

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Suit No.746 of 2011

Date	Order with signature of Judge
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1. For hearing of MA No.6468/11 (U/O 39 Rule 1 & 2 CPC.)
2. For hearing of CMA No.600/13 (U/S 151 CPC.)
3. For hearing of CMA No.398/12 (U/O VII Rule 11 C.P.C)
4. For Examination of parties/settlement of Issues.

13.01.2017

Mr. Zahid Marghoob, Advocate for the plaintiffs.
Mr. Alamgir Shaikh, Advocate for defendant No.3.
Mr. Imran Ahmed, Advocate for defendant No.5.
Mr. Ejaz Khattak, Advocate for defendant No.7 (DHA)

Muhammad Junaid Ghaffar J. Through this Application (CMA No.398/2012) under Order VII Rule 11 CPC, the defendant No.5 seeks rejection of Plaintiff in this Suit on the ground that this Suit is hopelessly time barred.

2. Learned Counsel for defendant No.5 submits that primarily on the basis of the prayer clause, this is a Suit for Specific Performance against defendant No.1 and is time barred under Section 17(1) of the Limitation Act, 1908 inasmuch as after the demise of the plaintiffs predecessor in interest, as stated, the legal heirs were required to file Suit against defendant No.1 within a period of three years under Article 113 of the Limitation Act. He further submits that the property in question was purchased by defendant No.5 from defendant No.3 in the year 2005 to whom the same was sold by defendant No.4 and has no concern with the alleged agreement between the plaintiffs predecessor in interest and defendant No.1. Therefore, per learned Counsel Plaintiff is liable to be rejected in this matter in view of Section 3 of the Limitation Act.

3. On the other hand, learned Counsel for the plaintiffs submits that instant Suit is within time as the cause of action accrued to the plaintiffs on or about 15.03.2011 when the

plaintiffs discovered that their deceased father/husband had purchased the Suit Property through a Pay Order bearing No.770324 dated 05.11.1986 for which a Receipt was also issued by defendant No.1. He further submits that as soon as it came into their knowledge they approached defendant No.7 and obtained certain documents, which reflected that even the proceedings for transfer of the property in favour of their deceased father/husband were completed but due to sudden accidental death, the same could not materialize. He submits that Section 17 of the Limitation Act does not apply in this matter as the Suit has been filed as soon as it came into the knowledge of the plaintiff that the plot was purchased by their deceased father/husband.

4. Learned Counsel for defendant No.7 (DHA) submits that as per their record there are no documents available with them as relied upon by the plaintiff to the effect that the transfer was being executed by defendant No.1 in favour of their deceased father/husband. He has referred to the contents of written statement and supports the case of defendants.

5. Mr. Alamgir Shaikh, Advocate for defendant No.3 adopts the arguments of learned Counsel for defendant No.5.

6. I have heard all the learned Counsel and perused the record. Insofar as the plaintiffs case is concerned on an overall examination of a Plaint and the prayer clause, this Suit appears to be a Suit for Specific Performance on the basis of alleged purchase of the plot in question by means of a Pay Order No. 770324 dated 05.11.1986 and so also a Receipt purportedly issued by defendant No.1 to that effect. Though the title of the Suit states that it is for Declaration, Perpetual, Mandatory, Permanent Injunction and Possession, however, the case as setup in the Plaint and so also in the prayer clause, makes it as a Suit for Specific Performance. The plaintiffs' further case is that the limitation would run from the date of knowledge about the sale purchase transaction entered into by their predecessor in interest and defendant No.1, which according to them is 15.03.2011, whereas, Suit has been filed on 25.05.2011, hence within time. However, in this regard reference has to be made to Section 17(1)

of the Limitation Act as contended by the learned Counsel for defendant No.5, which reads as under:-

“17. **Effect of death before right to sue accrues.** (1) Where a person, who would, if he were, have a right to institute a Suit or make an application, dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased capable of instituting or making such Suit or application.

