

# IN THE HIGH COURT OF SINDH, KARACHI

HCA No.483 of 2024

Present:

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Muhammad Osman Ali Hadi

16.04.2025

Mr. Adnan Ahmed, Advocate for the Appellant.

Mr. Nasir Rizwan Khan, Advocate for the Respondent.

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## ORDER

MUHAMMAD OSMAN ALI HADI, J:- The instant appeal arises against order dated 12.11.2024 ("**the Impugned Order**") in which the plaint of the Appellant (Plaintiff in Suit No.1188 of 2019) was rejected by the learned Single Judge in the Suit (No. 1188/2019).

2. The learned Counsel for the Appellants states that the Appellants had filed a Suit for, *inter alia*, specific performance for purchase of immoveable property being Plot No.1049/4 Liaquatabad, Karachi measuring approx. 90 square yards ("**the Plot**") against the Respondents (Defendants in the Suit). It is claimed the Appellants (through their late father / husband) had a written sale agreement dated 21.12.1976 with the Respondents for purchase of the Plot. Counsel for the Appellant further stated that the said sale agreement was novated, and a new contract was executed between the Parties in the year 1978. He submits the initial sale consideration was Rs.60,000/-, against which the Appellant had already paid the Respondents certain amounts, over a period of time, and that a balance amount of Rs.15000/- remained outstanding. Counsel for the Appellant contends that they hold a valid legal right on the Plot, since they were (previously) in possession of the property, and as such retain a right to claim possession and ownership, as well as having justifiable reasons for enforcing specific performance of the sale agreement. He has relied on Section 53-A of the Transfer of Property Act, 1882 and has cited and provided a copy of judgment being 2017 SCMR 316. He finally contends that the Impugned Order is erroneous in law and that the matter was not hit by limitation; and that his suit should be restored and proceeded with further. He also prayed the Impugned Order should be overturned/set-aside. Learned Counsel for the Respondents has vociferously opposed the instant Appeal, and has repelled the contentions raised by the Appellants. Counsel for the Respondents states that the alleged sale agreement is bogus and would also be hopelessly time barred. He states that the payment claiming to be made

by the Appellants was because of certain construction carried out by the Respondents for the Appellants, and that such payment had nothing to do with purchase of the Plot. He states that the Appellant was at some point a tenant of the Respondents and that is why he was in the Plot premises. He further submits that under the tenancy laws, the Appellants were evicted from the Plot and the Respondents were now in possession. This point was conceded by the Appellants. Counsel for the Respondents asserted that throughout the rent eviction proceedings, the Appellants had never once claimed that they had any right for ownership of the Plot, under any sale agreement or otherwise. Learned Counsel states that after being evicted, the Appellants concocted this bogus strategy to claim specific relief towards unlawfully gaining possession of the Plot. Counsel for the Respondents brought our attention to a previous suit (No. Nil of 2018) filed by the Appellants on the exact grounds as the instant Suit No. 1188/2019, which was dismissed as not maintainable as well as for non-prosecution vide order dated 13.05.2019 (available at page 101 of the file)

3. Having heard the learned counsel and having gone through all documents and pleadings available on the File, we find that the Appellants are attempting to seek specific performance of an alleged agreement which, in addition to being dubious in its authenticity, is also hopelessly time-barred. Reliance can be placed upon article 113 of the Limitation Act, 1908.

4. Under article 113 of the Limitation Act 1908, the time limit for enforcement of a suit for specific performance is three years, which has long past. Furthermore, the Appellants have failed to provide any information or evidence as to why or when such performance of the alleged agreement was to be concluded. At best case, the Appellants would have to calculate the limitation period from date of execution of the agreement, which would have expired latest in the year 1981, whereas their Suit was filed in the year 2019, i.e. thirty eight years belatedly. Reliance in this regard, can, *inter alia*, be placed in the case of *Abdul Ghani vs Muhammad Shafi* (2007 SCMR 1186). Even otherwise, a perusal of the order dated 13.05.2019 in the Appellants' previous suit (at page 101) clearly shows that the issue of maintainability *viz a viz* limitation was also raised previously by the Court in the earlier matter, which the Appellants also seemed to keep avoiding, resulting in dismissal of the previous Suit. Secondly, in light of the previous order dated 13.05.2019, we also find the Appellants, by their own conduct, were estopped from

further pursuing the matter again, as they did by filing Suit No.1188 of 2019, in which the Impugned Order was passed. A similar matter was also recently deliberated by us in unreported judgment dated 08.04.2025 passed in High Court Appeal No.117 of 2020, in which we have held that the bar of limitation and estoppel in such circumstances would be applicable.

5. Overall we have found no illegality in the Impugned Order. In fact and to the contrary, we would also like to observe that we find this Appeal to be the very epitome of frivolous litigation, in which much scarce time and resources of the judicial system have been wasted by the Appellants. The Appellants have also no doubt caused undue hardship and suffering to the Respondents, by dragging them through the court system for several years, without any legal basis or justification whatsoever. In light of the foregoing, this Appeal being entirely devoid of merits, is frivolous and hereby dismissed.

**JUDGE**

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