

2. In view of the clear position of law about an “agreement/contract of sale” being unregistered, there is no threat to the plaintiff to seek its cancellation and therefore, the suit is hit by **Order VII Rule 11 CPC** as no cause of action can ever accrue to the plaintiff to approach court of law for a decree of declaration and cancellation of it. If any case law is required in this context one may refer to the case of Muhammad Iqbal and others Vs. Mst. Baseerat and others (**2017 SCMR 367**), the Hon’ble Supreme Court has observed as under:-

“Be that as it may, when questioned as to what is sale and how a sale is made, through the provisions of section 54 of the Transfer of Property Act, 1882 (the Act) have been read, but learned counsel has not been able to establish if the property could at all be sold in favour of Allah Rakha through an unregistered agreement to sell. It is also mandated in the second part of section 54 of the Act that such an agreement would not confer any right to the property. Moreover the provisions of section 49 of the Registration Act, 1908 read with section 17 of the Act also come in the way of the appellants as the agreement to sell of the property would not confer any title in favour of Allah Rakha allegedly executed by Barkat Ali which could further confer any rights in the immovable property unto the appellants. In light whereof, as these aspects were not considered by the first two courts, the learned High Court has rightly interfered and accepted the revision petition. No case for interference has been made out. Dismissed accordingly.

In another case of Khalid Khan Vs. Haji Muhammad Anwar and 2 others (**2015 YLR 1845**). The relevant observation of Peshawar High Court in the said judgment are reproduced below:-

“ 9. Without prejudice to the above mentioned facts, respondent No.1/plaintiff filed suit for declaration by dint of two unregistered documents which would neither create any title nor any right or interest in the disputed land as envisaged under section 49 of the Registration Act, 1908, as such, declaratory suit under section 42 of the Specific Relief Act, 1877 on the basis of the two deeds in question is not permissible and, therefore, suit for declaration would not be maintainable.

3. In view of the above legal position the builder/plaintiff has filed the instant suit to harass and coerce the buyer though the frivolous suit and may be to pre-empt a suit for specific performance. It is clear abuse of the process of Court, therefore, the suit is dismissed

with cost of **Rs.20,000/-** to be deposited by the plaintiff in favour of High Court Bar Clinic within two weeks. If the cost is not paid, the Nazir of this Court is directed to attach the accounts of the plaintiff company M/S Ever Green Developers and its sole proprietor namely Mr.Shakeel Qadir.

4. Before parting with this order, I must point out that Additional Registrar seems to have overlooked his responsibility contained in Chapter-V of the S.C.C.R (O.S) with particular reference to his duties in terms of **Rule 119** ibid whereby he was supposed to thoroughly examine the proceedings. Had he examined the plaint properly and realized that the plaintiff is seeking a decree of cancellation of “un-registered” document.

5. No suit lies for cancellation of un-registered document for simple reason that document does not require cancellation, therefore, in fact the Additional Registrar should reject the plaint under **Order VII Rule 11 CPC** in exercise of power conferred on him under **Rule 121** of the Sindh Chief Court Rules (O.S) which is reproduced below:-

“121. If a plaint is liable to be rejected under O. VII, rule 11 of the Code, the Deputy Registrar **shall note thereon the reasons for its rejection and submit it for the orders of the Judge hearing miscellaneous matters.**

It may be emphasized here that in case of seeking cancellation of un-registered document the Additional Registrar is not required to raise simple objection in fact he has power to reject the plaint under **Order VII Rule 11 CPC** and reasons for rejection of plaint is to be placed before the learned Judge for orders. It means the office is not even supposed to assign a number of suit to the plaint for cancellation of un-registered document.

6. In view of the above legal position, it is ordered that learned Additional Registrar in all the cases in which the main prayer is for cancellation of un-registered document should endorse rejection of plaint under **Order VII Rule 11 CPC** in exercise of power conferred on him under **Rule 121** of the Sindh Chief Court Rules (O.S) and place them before the Court as soon as possible. He should also ensure that in future no plaint for cancellation of un-registered document is assigned any suit number.

7. In this context the order passed today may be kept handy by the Additional Registrar and refer to it as in this case I have relied on other case including a case from jurisdiction of the Hon'ble Supreme Court.

JUDGE

Imran