

Judgment Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Civil Revision Application No.184 of 2010

Applicant : Muhammad Anwar Khan,
through Raja H. R. Naurang Advocate.

Respondents : None for respondent No.1.
Mr. Mukhtiar Ahmed Khanzada,
State Counsel for the official respondents.

Date of hearing : 20.03.2013.

J U D G M E N T

NADEEM AKHTAR, J.– Through this Civil Revision Application, the applicant has impugned the concurrent findings against him by the trial court and the appellate court. By the impugned judgment dated 10.07.2009 and decree dated 20.07.2009, Suit No.120/2007 filed by the applicant against the respondents for declaration, specific performance and mandatory and permanent injunction, was dismissed by the trial court, as being barred by limitation. Civil Appeal No.150/2009 filed by the applicant against the said judgment and decree was dismissed by the appellate court vide impugned judgment dated 24.04.2010 and decree dated 22.05.2010.

2. The relevant facts of the case, as averred by the applicant, are that he filed F.C. Suit No.120/2007 against the respondents in the Court of IInd Senior Civil Judge, Hyderabad, for declaration, specific performance of contract and mandatory and permanent injunction. The case of the applicant was that respondent No.1 entered into an oral agreement with him in the year 1987, whereby she agreed to sell her open Plot bearing No.1-A, measuring 1,350 sq. yds., out of R.S. No.268, situated in Deh Sari, Taluka Qasimabad, District Hyderabad, hereinafter referred to as “**the plot**”. The sale consideration was agreed at Rs.90,000.00, which was paid by the applicant to respondent No.1 in full and final settlement in the presence of witnesses. After receiving the agreed sale consideration from the applicant, respondent No.1 handed over the possession of the plot to him in the presence of witnesses, and promised to execute the sale deed in his favour upon clearance and finalization of documents. After taking over possession of the plot, the applicant raised construction thereon and started living therein with his family. He kept on reminding respondent No.1 to complete the sale in his favour, but she avoided and finally six months prior to the filing of the Suit, she refused to perform her

agreed part of the contract by demanding an additional amount Rs.50,000.00 from him. The applicant again tried to contact respondent No.1 two months before filing the Suit, but it transpired that she had shifted to some unknown place.

3. The Suit was filed on 16.04.2007 by the applicant in the above background praying that the oral agreement of 1987 between him and respondent No.1 in respect of the plot be declared as valid and legal ; respondent No.1 be directed to execute the sale deed in respect of the plot in his favour, and in case of her failure, the Nazir be directed to do the needful ; respondent No.1 be restrained permanently from selling, transferring, etc. the plot, and also from dispossessing him therefrom ; and, official respondents 2 and 3 be restrained from registering any document in respect of the plot, or from changing its title. Respondent No.1 contested the Suit by filing her written statement, wherein she denied the alleged oral agreement of 1987 with the applicant, and the payment of the alleged sale consideration by the applicant. She asserted that she never agreed to sell the plot to the applicant, and the applicant had illegally occupied the plot. It was pleaded by her that the Suit was hopelessly barred by limitation, and was also barred under Section 42 of the Specific Relief Act, 1877.

4. Seven Issues were settled by the trial court, out of which Issue No.1 was "*Whether the suit filed by the plaintiff is hopelessly time barred ?*". The parties led their respective evidence. The applicant examined himself as PW-1, and two other witnesses ; namely, Moula Bux Lashari and Haji Ameen as PW-2 and PW-3, respectively, who, according to the applicant, were present when respondent No.1 had entered into the oral agreement to sell with him, received the entire sale consideration from him, and handed over possession of the plot to him. Respondent No.1 examined herself as DW-1, and one Muhammad Saleem Sajid as DW-2. After hearing the parties, Issue No.1 regarding limitation was decided by the trial court in the affirmative, by holding that the applicant's Suit was barred by limitation. It was further held by the trial court that in view of the findings on Issue No.1, all other Issues had become redundant ; and, if the other Issues were decided in favour of the applicant, even then his Suit, being barred by time, would fail. Accordingly, the applicant's Suit was dismissed by the trial court. The judgment and decree of the trial court were maintained by the appellate court by dismissing the appeal filed thereagainst by the applicant.

