

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA
Civil Revision No.S-59 of 2019
(Sain Bux Versus Santosh Kumar and others)

DATE _____ ORDER WITH SIGNATURE OF HON'BLE JUDGE _____

1. For orders on office objection "A"
2. For orders on CMA No.285/2019 (S/A)
3. For hearing of main case.

Applicant:

Sain bux Sabzoi Through Mr. Abdul Fattah Bhutto Advocate,
Associate of Mr. Ghulam Dastagir A. Shahani,
Advocate

Respondents No 1 to 3:

Santosh Kumar Through Mr. Muhammad Qasim Khan,
and 2 others Advocate

Respondents No 4 to 10:

Mukhtiarkar Revenue Through Mr. Munwar Ali Abbasi,
and 6 others Assistant Advocate General.

DATE OF HEARING: 15-09-2025

DATE OF ORDER: 15-09-2025

JUDGMENT

NISAR AHMED BHANBHRO, J.- This Revision Application under section 115 C.P.C, is directed against the order dated 21-04-2018 (**impugned order**) passed by the Court of learned Senior Civil Judge Kandhkot (trial court) in F.C Suit No.298/2017 Re:(Sain Bux Sabzoi V. Santosh Kumar and others), and judgment dated 08.08.2019 (**impugned judgment**) passed by the Court of Learned District Judge Kashmore @ Kandhkot (Appellate Court) in Civil Appeal No 45 of 2019 Re Sain Bux Sabzoi V. Santosh Kumar and others, whereby both the Courts below rejected the plaint in Suit filed by the Applicant for Specific Performance and

Permanent Injunction on the ground that the suit was barred under the law by invoking the powers vested under Rule 11 of Order VII C.P.C..

2. The case of the applicant as borne out from the pleadings is that applicant owned agricultural landed property viz. survey numbers 766,763,355,354,280,279 and 950 in Deh Kandhkot whereas the Respondents No 1 to 3 owned agricultural landed property viz. survey numbers 277(02-03 ghuntas), 950 (01-02 ghuntas) in same Deh (Suit Property). In year 2008 dispute between the parties arose over the Suit Property. Applicant filed civil suit No 20 of 2008 before Learned Trial Court for Declaration and Permanent Injunction. During proceedings in the suit parties settled the dispute in a private settlement, whereby applicant paid an amount of Rs 20,00,000 as a sale consideration for Suit Property. Such Iqarnama was executed by the parties and suit was accordingly disposed of. The possession of the Suit Property was handed over to the applicant, however Khatta was not transferred to him. In the month of September 2017, the Respondents Nop 1 to 3 refused to execute Khatta and attempted to dispossess the applicant from Suit Property, therefore, he filed Suit No 298 of 2017 Re Sain Bux Sabzoi V. Santosh Kumar and others before Learned Trial Court seeking relief of Specific Performance and Permanent Injunction. On summons, the Respondents No 1 to 3 appeared before Learned Trial Court and filed an application under Order VII Rule 11 C.P.C seeking rejection of the plaint on the ground that the suit was time barred and without cause of action. Learned Trial after hearing the parties allowed the application and rejected the plaint vide order dated 21.04.2018. Applicant filed appeal No 22 of 2018 (new number 49 of 2019) before Learned Appellate, which was pending adjudication, however he preferred fresh suit No 29 of 2019 Re. Sain Bux Sabzoi V. Santosh Kumar and others before Learned Trial Court. Learned Trial Court vide order dated 23.04.2019 rejected the plaint by allowing the application under Order VII Rule 11 CPC filed by the Respondents No 1 to 3. Appeal No 61 of 2019 Re. Sain Bux Sabzoi V. Santosh Kumar and others was preferred before Learned Appellate Court against the order dated 23.04.2019. Learned Appellate Court after hearing the parties, dismissed both the appeals through separate judgment and decree on 08.08.2019. The Applicant has preferred this revision application.

3. Learned counsel Mr. Abdul Fattah Bhutto, the associate of Mr. Ghulam Dastagir A. Shahani, argued that both the learned courts below failed to comprehend the scheme of law envisaged under First Schedule to Limitation Act

1908. He argued that both the Courts below dismissed the suit of applicant under the premise that it was barred by law and hit by Article 113 of the Limitation Act 1908. He argued that the suit was filed within time, as no specific time for execution of iqrarnama was set out in the agreement reached between the parties in year 2009. He argued that time to bring the suit for specific performance was three years which started to run from the date of refusal of the parties to perform their part. He contended that for the purposes of deciding an application under order VII Rule 11, C.P.C the contents of the plaint are taken to be true. He prayed to set aside the impugned order and judgment, and to remand the matter back to trial court for decision on merits.

