

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

IInd Appeal No.83 of 2021

Date	Order with signature of the Judge
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Priority.

1. For orders on CMA No.7204 of 2022.
2. For hearing of CMA No.6824 of 2022.
3. For hearing of Main Case.

25.04.2024

Mr. Nisar Ahmed Narejo, Advocate for the Appellant.
Mr. Jamil Ahmed Shah, Advocate for the Respondent No.8.
Mr. Ziauddin Jenejo, learned Additional Advocate General.

The second Appeal has challenged the concurrent findings passed on the Application under Order VII Rule 11 of CPC, rejecting the plaint of Suit (followed by the Decree), preferred by the Appellant, *inter alia*, for Cancellation of Sale Deed dated 20.04.2004 (*available in the record; at page-23 and filed by both the learned Counsel*). Contended that when the Sale Deed was registered, the Property in question was already mortgaged with the Zarai Taraqiati Bank and it was released vide Letter of 15.03.2005 (*at page-163*); that the Appellant and private Respondent No.8 are entangled in the litigation and this was the sole ground to allow the Application under Order VII Rule 11 of CPC, rather than dismissing it. Learned counsel for the Appellant has also produced an Order dated 04.01.2019, passed in a Private Complaint No.01 of 2019, preferred by Respondent No.8, *inter alia*, requesting the Court to restore the possession to him, which was declined.

This Appeal is vehemently opposed by the learned Counsel for the Respondent No.8, by referring to his Counter-Affidavit along with the documents appended therewith. He has rebutted the contention that the Property in question was sold during the mortgage and has referred to the Registration date of the above Sale. Deed, which is 20.10.2005, that is, after the release of the mortgage; contended that no illegality committed;

referred to the Revenue Proceeding, which is pending, in which the Appellant is unsuccessful and only as a counterblast, he has filed the above Suit, which was rightly dismissed through rejection of plaint; read the Report of the Assistant Commissioner [at page-69 with the Counter-Affidavit] and the favourable Report of Mukhtiarkar (at page-225), recognising the validity of the above Sale Deed.

Arguments heard and record perused.

The plaint has been rejected by the learned Trial Court, which is maintained in the Appeal, solely on the ground that the matter is *sub judice* before the Revenue Authority and baring Section 11 of the Sindh Revenue Jurisdiction Act, 1876, has been invoked.

The plaint has been perused in which Paragraph-10 relate to the date of knowledge, *inter alia*, when the Appellant got the Notice from the Official Respondent for demarcation, against which a Constitution Petition No. D-3131/2018 was filed. **Secondly**, the learned Court in the above Private Complaint has declined to extend any relief to the Respondent No.8, on the ground that the above Civil Suit is pending. **Thirdly**, the matter is also pending before the Revenue Officials, and the first Order is at page-105 (*with the Counter-Affidavit of Respondent No.8*), shows that it has been passed on the basis of the Sale Deed under dispute. It means that even before the Revenue Officials, the main consideration is the Sale Deed in question. Under Section 39 of the Specific Relief Act, 1877, a registered document threatening a legitimate interest in respect of an immoveable property can be cancelled by a Civil Court and no other Authority. The Case Law-**PLD 2004 Karachi 391** [*Mst. Ghulam Sakina vs. Member (J), Board of Revenue, Hyderabad and 4 others*), relied upon by learned counsel for the Appellant, is relevant. **Fourthly**, intricate question of law and facts can only be decided through a proper trial and provision of the Order VII Rule 11 of CPC, cannot be invoked in such matters for rejection

of plaint when *prima facie* it is apparent that the Plaintiff/Appellant has an arguable Case, as is appearing in the present *Lis*. Both the impugned Decisions are against the settled principle developed through case law on this point of law. Consequently, both the Decisions are set-aside, and the Case is remanded to the learned Trial Court for Decision afresh. The learned Trial Court will proceed in the following manner_

- i) If the Written Statements are not filed, the same should be within two (02) weeks.
- ii) After framing of Issues, the evidence will be led.
- iii) Once the evidence has commenced, no adjournment should be allowed to any of the Parties. If on the date of evidence, witness is present and Counsel is not present or he is not cross-examined, the same should be marked as 'Nil'; similarly, if a Party is not present on the date of his/her evidence, the side should be closed.
- iv) Preferably the Decision should be given within four (04) months from today.

Any observation made in this Judgment is of tentative nature and shall not *pre judice* either the Trial of the Suit or the Proceeding before the Revenue Authority.

In view of the above, the instant Appeal stands disposed of along with the pending application(s), if any.

JUDGE