

ORDER SHEET

IN THE HIGH COURT OF SINDH HYDERABAD
CIRCUIT.

Revision Appln. No. 182 & 183 of 2017.

DATE	ORDERS WITH SIGNATURE OF JUDGE
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21.08.2017.

Mr. Mazhar Hussain Kalwar, Advocate for the applicant.

This revision application is preferred by the applicant/plaintiff in pursuance of an order passed under section 12(2) by the appellate court. The suits for specific performance filed by the applicant bearing suit No.188 & 189 of 2011 were dismissed on merits. The plaintiff being aggrieved of the dismissal filed appeals bearing Civil Appeal No.25 & 26 of 2016, in the Court of District & Sessions Judge Mirpurkhas, which too met the same fate. Aggrieved of the decisions of the appellate court dated 26.10.2016, the applicant/plaintiff on 3rd April 2017, filed an application under section 12(2) on the ground that respondents No.1 and 2 have not sought the permission to sale the subject plot from the appellant and that the appellate court failed to consider the question of possession while considering the title of respondents 4, 5 and 6 to whom the properties were disposed off. It is but claimed to be a fraud upon the court that the sale deed was executed during the pendency of the suit.

I have heard the learned counsel and also perused the material available on record.

At the very outset the applicant if at all aggrieved of the orders of the appellate court passed in Appeal No.25 & 26 of 2016, could have exercised their right by filing a revision for the redressal of their grievances they deemed fit and proper but they chose to remain absent in respect of Judgments dated 26.10.2016 and preferred to challenge it by moving an application under section 12(2) on 3.4.2017. This is hardly a ground of

fraud or misrepresentation as the suit was contested between the parties and whether or not the sale deeds in favour of respondents No.4,5 and 6 were executed during pendency or was executed prior to the filing of the suit, it is not within the frame of fraud or misrepresentation. They never claimed to have obtained any interim order. The applicant had the remedy which they exercised and exhausted by filing a suit for cancellation of the sale deed and for specific performance of their agreements. This argument of the learned counsel of the applicant fail when the prayer clause itself shows that the sale deeds in favour of respondents No.3 to 5 were executed on 4.2.2011 i.e. much prior to the filing of the suit which was in fact filed on 20.6.2011. Hence there is no question of any fraud or misrepresentation regarding which this revision application has been filed.

These are the reasons for the dismissal of the revision application in limine.

Judge

A.