

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P.No.D-2790 of 2016

DATE ORDER WITH SIGNATURE OF JUDGE

Ho. of call/priority

1. For hearing of MA 14889/16
2. For orders on M.A 12703/17
3. For hearing of main case

20.05.2019

Petitioners present in person.
Mr. Arbab Ali Hakro, Advocate for respondents No.1 & 2.
Mr. Jamshed Lucas Khokhar, Advocate for respondents No.4,6
& 9.
Mr. Alisha Bachayo Soomro, A.A.G.

Mr. Kanji Mal Meghwar Advocate has filed power on behalf of respondent No.2; taken on record.

Petitioners are aggrieved by the order dated 22.01.2015 passed by learned 1st Senior Civil Judge, Mirpurkhas in F.C. Suit No.266 of 2014 dismissing their application under order 7 Rule 11 C.P.C and an order dated 23.09.2016 passed by learned District Judge, Mirpurkhas dismissing their Revision Application filed against the aforesaid order.

As per brief facts, respondents No.1 and 2 namely Tipu Sultan and Ghazanfar Ali have filed a Suit in the court of 1st Senior Civil Judge, Mirpurkhas for Declaration, Cancellation of Sale & Gift Deeds, Possession, Mesne Profits, Permanent and Mandatory Injunctions in respect of agricultural land comprising Survey Nos.4, 7/1;2, 8/1;2, 15/1;2, 16/1;2, 17, 23, 29, 30/1;2, 31/1, 177/1;2, 178 admeasuring 65-03 acres in deh 107-A Taluka Shuja Abad, District Mirpurkhas, on the facts that the suit land originally belonged to late Ghulam Muhammad, who was brother of their father namely Sultan Ahmed and had died issueless in the year 1994. He had two other brothers namely Gohar Khan and Ali Ahmed Khan but they had expired before his death as such entire suit land devolved on their father being his surviving legal heir, who died in September, 1996. Resultantly the suit land was inherited by them and other his legal heirs who are arrayed in the suit as defendants No.4 & 5 and their late sister Mst. Farhat survived by defendants No.6 to 8. With consent and permission of all legal heirs of Sultan Ahmed, late Shamshad Ahmed who was father of petitioners/defendants No.1 & 2 and after his death

in the year 2005 his sons, the petitioners, used to manage the suit land. Respondent No.1, the plaintiff, was in police department and used to remain mostly outside of his village. After his retirement in the year 2009 he asked his brothers, defendants No.4 and 5 for his share but they always kept him on hollow hopes. Suspecting fishy, he made an inquiry and came to know that the suit land was shown to have been sold to late Shamshad Ahmed by late Ghulam Muhammad through registered sale deeds in the years 1995 and subsequently the said late Shamshad Ahmed had gifted the suit property to his sons / petitioners. He suspected signature of his uncle late Ghulam Muhammad on sale deeds to be forged one and hence come to believe that through fraud and fabrication, the petitioners had become owner of the suit land. He approached the petitioners and demanded his land but they refused which led him to file aforesaid suit against them seeking, *inter alia*, declaration to the effect that the registered sale deeds are illegal, fraudulent and void abinitio.

The petitioners after service filed written statements contesting the averments in the plaint, and also filed an application w/o 7 Rule 11 CPC for rejection of the plaint on the ground that the plaintiffs have no cause of action to file the suit; the suit is barred by Limitation Act; that the Suit is barred under C.P.C, Transfer of Property Act, Contract Act, Specific Relief Act, Land Revenue Act, Qanun-e-Shahdat Order and Registration Act; that the suit has been filed with mala fide intention, but without success and the application has been dismissed vide impugned orders as stated above.

Petitioner No.1 who himself is a practicing advocate has argued that the suit filed by the respondents is time barred as the alleged sale deeds were executed in 1995 whereas the suit was filed on 17.02.2015 after almost 20 years; that the learned courts below have not considered this aspect of the case properly and have rejected his application on extraneous material; that there are registered documents in their favour which cannot be cancelled or challenged by the respondents in the suit; that they are in possession of suit land since 1995 and the respondents being residents of the same area have remained aware of the said fact but they never challenged their ownership or possession of the land and only when they launched a housing scheme on the suit land which increased the value of the land, the respondents became greedy and with evil eye have filed suit, which does not disclose any cause of action and the plaint is therefore liable to be rejected. In support of his contentions petitioner No.1 has relied upon the cases reported as 2014 SCMR 513, 2008 SCMR 677, 2017 YLR 1525 and 2015 S.LJ 394.