4. Mr. Muhammad Qasim Khan learned counsel for the respondents No 1 to 3 argued that the alleged Iqrarnama was executed in year 2009 and first suit was preferred by the applicant in year 2017. He argued that the plaint in first suit was rejected by invoking powers conferred under Order VII Rule 11 CPC. He argued that the applicant preferred second suit within short period of time after rejection of the earlier plaint. He argued that the suit was barred under the law, as the period of limitation prescribed under article 113 of the First Schedule to the Limitation Act 1908 for a suit seeking specific performance of contract was 03 years. He argued that there was no illegality or infirmity in the impugned order and judgment, thus prayed to dismiss the Revision Application.

5. Learned Assistant Advocate General supported the impugned order and judgment. He contended that the suit of the applicant was time barred, thus rightly buried in the inception.

6. Heard arguments and perused material available on record.

7. Scanning of the material available on record transpired that the applicant brought a suit for Specific performance and Permanent Injunction. The applicant averred that he had purchased the Suit Property from Respondent No 1 to 3 through Iqrarnama dated 18.12.2009 under sale consideration of Rs 20,00,000. The possession of the Suit Property was handed over to the applicant, however, the khatta was not transferred to him. It was the case of the applicant that he remained approaching the Respondents for transfer of Khatta, they kept on hopes. The refusal by the Respondents No 1 to 3 to transfer the Khatta was conveyed to the applicant in the month of September 2017, through an ill founded action, when

Respondents No 1 to 3 came to the Suit Property and attempted to dispossess applicant. The attempt to dispossess the applicant gave him a cause of action to prefer first Suit No 298 of 2017 before Learned Trial Court, with following prayer:

- i. To pass the judgment and Decree for specific performance of contract against the defendants No 1 to 3 directing them to perform their part of the contract and execute registered sale deed in respect of suit land i.e (1-1 ½) acres out of Survey No 277 and (0.21) acres out of survey No 950 situated in Deh Kandhkot Taluka Kandhkot and mutate the Khatta of land in the name of plaintiff in Form No VII in revenue Record of rights and in case of failure of defendant No 1 to 3 to do so, the Nazir of this Court be directed to do the above said acts.*

8. Learned Trial Court, rejected the plaint, on an application filed by the Respondents No 1 to 3, by invoking the powers vested in it under Order VII Rule 11 C.P.C. on the score that the Suit was filed beyond the period of limitation of three years prescribed under article 113 of the Limitation Act 1908. Learned Appellate Court concurred with the findings of trial court and dismissed the appeal. Both the Courts below failed to comprehend that the time to bring a suit for specific performance begins to run from the date of performance mentioned in the agreement, in case no date of performance is mentioned it begins to run from the date of refusal of performance of the part of the contract. It would be conducive to reproduce article 113 of the Limitation Act 1908, which reads as under:

Description of Suit	Period of Limitation	Time from which period begins to run
113. For Specific performance of a contract	Three Years	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused

9. The bare reading of the article 113 made it explicitly clear that the limitation to file a suit for specific performance was three years, but crucial point to ponder was that when such limitation begins to run. Under article 113 the limitation to bring a cause for specific performance of the contract has been divided under two distinct categories. In the first category it begins to run from the date fixed for the performance as mentioned in the agreement and in the second category limitation

begins to run from the date when plaintiff has the notice of refusal of the performance, when no such date is fixed for performance.

10. The strength in this regard can be derived from the judgment of Honorable Supreme Court of Pakistan in the case of Muhammad Iftikhar Abassi Versus Mst. Naheed Begum and others reported as 2022 S C M R 1074 , wherein it is held that:

5. To start with, we would like to advert to the question of limitation. It is precisely demonstrable and conspicuous that Article 113 of Limitation of Act, 1908 has two tentacles. In the first fragment, the right to sue mounts up within three years if the date is specifically fixed for performance in the agreement itself whereas in its posterior constituent, the suit for specific performance may be instituted within a period of three years from the date when plaintiff has noticed that performance has been refused by the vendor. The first part denotes the rigors of its application where the time is of the essence which connotes a particular timeline fixed for the performance by the parties. In this condition, the limitation period will be reckoned from that date and not from date of refusal but if no exact date is predetermined then obviously, the right to sue will accrue from the date of knowledge vis-a-vis the refusal. The intelligence and perspicacity of the law of Limitation does not impart or divulge a right, but it commands an impediment for enforcing an existing right claimed and entreated after lapse of prescribed period of limitation when the claims are dissuaded by efflux of time. The acid test is to get the drift of whether the party has vigilantly set the law in motion for the redress or remained indolent.

