

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

IInd Appeal No.5-33 of 2022

Ghulam Akhtar & others another ----- Appellants

Versus

Province of Sindh & others ----- Respondents

Date of hearing & order: 28.11.2022.

Mr. Mukhtiar Ahmed, Advocate for appellants.

Mr. Allah Bachayo Soomro Additional AG along with
Mr. Amjad Mukhtiarkar Dadu.

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JUDGMENT

ADNAN-UL-KARIM MEMON, J. Through this IInd Appeal, appellants are asking for setting aside the Judgment and Decree dated 11.03.2022 & 16.03.2022 respectively passed by learned Additional District Judge-I, Dadu in Civil Appeal No.146 of 2021 (Re-Ghulam Akhtar & others v. Province of Sindh & others) filed against the order and decree dated 04.11.2021 and 08.11.2021 respectively whereby the application under Order VII Rule 11 C.P.C moved by defendants / respondents 10 & 11 was allowed and the plaint of appellants/plaintiffs was rejected.

2. The appellants have averred that they filed suit for declaration, cancellation, possession, mesne profit, and permanent injunction before the learned Senior Civil Judge-II, Mehar @ Dadu. The respondents/defendants No.10 & 11 filed application under order VII Rule 11 C.P.C for rejection of plain inter-alia on the ground that the suit was/is time barred, learned trial court after hearing the parties rejected the plaint vide Order and Decree dated 04.11.2021 and 08.11.2021 respectively by observing that after the demise of Muhammad Paryal in the year 1943, the record of above entries was kept on changing, however legal heirs of said Muhammad Paryal failed to challenge such revenue entries at relevant time; further on 16th May 1978, father of plaintiffs/appellants Khan Muhammad executed sale deed with regard to subject survey numbers, but he failed to challenge earlier sale deed executed on 13.02.1957 in his lifetime in favour of Muhammad Bux father of many respondents/defendants; and, the Suit was filed on 19.04.2021 whereby plaintiffs/appellants sought cancellation of entries No.419, 413, 372, 369, 365, 359, 354, 254, 360, 361, 210, 371, mutated in record on 02.02.2017, for the reason of burning of previous

record in the year 2007, so after acquiring knowledge of such proceedings, cancellation of document ought to have been challenged in terms of Article 91 of Limitation Act within the period of three years but they failed. The aforesaid judgment and decree were assailed in Civil Appeal No.146 of 2022 before the appellate court who concurred with the view of trial court on the analogy that more than 30 years old documents could not be challenged having attached presumption of genuineness in terms of Article 100 of Qanun-e-Shahadat Order, 1984.

3. Perusal of record reflects that vide order dated 28.10.2022 notice was ordered to be issued to otherside including Mukhtiarkar concerned with direction to appear along with original record on 31.10.2022. On 31.10.2022 Mukhtiarkar appeared but the private respondents did not appear and chose to remain absent; hence the notice was repeated through all modes including publication for 21.11.2022; that on 21.11.2022 none appeared for respondents and the matter was adjourned at the request of counsel for appellants to 25.11.2022; on 25.11.2022 respondents were served through publication but they were called absent; hence as an indulgence, the matter was adjourned to 28.11.2022 and on the said date also respondents failed to appear though they were served through publication; hence there was no option left to the court but to decide the matter on the basis of available record and whatever assistance provided by the counsel for appellant as well as learned A.A.G.

4. Mr. Allah Bachayo Soomro, learned Additional Advocate General Sindh has submitted that the government has no interest as the dispute is between the private parties and the matter may be decided based on the material available on the record.

5. I have heard learned counsel for appellants/plaintiffs as well as learned A.A.G. and have also gone through the record available before me.

6. The question involved in the present proceedings is whether F.C Suit No. 30/2021 filed by Appellants/plaintiffs was/is barred under Section 172 of the Land Revenue Act and Article 91 of Limitation Act and the plaint was rightly rejected Under Order VII Rule 11 CPC vide order dated 04.11.2021 and decree dated 08.11.2021 respectively passed by learned Senior Civil Court-II, Mehar at Dadu.

7. It appears from the record that respondents contested the matter and raised the question of maintainability of the suit on various legal points; learned Trial Court attended the legal questions and agreed with the narration of private respondents on the analogy that the appellants/Plaintiffs filed suit for declaration, cancellation, possession, mesne profit, and permanent injunction beyond a period of three years.

8. As to the objection of limitation, the view taken by the learned courts below is based on erroneous understanding of the law. The dispute in this case is related to the right of inheritance. In suchlike cases, the consistent view is that on the opening of the succession, the property automatically devolves upon the legal heirs and that efflux of time does not extinguish the right of inheritance and that the limitation in such matters, starts from the date when the right of any co-sharer/inheritor is denied by someone. Reference can be made in this respect to the case of *Mst. Suban v. Allah Ditta and others* (2007 SCMR 635) where the Honorable Supreme Court observed to the effect that it was well-established that as soon as the owner of a property dies succession to the property opens which gets automatically and immediately vested in the heirs and that such vesting is not dependent upon any intervention or any act on the part of the state and that limitation against co-inheritors would start running not from the time of the death of their predecessor-in-interest nor even from the date of mutation if there be any, but from the date when the right of any such person was denied. This being so, the objection to the point of limitation that suit was barred under the law of limitation was illusory and not well-founded.

9. Coming to the core issue of rejection of the plaint under Order 7 Rule 11 CPC, clause A deals with the disclosure of the cause of action. The idea undermined in the said provision is that when no cause of action is disclosed in the plaint, the Court will not unnecessarily protract and the party should not be unnecessarily harassed in the suit. To invoke the power, the Court has to read the plaint whether it discloses the cause of action and if it does, then the plaint cannot be rejected by the Court by exercising power under Order 7 Rule 11 CPC.

10. It is a trite law that the cause of action is a bundle of facts and whether the plaint discloses a cause of action is a question of fact that has to be gathered based on the averments made in the plaint in its entirety by taking those averments to be correct. So long as the plaint discloses some cause of action that requires a determination by the Court, the mere opinion that the Suit is barred under Article 91 of the Limitation Act, cannot be a sole ground for rejection of the plaint in terms of the element of inheritance as discussed in the preceding paragraph.

11. Primarily a Plaint should not be rejected under Order 7 Rule 11 of the Civil Procedure Code at the initial stage without proper inquiry. At the same time, a Court of Law has enough powers to see that vexatious litigation are not allowed to consume the time of the Court. However, a Plaint should be rejected as per Order 7 Rule 11 of the Civil Procedure Code where it does not disclose a cause of action and not where there is a cause of action.

12. A cause of action means every fact, which if traversed, would be necessary for the plaintiff to prove to support his right to a judgment of the court. In other words, it is a bundle of facts that are taken with the law applicable to them giving the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defense which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff, thus a Plaint would be read as a whole and the merits of the case are not to be considered at this stage.

13. From the submissions made by both sides, this Court is of the considered opinion that the allegations made in the plaint cannot be gone into at the threshold as it is a matter to be tried in the suit. Even if the cause of action pleaded is a false or deliberate falsehood, the same cannot be gone into an application under Order 7 Rule 11 C.P.C. Besides, the parties will not be prejudiced if they are allowed to adduce evidence and the decision is made on merits.

14. I am of the view that the matter ought to have been decided on merits. Thus the impugned judgment and decrees/order passed by the courts below are set aside the matter is remanded to the trial Court for decision on merit within two months positively.

JUDGE

Muhammed Danish