

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

**Civil Revision No. S – 125 of 2011**

**Taqi Muhammad Rajpar and others v.**

**Saeed Khan (deceased) through his legal heirs and others**

Date of hearing: **29-11-2021**

Date of order: **28-01-2022**

Mr. Mukesh Kumar G. Karara, Advocate for the Applicants.  
*Nemo* for Respondents.

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

**Muhammad Junaid Ghaffar, J.** – Through this Civil Revision Application, the Applicants have impugned order dated 21-06-2011 passed by the 1<sup>st</sup> Additional District Judge, Khairpur in Civil Misc. Application No.02 of 2010, whereby the application under Section 12(2) CPC, filed by the Applicants, has been dismissed.

2. Learned Counsel for the Applicant has argued that the learned Court has failed to appreciate the facts and law; that the Respondents had played fraud and obtained a collusive judgment and decree which was maintained till the Hon'ble Supreme Court; that the Applicant had no knowledge about these proceedings and as soon as it came into his knowledge the concerned court was approached with an application under Section 12(2) CPC which has been dismissed without appreciating the true facts; hence, this Revision Application merits consideration and be allowed by setting aside the impugned order and the court below be directed to record evidence and then decide the Application. As to filing of the said application before the 1<sup>st</sup> Appellate Court instead of the trial court he has relied upon the case reported as *Sahabzadi MAHARUNISA V Mst. GHULAM SUGHRAN (PLD 2016 SC 358)*.

3. None present for Respondents, whereas, on 8.2.2021 their Counsel had pleaded no instructions. I have heard the Applicants Counsel and perused the record.

4. The Applicant through application under section 12(2) CPC had challenged judgment and decree dated 27.8.1989 and 2.9.1989 respectively, passed by the Senior Civil Judge, Gambat in F.C. Suit No. 16 of 1983, upheld by the 1<sup>st</sup> Additional District Judge, Khairpur, vide judgment dated 29.6.1998 in Civil Appeal No.04 of 1989. The same was then upheld by dismissal of Civil Revision No.86 of 1998 vide judgment dated 03.5.1999 by this Court, against which leave to Appeal was refused by the Hon'ble Supreme Court vide order dated 27.4.2000 in Civil Petition of Leave to Appeal No.504-K of 1999. Not only this, even a review application also stands dismissed by the Hon'ble Supreme Court vide order dated 24.11.2000.

5. The relevant portion of the Impugned order through which the application under section 12(2) CPC has been dismissed reads as under;

*“6/- From perusal of above proceedings, it is matter of record that the proceedings in between decree holder and judgment debtors went up to the level of Hon'ble Supreme Court since from 1983 till 24.11.2000 for about 17 years. The present applicant though has claimed ownership and possession of the suit land have denied the knowledge of the proceedings in between parties for more than 17 years. Admittedly, this Court has passed the judgment and decree on 29.6.1998 and 03.08.1998 since from 1998 till 2010 the applicant was remained keep-mum and has also not agitated their valuable rights. The present application filed by the applicants on 18.5.2010 which is too-late. The applicant has not filed application under section V of limitation Act in support of his contention. It is contended by the learned counsel for the applicants that he has no knowledge about the judgments and decrees, therefore, when he came to know he has filed present application. From perusal of the contents of application, nothing is mentioned in the application u/s 12 (2) CPC that when it was came to the knowledge of applicant about the judgment and decree passed by this Court as-well-as Honourable High Court and Honourable Supreme Court. In para No.04 of the ground, it is mentioned that applicants have come to know about the judgment and decree and orders of the above suit first time recently, when the legal heirs of original plaintiffs and defendants are arrived at the suit land and claimed the same to be their own showing the various judgments, decrees and orders of the Court. No any specific date is mentioned that at what date the decree holder/plaintiff came at the land and obtained possession.*

*7/- The present application filed by the applicant only to defeat the judgments and orders passed by the Honourable High Court and Honourable Supreme Court. The final judgment and decree passed by this Court and same was confirmed up to the level of Honourable Supreme Court. The case law relied upon by the learned counsel for the applicant is distinguishable from the facts of the present case. It is well settled prevision of law, that the law supports vigilant and not the indolent. It is also well settle law that each and every date is to be explained but in the present case, the applicants have not explained that why they were remained keep silent and filed present application after expiry of ten years after passing of judgment of Honourable Supreme Court of Pakistan. The applicant, judgment debtors and decree holders were residing in one and same village then how the applicants were unaware from the proceedings*

in between the decree holders and judgment debtors for about 17 years up to the level of upper Court. “It has been held by Honourable Supreme Court of Pakistan in “2001 S C M R 1062 in case of Sarfraz v/s Muhammad Aslam Khan and others”, which is read as follows:

“In this behalf, it may be noted that although under the provision of Limitation Act no specific time has been prescribed for filing of application under section 12 (2) CPC, therefore, article 181 of Limitation Act be residuary will govern such proceedings according to which maximum period of three years has been prescribed for filing the application under section 12 (2) CPC”.

