

IN THE HIGH COURT OF SINDH AT KARACHI
(APPELLATE JURISDICTION)

High Court Appeal No.16 of 2018

(*Asmat Ara & Another v. Inayat Begum (Deceased) & Others*)

Before:

Muhammad Faisal Kamal Alam J
Sana Akram Minhas J

Appellants:	(1) Ms. Asmat Ara (2) Tahir Ghafoor Through, Mr. Zulfiqar Haider Shah, Advocate
Respondent No.1:	Ms. Inayat Begum (Deceased) None
Respondent No.2:	Jawaid Iqbal Bhutti None
Respondent No.3:	Sub-Registrar Barrister Sandeep Malani, AAG
<u>Date(s) of Hearing / Re-Hearing:</u>	18-2-2026 & 18-5-2026
<u>Date of Decision:</u>	29-6-2026

J U D G M E N T

1. **Sana Akram Minhas, J:** Through the present Appeal, the Appellants challenge the Order dated 19.12.2017 (“**Impugned Order**”) passed by a learned Single Judge of this Court (exercising its then Original Civil Jurisdiction). Pursuant to an objection as to the maintainability of the Appellants’ Suit No.1245/2009 (*Asmat Ara & Another v. Inayat Begum & Others*) (“**Underlying Suit**”), the Plaint was rejected under Order 7 Rule 11 of *Code of Civil Procedure, 1908* (“**CPC**”) by the Impugned Order, on the ground that the claim for specific performance was barred by limitation under the first part of Article 113 of *Limitation Act, 1908* (“**Limitation Act**”).

Relevant Facts

2. The Underlying Suit was instituted by the Appellants (the Plaintiffs therein) before this Court on 2.9.2009 seeking, inter alia, specific performance of a sale agreement, compensatory damages, defamation, and a permanent injunction.

3. The deceased Respondent No.1 was the owner of residential Plot No.9/4, Survey Sheet No.K-28, Firdaus Cooperative Housing Society Ltd, Nazimabad No.1, Karachi (measuring 901 square yards) with a single-storeyed bungalow constructed thereon (**“Subject Property”**).
4. Pursuant to a Tenancy Agreement dated 15.11.1997 (**“Tenancy Agreement”**), the deceased Respondent No.1 let out the Subject Property to the Appellants.
5. Subsequently, the deceased Respondent No.1 and Appellant No.1 entered into a Sale Agreement dated 15.10.1998 (**“Sale Agreement”**) for the sale of the Subject Property. The material terms thereof were as follows:
 - i) Recital: The total consideration was agreed at Rs.3.2 million (Rupees Thirty-Two Lacs);
 - ii) Clause 1: A sum of Rs.1.6 million (Rupees Sixteen Lacs) had been paid by Appellant No.1 as advance sale consideration, receipt whereof had been acknowledged by the deceased Respondent No.1;
 - iii) Clause 2: Appellant No.1 was already in possession of the Subject Property as a tenant (since 1997) and had paid Rs.0.1 million (Rupees One Lac) as security deposit; and
 - iv) Clause 3: The balance sale consideration of Rs.1.6 million (Rupees Sixteen Lacs) was to be paid on or before 31.3.1999 (which admittedly remains unpaid to this day).
6. According to paragraph 7 of the Plaint of the Underlying Suit, the Appellants had been using the Subject Property as a godown/storage facility for their sanitary ware business.
7. The Plaint (paragraphs 10 and 11) alleges that the deceased Respondent No.1 informed the Appellants that Respondent No.2 would return from the United States of America (**“USA”**) in 1999 or 2000, clear his outstanding bank loans, and secure the release of the mortgage over the Subject Property. Upon his failure to return, the deceased Respondent No.1 repeatedly made further requests and assurances that Respondent No.2 would return, first by 2002 and thereafter in each successive year from 2003 to 2008. The Appellants regarded these assurances as fake requests, all of which proved futile as Respondent No.2 never returned to Pakistan. Nevertheless, owing to their *“old relations and good family terms”*, the Appellants did not initiate legal proceedings for completion of the Sale Agreement.
8. The Plaint (paragraphs 13 and 14) further alleges that upon his eventual return from the USA, the Respondent No.2, on 10.8.2009, visited the Subject

Property, demanded an increase in the sale consideration on account of the appreciation in its value, and threatened to dispossess the Appellants in the event of their failure to accede to his demand.

