

ORDER SHEET**LAHORE HIGH COURT, LAHORE**

JUDICIAL DEPARTMENT

Civil Revision No.1007/2014

Khalid Aziz etc.

Vs

Province of Punjab etc.

S.No. of Order/ Proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary
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10.5.2017 Mian Javed Jalal & Saqib Naveed Bhatti, Advocate for petitioners.
Mr. Ashfaq Ahmad Khara, Assistant Advocate General.

Through this civil revision, the petitioners have called in question the impugned judgment and decree dated 31.1.2014 passed by the learned Additional District Judge, Bhakkar, allowing the appeal of the respondents filed against the judgment and decree dated 18.6.2013 passed by the learned Civil Judge, Bhakkar, by which, a declaratory suit had been decreed in favour of the petitioners.

2. Brief facts of the case are that petitioners/plaintiffs Khalid Aziz and five others, who are sons and daughters of one Abdul Aziz, filed a declaratory suit against the public at large and other official respondents before the Civil Court, Bhakkar, claiming that a Plot No.24 measuring 10-Marlas, situate in Block No.1-2, Mandi Town Bhakkar was allotted to their father namely Abdul Aziz and he had been occupying the said plot as owner till his death on 15.11.1991. After the death of their father, the petitioners approached the official respondents

to incorporate their names as legal successors of their father in their official record but they advised them to get a Civil Court decree for this purpose, whereupon they were constrained to file the suit to seek declaration to the effect that they are the only legal heirs of their deceased father Abdul Aziz and the respondents are bound to incorporate their such status in their record in respect of the suit plot. The suit was contested by the respondents No.2 to 4, who in their written statement adopted a stance that predecessor-in-interest of the petitioners had not cleared the dues of suit plot, on account of which, the respondents department possessed authority to cancel the plot. Out of divergent pleadings of the parties, seven issues were framed. After observing usual formalities of trial, the suit was decreed in favour of the petitioners by the learned trial Court vide judgment and decree dated 18.06.2013. Appeal filed by respondents No.2 to 4 was however accepted by the learned Additional District Judge, Bhakkar, vide impugned judgment and decree dated 31.1.2014, as a result of which, the suit filed by the petitioners was dismissed. Hence, this civil revision petition.

3. The learned counsel for the petitioners has argued that the impugned judgment and decree passed by the learned appellate court on material issues is against law and facts and based upon erroneous assumptions; that both oral and documentary evidence has not been

appreciated; that the appellate court by unduly adopting the policy of pick and choose considered few documents and ignored others and accepted the appeal by recording half page findings, which is contrary to the requirement of law contained in Order 41 Rule 31 CPC. Further argued that during arguments on appeal, large number of points for determination were raised before the learned appellate court but very few of these were adverted to and considered in a capricious and arbitrary manner. Lastly argued that the learned trial court after complete and comprehensive survey and analysis of parties evidence, had recorded correct and legal findings in favour of the petitioners, which was unjudiciously up set in appeal. It has been, thus prayed that either the civil revision be accepted or in the alternate case be remanded to the learned appellate court for passing judgment in accordance with law.

4. The learned law officer representing the official respondents has opposed the civil revision by supporting the impugned judgment of appellate court.

5. Arguments heard. Record perused.

6. On perusal of trial court proceedings record annexed with the civil revision, it is found that in order to establish their claim, the petitioners examined two witnesses including the statement of one of them and in documentary evidence produced the record of death certificate and allotment papers of the plot in dispute,

while in rebuttal, the respondents No.2 to 4 examined only one of their official as DW-1 and the learned trial Judge after taking into consideration the oral and documentary evidence led from both sides believing the version of the petitioners as true and confidence inspiring after answering the material issue No.1 in favour of the petitioners decreed the suit. The learned appellate court on the other hand after considering few letters of respondents department, without discussing oral evidence of the parties and points for determination raised during the hearing of appeal proceeded to reverse the findings of learned trial court through a half page findings, which cannot be termed as in the nature of a speaking judgment.

7. During the course of arguments on this civil revision, the learned counsel for the petitioners by referring provision of Order 41 Rule 31 of CPC has argued that the impugned judgment of appellate court is not self-explanatory and illuminative. This assertion is confirmed when one goes through the said judgment, as its findings portion is barely spread over half page. Oral evidence led on record has been simply ignored and not discussed. The learned appellate court has not bothered to mention the respective contentions of the parties raised during the hearing of the appeal and ignored the basic provision contained in Order 41 Rule 31 CPC, which provides: -

“The judgment of the appellate court shall be in writing and shall state-

- a) the points for determination;*
- b) decision thereon;*
- c) reasons for the decision.”*

As per settled judicial norms propounded from time to time by the superior courts, an appellate judgment should state points arising for determination, its decision thereon and the reasons for its decision. The term ‘points for determination’ refers to all the important questions involved in the case. Reasons are to be given in the judgment for the decision arrived at. Similarly the appellate court is to state its own reasons for arriving at its conclusion. Guidance solicited from “Syed Iftikhar-ud-Din Haidar Gardezi and 9 others Vs Central Bank of India Ltd. Lahore and 2 others” (1996 SCMR 669), “Punjab Industrial Development Board Vs United Sugar Mills Limited” (2007 SCMR 1394).

8. The impugned judgment of the learned Addl. District Judge, Bhakkar, when seen and tested on the above yard stick, is found to be short of above mentioned standard as the said learned court miserably failed to first mention the points for determination or record his own independent reasons for arriving at its conclusions different from the trial court opinion/findings. In this view of the background, the impugned appellate court judgment not found to be in accordance with law, remand

of the case seems to be the inevitable solution. Resultantly, the impugned judgment and decree dated 31.1.2014 passed by the learned Additional District Judge, Bhakkar is set aside while allowing this civil revision in the terms that appeal filed by the respondents shall be deemed to be pending before the Additional District Judge, Bhakkar concerned to be decided afresh in accordance with law after affording the opportunity of hearing to the parties and their learned counsel and avoiding the lapses noted above.

(Abdul Sattar)
Judge

Naeem

Approved for reporting.

Judge