

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

R.A No.86 of 2009

Date Order with signature of Judge

Hearing of Case

For hearing of main case.

14.11.2016

Mr. Abdul Wahab Baloch, Advocate for the applicant.
None present for the respondents.

This Revision is directed against the findings of the first appellate Court dated **22.01.2009** in civil appeal No.29/2006 whereby IInd Additional District and Sessions Judge, Thatta set aside the judgment and decree of dismissal of suit No.58/2003 filed by respondent No.5, therefore, this revision is against the findings of the appellate Court.

2. I have heard learned counsel for the applicant and have gone through the findings of the two courts below and perused the record.

3. Despite the fact that the contesting respondents have been represented by several counsel at different time during last 7 years including Mr. Muhammad Waseem Samoo, Advocate, who undertook to file power on the last date of hearing. The case was adjourned in his presence for today at 8:30 but he is absent. The other lawyers, who were representing the respondents have not even withdrawn their powers till date. The respondents are also not present.

4. Learned counsel for the applicant has contended that the appellate court, while setting aside the well-reasoned findings of the trial Court by referring to the thumb impression of the applicant on a lease deed has failed to appreciate that execution of sale-deed by the applicant was not proved. He has drawn my attention to the trial

court judgment and contended that a specific application under **Sections 78 and 84** of Qanun-e-Shahadat Order, 1984 was filed by the applicant which was contested and allowed by the trial Court. Thereafter, on the basis of power exercised by the courts under **Section 84** of Qanun-e-Shahadat Order 1984, the learned trial Court has decreed the suit of the applicant after verifying the thumb impression through magnifying glass to conclude that the thumb impression of the applicant on the so-called lease deed was entirely different from the thumb impression obtained by the trial Court in the open Court on white paper.

5. The perusal of the appellate Court judgment suggests that the findings of the trial Court have been set aside by the sweeping observation that it was not in an appropriate finding. No reasoning has been given by the learned appellate Court on the point that whether **Article 84** of Qanun-e-Shahadat Order, 1984 was properly appreciated by the trial Court or not. The learned appellate Court seems to have been persuaded by the presence of two marginal witnesses of the execution of sale deed. Once the document has been denied and the trial court has relied on a particular piece of evidence to give its finding, the appellate court cannot differ from trial court's findings unless found that it was suffering from proper appreciation of the said evidence on record.

6. Learned counsel for the applicant has suggested that the case may be remanded to the appellate Court to re-appreciate the findings of the trial Court with reference to **Section 78 and 84** of Qanun-e-Shahadat Order, 1984 with direction to pass a fresh orders and give its own reasons on the point whether the thumb impression of the applicant on the so-called sale deed was genuine and otherwise proved or not. He has also contended that even the photograph said to have been affixed on the sale deed has neither been crossed or

stamped by the Sub-Registrar of properties before whom the document was executed creates another doubt in the execution of the document. This aspect has also been overlooked by the appellate court.

7. In view of the above discussion, the impugned judgment dated 22.01.2009 and decree dated 24.01.2009 passed by IInd Addl. District & Sessions Judge, Thatta is set aside and as suggested by the learned counsel for the applicant, the case is remanded to IInd Addl. District and Sessions Judge, Thatta for reappraisal of the findings of the trial Court with reference to the thumb impressions on the sale deed. Even evidence, if required by the court, may further be adduced with consent of the parties before giving final decision keeping in view this particular aspect of the disputed document. The counsel for the respondents is absent, therefore, the applicant's counsel is directed to be present before the first appellate court on **03.12.2016** and also intimate to the counsel for the respondents about this order. However, in case the counsel for the respondents does not appear in Court on 03.12.2016, the court motion notice must be issued only to the respondents. The first appellate Court is directed to decide this case within two months commencing from 03.12.2016.

The Revision is disposed of in the above terms.

J U D G E