

**ORDERSHEET**  
**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**  
**Civil Revision Application No. S-15 of 2010**

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<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
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Hearing of main case.  
(Notice issued to respondents)

**Date of Hearing: 20.09.2021**

**Date of Order: 20.09.2021**

Mr.Illahi Bakhsh Jamali, Advocate for Applicants.

M/s Rehmatullah Mangnejo and Muhammad Farooque  
Rajper Advocates for legal heirs of respondents Nos. 2 & 3.

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

Through this Revision Application, the Applicants have impugned Judgment dated 04.11.2009 passed in Civil Appeal No. 03 of 2009 through which the order of the trial Court dated 17.12.2008 passed in F. C. Suit No.53 of 2007 rejecting the plaint in Suit as being time barred under Order 7 Rule 11 CPC, has been maintained.

Learned counsel for Applicants has referred to agreement dated 22.07.1984 and submits that respondent No.1 while executing it had admitted that there is some dispute in respect of the Suit property and, therefore, he will execute the sale deed as soon as the dispute is resolved, and therefore, according to him the Suit filed by the Applicants in 2007 was not time barred. He submits that the Applicants also approached the Appellate Court in a civil dispute between Respondent No.1 and Respondents Nos. 2 and 3, but his application under Order 1 Rule 10 CPC was dismissed, and thereafter he filed his own suit wherein plaint has been rejected. He has prayed for setting aside the impugned judgments and remand of the matter to the trial Court to decide the same on merits in accordance with law.

Learned counsel for respondents Nos. 2 and 3 have supported the Judgment and submit that respondent No.1 was never owner of the

property, whereas, the dispute between him and these respondents now stand resolved, therefore, no case is made out.

Insofar as respondent No.1 is concerned, he has failed to appear though served through publication in daily Kawish dated 30.04.2021.

I have heard all the learned counsel and perused the record. It appears that a suit for specific performance was filed by the Applicants on 05.12.2007 in respect of agreement dated 22.07.1984 and though apparently it was filed belatedly; however, it is the Applicants' case that in the very agreement it was admitted by respondent No.1 that the sale deed would be executed once the dispute is resolved and no date was fixed for performance of the contract. In terms of Article 113 of the Limitation Act, 1908, the limitation for filing a suit for specific performance is three years from the date fixed for the performance, or if no date is fixed, when the plaintiff has notice that performance is refused. Admittedly, the case of the Applicants falls within the second part of Article 113 *ibid*; as no date was fixed for performance of the contract. In this case the Applicants stance has been that that the dispute was kept pending and was never resolved, therefore, sale deed was never executed, whereas, as soon as it came to his knowledge that some dispute is pending between respondents Nos. 1, 2 and 3 and they are entering into some settlement depriving the Applicants from their lawful right, they approached the said Court as interveners but their application was dismissed. Subsequently, the Applicants filed an independent Suit for specific performance. After perusal of the record and the contents of the plaint, in all fairness, both the Courts below ought to have allowed the Applicants to lead evidence instead of rejecting the plaint summarily, as the very issue of limitation could not have been decided and settled merely on the basis of objection raised by the Respondents / Defendants. The plaint could only be rejected if it is reflected from its contents that the same is barred by law or is otherwise incompetent. In this case it was never reflected from the plaint that the suit was time barred merely for the reason that it was filed in 2007 in respect of an agreement pertaining to the year 1984. This was not a correct approach of the Courts below. It has also been noticed that the Appellate Court even went to the extent that since the property was never owned by respondent No.1, and the matter stands decided in favour of

respondents Nos.2 and 2 in some proceedings, therefore, the very Suit of the Applicants was otherwise not maintainable. This is totally an incorrect approach and against the law as the plaint of a Plaintiff who was not a party to the dispute between Respondent No.1, 2 & 3, could not be have been rejected merely on this apprehension. Suffice it to say that the question of whether a suit is maintainable or not is moot with respect to whether or not a plaint is to be rejected as being barred by law. Both are a different species altogether and it may well be that a plaint is not rejected in terms of Order 7 Rule 11 CPC but the suit is dismissed eventually as not maintainable for a possible host of reasons<sup>1</sup>.

In view of hereinabove facts and circumstances of this case this Court is of the opinion that both the Courts below have erred in law by rejecting the plaint of Applicants as being time barred inasmuch as in the given facts the Applicants ought to have been allowed to lead evidence to prove that their Suit was within time in terms of second part of section 113 of the Limitation Act, 1908. Accordingly, by means of a short order on 20.9.2021 the impugned judgment(s) of the Courts below dated 17.12.2008 and 04.11.2009 were set aside, and matter was remanded to the trial Court to decide the same in accordance with law, and these are the reasons thereof.

JUDGE

Irfan/PA.

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<sup>1</sup>Al-Meezan Investment Management Company Ltd & Others V. WAPDA First Sukuk Company Limited, Lahore, etc (PLD 2017 SC 1)