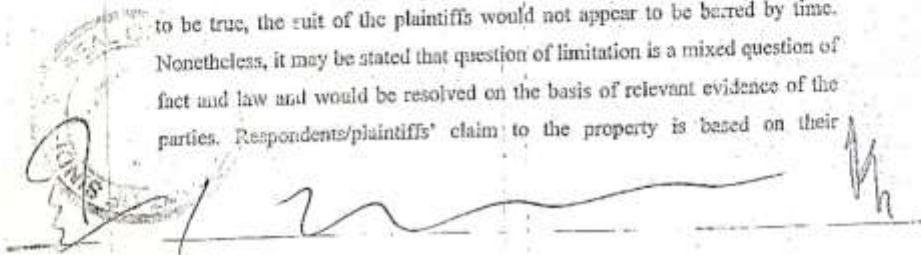


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On the other hand learned Counsel for respondents No.1 & 2 has opposed this petition and submitted that it is not maintainable; that there are concurrent findings against the petitioners; that question of limitation is a mixed question of law and fact and cannot be sorted out unless the evidence is recorded; that the respondents are legal heirs of late Sultan Ahmed, the brother of late Ghulam Muhammad, the original owner, and are entitled to their respective share from which they have been deprived through fraud on the basis of purported sale deeds which bear fabricated signatures of late Ghulam Muhammad; that such questions cannot be summarily determined unless the parties are allowed to adduce their respective evidence. In support of his submissions, learned counsel has relied upon the cases reported as 2005 CLC 1422, 2013 SCMR 1493, PLD 2002 Supreme Court 823, 2006 SCMR 489, 2001 SCMR 953, 2013 YLR 2829, 2002 MLD 1655 and 2008 YLR 1287.

Learned Additional Advocate General Sindh has supported the impugned orders.

We have considered submission of the parties and perused the material available on record including the case law cited at bar. Needles to state that while deciding the application under order 7 Rule 1: CPC, only the averments of the plaint are to be taken into consideration and the plaint would be rejected when the court finds that even if all the averments of the plaint are presumed to be correct, the plaintiff(s) would not be entitled to any relief. Further, it may be added that the plaint would be liable to be rejected only when it does not disclose any cause of action; where relief claimed is undervalued and despite time given to the plaintiff, he fails to correct the valuation within time; where the relief is properly valued but the paper on which plaint is written is insufficiently stamped and the plaintiff on being required by the court to supply the requisite stamp papers within time fails to do so; or where the suit appears to be barred by any law. In the present case, none of the grounds seems to have been attracted. The respondents/plaintiffs have raised multiple issues of facts in regard to death of original owner namely Ghulam Muhammad, and his purported signature on the registered instruments conveying the title of the property in favour of father of the petitioners. They have stated specifically in para 26 of the plaint that they gained knowledge of such facts in the year 2014, and if such statement of the plaintiffs is presumed to be true, the suit of the plaintiffs would not appear to be barred by time. Nonetheless, it may be stated that question of limitation is a mixed question of fact and law and would be resolved on the basis of relevant evidence of the parties. Respondents/plaintiffs' claim to the property is based on their



The block contains a handwritten signature in black ink, which appears to be 'M. H. Khan'. To the left of the signature is a circular official stamp. The stamp contains the text 'ADDITIONAL ADVOCATE GENERAL SINDH' around the perimeter and 'SINDH' in the center. The signature and stamp are positioned at the bottom of the page, below the main body of text.

assertion of being legal heirs of late Sultan Ahmed, the brother of original owner late Ghulam Muhammad who was issueless and therefore he had statedly inherited his property after his death. Unless such claim is put to the test of trial, the respondents cannot be nonsuited on any technical ground. It may also be added here that this court under the constitutional jurisdiction would interfere in the concurrent findings of the courts below only when it is shown that the same are illegal, perverse and are based on the material which has no relevancy with the facts of the case. A perusal of the impugned orders does not lead to any such position. Learned trial court after advertng to all relevant facts has dismissed the application and in support of such findings has given cogent reasons and has further drawn guidance from the case law reported as 2006 SCMR 489 and PLD 2003 Karachi 171 in this respect. The District Judge in Civil Revision has reexamined the record and has confirmed those findings by giving its own reasons, which do not seem to be unsustainable. In such a situation, we do not find any reason to interfere in the same findings and reject the plaint on the ground agitated by the petitioners. Consequently, this petition is dismissed along with listed applications leaving the parties to bear their own cost. The trial court however is directed to expedite the trial and conclude the same within a period of six months from today.

Sd/- MUHAMMAD IQBAL KALHORO,
JUDGE. 30.5.2019.

Sd/- FAHIM AHMED SIDDIQUI,
JUDGE. 30.5.2019.

CERTIFIED TO BE TRUE COPY

ASSY. CLERK



