

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
IInd Appeal No.402 of 2024

Date	Order with Signature of Judge
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<i>Muhammad Mobsin Khan.....Appellant</i>	
<i>Versus</i>	
<i>Muhammad Moin Khan and others.....Respondents</i>	
Date of hearing	:15.04.2025
Date of judgment	:15.04.2025
Mr. Muhammad Farooq, Advocate for the Appellant. Mr. Zamir Ahmed Kalhoro, Advocate for the Respondents. -----	

JUDGEMENT

MUHAMMAD JAFFER RAZA, J; - Instant 2nd Appeal has been preferred against judgment and decree dated 10.10.2024 passed in Civil Appeal No.162/2024 by the VI-Additional District Judge, Karachi Central. Facts of the case are summarized in the following paragraphs.

2. That the Appellant preferred Civil Suit No.31/2023 and vide order dated 24.04.2024, the plaint in the above-mentioned suit was rejected. Thereafter, Civil Appeal No.162/2024 was preferred, which maintained the order below vide Impugned Judgment dated 10.10.2024.
3. Learned counsel for the Appellant has invited my attention to the order passed by the trial Court, in which the plaint was rejected. Learned counsel has firstly argued that no application was preferred under Order VII Rule 11 CPC and the application fixed for hearing on the said date, was an for application for amendment of pleadings under Order 6 Rule 17 CPC. Learned counsel has further invited my attention to the relevant parts of the order in which the trial Court has held that the suit for administration/partition is not maintainable without seeking cancellation of documents. Learned counsel for the Appellant has further argued that the learned trial Court has not cited any law in this respect and the said

finding, respectfully, could not have been given under the permissible scope of Order VII Rule 11 CPC as expounded in the case of **Haji Abdul Karim & other v. Florida Builders (Private) Limited**¹

4. Conversely, learned counsel for the Respondents has argued that the suit was filed in the wrong jurisdiction which ought to have been filed in the jurisdiction other than the jurisdiction in which it was filed, therefore, it was rightfully rejected.

5. I have heard the learned counsel for the parties and perused the record with their assistance. It is evident from the bare perusal of the order of the trial Court that the trial Court went into the disputed questions of fact, which is not permissible under the scope of Order VII Rule 11 CPC as explained in the judgment above. It is further held that the findings given by the trial Court in respect of suit for administration/partition not being maintainable in the absence of prayer for cancellation is not sustainable and the said findings could not have been given under the above noted provision. It is evident that the learned trial Court has misunderstood the scope of VII Rule 11 CPC. Consequently, instant appeal is allowed, impugned judgment & decree dated 10.10.2024 passed in Civil Appeal No.162/2024 by the VI-Additional District Judge, Karachi Central, are hereby set-aside and the trial Court is directed to hear the case on merits and decide the same within three months from today.

Accordingly, instant IIInd Appeal is allowed.

Judge

Nadeem

¹ PLD 2012 Supreme Court 247.