

ORDER SHEET

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

C.P. No. D — 571 of 2009.

DATE	ORDER WITH SIGNATURE OF JUDGE[s]
<u>14.04.2022.</u>	

FOR ORDERS ON M.A. 2689/2009.
FOR HEARING OF MAIN CASE.

Mr. Nazeer Hussain Jarwar Advocate for petitioners.

Nobody despite service of notices has appeared to contest this petition on behalf of respondent.

This petition involves conflicting findings of two courts below. A suit for specific performance was filed by Mst. Zubeda the petitioner. On receipt of notices and summons written statement was filed along with an application under order VII rule 11 CPC which was dismissed by the trial court. Aggrieved of it, a revision application No.18 of 2006 was filed by the respondent when he was alive and the revision application was allowed on the count that the sale agreement was not registered and that it was typed on a stamp paper of Rs.10/-

We are of the view that unjustified reasons have been provided by the revisional court while allowing the revision and virtually allowing the application under order VII rule 11 CPC that rejected the plaint of the petitioners. None of the grounds as considered by the revisional court could have come to rescue the respondent in rejecting the plaint. As far as the question of limitation is concerned, it appears that it is a mixed question of law and fact as it is not established that the performance was ever denied by the respondent. Whereas an agreement could even be an oral or on a plain paper, therefore, nothing could turn for the benefit of the respondent that the agreement was typed on a stamp paper of Rs.10/-. Both the grounds as considered by the two courts below are misconceived and consequently the petition is allowed and the case is remanded to the trial court for proceeding on merit.

Since the case was filed in the year 2004, it is expected that the trial court may proceed with it expeditiously and dispose it of on merit after hearing the parties and recording evidence.

Petition allowed.

JUDGE

JUDGE

A.