

*Order Sheet*

IN THE HIGH COURT OF SINDH, KARACHI

**IInd Appeal No. 61 of 2025**

[Mst. Shaista Qaiser v. Zain Ameen and others]

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Appellant	In person.
Respondent-4	Through Ms. Deeba Ali Jaffri, AAG Sindh
Date of Hg:	23.02.2026
Date of Order:	23.02.2026

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**ARSHAD HUSSAIN KHAN, J.** This Second Appeal under Section 100 of the Code of Civil Procedure, 1908, is directed against the appellate judgment dated 20.01.2025, passed by the learned District & Sessions Judge, Malir, Karachi, in Civil Appeal No.145 of 2024, whereby the appeal preferred by the appellant was dismissed and the order dated 10.09.2024, passed by the learned IIIrd Senior Civil Judge, Malir, Karachi, in Civil Suit No.199 of 2024 was maintained, through which the plaint of the appellant's suit had been rejected under Order VII Rule 11 C.P.C.

2. A brief history of the case is that the appellant instituted a suit for Declaration, Possession, Cancellation of documents, Mesne Profits and Permanent Injunction in respect of Plot No.L-182, Category "A", admeasuring 80 square yards, situated at Rashidi Goth, Block-9/A, Gulistan-e-Johar, Karachi. It was pleaded that the appellant purchased the suit property on 15.07.2015 from Respondent No.1, Secretary of Rashidi Goth Residents Welfare Association, for a consideration of Rs.200,000/- and was allotted Membership No.116 dated 24.07.2015. The appellant claimed lawful entitlement on the basis of the said allotment and related documents. According to the plaint, in the year 2021, respondent No.2 allegedly occupied the suit property and raised construction thereon on the basis of documents described by the appellant as fake and fabricated. The appellant asserted that the respondents had no lawful title and had managed duplicate files in respect of the same plot.

Before the trial court, the respondents contested the claim, and Respondent No.2 filed an application under Order VII, Rule 11 C.P.C. seeking rejection of the plaint. The learned trial court, after hearing the parties, allowed the application and rejected the plaint, primarily on the ground that the appellant did not possess registered title documents in respect of the suit property. The appellant preferred Civil Appeal No.145 of 2024, which was dismissed by the learned lower appellate court on 20.01.2025, maintaining the order of rejection. Hence, the present Second Appeal.

3. The appellant, in person, has contended that both the courts below erred in law in rejecting the plaint without framing issues and recording evidence. It is argued that the plaint disclosed a complete cause of action and raised disputed questions of fact relating to entitlement, possession and genuineness of documents, which could only be determined after full trial. According to the appellant, the scope of Order VII, Rule 11 C.P.C. is confined to examination of the averments contained in the plaint alone and the defense set up by the respondents could not be considered at that stage. The appellant has further contended that even if the documents relied upon by her were unregistered, the alleged non-registration was a matter requiring adjudication after recording of evidence and could not, by itself, constitute a valid ground for rejection of the plaint at the initial stage. The appellant has also contended that the courts below have failed to appreciate that a plaint cannot be rejected in piecemeal and that where at least one relief is maintainable, the suit must proceed to trial. It was lastly prayed that the impugned judgments be set aside and the matter be remanded to the trial court for decision on merit after recording evidence of the parties.

4. The learned Additional Advocate General appearing for Respondent No.4 submitted that the courts below have rightly held that the appellant, lacking any registered title, cannot claim ownership or legal character based on membership/allotment forms issued by a private association. She has argued that the rejection of the plaint under Order VII, Rule 11, C.P.C., was fully justified, as the appellant had no pre-existing right in the suit property, and consequential reliefs such as possession, injunction, and mesne profit are not maintainable.

The AAG emphasized that the courts correctly applied Section 42 of the Specific Relief Act, 1877, and Section 54 of the Transfer of Property Act, 1882, and no ground exists for interference under Section 100 C.P.C.

