

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

R.A No.S-298 of 2011

DATE	ORDER WITH SIGNATURE OF JUDGE
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For orders on M.A No.1188/18
For hearing of M.A No.813/18.

10.01.2019

Mr. Gulab Khan Kaimkhani, Advocate for applicant.
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Mr. Bhagwan Das Bheel, Advocate states that his name may be deleted as he has been superseded by Mr. Gulab Khan Qaimkhan. Since, Mr. Gulab Khan Kaimkhani, Advocate has filed his Vakalatnama on behalf of applicants, as such, office is directed to remove the name of Mr. Bhagwan Das Bheel, Advocate from cause list as well as file cover.

In compliance of this court's order dated 04.06.2018, learned counsel for the applicant briefs this court about the maintainability of instant restoration application. By drawing attention to the judgment of trial Court, learned counsel states that trial Court was pleased to decree the suit in favour of the plaintiff / applicant by holding that the defendants' names were fraudulently entered into the register. However, when an appeal was preferred, the Appellate Court after placing reliance on the cross examination of plaintiff / applicant Kesro [Exhibit-30] where he admitted that at the time of filing of the suit, the suit property was valued at Rs.400,000/- and thereafter both the parties were

directed to pay appropriate court fee. Per learned counsel while appellants / defendants complied with this order by depositing court fee stamp however, since the respondent / plaintiff did not comply with the said order the appeal was allowed and plaint was rejected under Order 7 Rule 11 CPC. Learned counsel states that merely on verbal statement of the plaintiff / applicant the Appellate Court was not competent to declare that the value of the property was Rs.400,000/- and the procedure prescribed by the Court Fee Act, 1870 and Valuation Act, 1887 were not followed. He further states that on account of this technical departure applicant's valuable rights in the property have ceased. He further states that the order dated 09.10.2015, in terms of which the instant revision application stood dismissed upon an application made by the then counsel for the applicant Mr. Imtiaz Ali Channa. The said withdrew request was made after his client having been given an understanding that if the instant revision was withdrawn, the applicant's right in the property will be considered by the respondents, which commitment was not fulfilled and the applicant was cheated. Learned counsel further states that from the date of filing of instant revision application the applicant Kesro has expired and he wishes to bring his legal heirs on the record and in this regard he has made an appropriate application under Order 22 Rule 1 to 4 CPC being CMA No.1188 of 2018. Let notices of both the applications be served on to the respondents as well as learned A.A.G for 06.02.2019.

JUDGE

Fahad Memon