9. Consequently, the Appellants issued a legal notice dated 15.8.2009 to Respondents No.1 and 2, calling upon them, inter alia, to perform the Sale Agreement.
10. Faced with the Respondents' refusal to perform the Sale Agreement, the Appellants instituted the Underlying Suit on 2.9.2009, inter alia, seeking specific performance thereof. Subsequently, in a reply dated 10.9.2009 to the aforesaid legal notice, the Respondent No.2 categorically asserted that the Sale Agreement had been cancelled by Respondents No.1 and 2 on 10.8.2009 and, in any event, was "*time barred*".
11. On a question of maintainability, the Plaint of the Underlying Suit was rejected by the Impugned Order.

Appellants' Submissions

12. Learned Counsel for the Appellants advanced a two-fold submission:
 - i) Since the Appellants were already in possession of the Subject Property since 1997, the subsequently executed Sale Agreement stood partly performed, attracting Section 53-A of *Transfer of Property Act, 1882* ("**TPA 1882**"), which ought to have been considered in conjunction with Article 113 of the Limitation Act; and
 - ii) That a legal notice dated 15.8.2009 was issued by the Appellants, and in response thereto the Respondent No.2, in his legal reply, admitted that the Sale Agreement dated 15.10.1998 was cancelled on 10.8.2009; hence, the Underlying Suit instituted on 2.9.2009 was well within limitation.

Questions For Determination

13. The principal questions for determination in this Appeal are:
 - i) Whether the Appellants' plea of protection under Section 53-A of TPA 1882, based on their possession pursuant to the Tenancy Agreement dated 15.11.1997, has any bearing on the question of limitation?
 - ii) Whether, in view of the date fixed for performance in the Sale Agreement, the Plaint was liable to be rejected as barred by limitation under the first limb of Article 113 of the Limitation Act?

14. The submissions advanced have been duly considered, and the record examined.

Decision

Extract Of Relevant Statutory Provisions

15. Since the Impugned Order proceeds on the basis that the Plaint of the Underlying Suit is barred by limitation under Article 113 of Limitation Act, and the Appellants dispute the applicability of that provision in view of Section 53-A of TPA 1882, both provisions are reproduced below for reference purposes:

Article 113 of Limitation Act, 1908

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.

Section 53–A of Transfer of Property Act, 1882

53–A. Part performance: Where any person contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty,

And the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession continues in possession in part performance of the contract and has done some act in furtherance of the contract,

And the transferee has, performed or is willing to perform his part of the contract,

Then, notwithstanding that the contract, though required to be registered, has not been registered, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed thereof by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.

Judicial Interpretation Of Section 53-A Of Transfer Of Property Act, 1882

16. Before addressing the Appellants' submissions, it is necessary to examine the principles governing Section 53-A of TPA 1882.

17. The only right arising out of an agreement to sell, so far as the property itself is concerned, is the right to seek its specific performance, and where the vendee has been put in possession, such possession is protected under Section 53-A, provided the statutory requirements thereof are satisfied¹. The jurisprudence that has evolved over the years in relation to Section 53-A may be summarized as follows:

- i) Section 53-A is a statutory (codified) provision that partially imports the English equitable doctrine of part performance. Except to the extent provided in that section, the doctrine has no application in Pakistan, and the provision does not confer any right beyond those conferred by the formal agreement²;
- ii) Although an unregistered document that is compulsorily registrable does not create or transfer legal title to immovable property, Section 53-A operates as an exception by protecting the possession of a transferee under such an unregistered written document³; this right arises once the transferor places the transferee in possession pursuant to the agreement.
- iii) Section 53-A neither creates nor confers title to immovable property, nor can it be invoked to assert ownership or seek a declaration of title. Its function is limited to protecting the transferee's possession in part performance of a contract by operating as a statutory defence enforceable against the transferor and all persons claiming under him, while legal title continues to vest in the transferor⁴;
- iv) The benefit of Section 53-A may be invoked by the transferee to defend and protect his possession, and the procedural position is immaterial (i.e. whether the transferee appears as plaintiff or defendant⁵), as it may be asserted either as a defence in proceedings instituted against him or, where necessary, in proceedings instituted by him.

