

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD**

C.P No.D-2226 of 2016

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**DATE                      ORDER WITH SIGNATURE OF JUDGE**

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Before:

Mr. Justice Abdul Maalik Gaddi

Mr. Justice Zulfiqar Ahmed Khan

1. For Katcha Peshi.
2. For hearing of MA 13252/16

03.05.2017.

Mr. Khadim Hussain Soomro, Advocate for petitioners.  
Mr. Allah Bachayo Soomro, A.A.G.

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O R D E R

**ABDUL MAALIK GADDI, J** – Through this Constitutional Petition the petitioners Syed Khadim Hussain Shah and others have called in question the order dated 27.07.2016 passed by the learned 2<sup>nd</sup> Additional District Judge, Shaheed Benazirabad in Civil Revision Application No.25 of 2015 filed by the petitioners whereby said learned Additional District Judge while maintaining the order dated 17.09.2015 passed by the learned 2<sup>nd</sup> Senior Civil Judge Nawabshah in First Class Suit No. 100 of 2014 dismissing the application under order 7 Rule 11 C.P.C.

2. Perusal of record shows that the petitioners filed civil suit No.100 of 2014 against respondents before the trial court for declaration, cancellation, correction of record, mesne profits, possession and permanent injunction in which written statement was filed by the respondents. Issues have been framed and matter was fixed for evidence. The petitioners at that juncture filed an application

under order 7 Rule 11 C.P.C, which was dismissed by Trial Court. Subsequently, in the revision application the same order was also maintained.

3. Today, none present on behalf of the private respondents except A.A.G as such learned Counsel for the petitioners has been heard on the point of maintainability of this petition on the ground that when two courts below have concurrently dismissed the application under order 7 Rule 11 CPC how this petition is maintainable. Learned Counsel for the petitioners though argued the matter halfheartedly but stated that in this matter the issues have been framed and the matter is ripped for evidence, therefore, he would have no objection if the case is remanded to the Trial Court to record the evidence and decide the matter on merits within a period of six months after receipt of this order.

4. It is an admitted position that both the courts below have dismissed the application under order 7 Rule 11 CPC filed by the petitioners. We have perused the impugned orders. No misreading or non-reading of evidence or any other defect in exercise of jurisdiction by courts below stood proved. No case is made out that courts below had exercised jurisdiction not vested in them or that they had acted illegally or that material irregularity has been committed. No case having been made out for interference by this court in the concurrent findings of the two courts below. Finding on application under order 7 Rule 11 CPC by the two courts below does not appear to be perverse, irregular or illegal but is based on solid reasons.

5. As observed above, in this matter the issues have already been framed and the matter is ripped for evidence as stated by the learned

Counsel for the petitioners. We have perused the pleadings of the parties showing that the parties are seriously at issue which requires evidence, therefore, the instant petition having no merit is dismissed. However, the Trial Court is directed to decide the case on merits as early as possible preferably within the period of six months after receipt of this order. Compliance report be submitted to this Court through Additional Registrar.

JUDGE

JUDGE