

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

II. A. No. 31 of 2024

DATE	ORDER WITH SIGNATURE OF JUDGES
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1. For orders on CMA No.10968/2024.
2. For orders on CMA No.8514/2024.
3. For hearing of main case.

25.04.2025.

Mr. Abdul Latif Leghari, Advocate for the Appellant.
None for the Respondents.
Mr. Ahmed Khan Khaskheli, A.A.G.

ORDER

MUHAMMAD JAFFER RAZA – J: Through this instant IInd appeal the Appellant has Impugned Judgment dated 05.10.2021 passed in Civil Appeal No.27/2021. Brief facts of the case are as under:

2. The Appellant filed Civil Suit No. Nil/2021 for specific performance of contract, possession, declaration and permanent injunction against the Respondents. It is stated by learned counsel for the Appellant that soon after he has filed the above Suit the plaint was rejected by the learned trial Court vide order dated 03.08.2021. Thereafter, he preferred Civil Appeal No.27/2021 and the same was also dismissed vide Impugned judgment dated 05.10.2021.

3. Learned counsel for the Appellant has stated that summary dismissal of the suit by the trial Court was not in accordance with the dicta laid down by the Hon'ble Supreme Court in the case of **Haji Abdul Karim v. M/s. Florida Builders Pvt. Ltd¹**. He has further argued that the grounds on which the plaint has been rejected by the learned trial Court U/O VII Rule 11 CPC are the grounds on which evidence ought to have been recorded by the trial Court. He lastly argued that the learned Appellate Court has not applied its judicial mind and has in essence reproduced the order of the learned trial Court.

¹ PLD 2012 SC 247

I have heard the learned counsel for the Appellant and perused the relevant record. Prior to giving my findings, it is pertinent to note that the Respondent has been served through all modes of service including publication, but no one effected appearance on behalf of the Respondents, therefore, the instant appeal is heard and shall be decided with the able assistance of learned counsel for the Appellant.

I have examined the order of the learned trial Court whereby the plaint was rejected under Order VII Rule 11 CPC. The primary ground for the purposes of rejection was the reliance of the learned trial Court upon an unregistered General Power of Attorney which was the basis of the alleged sale agreement. The learned trial Court has thereafter rendered findings on the basis of said General Power of Attorney and the said finding, respectfully, could not have been given under the permissible scope of Order VII Rule 11 CPC. The learned Appellate Court has also gone into the findings of fact. Therefore, it is held that the Impugned Judgment is beyond the permissible scope of Order VII Rule 11 CPC as set out in the case of **Florida Builders** (supra). It is evident that the learned Courts below have not given any consideration to the scope of Order VII Rule 11 CPC and embarked on adjudicating disputed questions in a summary manner, without recording evidence. In the light of what has been held above, the both the Impugned Orders/Judgments are hereby set-aside. Consequently the matter is remanded back to the learned trial Court for deciding the same on merits after recording of evidence. Accordingly, instant Appeal is allowed in the above terms with no order as to cost.

J U D G E

Nadeem Qureshi “PA”