¹ 2000 SCMR 204 (*Muhammad Yousaf v. Munawar Hussain*)

² PLD 1989 SC 575 (*Shamim Akhtar v. Muhammad Rasheed*)

³ 1993 SCMR 428 (*Hikmat Khan v. Shamsur Rehman*); 2022 SCMR 778 (*Athar Hussain Shah v. Muhammad Riaz*)

⁴ PLD 1967 Kar 372 (*Bachu Bai F.E. Dinshaw v. Commissioner of Income-Tax*); 1993 SCMR 428 (*Hikmat Khan v. Shamsur Rehman*)

⁵ PLD 1961 Lah 372 (*Inayat Ullah v. Shah Muhammad*); 1990 CLC 1381 (*Ahmed Mujtuba Khan v. Iqbal Shah*); 2010 CLC 407 (*Muhammad Nawaz Magsi v. Illahi Bux*); 2026 MLD 36 (*Raja Muhammad Saleem Khan v. Nabeela Azam*)

- v) In practice, the provision is most often invoked when the transferor or a person claiming under him sues to disturb the transferee's possession;
- vi) Section 53-A cannot be utilised by a transferee as a sword (weapon of offence) to assert title in respect of the property, but is available only as a shield (defence) to protect possession against dispossession or interference by the transferor or persons claiming through him⁶.

Applicability Of Section 53-A Of Transfer Of Possession Act, 1882 Where Possession Originated Under A Tenancy Agreement

18. The Appellants challenge the Impugned Order on the ground that the learned Single Judge failed to consider the applicability of Section 53-A of TPA 1882. They contend that they were initially inducted into possession of the Subject Property as tenants in 1997. However, upon execution of the Sale Agreement dated 15.10.1998, the landlord-tenant relationship, according to them, stood superseded, and they continued in possession thereafter not as tenants, but in part performance of the said Agreement, as prospective purchasers in possession.
19. The object of the Appellants in invoking Section 53-A is to assert and protect their right to continue in possession under the Sale Agreement coupled with delivery of possession. The advantage of this plea is that it enables them to resist interference with their possession notwithstanding the passage of time and to safeguard their continued occupation of the Subject Property on the basis of the said Sale Agreement so long as the statutory conditions of Section 53-A are satisfied.
20. The protection available under Section 53-A constitutes a continuing statutory protection of possession embodying an equitable principle and not a proprietary right, which is not extinguished by mere efflux of time. Consequently, the law of limitation does not operate to defeat such protection, as limitation bars the remedy and not the underlying equitable right to defend possession itself. A transferee in possession is, therefore, entitled to seek judicial protection of such right, including by way of a suit for injunction to restrain interference with his possession⁷ where such protection is otherwise available in law and fact.

⁶ 1993 SCMR 428 (*Hikmat Khan v. Shamsur Rehman*); 2000 SCMR 204 (*Muhammad Yousaf v. Munawar Hussain*); PLD 2003 SC 410 (*Amirzada Khan v. Ahmad Noor*); 2022 SCMR 778 (*Athar Hussain Shah v. Muhammad Riaz*)

⁷ 2010 CLC 407 (*Muhammad Nawaz Magsi v. Illahi Bux*)

21. However, the protection envisaged under Section 53-A of TPA 1882 is not attracted merely by the existence of an agreement to sell. To successfully claim the benefit of this provision, a tenant must, inter alia, satisfy the following essential requirements:
- i) There exists a contract for the transfer of immovable property for consideration, executed by the transferor;
 - ii) The tenant establishes that:
 - a) Subsequent to the agreement to sell, he either entered into possession in part performance thereof or, if already in possession, continued in possession and did some act in furtherance of the agreement⁸, such possession and conduct being referable to the agreement to sell rather than to the pre-existing tenancy; and
 - b) The character of his possession has changed from that of a tenant to that of a prospective transferee under the agreement to sell (having regard to the obligations of the seller under Section 55(f)⁹ of TPA 1882);
 - iii) The tenant has performed, or has at all material times been ready and willing to perform, his part of the contract.
 - iv) Upon satisfaction of the foregoing conditions, the tenant becomes entitled to invoke the protection of Section 53-A, and may resist any interference with his possession by the transferor or any person claiming through or under him.
22. Applying the above principles to the present Appeal, it is evident that the essential ingredients required to invoke the protection under Section 53-A of TPA 1882 are absent in the Appellants' case, for the following reasons:
- i) Although the Sale Agreement acknowledges the Appellants' pre-existing status as tenants, it does not provide that their tenancy would cease or that their possession would thereafter be held in the capacity of prospective purchasers in part performance of the contract¹⁰. In short, there is nothing in the Sale Agreement to show that the

⁸ PLD 1989 SC 575 (*Shamim Akhtar v. Muhammad Rasheed*)

⁹ PLD 1990 SC 382 (*Azeemun Nisa Begum v. Ali Muhammad*)

¹⁰ 1994 SCMR 1012 (*Muhammad Rafique v. Habib Bank Limited*); 2000 SCMR 1604 (*Nabi Bux v. Naseem*)

possession of the Appellants as tenants was converted into possession as vendees under the Sale Agreement;

