

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI
IInd Appeal No.372 of 2024
IInd Appeal No.373 of 2024

Date	Order with signature(s) of Judge(s)
Fresh Case.	

- 1. For orders on office objections.
- 2. For hearing of main case.

17.11.2025.
Mr. Imran Ahmed, Advocate for Appellant.

Since a common question of law is involved in both these appeals, the same are being disposed of through this common order.

Per learned counsel for the appellants, the property bearing 1st Floor of Plot No. 3/12, Block 1-D, Nazimabad No. 1, Karachi was owned by the predecessor-in-interest of the appellants, but it was recorded in the record of rights in the name of the mother of defendants No. 1 to 7 / respondents No. 1 to 7 in the present appeals. The appellants filed a suit for declaration and permanent injunction, which was contested by the respondents. The plaint was rejected on an application filed under Order VII Rule 11 CPC. The first appeal filed by the appellants was also dismissed.

Learned counsel for the appellants contended that there was a definite cause of action for the appellants to institute the suit, and that the learned trial court exercised its jurisdiction or its powers and rejected the plaint on the grounds that were not available. When confronted regarding the appellants’ rights of ownership, he referred to page 113 of the appeal, wherein through a joint affidavit of Muhammad Younus, Muhammad Farooq, and Muhammad Imran, the suit property was allegedly surrendered in favour of the appellants. However, from a perusal of the plaint, it appears that no such ground was taken in the pleadings, and an assertion was made seeking a declaration that the appellants be declared owners of the property.

For the sake of convenience the prayer clause of the plaint is reproduced below:-

- a) Declare that the plaintiffs have legal rights, title and character in respect of the right hand side two flats, one on ground floor and one on 1st floor of plot and building No. 3/12, Block 1-D, Nazimabad No. 1, Karachi, with undivided 1/3 share in the said plot.

- b) Declare that the Plaintiffs also entitled to continue to enjoy physical and constructive possession and live in two flats one on ground floor and one on 1st floor of/ blot and building No. 3/12, Block 1-D,, Nazimabad No. 1, Karachi, with undivided 1/3 share without any unlawful let, hindrance, obstacle from the defendants above named, otherwise then in due course of law.
- c) Grant Permanent Injunction against the defendants, their nominees / agents retraining them from in any manner, using unlawful means from attempting and/or dispossessing the plaintiffs from the said two flats, otherwise then through lawful means.
- d) Any other relief which this Hon'ble court deems just and proper in the circumstances of the case.
- e) Grant cost of the suit.

It appears that Appellants did not seek declaration of ownership on the basis of joint affidavit.

When confronted, learned counsel for the appellants contended that if this court permits the parties will file a fresh suit seeking declaration of ownership on the basis of said right.

Under the provisions of Order VII Rule 13 CPC, the institution of a fresh suit is not barred if the plaint has been rejected under Order VII Rule 11 CPC. Since the appellants intend to file a fresh suit, they may do so. If the appellants file a fresh suit seeking enforcement of their rights on the basis of the joint affidavit furnished by the persons mentioned above, the learned trial court shall decide the fate of the suit independently, without being influenced by the orders passed in the present litigation at the trial, appellate, or second-appeal stages.

Instant appeals stand disposed of in the above terms. Office to place copy of this order in connected appeal.

JUDGE