

Dr. M.A. AMIN---Petitioner

Versus

**FAISALABAD DEVELOPMENT AUTHORITY through Director General and
another----Respondents**

Civil Revision No.1626 of 2003, heard on 20th August, 2010.

NASIR SAEED SHEIKH, J.---This civil revision is directed against the judgment and decree dated 18-7-2003 passed by the learned Additional District Judge Faisalabad whereby the appeal preferred against the judgment and decree dated 8-7-2002 passed by learned Civil Judge Faisalabad in a civil suit instituted by the petitioner was dismissed.

2. Briefly stating the facts of the case are that the petitioner instituted a suit for declaration with permanent injunction of a Quarter No.415 Block-I, Allama Iqbal Colony, Faisalabad with the prayer that agreement to sell dated 24-5-1080 was executed by the respondent No.2 Mst. Mubarak Bibi in favour of the plaintiff/ petitioner. On the basis of the said agreement to sell the petitioner claimed the declaration of his ownership of the quarter in question.

3. This suit was contested by the respondents. The learned Civil Judge Faisalabad framed the following issues:--

ISSUES

(1) Whether plaintiff has no cause of action to institute this suit? OPD

(2) Whether this suit is not maintainable in its present form? OPD

(3) Whether this court has no jurisdiction to entertain this suit? OPD

(4) Whether defendant No.2 is entitled to special costs under section 35-A, C.P.C.? OPD

(5) Whether defendant No.2 is the real allottee of the disputed quarter? OPD2

(6) Whether disputed quarter was allotted to one Mst. Mubarik Bibi (deceased) widow of Ghulam Muhammad and the plaintiff has purchased the proprietary rights/ allotment of the suit plot from the said deceased Mubarik Bibi for the consideration of Rs.20,000 through agreement dated 24-5-1980? OPP

(7) If issue No.6 is proved, then whether plaintiff is entitled to decree as prayed for?
OPP

(8) Relief.

4. The parties produced their respective evidence and the learned Civil Judge after recording the findings on all the issues dismissed the suit of the petitioner vide judgment and decree dated 8-7-2002.

5. An appeal was preferred by the petitioner against judgment and decree dated 8-7-2002 which was entrusted for disposal to the learned Additional District Judge Faisalabad. This appeal came up for hearing on 18-7-2003. The petitioner who was the appellant before the learned Additional District Judge Faisalabad made a request and his learned counsel got recorded a statement before the learned Additional District Judge on 16-6-2003 to the effect that he be allowed to withdraw the appeal with a permission to file a fresh one as there were some technical defects in the appeal. It was also prayed that even the suit be allowed to be withdrawn with a permission to file afresh suit. Before the learned Additional District Judge only this prayer was argued by both the parties as is reflected in paragraph No.6 of the impugned judgment dated 18-7-2003. The learned Additional District Judge disallowed the request made by the learned counsel for the appellant of withdrawing the suit as well as the appeal. However at the same time the learned Additional District Judge dismissed the appeal of the petitioner as well.

6. This civil revision is directed against the judgment and decree dated 18-7-2003 whereby the main appeal was dismissed, hence this civil revision.

7. It is contended by the learned counsel for the petitioner that at the time of disallowing the prayer of withdrawal of the appeal as well as that of the suit it was legally obligatory upon the Additional District Judge to hear the arguments on merits and to have decided the appeal on merits but this exercise has not been undertaken by the learned Additional District Judge. It is argued that without discussing the merits of the case and the question of legality or otherwise of the impugned judgment and decree passed by the learned Civil Judge the learned Additional District Judge has dismissed the appeal which is a material irregularity committed by the learned first appellate court.

8. The learned counsel for the respondent has half heartedly contested the Civil Revision.

9. I have considered the arguments of the learned counsel for the parties.

10. It is noted that the learned Additional District Judge has himself pointed out in paragraph No.6 of the judgment that he has heard the arguments of the parties on the sole point as to whether the appeal and the suit requested to be withdrawn be allowed to be withdrawn with a permission to file afresh suit/appeal or not. At the time of declining such a request the learned Additional District Judge cannot dismiss the appeal without hearing the arguments of the parties on the merits of the case. This dismissal of the appeal has thus resulted into miscarriage of justice and is material irregularity committed by ADJ which needs to be corrected by this Court. However since matter pertains to the year, 2003, after setting aside the impugned judgment and decree dated 18-7-2003 passed by the learned. Additional District Judge, Faisalabad, I remit back the matter to the learned District Judge, Faisalabad to hear the arguments of the parties on merits of the case and decide same within a period of one month positively. Parties shall produce no further evidence. Learned District Judge shall decide the case on merits. Parties shall appear before the learned District Judge Faisalabad on 16-9-2010 without any further notice from the court. The learned District Judge shall himself hear the arguments and shall dispose of the matter within the time frame fixed by the Court above. The civil revision is accepted with no orders as to costs.

M.U.Y./M-491/L

Revision accepted.