

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

**R.A No. 44/2009**

Date

Order with signature of Judge

1. For orders on CMA No.3466/2016 (U/s.151 CPC)
2. For orders on CMA No.3646/2015 (U/s.151 CPC)
3. For hearing of Main Case
4. For orders on CMA No.1047/2016 (U/o.39 Rule 1 & 2 r/w Section 151 CPC)

**08.11.2016**

Mr. Khawaja Naveed Ahmed, advocate for the Applicant.  
Chaudhry Hameed Ahmed, advocate for Respondent No.2/DHA.  
Raja Qasit Nawaz Khan, advocate for Respondent No.3.

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1. This revision is directed against the order whereby V-Additional District Judge, South Karachi on **02.03.2009** allowed Civil Appeal No.3/2007 filed by Respondent No. 3 and the judgment and decree dated **18.12.2006** in suit No. 638/1994 passed by III-Senior Civil Judge, South Karachi in favour of the applicant was reversed.

2. The dispute was in respect of property bearing Plot No. 223/C Al-Murtaza Commercial Lane No.IV, Phase-VIII, Pakistan Defence Officers Housing Authority Karachi measuring 200 sq.yards (the suit property). The Applicant has claimed to have purchased the same by agreement of sale dated **01.07.1987** from Respondent No.1. Respondent No.1 from whom he has allegedly purchased the suit property is exparte throughout. Respondent No.3 also claimed to have purchased the suit property from Respondent No.1, but he has complied with all legal requirement for such sale to the satisfaction of Respondent No.2/DHA. The Applicant has filed a suit for declaration as well as specific performance of the agreement to sell dated **01.07.1987** and the burden of proof was obviously on the applicant which was not discharged. The date of agreement of sale was such on which date Respondent No.1 himself was not even holding the title of

the suit property. Learned counsel for the applicant when confronted with the first finding of the appellate Court that how Respondent No.1 sold the suit property to the applicant at the time when he himself was not owner and declared in the recital of agreement that he is seized and possessed of and otherwise entitle to all that plot of land, he was unable to answer the question. He, however, attempted to argue that the agreement was entered in anticipation of allotment expected by Respondent No.1 by virtue of his position in armed forces. Be that as it may, when agreement of sale has been denied, the burden was on the applicant to prove execution of the agreement by cogent evidence in terms of **Article 17 & 79** of Qanun-e-Shahadat Order, 1984. The applicant has not produced marginal witnesses of the agreement. Therefore, the agreement of sale was even otherwise not proved before the trial Court.

3. Secondly the Appellate court has decided the question of limitation against the applicant by comprehensively referring to the documentary evidence. The record shows that the applicant has realized in September 1990 that Respondent No.1 is not going to execute sale deed of the suit property in his favour and therefore, he has sent notice through telegram dated **07.09.1990** to Respondent No.1 that if it is not done within three days he will approach the Court of law for specific performance of the contract. It is pertinent to mention here that even the telegram was after the expiry of three years' time from the date of agreement. Then again when no answer was received from Respondent No.1 within three days, the applicant should have treated it as denial by Respondent No.1 and no further denial was required. However, the applicant approached the Court

after more than three years from the date of his telegram. The suit has been filed in 1994. It was, therefore, hopelessly time barred.

4. In view of the above discussion, no case is made out for interference, this revision is dismissed and all the applications pending have become infructuous.

JUDGE

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