5. Heard the appellant in person and the learned AAG on behalf of respondent No.4; perused the record and the relevant laws.

From perusal of the record, it appears that the learned Senior Civil Judge-III, Malir, Karachi, while hearing Civil Suit No.199 of 2024, rejected the plaint under Order VII Rule 11, C.P.C., observing that the appellant had relied on unregistered documents and membership / allotment forms issued by the Rashidi Goth Residents Welfare Association, which is not a competent authority to confer legal title. The trial court held that in the absence of registered title documents, the appellant had no pre-existing legal character to claim declaratory relief under Section 42 of the Specific Relief Act, 1877, and accordingly, the plaint was rejected at the threshold. The learned lower appellate court while hearing Civil Appeal No.145 of 2024, confirmed the trial court's reasoning, noting that the appellant's claim of ownership based solely on unregistered documents could not be legally recognized. The appellate court further observed that the plaint disclosed no cause of action; that the claim was barred by law; and that the rejection under Order VII Rule 11, C.P.C., was fully justified.

6. Having perused the record and the findings of the courts below, it is observed that the suit relates to immovable property allegedly purchased by the appellant in the year 2015 with subsequent possession taken over by the respondents in the year 2021. The appellant claims ownership based on payment of consideration and issuance of membership/allotment forms, and seeks declaratory relief, possession, cancellation of documents, injunction, and mesne profit. The plaint, however, does not disclose any legally recognized title in the appellant's favour. The documents relied upon are unregistered and issued by a private association with no statutory authority to confer ownership rights.

7. The matter, therefore, involves the question whether a declaratory suit under Section 42 of the Specific Relief Act, 1877, can be maintained on the basis of unregistered documents issued by a

private association. In this context, both the courts below have correctly held that Section 42 permits a declaration only in respect of a pre-existing legal character or right. Since the appellant had no registered or legally enforceable title in the suit property, her claim for declaration, as well as consequential claims for possession, injunction, and mesne profit, are not maintainable.

8. The learned courts below have also correctly observed that in the exercise of jurisdiction under Order VII, Rule 11 C.P.C., the court examines the plaint and annexed documents only for legal sufficiency and cause of action, and not for a detailed appreciation of disputed facts. The appellant's assertion that the respondents produced fabricated or bogus documents does not, at the initial stage, cure the absence of a legally recognized title. The courts below were, therefore, correct in declining to reappraise the documents and in rejecting the plaint.

9. The rejection of the plaint by the learned trial court, and its affirmation by the learned appellate court, constitute concurrent findings of fact and law to the effect that the appellant lacked any legally recognized title in the suit property and, consequently, had no pre-existing legal character to sustain a suit for declaration under Section 42 of the Specific Relief Act, 1877, along with consequential reliefs. The plaint itself failed to disclose any legally enforceable right in favour of the appellant; therefore, the courts below were justified in holding that the suit was barred by law and liable to rejection under Order VII Rule 11, C.P.C.

10. It is well settled that in a second appeal under Section 100, C.P.C., this Court cannot interfere with concurrent findings unless it is shown that the courts below have misapplied the law, ignored material evidence, acted perversely, or decided a substantial question of law erroneously. In the present case, both courts have correctly interpreted Section 42 of the Specific Relief Act, 1877, Section 54 of the Transfer of Property Act, 1882, and the principles governing rejection of plaints under Order VII Rule 11, C.P.C. No material irregularity, illegality, perversity, or substantial question of law arising from the impugned judgments has been demonstrated so as to warrant interference.

11. In conclusion, the findings recorded by the trial court and confirmed by the appellate court are concurrent, reasoned, and in accordance with law. The appellant has failed to disclose any pre-existing legal character or legally enforceable title in the suit property, and her reliance on unregistered documents issued by a private association cannot confer ownership or legal rights. There is no merit in the present Second Appeal, which is, therefore, dismissed.

JUDGE

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