

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
II-Appeal No. 147 of 2012.

Date

Order with signature of Judge

1. For hearing of CMA No. 7099 of 2012.
2. For hearing of main case.

21st January 2020.

Mr. Muhammad Safdar, advocate for appellants.
Ms. Naila Tabassum, advocate for respondent.

Through instant II-Appeal appellant has challenged the judgment dated 22.03.2013 and decree dated 28.03.2013 passed by learned 1st Additional District Judge Malir in Civil Appeal No. 75 of 2011 whereby the suit filed by respondent (plaintiff) was decreed and the order of the civil court was set aside.

Heard learned counsel for the respective parties.

Admittedly, trial court's judgment as well as judgment of the appellate court are based on an application filed for compromise, which is not signed by the appellant (defendant), as well same is not supported by any affidavit; despite that both courts below while relying upon that compromise application decided issue of specific performance of contract in favour of respondent (plaintiff). It is also a matter of record that application was not exhibited in evidence and no evidence was even led on that issue, hence, both courts' judgments are beyond the pleadings. Under the given circumstances impugned judgments recorded by trial court and appellate court are hereby set aside; case is remanded back to the trial Court for deciding the case afresh. Parties would be at liberty to move any application with regard to verification of sale agreement or leading of evidence subject to permission of the trial Court.

Instant appeal is disposed of alongwith pending applications.

J U D G E