

IN THE HIGH COURT OF SINDH AT HYDERABAD

R.A S-156 of 2023 : Mst. Tahira Bano w/o Sartaj Ali (deceased)
through her legal heirs.

For the Petitioner/s : Mr. Irfan Ahmed Qureshi, Advocate.

For the respondent/s : Mr. Muhammad Yousif Rahpoto, A.A.G.

Date/s of hearing : 30.10.2023

Date of announcement : 30.10.2023

ORDER

Agha Faisal, J. The applicant had filed F.C.Suit No.467 of 2013 before the Court of VIth Senior Civil Judge, Hyderabad and the same was dismissed, predicated upon limitation and merit, vide judgment dated 03.08.2019. The operative findings are reproduced herein below:

"It is very important to note here that, admittedly the suit shop belongs to defendant No. 4/H.M.C and the same is not inherited property; as such, the same could not be excluded from the Limitation; even otherwise, I am of the humble opinion that, Limitation could be run in the matter of inheritance too, and on this point, I would lay my hands with the case of "JameelaKhatoon and others Versus Aish Muhammad and others, reported in 2011 SCMR 222, in which the Honourable Supreme Court of Pakistan hold the issue of Limitation, even in the matters of inheritance.

It is pertinent to mention here that, the Law of Limitation has provided the period of six years for seeking the relief of Declaration; whereas, three years for seeking the Cancellation. The plaintiff No. 1 Mst. Maria had deposed in her cross-examination that, defendants are in possession of suit shop on 24-05-2000; further this, she had deposed that, they were aware about such fraud on the very date, viz. 24-05-2000; so in presence of such piece of evidence, I am in clear mind that, plaintiff side was fully aware about alleged fraud and possession of suit shop; as such, the time of Limitation starts from the date of knowledge, viz. 24-05-2000; so meaning thereby, the plaintiff side should have filed their suit for Declaration and Cancellation of Lease Deed up to 2003 or 2006 (in case of Declaration); whereas, admittedly present suit had been instituted in the year 2013; as such, the suit of the plaintiffs is miserably time barred; though, admittedly the plaintiff side had not sought the relief of Possession, but in case of Possession, their suit is also barred; as Law of Limitation had provided twelve years Limitation for seeking the relief of Possession.

In my humble opinion, the very purpose of Law of Limitation is put to an end to a issue; otherwise there will be no end for litigation/issue; besides this, it is well settled Principle of Law that, Law helps vigilant persons and not those persons, who are deep sleep; same is the position in the present suit, as plaintiff side had failed to knock the door of Court for getting their right/claim within the prescribed period of Limitation.

Being Student of Law, we know that, the burden of proof of proving the case/suit lies upon the shoulders of plaintiff(s) and they cannot claim of the weakness of other side; so far the present matter is concerned, I am of the considered view that, plaintiff side failed to prove their claim within the four corners of Law. My view is supported by the cases, reported in 2011 SCMR 284 and 1971 SCMR 94.

So, in view of the above detailed discussion and quoted Laws, I am in clear mind that, defendant side had succeeded in proving this issue; which is answered, as Affirmative.

This plea was also taken by the private defendants side in their pleading; however, later on during the proceedings of the present suit, the maximum Court Fee was provided by the plaintiff side; hence, such issues does not require any discussion; as such, my answer to this issue is accordingly.

In view of my detailed discussion in issue No. 1 that, no documentary evidence had been brought on record by the plaintiff side, from which, it could be ascertained that, suit shop was ever allotted to the predecessor/ grandfather of plaintiff side, so also there is nothing on record that, said deceased had ever remained in possession of suit shop; hence, my answers to issues No: 3 and 4 are accordingly.

As discussed in detailed in issue No. 1 that, the suit shop was on the name of father of private defendants by virtue of Lease Deed, who later on got transferred it in favour of their sons, the private defendants. The entire record pertaining to suit shop had been produced by the concerned Clerk of defendant No. 4/H.M.C and from the perusal of such documents, it could not be said that, such transfer in favour of late Mairaj Ali was result of any fraud or collusion with officials of H.M.C./defendant No. 4; even otherwise, during the proceedings of the matter, the plaintiff side was pressing that, fraud had been committed by the private defendant side and not by the father of private defendants; so the stance of plaintiff side is sufficient to disprove this issue; hence, my answer to this issue is negative.

In view of my detailed discussion in issue No. 1, it cannot be said that, such transfer in favour of private defendant side in respect of suit shop by H.M.C is a result of fraud. As mentioned above, the father of private defendants moved application to H.M.C. for transfer of tenant-ship in favour of his sons, the private defendants and thereafter the transfer was made in favour of private defendants by the defendant No. 4. The entire record pertaining to suit shop, so also its transfer had been produced by the concerned Clerk in his evidence and the same has been fully discussed in issue No. 1; hence, my answer to this issue is negative.

The burden of this issue was rested upon the shoulders of plaintiff side and they have to prove such issue. Admittedly, the suit shop was/is not the personal property of plaintiff side or private defendant side, and the same is exclusive property of H.M.C/official defendant No. 4; as such, it could not be said that, suit property is inherited property or the plaintiff side had been deprived from their legitimate share. As discussed above, the controversy between the parties was relating to allotment/lease of suit shop,

but plaintiff side miserably failed to prove their assertion of allotment in favour of their predecessor Safdar Ali; hence, my answer to this issue is negative. For the fore-going reasons and findings on issues discussed above, the plaintiff is not entitled for the relief claimed; hence, their suit is dismissed, being not maintainable in its present form and barred by Law of Limitation. Let, such decree be prepared accordingly. There shall be no order as to costs."

