

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

R.A. No.317 of 2011

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DATE ORDER WITH SIGNATURE OF JUDGE

16.10.2015.

Mr. Sunder Das Advocate for the applicant
Mr. Ashfaque Nabi Qazi Assistant A.G

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This Revision Application has been filed against concurrent findings of the two courts below. The counsel for the applicant has effected service upon the respondents in alternate mode by way of publication however no one has appeared on behalf of the respondents except Mr. Ashfaque Nabi Qazi Assistant A.G who is appearing for the official respondents. The counsel for the applicant has argued following points:-

1. That the suit is barred by time.
2. That first three issues and issues No.4,5 & 6 were decided by the trial court through common reasoning and that is barred u/o XX rule 5 CPC;
3. That the appellate forum has not decided the controversy after framing points for determination.

2. In so far as first point is concerned, I have perused the plaint where the cause of action set in para No.9 which is said to have been accrued one month back from the date of filing of the suit. The counsel has also gone through the agreement which is available at page 87 and he concedes that

there is no time prescribed for finalization of the sale transaction, hence he submits that in terms of Article 113 of the Limitation Act, the date of performance is to be reckoned from the date of refusal. He submits that no notice of the willingness of the respondent No.1 was issued. In so far as cause of action is concerned that has not been disturbed through evidence that on its refusal by the applicant, the respondent No.1/plaintiff came to the court. The time for filing this suit is to be reckoned from the date of refusal and since it has not been disturbed, therefore, no other findings can be reached than those reached by the trial court and appellate court that suit was well within time, as it was filed within three years from the date it is said to have occurred.

3. Next point that has been raised by the applicant relates to the decision of the issues independently, I have gone through order XX rule 5 CPC which provides that court is required to give decision on each issue separately. This is not requirement of law that each issue is to be decided separately and not cumulatively. If those issues are somehow interrelated and decided cumulatively and findings in relation to each and every issue are available, then the Judgment of the lower court can hardly be interfered. I am not convinced with the arguments of learned counsel for the applicant that each issue is to be decided separately and that it cannot be decided cumulatively and by common findings in relation to some of the issues.

4. Similarly in so far as points for determination are concerned, in terms of rule 41 rule 31 CPC, the substantial reasoning and findings are to be given by the appellate forum and the framing of the points for

determination is not a factor alone which contributes towards illegality or irregularity, if the Judgment otherwise provides reasoning in relation to the issues or points for determination involved in the case.

5. It has come in evidence that after the execution of agreement and payment of Rs.90,000/- the remaining amount of Rs.22750/- was agreed to be paid at the time of execution of registered sale deed. It has also come in evidence that the respondent is in possession of the property since the date of execution of sale agreement. It is also an admission that the share of the applicant is to the extent of 5.25 1/2 acre. It has also come in evidence that land revenue receipts were produced to prove his possession over the suit property relating to different years followed after possession. Rubkari issued by Mukhtiarkar Taluka Hala also produced as Ex.60/B. These facts and documents are not disputed by the appellant in the cross. Such undisputed possession without any objection on behalf of the co-owners is a sufficient proof of not only the execution of agreement but also the division of the land. These facts which have now been challenged have come up as a concurrent findings of two courts below and hence the question of joint properties at this stage to deny the specific performance which otherwise stands proved cannot be appreciated. Agreement otherwise itself is clear which also provides specific survey numbers which agreement is available at page 87. The connected revision application also impugned an order dated 23.8.2011 in terms whereof the order passed by the Executing Court whereby the Execution Application was allowed was challenged and the appeal was dismissed in view of the fact that the order impugned in this revision application, which is an appellate order against the judgment and decree, was dismissed and hence the other appeal (in



connected Revision) before the District & Sessions Judge became infructuous in view of such order which is impugned here. Hence no interference is required in respect of both the orders and the revision applications are dismissed.

6. Since these points have been decided by the two courts below in concurrent way, therefore, under revisional jurisdiction these points can hardly be appreciated.

7. In view of the above, instant Revision Applications are dismissed alongwith pending applications.

Sd- Muhammad Shafi Siddiqui
Judge.