upon proper appreciation and reference of the evidence produced by the parties, therefore, we are constrained to accept this appeal, set-aside the impugned judgment of the High Court as well as the first appellate Court and remand the matter to the first appellate Court with the direction to decide the same after providing

opportunity of hearing to the parties and while formulating the points for determination in appeal, within a period of three months from communication of this judgment.

This appeal is accepted in the above terms with no order as to costs.

Mirpur,
21.01.2020

CHIEF JUSTICE

JUDGE

M. Yasin & others VS Sohbat Ali & others

ORDER:

The judgment has been signed. It shall be announced by the Additional Registrar after notifying the learned counsel for the parties.

Mirpur,
21.01.2020

CHIEF JUSTICE

JUDGE