8/- In view what has been discussed above and in view of the above case authority, I'm of the opinion that the applicant has failed to prove that the judgment and decree obtained by the decree holder from the trial Court and so also from this Court through fraud and by misrepresentation of facts. Hence, in view of the above, the application u/s 12 (2) CPC merits no consideration and is hereby dismissed accordingly.”

6. As to the application filed under section 12(2) CPC is concerned, it is admittedly not in dispute that the same was hopelessly time barred in terms of Article 181<sup>1</sup> of the Limitation Act, which applies to such an application. Though it could be pleaded that the period of three years is to be counted from the date of knowledge of such judgment and decree which has been allegedly obtained with fraud and misrepresentation or when the cause of action accrues and to a certain extent the same may be true; however, this benefit is not applicable in the facts and circumstances of this case. It would be advantageous to refer to the relevant paragraphs of the application filed by the Applicant which apparently shows that the application in had was time barred;

*“That due to illiteracy of father of the applicants, a mutation entry in revenue record could not be kept, therefore, when in the year 2003, **the applicant No.1 came to know about the affairs**, he at once rushed to the Mukhtiarkar Revenue concerned and got a mutation entry kept in the revenue record of rights on the basis of above registered sale deed No.911 dated 3.10.1967, bearing entry No.116 dated 14.1.2003 [copy of the revenue entry No.116 dated 14.1.2003 of Form VII-B is annexed as annexure “O”].*

*That recently when the original plaintiffs and defendants who were in collusion with each other's, and the original purchaser of the suit land late Khair Muhammad expired away, therefore, the legal heirs of original plaintiffs and defendants malafidely arrived at the suit land showing the various judgments, decrees and orders and writ of possession of the Courts of law and claimed the suit property to be their own and tried to snatch the possession of the suit property from the applicants, but timely intervention of the notables their attempt foiled. Thus, the applicants have come to know that the plaintiffs and the defendants being in collusion with each other's, in order to usurp the valuable rights of the applicants over the suit property, have filed this suit*

<sup>1</sup> 181. Application for which no period of limitation is provided elsewhere in this Schedule or by section 48 of the Code of Civil Procedure, 1908.

Three years                      When the right to apply accrues.

*No.16/1983 titled “Plaintiff Mian Raza Muhammad vs Saeed Khan & others defendants” before learned trial Court, and through fraud and misrepresentation of the facts and suppressing the actual story, have obtained a fraudulent Judgment & decree dated 27.8.1989 and 2.9.1989 respectively, from learned trial Court.”*

7. Now the aforesaid contention of the Applicant itself shows that he was in knowledge of some adverse affairs in respect of the property in question at least in 2003. Admittedly the impugned judgement and decree was finally approved by the Hon’ble Supreme Court on 27.4.2000, against which the review was also dismissed on 24.11.2000. Though as stated in the impugned order, the Applicant had not pleaded as to specific date on which it came into his knowledge that some judgment has been passed fraudulently as alleged; but he has said so in his application under section 12(2) CPC that some adverse affairs were in his knowledge in 2003. In that case, even if the limitation is counted from 2003, the Application under section 12(2) CPC was hopelessly time barred, for which no plausible justification had come from the Applicants side. In fact, not even an application for condonation of any such limitation was ever filed, whereas, the accrual of cause of action was also pleaded vaguely, instead of specifically detailing all such dates as to make out a case for condonation of the delay. The impugned judgment has attained finality up to the level of Hon’ble Supreme Court, and even a review petition also stands dismissed; hence, the present proceedings appears to be an attempt to thwart the final execution of the said judgment and decree for which apparently no case is made out.

8. In view hereinabove facts and circumstances the Applicant has failed to make out a case of indulgence; hence, this Revision Application being misconceived is hereby **dismissed**.

**Dated: 28-01-2022**

Abdul Basit

J U D G E