

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI

**Suit No.227 of 2010**

Date	Order with Signature of Judge
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Present: ***Mr. Justice Nazar Akbar***

Plaintiff : Saiyid Usman Ahmed, through  
Mr. Barner Newton Barni, Advocate.

**Versus**

Defendant : Saiyid Sulaiman Ahmed. (Nemo).

Date of hearing : **13.04.2021**

Date of Decision : **24.05.2021**

**JUDGMENT**

**NAZAR AKBAR, J.** The Plaintiff had filed this suit on **28.01.2010** for Specific Performance against the Defendant.

2. Brief facts of the case are that the Plaintiff is a qualified medical practitioner and has good medical practice. The Plaintiff is the eldest of three siblings, the youngest sister resides at Hyderabad while his younger brother resides in London, England. The Plaintiff and the Defendant are real brothers. Their father died on **19.5.2009**. It was further averred that on 20.12.2006, the Plaintiff loaned some Gold including an amount of cash US\$-12000 to the Defendant for financing the Defendant's postgraduate studies and for purchasing an apartment, to which the Defendant entered into an agreement dated **20.12.2006** with the Plaintiff. In the said agreement the time was essence and a period of three years had been stipulated, therefore, the Plaintiff one month prior to expiry of said agreement on **21.11.2009** dispatched demand notice to the Defendant to re-compensate the said loan and on expiry of said period of three year,

the Plaintiff filed the instant suit for Specific Performance against the Defendant with the following prayers:

- a) To direct the defendant to perform his obligations stipulated in the agreement.
- b) To direct the defendant to render his obligation under the agreement and recuperate the Gold Bullion (Gold Biscuits of 100 Tolas, 24 Caret Gold) 24 Caret and US\$ 12000/- make good the value thereof at the prevailing market rate, in the alternative transfer his share in property viz. House No.286-C, Block-D, Unit No.6, Latifabad, Hyderabad, in the name of the plaintiff.
- c) Any other relief, that this Honourable Court deem fit and proper under the circumstances of the case.

3. Notice of the instant suit were sent to the Defendant on both addressed i.e Hyderabad and London as provided by the Plaintiff in the title of the plaint, but the same could not be served upon the Defendant, therefore, the instant matter was proceeded ex-parte against the Defendant. Subsequently, the Plaintiff filed affidavit-in-exparte proof on 01.06.2015.

4. I have heard learned counsel for the Plaintiff and perused the record.

5. Before looking at the merits of the exparte case, I have noted that the office has raised the following objections.

- i. The agreement/affidavit was executed between the parties at District / Hyderabad and the suit is to be filed before the Court of Sr. Civil Judge District Hyderabad having its jurisdiction.
- ii. According to para-2 of the plaint, the alleged sale agreements was executed on 20.12.2006 while the suit has been filed on 28.01.2010, it appears that the same is time barred by virtue of Article 113 of the Limitation Act.

6. The order dated **08.02.2010** suggests that only temporarily the office objection was overruled, no specific order was passed to hold

that Sindh High Court at Karachi has territorial jurisdiction to try and prosecute the suit. The plaintiff himself has claimed that this is a suit for specific performance and he has relied on an affidavit said to have been executed by the defendant at Hyderabad whereby according to the plaintiff, the defendant has agreed to perform some obligations and on failure of the defendant to perform the same are to be enforced through the Court of Law. On the face of it, all the executants of the alleged contract at the relevant time were at Hyderabad. Even the two witnesses to the contract are also residents of Hyderabad and the property mentioned in the contract in which share of defendant has been claimed by the plaintiff to be transferred to him is also situated in Hyderabad.

7. In view of the above clear admitted position about the place of execution of the contract and the location of the suit property, the suit ought to have been filed before Sr. Civil Judge at Hyderabad having territorial jurisdiction over the suit property. The reliance placed on the case law viz; *Kazi NOOR MOHAMMED..Vs..Pir ABDUL SATTAR JAN (P L D 1959 (W. P.) Karachi 348)* on **08.02.2010** by the Plaintiff at the time of hearing of office objection was misconceived as the facts of the case in hand are clearly distinguishable from the facts of the cited case. In the case of Kazi Noor Muhammad loan advanced by the plaintiff to the defendant was not to be treated as sale consideration for transfer of any immoveable property of the defendant. In the case in hand plaintiff has prayed for transfer of share of the defendant in the immoveable property bearing House No.286-C, Block-D, Unit No.6 Latifabad, Hyderabad to his name.

8. In view of the above facts and discussion office objection No.1 that the suit ought to have been filed at Hyderabad is upheld and without touching the merit of the case, it is hereby ordered that since this Court has no territorial jurisdiction to entertain this suit, the plaint is returned to the plaintiff in terms of **Order VII Rule 10** of the CPC.

9. As regard office objection No.2 regarding application of Article 113 of the Limitation Act. I am refraining from dilating upon this office objection since this Court has no territorial jurisdiction to entertain this suit. However, as and when if the plaint is presented to the Court in which the suit should have been instituted, the concerned Court may decide this office objection on merit.

10. With the order of return the plaint this suit is disposed of.

JUDGE

Karachi, Dated:24.05.2021

Ayaz Gul