

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S – 220 of 2010

Mian Mumtaz Rabbani v. Bahadur Ali and others

Date of hearing: **14-01-2022**

Date of announcement: **14-01-2022**

Mr. Tariq G Hanif Mangi, Advocate for the Applicant.
Mr. Manoj Kumar Tejwani, Advocate for private Respondents.
Mr. Ahmed Ali Shahani, Assistant Advocate General

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J U D G M E N T

Muhammad Junaid Ghaffar, J. – This Civil Revision Application has been filed by the Applicant impugning judgment dated 15.6.2010 passed by the 5th Additional District Judge, Sukkur in Civil Appeal No.28 of 2005, whereby the order and decree dated 21.5.2005 and 28.5.2005, respectively, passed by the 2nd Senior Civil Judge, Sukkur, in F.C. Suit No.76 of 2004, through which the application of Respondent under Order 7 Rule 11 CPC was allowed by rejecting the plaint has been maintained and the Appeal has been dismissed.

2. Heard both the Learned Counsel for the parties and perused the record.

3. This Civil Revision appears to be time barred by 24 days. I have gone through the contents of CMA No.839/2010 filed for condonation of delay, and convinced that the delay was beyond the control of the Applicant due to personal reasons; hence, the application is allowed by condoning the delay.

4. It appears that the Applicant filed a Suit for specific performance, declaration, cancellation and injunction in respect of an agreement of sale purportedly entered into with Respondent No.1 in January 1984 (there appears to be no specific date on the agreement itself). At the same time, the Plaintiff has also sought various other prayer(s) in respect of declaration along with cancellation. Apparently, in a suit for specific performance, no other prayer can be made as in essence such a suit is only for performance of an agreement and nothing else. This was perhaps done to overcome the

barrier of limitation and also for the reason that the Plaintiff had filed another Suit No. 75/2004 along with this Suit simultaneously as there is overlapping of the claim as well as pleadings. It is the case of the Plaintiff that he left for Islamabad permanently in 1989, whereas, his father who was all along supervising the said land acting as an attorney of Respondent No.1 sold the property already purchased by the Plaintiff. As noted it is also stated in the plaint and prayer that sale deed dated 13.3.1997 be also cancelled. This sale deed was admittedly executed by the father of the Plaintiff (as an attorney); hence, it is to be presumed that it was all along in the knowledge of the Plaintiff that suit land has been conveyed to someone else, and limitation had started running. The plea that since in the agreement it has been agreed that the property will be conveyed when the mortgage is redeemed, also appears to be an afterthought as the execution of sale deed by the father has not been denied; hence, the limitation at the maximum would start running from the date of sale deed if not from the date of the agreement in terms of Article 113 of the Limitation Act.

5. It is an admitted position that the sale deed in question was executed by the father of the Plaintiff in favor of Respondents by himself as an attorney. In terms of Article 113 of the Limitation Act, a Suit for specific performance can be filed within three years from the date fixed for performance of the agreement or if no such date is fixed, then from the date when performance is refused by a party. In this case the refusal date is the date on which the Plaintiff's father executed the sale deed in favor of Respondent No.1 as stated in the plaint by the Plaintiff himself. Reliance may be placed on the case of *Haji Abdul Karim*¹. Admittedly the suit has been filed beyond the period of limitation for which there is no justification. Even during arguments, the Applicants Counsel could not satisfactorily respond except that the trial court had mixed up the two Suits of the Plaintiff, whereas, the Suit was also for declaration; hence, he ought to have been permitted to lead evidence. However, this contention appears to be misconceived and unwarranted as the question of limitation cannot be overlooked merely for the reason that the title of the Suit is also for declaration and a prayer has also been made. Here, as noted, the suit is primarily of specific performance in which other reliefs have been sought which otherwise cannot be granted in such a suit. If at all he had a case, it was against his own father / attorney, which is not the case here. In fact,

¹ *Haji Abdul Karim v Florida Builders (Pvt.) Limited* (PLD 2012 SC 2470)

the father was never sued as a defendant nor was joined as a plaintiff. Lastly, it is also not appealable to a prudent mind that the father after executing the sale deed had not informed the Plaintiff immediately that he had done so. The averment that he was only informed by his father when he returned in 2003 from Islamabad is beyond comprehension. Hence, the matter was always in the knowledge of the plaintiff, who was required to be vigilant in pursuing his attempt of seeking specific performance of the agreement.

6. In view of hereinabove facts and circumstances of this case, it appears that both the Courts below have arrived at a fair and just conclusion; whereas, on the face of it the Suit was time barred for which no justifiable reason was assigned; hence, the plaint was liable to be rejected as being barred in law. Accordingly, this Civil Revision Application, being misconceived was **dismissed** by means of a short order on 14.1.2022 and these are the reasons thereof.

Abdul Basit

J U D G E