

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

IInd Appeal No.11 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE
------	-------------------------------

1. For orders on CMA 2882/2021
2. For orders on CMA 2883/2021
3. For hearing of main case

07.08.2023

Mr. Shahid Hussain Bhurgri advocate for appellants.

MUHAMMAD SHAFI SIDDIQUI, J. This second appeal is arising out of the concurrent findings of two courts below. A suit for declaration was filed by respondent as F.C. Suit No.576 of 2012 that a sale deed in favour of the appellants be cancelled. Notices and summons were served and the appellants filed their respective written statements. The suit was contested and eventually after recording evidence was decreed on 03.03.2016, in favour of the respondents. The decree was challenged in Civil Appeal No.65 of 2016 before 8th Additional District Judge Hyderabad which maintained the order of trial court on 17th day of November 2020.

2. I have heard the parties and perused the record. The scope of appeal u/s 100 of the Civil Procedure Code is very limited as it provides the frame of the jurisdiction in the following terms:

100. Second Appeal: - Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to a High Court on any of the following grounds, namely:

- (a) *the decision being contrary to law or usage having the force of law;*
- (b) *the decision having failed to determine some material issue of law or usage having the force of law;*
- (c) *a substantial error or defect in the procedure provided by this Code or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon the merits.*

3. It is the case of the appellant that the two sale deeds under consideration were not verified by the learned two forums below from the concerned Sub-Registrar where such sale deeds were allegedly registered. This question has been raised for the first time in this second appeal. Since the appellants have failed to raise such point in the two

courts below it cannot be taken up to overcome lacuna in the proceedings. The next point as raised in the memo of appeal is with regard to order XX Rule 1(2) CPC. Learned counsel is unable to support the ground of Order XX Rule 1(2) PC which provides and enables the court to either pronounce the judgment in open court at once or on some future date not exceeding 30 days. Learned counsel is unable to point out if such provision of law has been violated as it is not apparent from the judgments placed for consideration and impugned in this second appeal nor any consequential effects were highlighted. With this limited scope of grounds, learned counsel is unable to disclose any evidence which was either not taken into consideration or if had taken it would have not resulted in the manner as pronounced by the two courts below. This being a situation, the second appeal merits no consideration and is dismissed.

JUDGE