5. Raja H. R. Naurang, learned counsel for the applicant, contended that the averments made by the applicant in his plaint regarding the cause of action accrued to him, were not appreciated by the courts below. He submitted that the applicant had stated in his plaint that he had requested respondent No.1

time and again to complete the sale in his favour, but she avoided to do so, and six months prior to the filing of the Suit, she finally refused to complete the sale. He further submitted that the cause of action accrued to the applicant on every such occasion when respondent No.1 avoided to complete the sale, and it accrued finally six months prior to the filing of the Suit, when she refused to perform her agreed part of the contract. It was urged that there was sufficient evidence on record to support the contention of the applicant, but the same was ignored by both the courts below. It was further urged that this is a case of mis-reading and non-reading of evidence, and as such the impugned judgments and decrees are liable to be set aside by this Court. No other submission was made on behalf of the applicant by his learned counsel.

6. Respondent No.1 and her counsel were called absent. The learned State Counsel representing the official respondents 2 and 3, supported the impugned judgments and decrees. He, however, submitted that this Court may pass order as may be deemed fit and proper in the facts and circumstances of this case, and the official respondents shall be bound by such order.

7. I have examined the material on record, particularly the plaint and the impugned judgments, and have also heard the learned counsel for the applicant. The applicant had claimed that there was an oral agreement between him and respondent No.1 in the year 1987 in respect of the plot, and at the time of the said oral agreement, the possession of the plot was handed over to him by respondent No.1 when he paid the agreed sale consideration to her. However, no specific date and month were disclosed in the plaint in respect of the alleged transaction and delivery of possession. The case set up by him was that he approached respondent No.1 "*from time to time*" for completing the sale in his favour, "*but on all occasions*" respondent No.1 kept him on false hopes. Again, the dates when he purportedly approached respondent No.1 and the dates when she allegedly avoided to complete the sale, were not disclosed by him in the plaint. In his evidence also, he as well as his witnesses failed to substantiate the above assertions as not a single date was disclosed by any of them between the period from 1987 till 2007. The burden to prove these assertions was solely on the applicant, but he miserably failed in discharging the same.

8. In paragraph 7 of the plaint, the applicant had alleged that six months prior to the filing of the Suit, respondent No.1 demanded from him an additional amount of Rs.50,000.00 and refused to perform her agreed part of the contract. On the basis of such alleged refusal by respondent No.1, the Suit was filed twenty (20) years after the alleged oral agreement. In the same paragraph, it was admitted by the applicant that he came to know about the said alleged

refusal by respondent No.1 about six months back when “*after a very long period of years*” he went to her house. Despite such admission in the plaint, the extraordinary long delay of twenty (20) years was not explained by the applicant either in his plaint or in his evidence. Thus, it is quite clear that the assertion regarding refusal by respondent No.1 six months before filing the Suit, was made by the applicant only in order to bring his Suit within limitation. If respondent No.1 had actually refused to perform her agreed part of the contract in the year 2007, as alleged by the applicant, even then the applicant’s Suit would have been barred by time as the prescribed period of limitation had expired long ago.

9. In view of the above, I am of the opinion that the material on record was duly appreciated by both the courts below in its true perspective, and their concurrent findings are neither perverse nor patently against the evidence, nor the evidence was misread, nor any material piece of evidence had been ignored by the learned courts below, and there was no jurisdictional error in the proceedings. The findings of both the learned lower courts are based on correct appreciation of evidence, and full and proper application of mind. I do not find any infirmity or illegality in the impugned judgments and decrees, which in my humble opinion, do not call for any interference by this Court. This Civil Revision Application is, therefore, liable to be dismissed.

The above are the reasons of the short order announced by me on 20.03.2013, whereby this Civil Revision Application was dismissed.

J U D G E