11. The careful reading of Iqarnama available at page No.103 of the memo of revision application itself spoke that the Suit Property was sold out to the applicant under sale consideration of Rs.20,00,000/- and such a Iqarnama was executed in presence of witnesses Mohammed Shoaban and Hafiz Ramzan Awan and signed by the parties. In the iqarnama no date for the performance of contract to effectuate sale deed or mutate Khata in favor of applicant was fixed, nevertheless, it was specifically mentioned in iqarnama that the respondents/defendants in the suit would be bound to get the Khatta mutated in favor of the applicant before the Mukhtiarkar or the Sub-Registrar, as the case may be. The contents of the Iqarnama did not reflect that when such transfers would be made in the record of rights. It is another aspect of the case that the

defendants/respondents admitted that they received two million rupees from the applicant. Iqrarnama was executed between the parties pursuant to a faisla held between the parties on the court directions, where the civil proceedings between the parties were pending. The limitation in the instant case for the aforementioned reasons will begin to run from the date when plaintiff / applicant came into notice of the refusal of performance. The learned courts below on both occasions non-suited the applicant on the ground that Iqrarnama was executed in year 2009 and its performance was sought in year 2017 which was beyond the prescribed period of three years, without verifying the averments in plaint and going into the contents of Iqrarnama to take an inference that since when such time of limitation will begin to run.

12. Since the defendants / Respondents did not deny the execution of Iqrarnama, the sole point agitated by the respondents/defendants before the Courts below was that the suit was barred under the law of limitation. Learned trial court as well as appellate court were required to go through the contents of the Iqrarnama and the pleadings to form an opinion whether the suit was hit by the provisions of Article 113 of the Limitation Act 1908 or not. Applicant has specifically mentioned in the pleadings that in the month of September 2017 he came to notice of the refusal of performance. In such circumstances the question of limitation became a mixed question of law and facts which cannot be resolved straight away by throwing the suit invoking the provisions of Rule 11 of Order VII C.P.C.

13. Applicant filed fresh suit, wherein he specified that the attempt was being made by the Respondents / Defendants to seek his evacuation. Both the Courts below held that the earlier suit filed by the applicant was dismissed by invoking the provisions of Rule 11 of Order VII C.P.C, therefore, the instant suit was not maintainable. Such a proposition adopted by the forums below offended the provisions of Rule 13 of Order VII which provided that the rejection of the plaint will not preclude the party from bringing fresh suit.

14. It is settled proposition of law that for deciding the fate of the suit under Order VII Rule 11, C.P.C. the averments made in the plaint are taken as true, meaning thereby that to conclude that the plaint unveiled any cause of action or not nothing else was to be seen but the averments in the plaint. In case of any mixed questions of law and facts, the right methodology and approach is to allow

the suit to proceed to the written statement and discovery phases and to determine the matter either by framing preliminary issues or through a regular trial. The Court is under an obligation to give a meaningful reading to the plaint and if it is found that no reason existed to proceed further or plaint did not disclose a cause to sue, the court may reject the plaint, but in the instant case the Courts below went on to a wrong premise to hold that the plaint was barred under the law and performance of the contract could not be made on account of its presentation beyond prescribed period of limitation, without inquiring into the contents of Iqrarnama for which the performance was sought.

15. Undoubtedly, the plaint can be rejected under Order VII, Rule 11, C.P.C., at any stage of the proceedings to set at rest the proceedings which may fail ultimately to save public exchequer and precious time of the Court. But the provisions of Order VII Rule 11 C.P.C should not be used as a weapon to throttle the genuine litigation as has happened in the instant case.

16. For the aforementioned reasons, it can be safely held that both the Courts below travelled beyond the jurisdiction vested in them and non-suited the applicant on the legal ground of limitation which was not available. This is a fit case for indulgence of this Court to exercise powers under its supervisory and corrective jurisdiction conferred under section 115 C.P.C. Consequently, this revision application is allowed. The impugned order dated 21-04-2018 passed by the Court of learned Senior Civil Judge Kandhkot in F.C Suit No.298/2017 Re:(Sain Bux Sabzoi V. Santosh Kumar and others), judgment and decree dated 08.08.2019 passed by the Court of Learned District Judge Kashmore @ Kandhkot in Civil Appeal No 45 of 2019 Re Sain Bux Sabzoi V. Santosh Kumar and others are reversed and set aside. The suit No 298 of 2017 Re:(Sain Bux Sabzoi V. Santosh Kumar and others), filed by the applicant shall be deemed to be pending before Trial Court, where the Respondents shall file written statement within a period of four weeks from today with an advance copy to the applicant /plaintiff. The Trial Court, after framing issues and recording the evidence of the Applicant /Plaintiff and respondents / Defendants as well as the evidence of any other official summoned on the request of the parties, shall decide the suit on merits within a period of Eight months from today, positively. Since the applicant has sought indulgence of this Court in proceedings initiated through Suit No 298 of 2017, therefore, the subsequent suit No 29 of 2019 filed by the applicant shall be deemed to be infructuous.

The Revision Application stands disposed of in above terms, with no order as to the costs.

JUDGE

Asghar Altaf/P.A

Approved for reporting

Larkana

Dated: 15.09.2025