- ii) The Sale Agreement likewise contains no stipulation providing for exemption from, or cessation of, liability to pay rent¹¹, or otherwise altering the incidents of tenancy. Consequently, it does not displace the admitted landlord–tenant relationship¹² or the Appellants’ obligation to pay rent;
- iii) The Appellants also cannot contend that their status as tenants stood converted into that of prospective vendees in possession under Section 53-A merely because they had themselves stopped paying rent¹³ or instituted a suit for specific performance¹⁴ – particularly where 50% of the sale consideration (i.e. Rs.1.6 million) admittedly remains outstanding to date;
- iv) Equally, there is nothing in the Sale Agreement to suggest that, upon its execution, the Appellants’ possession as tenants would be protected against eviction or that the deceased Respondent No.1 would be precluded from seeking their ejection through lawful proceedings¹⁵; and
- v) In the absence of any such express or implied change, the Appellants’ continued possession cannot be regarded as being referable to part performance of the Sale Agreement, particularly when no material has been produced to establish that they entered into, or continued in, possession in a new contractual capacity distinct from that of tenants.

23. Accordingly, in the facts and circumstances of the present case, the essential requirement of a clear and unequivocal change in the character of Appellants’ possession – from that of tenants to that of prospective transferees in possession – remains wholly unfulfilled. Consequently, Section 53-A of TPA 1882 has no application to the instant controversy, and the Appellants are not entitled to invoke its protection to resist a claim for recovery of possession¹⁶.

¹¹ 1987 CLC 1149 (*Ammar Husain v. Muhammad Shabbiruddin Khan*); PLD 1989 SC 575 (*Shamim Akhtar v. Muhammad Rasheed*)

¹² 1994 SCMR 1012 (*Muhammad Rafique v. Habib Bank Limited*)

¹³ 1976 SCMR 141 (*Jan Muhammad v. Ghulam Ghous*)

¹⁴ PLD 1991 SC 242 (*Iqbal v. Rabia Bibi*); 2000 SCMR 1604 (*Nabi Bux v. Naseem*)

¹⁵ 2010 MLD 1354 (*Muhammad Asad v. Muhammad Tariq*)

¹⁶ PLD 1990 SC 382 (*Azeemun Nisa Begum v. Ali Muhammad*); 2000 SCMR 1604 (*Nabi Bux v. Naseem*); PLD 2003 SC 410 (*Amirzada Khan v. Ahmad Noor*); 2014 YLR 1754 (*Shahid Ali Khan v. Hamid Siddiqui*); Unreported order of Sindh High Court dated 2.9.2023 in CP No.S-958 and 959 of 2021 (*Khurram Aftab v. District & Sessions Judge, Karachi-East*)

Correct Application Of Article 113 Of Limitation Act, 1908 In Impugned Order

24. The Impugned Order places reliance on the much-cited precedent of **Florida Builders (Pvt) Limited**¹⁷, wherein the Supreme Court, while interpreting Article 113 of *Limitation Act, 1908*, examined its legislative history and held that the provision, as carried forward from the earlier Limitation Acts of 1871 and 1877, reflects a deliberate legislative design. Under the 1871 Act, limitation ran from the date when the plaintiff had notice of denial of right, making the computation dependent on proof of refusal. This was subsequently altered in the 1877 Act by introducing the “*date fixed for the performance*” as an independent starting point, which was retained in Article 113 of the present Act, 1908.
25. The Supreme Court ruled that Article 113 prescribes a three-year limitation period commencing from two distinct and independent points: (i) from the date fixed for performance; or (ii) where no such date is fixed, from the date when performance is refused. Where a specific date for performance is agreed between the parties, limitation runs strictly from that date, irrespective of any subsequent default or refusal, thereby avoiding factual disputes regarding notice or denial. The second limb applies only where no date is fixed, and the two limbs are mutually exclusive in their operation. Any extension or exclusion of limitation under the first limb is permissible only through a subsequent express agreement, novation, acknowledgment under Section 19 of Limitation Act, or other statutory exception, and must be specifically pleaded in accordance with Order 7 Rule 6 CPC.
26. Applying the principles laid down in *Florida Builders (Pvt) Limited* (supra), the Underlying Suit, founded on the Sale Agreement dated 15.10.1998, was admittedly instituted on 2.9.2009. The stipulated date for performance, namely payment of the balance sale consideration, was 31.3.1999, which is not in dispute. Limitation therefore commenced from the said date. Computed accordingly, the **Underlying Suit was instituted 10 years and 5 months thereafter**, well beyond the prescribed period of three (3) years under Article 113 of the Limitation Act, and is consequently barred by limitation¹⁸.
27. Additionally, the Appellants’ attempt to press Section 53-A of TPA 1882 into service in support of their Underlying Suit will not assist them in extending the period of limitation, as Section 53-A has no application to the present controversy for the reasons discussed in the preceding paragraphs and, in

