

Civil Revision Application No.86 of 2017

Present: Mr. Justice Nazar Akbar

Versus

Date of judgment : **20.12.2018**

2. To be very precise, the facts of the case are that applicants filed civil suit No.128/2014 against the Respondent stating therein that on **09.01.1990** their father late Abdul Razzaq Patel had entered into a sale agreement with Respondent in respect of an immovable property bearing Plot No.332, admeasuring 550 sq. yds situated at Defence Housing Scheme No1, Malir Cantonment Karachi (the suit plot) against sale consideration of **Rs.2,50,000/-** which was duly

paid to the Respondent. The Respondent after payment has delivered peaceful possession of the suit plot to the applicants alongwith original documents with promise to transfer the suit plot in the name of applicants' father. On **25.12.2011** father of the applicants had expired and the applicants asked the Respondent to comply the terms of sale agreement but the Respondent did not perform his part of the contract despite of even having received full and final sale consideration, therefore, the applicant on **18.4.2014** filed suit for specific performance of contract dated **09.1.1990**.

3. Notice of the said suit was sent to the Respondent through all modes and the service was held good against the Respondent on **18.2.2015**. However, on **18.8.2015** the said suit was dismissed for non-prosecution, which was subsequently restored on **09.3.2016** on the application filed by the applicants. Since the Respondent has failed to appear before the trial Court, on **13.4.2017** he was debarred from filing written statement and the matter was declared exparte. On **23.4.2017** the applicant No.1 filed her affidavit-in-exparte proof. She was examined and in her examination-in-chief she produced only her affidavit-in-exparte proof and original sale agreement as Exh:P/1-A and P/1-B.

4. Learned trial Court after hearing learned counsel for the applicants, dismissed the suit by judgment dated **29.4.2016**. The appellants preferred civil appeal No.36/2016 challenging the said judgment before IV-Additional District Judge, Malir Karachi. The appeal was also dismissed by exparte judgment dated **09.02.2016**. Therefore, the applicants have preferred the instant Revision Application against concurrent dismissal of their suit by the two Courts.

5. I have heard learned counsel for the applicants and perused the record.

6. Learned counsel for the applicants against the concurrent findings of the two Courts on the question of limitation has only referred to **Article 113** of Qanun-e-Shahad Order whereby limitation for filing of suit for specific performance is three years from the date given in the agreement, if any, or from the date when the performance is refused by the seller/defendant. He has, however, failed to identify the date of knowledge of such refusal by the Respondent/defendant to perform his part of the contract. The bare reading of plaint shows that the date of agreement of sale is **09.01.1990** and the parties to the agreement are late father of the applicants and the Respondent namely Lt. Col. Nadeem Ahmed Khan. As stated in para-3 of the plaint, the applicants' father has died on **01.12.2011**. Admittedly their father has died after 21 years of the execution of so-called agreement of sale, the performance of which has been sought by the applicants through suit for specific performance on **18.4.2014**. The time for filing of the suit for specific performance has expired in the life time of their father. The applicants have not produced any documentation showing any correspondence between their deceased father and the Respondent, therefore, it cannot be said that on the death of their father the time for filing of the suit for specific performance has revived nor even this is a case of the applicants.

7. Learned counsel for the applicants contended that the applicant found these documents after the death of their father and applicants have also approached the Respondent/defendant before filing the suit. In para-3 of the plaint an attempt has been made to

cover time for filing the suit, therefore, Para-3 of the plaint is reproduced below:-

3. *That thereafter on 25.12.2011 the father of the Plaintiffs passed away and thereafter, the Plaintiffs No.1 to 4 asked again the Defendant to comply with the terms of sale agreement, but he again kept the Plaintiffs on different pretexts.*

Even in the above paragraph the applicants have not identified the date and time on which the applicants/plaintiffs have asked the Respondent/ defendant to comply with the terms of sale agreement nor they have identified that where they came across the Respondent/ defendant to make such oral request. The applicants have never sent even a formal letter asking the Respondent/ defendant to perform his part of the contract.

8. Besides above, on merit the perusal of record shows that in evidence only affidavit of exparte proof and a copy of original sale agreement dated **04.1.1990** were exhibited as exhibit P/1-A and exhibit P/1-B respectively. Though it was alleged that the applicants are in possession of original documents of suit property and site plan but even copies of the same had not been produced in evidence nor even copies of such documents had been annexed with the plaint. However, out of curiosity, I have examined the photocopies of documents annexed with the instant petition which have just surprised me. I have noted from the documents as follows:-

- i. The first page of so-called agreement of sale dated **09.1.1990** annexed with this revision application as annexure A/3 does not bear signature of the father of applicants.
- ii. National Identify Card number of Lt. Col. Nadeem Ahmed Khan as well as his residential address is not mentioned on

the agreement of sale. The address shown in sale agreement is "C/o HQ Log Area, 8 Liaquat Barracks, Karachi".

- iii. The entire payment amounting to **Rs.250,000/-** is shown to be in cash.
- iv. According to clause 8 of the sale agreement a Public Notice was required to invite objections, if any. But till date Public Notice was not published by the father of the applicants or the applicants.
- v. The applicants have not even produced the marginal witness of the sale agreement as well as receipt. Original receipt was not produced in Court when they approached the Court of law after exactly 24 years from the date of execution of so-called agreement of sale.
- vi. The copy of indenture of lease between the defendant and Military Estate Office is not even photocopy of the original. It is photocopy of **true copy** obtained by some lawyer from the office of Registrar on **23.2.2009** after more than **19 years** of the execution of so-called agreement of sale on **09.1.1999**.

9. In view of the above facts and law, the findings of the two Courts below that the suit was hopelessly time barred on the basis of the record were justified. All the above facts indicates that there is possibility of some mischief to the suit property, therefore, while dismissing this Revision Application, I am constrained to order that the office should send copy of this judgment to the Military Estate Office Karachi Circle, Karachi as well as Sub-Registrar T-Division-III, Karachi for their record and information.

JUDGE

Karachi
Dated: 20.12.2018