

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

R.A. No.210 of 2006.

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For katcha peshi.
2. For orders on CMA-1568 of 2006.
3. For orders on CMA-1569 of 2006.

26.02.2018.

Mr. Rao Faisal Ali, Advocate for the applicants.

Mr. Wali Muhammad Jamari, Assistant A.G.

Mr. Mohan Lal, Advocate for the respondent No.4.

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Learned counsel for private respondent No.4 was heard on the earlier date, his contention as such need not to be repeated.

2. Today, learned counsel for the applicants placed his submissions according to which, the suit was decided under Order 17 Rule 3 CPC and as per the learned counsel for the applicant there being no evidence available as such the suit could have been dismissed for non-prosecution and not under Order XVII Rule 3 C.P.C. Learned counsel further contends that on account of sickness of the leading applicant the evidence could not be led by the parties and in the circumstances as present the learned trial Court was not justified in granting the decree. He has relied upon the cases of **Lt.-Col. Mirza Munawar Beg Etc. v. Mst. Hassan Bibi and others (1981 SCMR 160)**, **Zahoor Ahmed v. Mehra through Legal Heirs and others (1999 SCMR 105)**, **Mrs. Asmat Begum v. Badiuzzaman Khan (2002 CLC 71)** and **Abdul Aziz v. Abdul Hameed (2007 YLR 3159)**.

3. Learned AAG supports the impugned orders and contends that the pleadings of the parties were sufficient to justify the orders as were passed.

4. Having heard the learned counsels and gone through the record, the matter pertains to alleged malafide in the distribution of irrigation water as it was claimed by the applicants that the private respondent was allocated share of water in violation of the applicable law being Sindh Irrigation Act. Learned counsel for the applicants in this respect has also relied upon section 28 of the

Sindh Irrigation Act contending that a notice was liable to be given to the applicants as they were co-sharers of the said water-course. It bears from the record that evidence was not led by the applicants. The revision in this respect against closing of side was also dismissed and the matter was not agitated further. In the present circumstances, the learned trial Court was not restricted to pass the order under Order XVII Rule 3 CPC, as the material whosoever it was nevertheless present. Even otherwise, the share holders of the water-course always have open to them the proceedings before the Irrigation Authorities to agitate the distribution of water were the party were unable to bring evidence before the Court on account of malafides which are to be required to be proved through evidence, the result could have been dismissal for non-prosecution or on under Order XVII Rule 3 C.P.C. based upon the material as available. Nothing has been shown to restrict the same. In the circumstances, no ground has been show for exercise of powers under section 115 C.P.C., as such this revision application is dismissed alongwith pending applications.

JUDGE

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