

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

1. R.A. No.110 of 2009.
2. R.A. No.111 of 2009.
3. R.A. No.112 of 2009.
4. R.A. No.113 of 2009.
5. R.A. No.114 of 2009.
6. R.A. No.115 of 2009.
7. R.A. No.116 of 2009.

DATE	ORDER WITH SIGNATURE OF JUDGE
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22.12.2017.

Mr. Aqeel Ahmed Siddiqui, Advocate for the applicant.

Mr. Naimatullah Soomro, Advocate for respondent No.1.

Mr. Wali Muhammad Jamari, Assistant A.G.

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These matters were heard on 13.11.2017, wherein learned counsels have argued as under:

i. According to learned counsel for the applicant, learned trial Court as well as the learned appellate Court has failed in its required duty as provided under Order 41 Rule 31 CPC i.e. to frame points of determination. It is also contended by the learned counsel for the applicant that the declaratory suit as was entertained by the learned trial Court was filed beyond the period of limitation on account of the documents having been executed in the year 1987, whereas the suit was filed in the 2004. Learned counsel for the applicant has also relied upon Order XX Rule 5 CPC stating that the orders have been passed without framing specific issue in this regard and that the Courts below have failed to appreciate the evidence as led by the parties. He has relied upon **2009 SCMR 1169** and **PLD 1998 Karachi 59**.

ii. Learned counsel for private respondents, however, contends that SASO the applicant in the matters have since long cease to exist and such right to sue has not survived in the matter. Learned counsel for the private respondents further contends that in the denial of the liability as was being alleged by the applicant the predecessor of the private respondent had initiated the proceedings in accordance with his legal right and the same was decided on merits by the learned trial Court as well as the learned appellate Court. It is also contended on part of the learned counsel for the private respondents that the requirement of Order 41 Rule 31 CPC as to the separate discussion is required only

when concurrence is not made. He relies upon **2004 SCMR 877** and **1997 SCMR 1139**. Learned counsel for the private respondents has also contended that limited scope is available under the revision and has relied upon **2001 SCMR 798**.

iii. Learned AAG has relied upon the arguments made by the learned counsel for private respondents.

2. Having heard the learned counsels and with their assistance gone through the record, it is observed that the main contestation on part of the applicant has been that the issues have not been framed by the learned appellate Court; however, framing of issues under Order 41 Rule 31 C.P.C. is not required in the manner as pleaded where the orders of the trial Court are not being aside by the learned appellate Court. The reason quite is clear that no distinguishable elements are to be discussed and only the judgment as passed by the learned trial Court is to be re-assed on the basis of the material present before the Court. Nothing has been shown to warrant exercise of powers under section 115 C.P.C., as such these revisions stand dismissed, however, with no orders as to costs.

JUDGE

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