(2)

7. Perusal of the aforesaid provision reflects that where a person, who would, if he were, have a right to institute a Suit or make an application, dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased capable of instituting or making such Suit or application. The intent behind the aforesaid legislation is to provide an extended limitation to the legal heirs of a deceased but only to the extent when such legal heirs become capable of instituting a Suit or seeking such remedy. It nowhere provides that the legal heirs of a deceased can seek a legal remedy as and when it comes to their knowledge. The benefit of Section 17 is only available up to the age of majority, which means that such legal representative of the deceased becomes capable of taking up legal remedies, whereas, in this matter admittedly the Pay Order was prepared in the year 1986 and on such date (i.e.14.12.1986) when the predecessor-in-interest of the plaintiffs expired, the plaintiff No.1 i.e. widow of the deceased was approximately 29 years of age and therefore, she was capable of instituting and seeking legal remedy in respect of the dispute in question. Even otherwise all the other legal heirs attained majority age maximum by the year 2005, and therefore without prejudice to the above, even if it is assumed that they had an individual right as a legal heir protected under Section 17(1) of the Limitation Act, even then, they were required to institute Suit for Specific Performance within the period of three years from such attaining age of majority. It is an admitted position that Suit has been filed in the year 2011, which appears to be hopelessly time barred. The contention of the learned Counsel for the plaintiff that the limitation would run from the date of knowledge

is misconceived inasmuch as under Article 113 of the Limitation Act, a Suit for Specific Performance has to be instituted within a period of three years from the date fixed for performance and if no such date is fixed, then when the plaintiffs has noticed that performance is refused. The contention of the learned Counsel for the plaintiff that limitation of 3 years is to be counted from the date of knowledge is too far stretched and not tenable in law. The benefit under S.17(1) of the Limitation Act is only to the extent of being “capable” of seeking remedy on its own, and this does not mean that no limitation would run till a party gets knowledge about something giving rise to an occasion to sue. If that would have been the intent the legislature would have used such words in an express manner instead of using the words being “capable” which only has one meaning and that this that the legal heir attains majority and becomes capable in law.

8. It is a settled proposition of law that the Court is duty bound to see that whether the Suit which has been filed before it, is barred by any law or not. If a specific objection is taken through an application under Order VII Rule 11 CPC, or otherwise, the Court is bound to examine the plaint and reject it forthwith, if it appears from the statement made therein, to be barred by any law. The Court is duty bound by the use of the mandatory word “**Shall**” under Order VII Rule 11 CPC, to reject the plaint if it “**appears**” from the statement in the plaint to be barred by any law. Though the Counsel for the Plaintiff has tried to make an effort by arguing that while deciding an application under Order 7 Rule 11 CPC, the Court has to see and examine the contents of the plaint and not beyond that, whereas, this matter requires further evidence. However, with respect I am not impressed by such argument as the Court while examining the averments in the plaint is not obligated to accept as correct, any manifestly self-contradictory or wholly absurd statement of the plaintiff. See ***Haji Abdul Karim Versus Messers Florida Builders (Pvt) Limited (PLD 2012 SC 247)***. Whereas, even otherwise in this matter I have only taken and considered the averments in the plaint to decide the listed application. Be that as it may, since the question of limitation is to be taken up by the Court at the very first instance and on perusal of the plaint in question it appears that

the Suit is beyond the limitation period as prescribed under the Limitation Act. Mere vague assertions cannot be allowed to be accepted in such matters, as the question of limitation is a pivotal question which gives vested rights to the other contesting party and cannot be taken away in this manner. This in turn would be against the spirit of law, including the Limitation Act.

9. In the circumstances and the facts discussed hereinabove, I am of the view that the Suit of the Plaintiff is hopelessly time barred in terms of Article 113 read with section 17(1) of the Limitation Act, and therefore, the Plaint must be rejected. Accordingly the Application listed at Serial No.3 bearing CMA No. 398/2012 is allowed by rejecting the Plaint under Order VII Rule 11 C.P.C. The plaint is rejected.

J U D G E