

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

2nd Appeal No.94 of 2019.

DATE	ORDER WITH SIGNATURE OF JUDGE
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For orders on office objections.
For hearing of M.A. No.2208/2019.
For hearing of main case.

09-11-2020

Mr. Tarique Ali Narai advocate for appellants.
Mr. Satar Iqbal Panhwar advocate for respondents No.3 to 6.
Mr. Allah Bachayo Soomro, Additional Advocate General Sindh.
Respondent No.5 Ghulam Rasool is present in person.

This second appeal is arising out of concurrent findings of two Courts below. Appellants filed a suit bearing No.257 of 2018 before the Senior Civil Judge, Dadu for declaration against their father Ghulam Rasool for granting judgment and decree that their father Ghulam Rasool is mentally not in a position to make decision or sign any documents and that he is being pressurized. Respondent Ghulam Rasool filed written statement and consequently the plaint was rejected under Order VII Rule 11 CPC on account of Sindh Mental Health Act, 2013. Appellants preferred Civil Appeal No.96 of 2019 which met the same fate. The appellate Court however, in addition to the reasoning assigned by trial Court also considered the provisions of Section 42 of the Specific Relief Act which contemplates the entitlement of the appellants/ plaintiffs insofar as any legal character to any right as to any property attached and that such right is being denied or is interested to deny their title to such character or right. These conditions were not met by the appellants and consequently for these additional reasoning the order was maintained. In view of the subsequent reasoning of the appellate Court, I deem it appropriate that the appellants' rights were neither matured nor covered in terms of Section 42 of the Specific Relief Act and hence, lis was nipped in the bud at the earliest. In case the appellants are aggrieved of any action or if they are of the view

that the mental health of respondent No.5 who was defendant No.3 in the suit is not up to the mark as required under the subject/ ibid law, they may initiate proceedings as they deem fit and proper as directed by trial Court for which no permission is required by this Court, as requested by them during the course of arguments. Respondent No.5/ defendant No.3 against whom allegations were raised is also present in the Court and has also engaged a counsel independently. Though he is feeble physically and though he was hard of hearing but mentally is a sound person apparently. This however would not take away any right of the appellants in case they intend to proceed under the Sindh Mental Health Act, 2013. The appeal is dismissed with no order as to costs.

JUDGE

Irfan Ali