



Nop.1 had purchased House No.77 (House No.40) and shop No.7, Survey No.18, Drigh Road, Cantt Bazar, Karachi (the suit property) through an **Iqrarnama** from Respondent No.2 against the consideration of **Rs.70,000/-**. It is further averred that applicant and Respondent No.1 as well as other family members were residing in the suit property with their father namely Jan Muhammad. In the year **1982** two brothers of applicant namely Muhammad Rafiq and Muhammad Rasheed got separated with their families and four brothers lived together till the year **1990**. Thereafter he was shifted to first floor of the suit property. It is averred that father of applicant and Respondent No.1 had died on **17.7.1988** and left behind 9 legal heirs. The mother of applicant and Respondent No.1 has already died on **25.7.1963**. Respondents No.1 & 2 in collusion with each other fabricated sale agreement dated **16.11.1980** and executed a Gift deed dated **22.9.1987**, thereafter in collusion with Respondents No.3 & 4, Respondent No.1 got renewed lease deed in his favour. Since 1988 Respondent No.1 is utilizing shop No.7 for his business, but till today he has not given any single penny of rent.

2. On service of summon / notice Respondent No.1 filed an application under **Order VII Rule 11 CPC** before the trial Court. It is averred by the respondent No.1 that applicant has not come to the Court with clean hands as such he has no locus standi to file the suit. It is further averred that suit is barred by Limitation Act, 1908 and hit by Article 91 of the Limitation Act, 1908 so also under Section 25, 39, 42 & 56 of Specific Relief Act, 1877 and also hit by mis-joinder of necessary parties. No cause of action has accrued to the applicant against Respondent No.1 for filing suit. It is averred that trial Court has rightly rejected the plaint under **Order VII Rule 11 CPC** after perusal of record and facts narrated by Respondent

No.1. The applicant has deliberately failed to implead all the legal heirs as party in the said suit. It is averred that Respondent No.1 is lawful owner of the suit property as he has purchased the same from Respondent No.2 by way of sale agreement and also through a registered gift deed dated **22.9.1987** in presence of witnesses and thereafter the suit property was mutated in his name in the year **1988** and the lease has also been extended in his favour. The applicant is residing in the suit property as tenant and Respondent No.1 has requested him to vacate the said property, but he has failed to do so as such he filed **Rent Case No.09/2015**, which was dismissed and Respondent No.1 has preferred **FRA No.28/2015**.

4. Trial court after hearing the parties rejected the plaint of the suit filed by the applicant under **Order VII Rule 11 CPC**. The applicant preferred an appeal bearing Civil Appeal **No.23/2016** before IVth Additional District & Sessions Judge Karachi-East, which appeal was also dismissed. The applicant through this revision has impugned order dated **27.1.2016** passed by the trial Court and impugned judgment dated **28.7.2016**, passed by the appellate Court herein.

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

6. Learned counsel for the appellant through suit filed before the trial Court wanted a declaration of title in respect of the suit property in favour of his deceased father on the basis of Iqarnama dated **27.12.1979** executed by respondent No.2 in favour of the deceased. However, he has not explained in the pleadings that why his father did not get the Iqarnama converted into title document from

**27.12.1979** to **17.7.1988** during his lifetime. He had neither made all the other legal heirs party who could also be claimants by inheritance in case such declaration is granted by the Court. None of the legal heirs have ever filed any succession petition for claiming any share in the suit property by virtue of the so-called Iqrarnama discovered by the plaintiff in **2015** when he for the first time filed a suit on the basis of Iqrarnama after 36 years of its date of inception and 27 years of death of the beneficiary of Iqrarnama (his own father).

7. The two Courts below have rightly applied the provisions of Limitation Act, since through the suit the applicant has attempted to seek declaration of ownership of the suit property on the basis of unregistered document himself treating it only **Iqrarnama**. The executant of Iqrarnama (respondent No.2) has transferred the suit property through registered deed in favour of respondent No.1. The jurisdiction of Civil Court is subject to limitation and once the Court has come to the conclusion that the suit was not filed within the period of limitation, the Court has no authority to exercise its jurisdiction and it is mandatory for the Courts to dismiss the suit even if limitation has not been taken by the respondents as a defense.

8. In view of the above instant Revision Application is dismissed with no orders as to cost.

JUDGE

Karachi  
Dated:15.03.2019

Ayaz Gul