

IN THE HIGH COURT OF SINDH, KARACHI

**IInd Appeal No. 241 of 2019**

[Mst. Memona Arshi vs. Mst. Rani Akhtar and others]

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**IInd Appeal No. 242 of 2019**

[Mst. Suriya Siddiqui vs. Mst. Rani Akhtar and others]

Appellant in both the Appeals: Through M/s. Muhammad Fahim Zia, Pervaiz Ahmed Bhatti and Sawan Mehgwar, Advocates

Respondents in both the Appeals: Through Mr. Abdul Monem, Advocate

Date of Hearing: 26.02.2026

Date of Order: 26.02.2026

**JUDGMENT**

**ARSHAD HUSSAIN KHAN, J.** Since these Second Appeals arise out of identical facts, involve common questions of law, and impugn similar concurrent findings of the courts below, the same are being disposed of through this single consolidated judgment.

These Second Appeals, filed under Section 100 of the Code of Civil Procedure, 1908, arise from the orders dated 12.11.2019 and decrees dated 14.11.2019, passed by the learned IInd Additional District & Sessions Judge, Karachi (Central) in Civil Appeal Nos. 73 and 74 of 2019, whereby the appeals preferred by the appellants were dismissed and the orders dated 27.03.2019 passed by the learned XIth Senior Civil Judge, Karachi (Central) in Civil Suit Nos. 655 and 656 of 2018, rejecting the plaints under Order VII Rule 11 CPC, were maintained. Through the appeals, the appellants seek setting aside of the impugned orders and decrees and remand of the suits for decision on merits after recording evidence.

2. Briefly stated, the appellants instituted separate suits for specific performance, declaration and permanent injunction in respect of different portions of property bearing House No. R-199, Block-19, Al-Noor Society, F.B. Area, Karachi, on the basis of separate agreements to sell allegedly executed by respondent No.1 after receiving substantial consideration and delivering possession.

Respondent No.1 contested the suits and filed applications under Order VII Rule 11 CPC for rejection of the plaints. The learned XIth Senior Civil Judge, Karachi (Central), vide orders dated 27.03.2019, allowed the applications and rejected the plaints in Civil Suit Nos. 655 and 656 of 2018, holding that respondent No.1 was neither the owner of the suit property nor competent to execute the agreements, as the property stood gifted to minor children under guardianship appointed by a competent court.

The civil appeals preferred by the appellants under Section 96 CPC, being Civil Appeal Nos. 73 and 74 of 2019, were dismissed by the learned II Additional District Judge, Karachi (Central), through orders dated 12.11.2019 and decrees dated 14.11.2019, maintaining the rejection of the plaints. Hence, the present Second Appeals.

3. Learned counsel for the appellants contended that the impugned orders and decrees are contrary to law and the record, having been passed without proper appreciation of the pleadings and material on record. It is argued that the learned trial court erred in rejecting the plaints under Order VII Rule 11 CPC despite the existence of disputed questions of fact relating to the execution of the agreements, payment of consideration and delivery of possession, which could only be resolved after recording evidence. It is further argued that respondent No.1, after representing herself as owner and receiving substantial consideration, subsequently took a contradictory stance that the property belonged to minors and the amount was a loan; such issues of misrepresentation and concealment, according to the learned counsel, required adjudication on evidence. It is urged that the courts below misapplied distinguishable precedents and failed to independently examine the material issues, thereby denying the appellants a fair opportunity to establish their case. He, lastly, prayed for setting aside the impugned orders and decrees and remand of the suits for decision on merits.

