

ORDER SHEET

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Civil Revision Application No. S – 107 of 2017

DATE	ORDER WITH SIGNATURE OF HON'BLE JUDGE
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1. For orders on CMA No.1009/2017 (Ex.A)
2. For Katcha Peshi.

15.12.2017

Mr. Muhammad Asim Malik, Advocate for the applicant.

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NADEEM AKHTAR, J : Through this Civil Revision Application, the applicant has impugned concurrent findings of the two Courts below whereby plaint of the Suit filed by him was rejected on the ground of limitation. Vide impugned order dated 30.08.2017 passed by the learned trial Court, plaint of F.C Suit No. Nil of 2017 filed by the applicant on 11.08.2017 against the respondents for specific performance and injunction praying that respondents 5(a) and 5(b) be directed to specifically perform the sale agreement dated 28.08.2004 executed by their late grandfather / predecessor-in-interest in his favour in respect of the subject land, was rejected by the learned trial Court by holding that the Suit having been filed after more than thirteen (13) years was hopelessly barred by time. Vide impugned judgment and decree dated 29.09.2017 passed by the learned appellate Court in Civil Appeal No. 149 of 2017, the said appeal filed by the applicant against rejection of his plaint was dismissed.

2. In his plaint it was pleaded by the applicant that Muhammad Yakoob, grandfather of respondents 5(a) and 5(b), had entered into a sale agreement with him on 28.08.2004 for sale of the subject land in consideration of Rs.70,000.00 ; after receiving part payment of Rs.50,000.00 from him, the said Muhammad Yakoob promised to execute sale deed in his favour upon receiving the balance sale consideration of Rs.20,000.00 ; the applicant requested him on various occasions to complete the sale, but he avoided to perform his agreed part of the contract for one reason or the other ; after his death, his grandsons / respondents 5(a) and 5(b) promised the applicant that the sale will be completed by them as soon as the land is mutated in their favour ; and, foti khata of the subject land was changed in favour of the said respondents on 13.01.2016, but they still did not fulfill their promise. In the

above background, the Suit was filed by the applicant on 11.08.2017 seeking specific performance of the sale agreement executed by the deceased admittedly on 28.08.2004.

3. Perusal of the plaint shows that the averments made therein in relation to the alleged insistence by the applicant and alleged refusal by the deceased and his grandsons, were vague and evasive. In his plaint, the applicant did not mention any date(s) on which the deceased was approached by him for completion of the sale and the deceased had refused or avoided to do so. It is surprising that he also did not disclose the date of death of the deceased vendor. In my opinion, the above dates would have been extremely relevant for the purpose of determining the limitation for filing the Suit for specific performance. This aspect of the case becomes more important in view of the fact that foti khata of the land was changed admittedly after more than 11 years of the sale agreement and the Suit was instituted after 13 years of the sale agreement. In the absence of the above dates, it could not be presumed that cause of action, if any, accrued to the applicant, continued from time to time. Moreover, in paragraph 10 of the plaint, which relates to accrual of cause of action, it was not pleaded by the applicant that cause of action had accrued to him originally against the deceased vendor which continued from time to time against the deceased and then against his legal heirs, and instead it was pleaded by him in the said paragraph that cause of action had accrued to him against respondents 5(a) and 5(b) on 07.01.2017 when they refused to perform their part of the contract.

4. In view of the above, I am of the considered view that the impugned order passed by the learned trial Court and the impugned judgment and decree passed by learned appellate Court do not call for any interference by this Court. Accordingly, this Civil Revision Application and listed application are dismissed in limine with no order as to costs.

JUDGE