

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
IInd Appeal No.12 of 2024

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| <i>Date</i> | <i>Order with Signature(s) of Judge(s)</i> |
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HEARING.

1. For hearing of CMA No.3545 of 2025.
2. For hearing of main case.

20.05.2025

Mr. Raja Ali Ashgar, Advocate for the Appellant.

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1. The instant IInd Appeal has been preferred under Section 100 CPC against the Judgment dated 18.10.2023 in Civil Appeal No.79 of 2023. The said Civil Appeal emanated from Order dated 18.03.2023 in Civil Suit No.709 of 2023, in which, the Complaint filed by the Appellant was rejected under Order VII Rule 11 of CPC by the Court itself without notice being issued to the Defendant in the said Suit. Learned counsel for the Appellant has argued that no opportunity of proving his case was given by the Courts below and both the Courts below have rejected the Complaint on the sole ground for non-joinder as the Appellant failed to make Karachi Development Authority [“KDA”] a Party to the said Suit. Further the ground for rejection by both the Courts below was that the Plaintiff in the said Suit (Appellant herein) had failed to annex any title documents showing the deceased as owner of the Property in question. In this respect, learned counsel for the Appellant has stated that in Paragraph No.3 of his Complaint, he has specified that the documents are in the possession of the Respondents as the Respondents are siblings. Learned counsel has, therefore, prayed that the instant IInd Appeal may be allowed and the matter may be remanded back to the learned trial Court for decision on merits.

2. The instant Appeal was filed on 22.12.2023 and notices were repeatedly served on the Respondents. Vide Order dated 24.12.2024 it was directed that

Publication be made in one English and one Urdu Newspapers by way of substituted service. In compliance of that Order, it was noted vide Order dated 13.02.2025 that the Publication had in-fact being made. It is evident that the Respondents have not appeared in the case and therefore, instant case is being heard and decided with the able assistance of learned counsel for the Appellant.

3. I have heard the learned counsel for the Plaintiff and perused the record.

4. Learned counsel filed Suit No.709 of 2023, with the following prayers:

1. To pass Judgment & Decree for the administration of the Estate/Tarka left by deceased Ali Bahadur son of Ghulam Qadir House No.4/40 duly constructed building ground plus three story Shah Faisal Colony No.4, Karachi admeasuring 80 Square Yards valued Rupees Two Crore Karachi after the sale by way of auction through Nazir of the Court according to the respective share of the each legal heir as per law of inheritance of Sunny Muslim as the property is not dividable and partitioned.
2. To grant other relief that this Hon'ble Court may deem fit and proper in the circumstances of the case.

5. Thereafter, as noted above, the Plaint was rejected without issuing notice in the said Suit to the Defendants impleaded therein. I agree with the contentions of the learned counsel for the Appellant that the Plaint could not have been rejected solely on the grounds specified in the Order of the Courts below. It is held that both Courts below rejected the plaint filed by the Appellant beyond the scope of Order VII Rule 11 of CPC as expounded by the Judgment of the Hon'ble Supreme Court of Pakistan in the case **Haji Abdul Karim v. M/s. Florida Builders Pvt. Ltd**¹. It is further held that the Appellant not being possession of the title documents in favour of the

¹ PLD 2012 SC 247

deceased is in itself not a ground for rejection of Plaintiff. The learned counsel for the Appellant ought to be given opportunity to file an Application for production of documents, which as claimed by him, are in the possession of the Respondents. An application in this regard, could have been preferred by the learned counsel for the Appellant but no such opportunity was afforded.

6. Further the ground of non-joinder of KDA as a Party cannot by itself for rejection be a ground for rejection of Plaintiff as the same is a defect which rectifiable by necessary Application under the CPC and impleading necessary and proper parties to the said Application. It is evident from the bare perusal of both the Courts below of the impugned Judgment and the Order of the learned trial Court that both the Courts below have not understood the Scope of Order VII Rule 11 of CPC as expounded in the case of **Haji Abdul Karim** (supra).

7. I am mindful of the scope of Section 100 CPC and the Parameters which have been set by the Hon'ble Supreme Court of Pakistan repeatedly. However, I cannot be oblivious to the glaring errors which has been committed by the Courts below and in that regard, I am inclined to allow the instant IInd Appeal within the narrow parameters set in the case of **Sheikh Akhtar Aziz Versus Mst. Shabnam Begum and others**² wherein it was held as under: -

“14. As far as the argument of the learned counsel for the appellant that the learned High Court had travelled beyond the parameters of section 100, C.P.C., the same in the facts and circumstances of the case has been found by us to be totally misconceived. Although in second appeal, ordinarily the High Court is slow to interfere in the concurrent findings of fact recorded by the lower fora. This is not an absolute rule. The Courts cannot shut their eyes where the lower fora have clearly misread the evidence and came to hasty and illegal conclusions. We have repeatedly observed that if findings of fact arrived by Courts below are found to be based upon misreading, non-reading 52019

² 2019 S C M R 524

S C M R 524 or misinterpretation of the evidence on record, the High Court can in second appeal reappraise the evidence and disturb the findings 52019 SCMR 524 9 which are based on an incorrect interpretation of the relevant law. We have examined the record and found that the issues have not properly been determined by the lower fora and there are material and substantial errors and defects in the reasoning and conclusions drawn by the trial as well as the first appellate Court which materially affected the outcome of the case on merit. The High Court was therefore, in our opinion, quite justified in interfering with this matter and correcting the errors of the lower fora in order to do complete justice.” (Emphasis added).

8. In light of the above, the instant IInd Appeal is allowed. The matter is remanded back to the trial Court for decision on merits

The Appeal is allowed in the above terms.

JUDGE