IN THE HIGH COURT OF SINDH
CIRCUIT COURT, HYDERABAD

IInd Appeal No. 30 of 2019
IInd Appeal No. 31 of 2019

Appellants(s):	Saeed Qureshi and Mukhtiar Ahmed Qureshi, through Mr. Aqeel A. Siddiqui, advocate.
Respondent):	Muhammad Iqbal Qureshi Through Mr. Arbab Ali Hakro, advocate.
Date of hearing:	13.09.2019
Date of decision:	13.09.2019

JUDGMENT

MAHMOOD A. KHAN, J. 1. These two second appeals arise from concurrent findings wherein counter proceedings were filed on part of the parties. The present appellants had filed the proceedings for specific performance after the respondent being the owners had filed the suit for possession alongwith ancillary prayers thereto. Learned trial Court had proceeded with the case separately at the initial stage, however, subsequently both the matters were consolidated and as such consolidated issues were re-framed which were decided after leading of evidence, primarily on failure of appellants to prove the alleged sale agreement through reliable convincing evidence brought up and the bar of limitation specifically coming up in the evidence present on part of the applicants themselves as to the alleged refusal. Learned appellate Court maintained the findings by dismissing the appeals after re-appraisement of evidence, discussing portion/s of evidence that were left over by the learned trial Court as the

witnesses of the applicants had not been able to support the agreement of sale in their evidence.

2.   Learned counsel for the appellants contended that the learned Courts below have failed to consider that required marginal witnesses were got examined; that the element of limitation has wrongly been considered as the dispute arose from the date of filing of the suit for possession and not from the refusal. It is further contended that points of determination were not framed by the learned Appellate Court in violating the required procedure. It is also contended that evidence has not been discussed properly and this Court in second appeal in exercise of power i.e. u/s. 100 CPC is required to reappraise the evidence. It is lastly contended that there were in all three plots; one of which was on rent and two were in occupation through the agreement of sale, as such jurisdiction of the Civil Court was not available in respect of the rented property.

3.   Learned counsel for the respondent, however, contends that the concurrent findings are not contrary to law and no procedural defect is present therein. It is further contended that date of refusal is specifically admitted and that where the judgment of trial Court is upheld, the Appellate Court is not required to frame the points of determination.

4.   Learned counsel for the appellants in rebuttal contends that at the second appeal stage evidence is likely to be re-appreciated.

5.   Having heard the learned counsel and gone through the record, it is found on record that the learned trial court has framed the issues in the matter, conducted the evidence and whereafter findings have been given, which are properly found to have been re-appreciated at the first appellate stage. No defect on short coming alongwith any element prejudicing the rights of the appellants has been shown in the impugned judgments. As to the element of jurisdiction now being agitated, the same was found to be absent in the pleadings, no issue to this extent was got framed and the said element is also not found present in the memo of appeal, as such, it is not possible to entertain such a question at the stage of second appeal. No material has been shown to establish that the impugned judgments are contrary to law or usage having the force of law alongwith failure of required determination. To the element of re-appraisement of evidence at the stage of second appeal the same is never a prime consideration/requirement, the same may only be considerable when a defect is shown in the judgments. In the present case no such element has been shown or found to be present. Both these appeals in consideration of above observations are found not maintainable and stand dismissed alongwith costs accordingly.

Sd/- MEHMOOD A. KHAN,
JUDGE