

Judgment Sheet

**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**

**Civil Revision No. S – 56 of 2006**

Date of hearing: 04-10-2021

Date of decision: 04-10-2021

Mr. Raj Kumar D. Rajput, Advocate for the Applicants.  
Mr. Abdul Ahad Buriro, Advocate for Respondent No.3.

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**J U D G M E N T**

**Muhammad Junaid Ghaffar, J.** – Through this Civil Revision, the Applicants have impugned judgment and decree dated 31-03-2006 passed by the Additional District Judge, Moro in Civil Appeal No.52 of 1992, whereby the judgment and decree dated 31-05-1992 and 06-06-1992, respectively, passed by the Senior Civil Judge, Moro in F.C. Suit No.12 of 1991, through which the Suit of the Applicants was decreed, have been set aside and the Suit has been dismissed.

2. Learned Counsel for the Applicants submits that the learned Appellate Court has erred in law by setting aside the judgment and decree of the Trial Court passed in favour of the Applicants on the ground that the Suit for possession was time barred, as according to him, the provision of Section 28 read with Article 144 of the Limitation Act has been held to be repugnant to the Injunctions of Islam by the Shariat Appellate Bench of the Hon'ble Supreme Court in the case reported as Maqbool Ahmed v. Government of Pakistan (1991 SCMR 2083), and therefore, the impugned judgment is liable to be set aside. He has also relied upon the subsequent amendment in the Limitation Act, whereby Article 144 stands omitted through an amended Act called "The Limitation (Amendment) Act, 1995" promulgated on 18-10-1995.

3. Respondent's Counsel has supported the impugned judgment and decree.

4. I have heard both the learned Counsel and perused the record.

5. The argument of the Applicants' Counsel, as above, does not seem to be a correct proposition of law inasmuch as in the judgment, which has

been relied upon by the Applicants' Counsel, it has been specifically held that the said decision shall take effect from 31-08-1991, and on this date, Section 28 of the Limitation Act shall cease to have effect. It would be advantageous to refer to the operative part of the final order of the Court, which reads as under:

*“For reasons recorded in two separate judgments, the Court is unanimous in holding that section 28 of the Limitation Act, 1908 (Act No.IX of 1908) is repugnant to the Injunctions of Islam in so far as it provided for extinguishment of the right in the property at the determination of the period prescribed for instituting a suit for possession of the said property. **It is further held that this decision shall take effect from 31st of August, 1991** and on this date section 28 aforesaid shall also cease to have effect.”*

6. The Suit of the Applicants was admittedly filed on 14-03-1991, hence, on that date, the law still held the field and the benefit of this judgment cannot be extended to the Applicants, therefore, the learned Appellate Court was fully justified in holding that the Suit for possession in respect of a sale deed of 1965 filed in 1991 was hopelessly time barred.

7. Be that as it may, it may also be observed that apparently the case of the Applicants does not fall under Article 144 of the Limitation Act per se inasmuch as the Applicants while filing their Suit never arrayed the seller who had purportedly executed sale deed in their favor and sought possession of the property from some strangers, who according to the Applicants, were in unlawful possession. While confronted, the Counsel could not satisfactorily respond as to why the seller and from whom the property was purchased was never arrayed as a defendant. It may also be observed that pendency of any litigation between the present Respondents and the said seller could not by itself enlarge the limitation, as in that case, the Applicants ought to have been vigilant and should have made an attempt to be joined in the pending proceedings; but in any case, cannot take shelter in the pendency of such proceedings to enlarge the limitation.

8. In view of hereinabove facts and circumstances of this case, no case for interference is made out as the Appellate Court has drawn a fair and legal conclusion; hence, this Civil Revision Application being misconceived is hereby **dismissed**.

J U D G E

Abdul Basit