

Order Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

R.A. No.300 of 2011

DATE ORDER WITH SIGNATURE OF JUDGE(S)

1. For hearing of CMA-1240/2011
2. For hearing of main case.

14.11.2023

Noor Ahmed Memon, advocate for applicant.

This Revision Application is pending since 2011. Briefly stated First Civil Suit No.16 of 2007 was filed for specific performance before the Court of Senior Civil Judge, Badin and the same was dismissed vide judgment dated 8th July, 2009 *inter alia* on the ground that the concerned defendant was not the owner of the land hence could not confer any title in respect thereof. The Civil Appeal No.52 of 2009 was then filed before the 1st Additional District Judge, Badin and the same was dismissed vide judgment dated 16.08.2011. The present Revision Application assails the concurrent judgments.

Applicant's counsel unequivocally states that at the material time the immoveable property had already been gifted away, however, insists that the plea for specific performance ought to have been allowed since the execution of the agreement in itself was not doubted. Objections were also raised with respect to the form of the appellate judgment.

Heard and perused. Learned counsel did not controvert the narrative / observations recorded in the impugned judgments, hence, the same is taken as fact. Learned counsel remained unable to demonstrate before this Court as to how any agreement of sale could be enforced without the seller having title in respect of the relevant property.

Notwithstanding the foregoing, learned counsel was unable to cite a single ground based upon which the jurisdiction of this Court could be exercised under section 115 of Code of Civil Procedure. There is no suggestion that the impugned judgments are either an exercise without jurisdiction or a failure to exercise jurisdiction or an act in exercise of jurisdiction illegally or with any material irregularity. It is trite law¹ that where the fora of subordinate jurisdiction had exercised its discretion in one way and that discretion had been judicially exercised on sound principles the supervisory forum would not interfere with that discretion, unless same was contrary to law or usage having the force of law. It is the considered view of this court that no manifest illegality has been identified in the judgments impugned and further that no defect has been pointed out in so far as the exercise of jurisdiction is concerned of the subordinate forums. In view hereof, this revision is found to be misconceived and devoid of merit, hence, hereby dismissed along with listed applications.

Judge

¹ Per *Faqir Muhammad Khokhar J. in Naheed Nusrat Hashmi vs. Secretary Education (Elementary) Punjab* reported as *PLD 2006 Supreme Court 1124*; *Naseer Ahmed Siddiqui vs. Aftab Alam* reported as *PLD 2013 Supreme Court 323*.