

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

R.A. No.229 of 2009.

---

DATE	ORDER WITH SIGNATURE OF JUDGE
------	-------------------------------

---

1. For katcha peshi.
2. For hearing of M.A-801 of 2009.
3. For hearing of M.A-802 of 2009.

22.01.2018.

Mr. Suresh Kumar, Advocate for the applicant.

Mr. Wali Muhammad Jamari, Assistant A.G.

=

Learned counsel for the applicant contends that the learned trial Court had dismissed the plaint of the applicant being hopelessly time barred and the said order was maintained by the learned appellate Court while considering the articles concerning the limitation as present whereas the articles applicable have not been considered. Learned counsel for the applicant further contends that the limitation in the matter has been considered for cancellation of the registered document; however, the declaratory element was also available to the applicant has not been considered though the dispute between the parties was arising out of inheritance.

2. Learned AAG supports the impugned judgments and submits that according to the contents of the plaint the applicant was in knowledge of the adversity created to her title despite which she kept mum as referred to in the impugned judgments and as such the matter stood barred by limitation. The suit as such was rightly dismissed by the learned trial Court and the appellate Court's judgment also contains full reasons for the same.

3. Having heard the learned counsel for the applicant as well as the learned AAG and gone through the record with their assistance. It is observed that the respondent No.6 was holding the title of the subject properties when the same was challenged by the applicant. It is also a matter of record that the said respondent is the real brother of the applicant. In the wake of the said relationship it is not comprehensible that the said respondent was not aware of the facts and circumstances i.e. existence of her real sister having share in the

subject property by way of inheritance and in the said circumstances as he was aware of the facts of the matter irrespective to the documents as are / may be present he was having knowledge of the actualities. In my humble understanding the respondent No.6 cannot claim any benefit on account of any limitation on account of his said knowledge and position. His position is different to any outsider of the family. In the circumstances, the question of limitation cannot be out rightly considered for dismissal of the plaint and is to be considered as a triable issue between the parties required leading of evidence in this regard. This element seems to have gone un-noticed by the learned Courts below.

4. Considering the forgoing, this revision as such is allowed. The impugned judgments are set aside and the matter is remanded to the learned trial Court with direction that an issue to the matter of limitation be framed and decided after leading of evidence by the parties, *inter alia*, to any other issue as considered fit and proper in accordance with the law.

The listed applications also disposed of accordingly.

JUDGE

S