4. Learned counsel for the respondents is called absent.

5. Heard the learned counsel for the appellants, perused the record and the relevant law.

Upon perusal of the record, including the plaints, written statements, applications under Order VII Rule 11 C.P.C., and the

impugned judgments of the two courts below, it is evident that respondent No.1 in both cases was neither the lawful owner of the suit properties nor the duly appointed guardian of the minor children in whose names the properties stood registered. The properties in question, namely, portions of House No. R-199, Block-19, Al-Noor Society, F.B. Area, Karachi, were gifted by the deceased Syed Akhtar Ali to his minor children, namely Sonia Ali, Syed Haseeb Akhtar, Muskan Akhtar, and Minahil, through a registered declaration of oral gift dated 05.05.2007, duly recorded in the office of the Sub-Registrar, Gulberg Town, Karachi vide M.F. No. U-40482/4303 Photo-Registrar dated 26.05.2007.

6. Further, it is on the record that the learned Civil/Family Judge XVI, Karachi [Central], in Guardian and Wards Application No.1825 of 2017, appointed Shaikh Shujauddin, the maternal uncle of the minors, as guardian of the person and property of the minor children. There is no material to suggest that respondent No.1 was lawfully entitled to act on behalf of the minors or to execute agreements of sale in respect of the properties. She was neither owner, nor attorney, nor guardian of the minor children, and consequently, the agreements executed by her in both the suits were legally incompetent to confer rights upon the appellants.

7. The learned trial court in both Civil Suits Nos. 655 and 656 of 2018, after hearing the parties and examining the record, held that the respondent No.1 had no title, authority, or competence to execute the agreements of sale. The trial court, therefore, rejected the complaints under Order VII Rule 11 C.P.C. The appellants' claim that substantial consideration was paid and possession was delivered does not cure the legal incapacity of the respondent. It is settled principle that a person, who is neither the owner nor guardian cannot validly enter into a contract for sale of property belonging to minors and any such transaction is void ab initio.

8. The learned appellate Court, in Civil Appeal Nos. 73 and 74 of 2019, after hearing the parties and examining the findings of the trial Court, dismissed the appeals. The courts below held that respondent No.1, being incompetent to act on behalf of the minors, could not confer any right upon the appellants. Reliance was rightly placed on precedents, including *Muhammad Faazal v. Abdul Hameed Mughal & Others* (2016

MLD 337) and *Mohsin Raza v. Muhammad Khizar* (2006 YLR 1717), wherein it has been held that agreements executed by persons lacking authority on behalf of minors are void and unenforceable.

9. The plea of alleged misrepresentation, receipt of consideration or delivery of possession, as advanced by learned counsel for the appellants, does not alter the legal position. The incapacity of respondent No.1 to enter into a valid contract of sale, as evident from the registered gift deed and appointment of a lawful guardian, renders the alleged agreements unenforceable in law. Consequently, no amount of evidence or trial could cure this inherent legal defect.

10. It is further observed that under Order VII Rule 11 CPC, the Court is required to examine the plaint to determine its legal sufficiency and the existence of a cause of action, without entering into disputed questions of fact. It is a settled principle that a suit which is ex facie incompetent should be nipped in the bud so that no judicial time is wasted on proceedings which are bound to fail in law<sup>1</sup>. In the present cases, since respondent No.1 lacked the legal competence, whether as owner, guardian or attorney, to enter into the alleged transactions, no amount of evidence could cure such defect. Consequently, no interference is warranted in exercise of jurisdiction under Section 100 CPC, as no perversity, misreading or non-reading of evidence has been pointed out in the concurrent findings of the Courts below.

11. For the foregoing reasons, this Court is of the considered view that the learned trial Court rightly rejected the plaints under Order VII Rule 11 CPC, and the appellate Court committed no error in affirming the same. No substantial question of law arises within the meaning of Section 100 CPC. Consequently, these Second Appeals, being devoid of merit, are dismissed with no order as to costs. However, the appellants, if so advised, may seek appropriate remedy for recovery of any amount allegedly paid to respondent No.1 in accordance with law.

JUDGE

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<sup>1</sup> *Ali Muhammad and another v. Muhammad Bashir and another* [2012 SCMR 930]; *Ilyas Ahmed v. Muhammad Munir and 10 others* [PLD 2012 Sindh 92]