

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

C.P. No.D-2997 of 2016.

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For katcha peshi.
2. For hearing of M.A-16164 of 2016.

07.09.2017.

M/s. Muhammad Hashim Bajeer and Abdul Hameed Bajwa, Advocates for the petitioners.

Mr. Imtiaz Ali Mahar, State Counsel.
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Through instant petition, petitioners have challenged concurrent findings recorded by the two Courts below, whereby application under Order VII Rule 11 CPC filed by the petitioners in FC Suit No.121/2015 has been declined.

2. It is the case of the petitioners that earlier respondents filed civil suit and that plaint was rejected under Order VII Rule 11 CPC, hence they preferred fresh suit / plaint on same cause of action; therefore, that suit is liable to be dismissed. He relied upon the cases reported as **2002 SCMR 1330, 2013 SCMR 299, 2015 MLD 1300, PLD 2003 Supreme Court 484, PLD 2011 Supreme Court 657, PLD 2015 Sindh 39, 2012 MLD 970, 2015 MLD 1408 [Peshawar], and 2006 CLC 303**; where judgment delivered on two counts one is that under *res judicata*, same point cannot be agitated; second that predecessor of the legal heirs who did not challenge the instrument, therefore, the legal heirs have no right to challenge the same; *albeit*, he relied upon dispute between the parties. The legal heirs here petitioners are claiming that they have purchased the suit property by way of registered sale deed.

3. We have examined the earlier plaint, which shows that plaintiffs of that suit prayed for cancellation of entry hence by order of the trial Court it was observed that plaintiffs have remedy to approach Revenue hierarchy. Thereafter, the plaintiffs / respondents approached Revenue hierarchy and Additional Commissioner heard them where petitioners introduced a registered sale deed and Additional Commissioner while dismissing appeal directed the

parties to approach civil Court. Accordingly, respondents filed civil suit with specific prayer alongwith the cause of action that they were not having knowledge of that registered sale deed and they have availed the remedy before Revenue hierarchy as observed in the earlier order, hence impugned orders are in accordance with law. We are aware of the concept of constitutional petition in writ of *Certiorari*. Question of jurisdiction and question of competence of trial Court can be looked into if there is material illegality then this Court can interfere and pass an appropriate order. Here trial Court as well revisional Court while declining considering the pleadings observed that case shall be decided on merits hence revision was also dismissed. Petitioners claim that plaint is time barred on the ground that such deed was executed in 1959, but same was challenged by the respondents as fraudulent document in 2015, hence question of date of knowledge is to be proved, as the issue of limitation is a mixed question of facts and law; principle of *res judicata* is not applicable as this issue was not decided on merits after framing of issue. Instant matter was referred to the Revenue hierarchy and that direction was complied with by the respondents. Accordingly, impugned orders are in accordance with the guidelines of the judgments of the Superior Courts. In result of what has been discussed above, instant petition is dismissed.

JUDGE

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