

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

IInd Appeal No.22 of 2011

DATE	ORDER WITH SIGNATURE OF JUDGE
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For Katcha Peshi

21.08.2015.

Mr. Nazeer Ahmed Bhatti Advocate for the appellants.

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NAZAR AKBAR J: This second appeal is directed against concurrent findings given by learned Senior Civil Judge, Sehwan whereby F.C. Suit No.23/2003 was dismissed on 28.11.2007 and appeal preferred in the court of learned Additional District Judge, Sehwan bearing Civil Appeal No.01/2008 was also dismissed on 30.11.2010.

2. Record shows that ever since presentation of this appeal on 04.03.2011, Mr. Nazeer Ahmed Bhatti, advocate for the appellants, never appeared in Court to proceed with the matter. This case was fixed in court for the first time on 04.05.2012 i.e. after more than one year and two months of the presentation of this second appeal, however, nobody appeared on behalf of the appellants even on 04.05.2012 and the court showed indulgence by adjourning this case to a date in office. After five months, i.e. on 25.10.2012 again this case was listed for Katcha Peshi and on that date, Mr. Nazeer Ahmed Bhatti informed the court that the appellants have taken away file from him and he has served his clients with a notice under Rule 50 of Sindh Civil Court Rules, therefore, case was again adjourned. On 07.01.2013 nobody appeared for the appellants and on 07.08.2013 Mr. Nazeer Ahmed Bhatti advocate again appeared on behalf of the appellants without realizing

that he had returned the file to his clients and requested for adjournment. On 02.10.2013 again request was made on behalf of Mr. Bhatti for adjournment. On 11.02.2014 nobody appeared and again indulgence was shown by this court by adjourning this case. On 19.03.2015, learned counsel for the appellant was put on notice to satisfy this court on the maintainability of this appeal. Today after four years and six months, Mr. Bhatti learned counsel for the appellants has argued the case.

3. I have heard learned counsel and perused the record. The record shows that the appellants made following prayers in F.C. Suit No.23/2003:-

- a) That this Honourable Court may be pleased to declare that the plaintiffs are fairly entitled to purchase the construction in the same amount in which the defendant No.5 and 6 are prepared to sale, as the plot is originally belongs to the plaintiffs upon which the construction is raised;*
- b) That the Honourable Court may further be pleased to declare that the agreement executed by late Haji Uris father of defendant No.5 & 6 is binding upon them.*
- c) That the Honourable Court may further be pleased to direct the cancellation of said registered sale deed executed by late Haji Uris in favour of his sons viz. defendant No.5 and 6 the said registered sale deed forms the base for sale.*
- d) That the Honourable Court may further be pleased to issue permanent injunction against the defendant No.5 and 6 from selling the suit plot with structure thereupon to anybody else, excepting the plaintiffs;*
- e) Any other relief;*
- f) Costs.*

4. The prayers were on the face of it were vague The suit was dismissed by the learned trial court on the ground that the suit was hit by section 29 of

Contract Act, 1872 and section 21(b) and (c) of the Specific Relief Act, 1877. Learned counsel for the appellants has failed to point out any illegality in coming to the conclusion on law points decided by two courts below against the appellants. He has not filed agreement with the memo of second appeal nor he has quoted any of the clauses of the agreement to point out that the learned courts below have failed to appreciate contents thereof and, therefore, findings of the courts are not sustainable. According to section 29 of Contract Act, 1872 the agreement was not enforceable. The counsel for the appellants is unable to point out that the findings of the courts below are contrary to law and the contents of agreement were free from ambiguity and uncertainty. After more than four years and six months, this court cannot show any indulgence by giving time to the counsel for the appellants to prepare the brief or file documents from the file of the trial court, which he was otherwise supposed to have filed at his own.

5. This second appeal under the foregoing circumstances merits no consideration, therefore, the same is dismissed in limine.

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JUDGE.

A.K/-