

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 2213 of 2018

Plaintiffs : Ahmed Furqan Mohsin and others, through Mr. Badar Alam, Advocate.

Defendants : Nasir Sultan Hasan and others, through Mr. Mehar Khan, Advocate.

Nos. 1 to 4

Dates of hearing : 06.12.2019.

ORDER

YOUSUF ALI SAYEED, J – In terms of CMA No.6883/2019 filed under Order VII Rule 11 CPC, the Defendants Nos. 1 to 4 seeks rejection of the Plaint.

2. The first ground advanced by learned Counsel for said Defendants during the course of arguments was that the Suit was barred by limitation, as Prayer (i) of the Plaint seeks a Declaration as to the Plaintiffs' entitlement under a Will dated 20.01.1987, which, per learned counsel, could have been sought within six years in terms of the Article 120 of the Limitation Act, 1908, whereas the Suit has been filed on 19.11.2018, with it being contended that the same is therefore barred and liable to be dismissed under Section 3 of that Act.
3. Secondly, it was stated that the description of the properties said to form the corpus of the estate, as set out in Paragraph 2 of the Plaint, was vague, as the plot numbers were not specified.

4. Thirdly, it was stated with reference to the joinder of the Pakistan Employees Cooperative Housing Society and Central Government Employees Cooperative Housing Society as the Defendants Nos. 6 and 7 respectively, that notices for the purpose of Section 70 of the Cooperative Housing Society Act, 1925 had not been issued to such Societies prior to the institution of the Suit and the Plaint was silent on the subject, with it being contended that Section 70 was applicable in the context of the Suit.
5. It was submitted that due to such reasons, the Plaint ought to be rejected.
6. In response, learned counsel for the Plaintiff pointed out that in reply to what had been stated in Paragraph 2 of the Plaint, the Defendants had conceded in their written statement that certain properties were in the name of the deceased father of the Parties and had also acknowledged possession of the title documents. He submitted that the Will dated 20.01.1987 was only to take effect upon the demise of the second wife of the deceased, namely Shamima Nasreen, who had passed away on 07.10.2014, as stated in the Paragraph 8 of the Plaint setting out of the cause of action, hence the Suit was within time even if limitation were to be reckoned with reference to Article 120 of the Limitation Act, 1908, as the prescribed period of 6 years would only begin to run from that date. He submitted that Section 70 of the Cooperative Societies Act, 1925 was not applicable, as the Suit was one for administration of the estate of the deceased and did not touch upon the business of those Societies, and such Objection could even otherwise only be taken by the Defendants No.6 and 7, who had not raised the same.

7. Having considered the matter, it is manifest that firstly the alleged lack of particulars in the pleadings does not of itself create a ground for rejection of the plaint. Furthermore, Section 70 of the Cooperative Societies Act, 1925 would only come into play when a suit touches upon the business of a society, which is not the case in the matter at hand. As to the point of limitation, it is apparent that for reckoning the period of limitation in respect of Prayer (i) of the Plaint relating to the Will in relation to the immovable property that is the subject thereof, the demise of Mst. Shamima Nasreen on 07.10.2014 would be the *terminus quo* as per the terms thereof, hence the Suit is within time under Article 120, as is said to be the applicable Article, when the prescribed period is reckoned accordingly. Even otherwise, the Plaintiff No.3 is said to be the real daughter of Mst. Shamima Nasreen and her claim would subsist independently of the prayer in relation to the Will, and the other prayers in respect of the remainder of the estate also proceed independently.

8. As such, it apparent that CMA No.6883/2019 is misconceived, and is dismissed accordingly.

JUDGE

Karachi
Dated _____