¹⁷ PLD 2012 SC 247 (*Abdul Karim v. Florida Builders (Pvt) Limited*)

¹⁸ PLD 2018 SC 692 (*Muhammad Sadiq v. Muhammad Mansha*); 2022 SCMR 933 (*Khudadad v. Ghazanfar Ali Shah*); 2022 SCMR 1074 (*Muhammad Iftikhar Abbasi v. Naheed Begum*)

any event, does not confer or create any proprietary or substantive title right, being available only as a defensive shield to protect possession¹⁹ and not as a source of any independent claim or extension of limitation, as previously observed.

Reply To Legal Notice Cannot Extend An Expired Limitation Period

28. The Appellants have placed considerable reliance on Respondent No.2's reply dated 10.9.2009 (to the Appellants' legal notice of 15.8.2009), wherein it was stated that the Sale Agreement stood cancelled on 10.8.2009. On this basis, it is contended that the Underlying Suit filed on 2.9.2009 (prior to the issuance of the said reply dated 10.9.2009) was within limitation.
29. The contention is misconceived. As discussed in the preceding paragraphs, the cause of action had accrued much earlier and the Underlying Suit, instituted on 2.9.2009, was already barred by limitation. Under Section 19 of Limitation Act, an acknowledgment of liability gives rise to a fresh period of limitation only where it is made before the expiry of the prescribed limitation period²⁰. Once that period has expired, any subsequent acknowledgment is legally ineffectual and cannot revive or extend a time-barred claim.
30. In the present case, even if the reply dated 10.9.2009 were construed as an acknowledgment of liability within the meaning of Section 19 of Limitation Act, the same – having been made after the cause of action had accrued and after the expiry of the prescribed period of limitation – could not revive or extend the Appellants' time-barred claim. The subsequent assertion in Respondent No.2's reply dated 10.9.2009 that the Sale Agreement stood cancelled on 10.8.2009, in any event, does not alter this position. Consequently, the Appellants' reliance on the said reply is misplaced and does not assist them in saving the Underlying Suit from being barred by limitation.

Appellants' Own Pleadings Reinforce Bar of Limitation

31. There remains one final aspect of limitation that falls to be considered. The Appellants themselves have pleaded in paragraph 11 of the Plaint:

11. *THAT being an old relations and good family terms between the Plaintiffs and Defendants, the Plaintiffs had not taken any legal action or initiate any legal proceedings before any court of law regarding the completion of the said Sale Agreement in respect of suit property.*

¹⁹ 2022 SCMR 778 (*Athar Hussain Shah v. Muhammad Riaz*)

²⁰ 1997 SCMR 536 (*Behlol v. Quetta Municipal Corporation*); Unreported judgment of Sindh High Court dated 2.12.2025 in HCA No.5/1995 (*Sindh Flour Milling Corporation v. Punjab Roller Flour Mills*)

32. This by itself shows that the Appellants were fully aware of their alleged right to seek enforcement of the Sale Agreement but consciously chose not to pursue legal remedies within the prescribed time. The stated reason does not extend, suspend, or otherwise affect the running of limitation; rather, it clearly indicates voluntary inaction and deliberate abstention from asserting the alleged right. Such a plea negates any suggestion of sufficient cause for delay and, in fact, demonstrates that the Appellants refrained from asserting their claim merely due to personal relations. Considerations of friendship or family ties cannot override the statutory bar of limitation. The law of limitation operates with full rigour and cannot be defeated by subjective or sentimental reasons.
33. The law of limitation has been described as a statute of repose, designed to quiet title and bar stale claims, and is required to be strictly complied with. By its very nature, it is strict and inflexible. It does not confer substantive rights; it merely regulates the enforcement of rights²¹.
34. Accordingly, the Appellants' own averment confirms that the Underlying Suit is barred by limitation, having been instituted after an inordinate delay, and therefore merits rejection under Order 7 Rule 11 CPC.

Conclusion

35. For the foregoing reasons, the Impugned Order rejecting the Plaint as barred by limitation calls for no interference. As a result, this Appeal is **dismissed** along with all pending applications, with no order as to costs.

JUDGE

JUDGE

²¹ PLD 2016 SC 872 (*Khushi Muhammad v. Fazal Bibi*); 2022 CLD 118 (*Zarai Taraqiyati Bank Limited v. Yaseen Dahr*)