

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

R.A No. 33 / 2010

Date Order with signature of Judge

1. For orders on CMA No.839/2014.
2. For order on office objection a/w reply as at 'A'.
3. For hearing of Main Case.
2. For hearing of CMA No.809/2010 (U/.41 R-5 CPC).

03.11.2016

Mr. Khalil Ahmed, advocate for the Applicant.
Mr. Muhammad Arif Khan, advocate for the Respondent.

.-.-.-.

NAZAR AKBAR, J:- This revision is directed against the concurrent findings whereby on **18.12.2006** suit No.406/2002 filed by the Respondent was decreed against the applicant by the trial court and on **11.12.2009** appeal No. 31/2007 preferred by the applicant was also dismissed by the first appellate court.

2. Very briefly, the applicant is in possession of half portion of House No.5/806, Liaquatabad Township Karachi (the suit property). He is brother in law of the respondent and was allowed by her deceased husband to live in the half portion as younger brother. This is not disputed by the applicant before the trial Court and the appellate Court that after the death of his elder brother, the Respondent is not the owner of the suit property. The applicant has taken the defense in written statement that he has raised construction of half portion in his possession and the legal heirs of his deceased brother namely Muhammad Bashir, wife, his one daughter and four sons had no right to relinquish their right of inheritance in favour of their mother, the respondent herein, in the entire property measuring 90 sq yards. However, he failed to prove his contention by any documentary evidence and even any other family member or friend to support his contentions. He did alleged

collusion of KMC in execution of lease suit property in favour of the respondent but till date he has not filed any suit for declaration of ownership of the half portion of suit property and cancellation of lease document in her favour. The applicant before the trial court in support of his claim that he is lawfully entitle to retain possession of half portion of the suit property has not produced even a single document.

3. Both the Court below have decreed the suit of respondent on the basis of unimpeachable evidence that the suit property was exclusively owned by her husband and on his death in 1993 the suit property on relinquishment of their rights by other legal heirs was transferred in name of the respondent. Learned counsel for the applicant has not been able to point out any misreading or non-reading of evidence.

4. The learned counsel for the respondent has contended that beside the merit, the revision is time barred since the court fee was paid after 03 years and 10 month of filing of this Revision application. He has pointed out office objection has not been overruled till date. When the office objection was raised about the Court fees, he has flatly refused by replying that **no court fees is required** in revision. However, after three years on **12.12.2013**, he filed court fees. By order dated **23.4.2015**, the applicant was directed to satisfy the Court on maintainability of Revision. The record shows that applicant has not even filed application under **Section 149 CPC** for extension of time for filing court fee. The applicant's counsel in reply to the question of maintainability on account of non-payment of Court fee has relied only on the case law reported as Province of Punjab through D.O (Revenue) and another ..Vs.. Ch. Muhammad

Rasheed Ahmed (PLJ 2016 Lahore 474) and claimed that the delay in filing court fees cannot be treated a case of bar by limitation against the applicant. In rebuttal counsel for the respondent has relied on the case law reported as Mst. Walayat Khatun ..Vs.. Khalil Khan and another (PLD 1979 SC 821), Hassan Bakhsh & others ..Vs.. Syed Afzal Shah & others (1974 SCMR 364) and Allah Yar ..Vs.. Muhammad Riaz & others (PLD 1981 SC 489). In presence of Supreme Court judgment against the contention of the applicant reliance placed by him on the judgment of single bench of Lahore High Court Multan Bench reported in PLJ 2016 Lahore 474 is of no consequences. The citations of Supreme Court are on the point that non-payment of Court fee on plaint, appeal and/or revision within the period of limitation for filing the same would be deemed to be barred by law of limitation. In all the three cases of Supreme Court the discussion is on the application under **Section 149 C.P.C** for condonation of delay in payment of Court fee. **Section 149 C.P.C** provides an opportunity to the applicant to seek condonation of delay in payment of Court fee and if allowed and time is given by the Court, the Court fee can be paid even beyond a reasonable time after expiry of limitation. But in the case in hand the applicant has not filed even a formal application under **Section 149 C.P.C** and the delay of three years and 10 months cannot be condoned since a valuable right has been accrued in favour of the respondent.

In view of the above, this Revision is dismissed both on merit as well as barred by limitation alongwith pending applications.

J U D G E