3. Civil Appeal No.204 of 2019 was filed by the present applicants, however, same was also dismissed vide judgment dated 19.12.2022. The operative findings are reproduced herein below:

"2. The plaintiffs / appellants have filed suit that they may be declared as co-sharers in the suit property viz Shop No: 5, situated at Gur Market, Hyderabad; to cancel the lease deed fraudulently made in the names of private defendants/ private respondents and that the suit property may be distributed amongst all the legal heirs.

13. Learned Trial Court considering that the suit property is not a private property but it is the property of Hyderabad Municipal Cooperation (HMC) and the same was leased out on rent to the predecessor-in-interest of parties, therefore, it could not be said that the suit plaintiff is inherited by either side. It is admitted position that predecessor-in-interest of plaintiffs / defendants, obtained suit shop on rent from Hyderabad Municipal Cooperation (HMC). During his life time, he moved application to Hyderabad Municipal Cooperation (HMC) authorities that being old age, he cannot run shop, therefore, the suit shop may be transferred in the name of his sons (private defendants) on rent; the private defendants / respondents since then paying rent to Hyderabad Municipal Cooperation (HMC). The record produced by Hyderabad Municipal Cooperation (HMC) (respondent No.04) also confirms that the suit property is owned by Hyderabad Municipal Cooperation (HMC) and is on rent with private defendants / private respondents.

14. In view of above discussion, I see no reason to upset the findings given by learned Trial Court on the issue of maintainability and the issue No.07 qua claim of inheritance over the suit property. In my humble view the impugned Judgment and Decree passed by learned Trial Court are quite legal and require no interference by this Court. The point No.01 is therefore, answered in negative.

15. In view of my findings on point No.01, I see no merits in the instant appeal, hence, the same is hereby dismissed. Office is directed to draw such decree. Parties are saddled to bear their own costs"

4. Learned counsel submits that the evidence was not appreciated in its prospective by the Courts below, hence, the findings were erroneous. It was insisted that Hyderabad Municipal Corporation, a defendant in the suit, ought to have been required to provide the relevant documents / evidence so as to substantiate the applicants' claim.

5. Heard and perused. The issue of limitation has been taken place by the learned trial Court at the very first instance and the findings non suit the applicants. The law requires Courts to first determine whether the proceedings filed there before are within time and the Courts are mandated to conduct such an exercise regardless of whether or not an objection has been taken in such regard¹. The Superior Courts have held that proceedings barred by even a day could be dismissed²; once time begins to run, it runs continuously³; a bar of limitation creates vested rights in favour of the other party⁴; if a matter was time barred then it is to be dismissed without touching upon merits⁵; and once limitation has lapsed the door of adjudication is closed irrespective of pleas of hardship, injustice or ignorance⁶. It is pertinent to observe that the preponderant bar of limitation could not be dispelled by the applicants before the relevant courts and no case has been set forth herein to suggest any infirmity in the findings rendered in such regard.

¹ *Awan Apparels (Private) Limited & Others vs. United Bank Limited & Others* reported as 2004 CLD 732.

² 2001 PLC 272; 2001 PLC 143; 2001 PLC 156; 2020 PLC 82.

³ *Shafaatullah Qureshi vs. Pakistan* reported as PLD 2001 SC 142; *Khizar Hayat vs. Pakistan Railways* reported as 1993 PLC 106.

⁴ *Dr. Anwar Ali Sahito vs. Pakistan* reported as 2002 PLC CS 526; *DPO vs. Punjab Labour Tribunal* reported as NLR 1987 Labour 212.

⁵ *Muhammad Tufail Danish vs. Deputy Director FIA* reported as 1991 SCMR 1841; *Mirza Muhammad Saeed vs. Shahabudin* reported as PLD 1983 SC 385; *Ch Muhammad Sharif vs. Muhammad Ali Khan* reported as 1975 SCMR 259.

⁶ *WAPDA vs. Aurangzeb* reported as 1988 SCMR 1354.

6. The case of a claimant may sink or swim predicated on the strength of the evidence adduced. No case could be rested on a plea that some evidence ought to have been required from a contesting defendant, to prove a claimant's claim. Even otherwise, it is demonstrated that the applicants neither impleaded legal heirs nor could demonstrate any enforceable right in the suit property and no infirmity with regard to such findings could be identified before this court.

7. The learned counsel was unable to cite a single ground based upon which the jurisdiction of this Court could be exercised under section 115 of Code of Civil Procedure. There is no suggestion that the impugned order is either an exercise without jurisdiction or a failure to exercise jurisdiction or an act in exercise of jurisdiction illegally or with any material irregularity. It is trite law⁷ that where the fora of subordinate jurisdiction had exercised its discretion in one way and that discretion had been judicially exercised on sound principles the supervisory forum would not interfere with that discretion, unless same was contrary to law or usage having the force of law. It is the considered view of this court that no manifest illegality has been identified in the order impugned and further that no defect has been pointed out in so far as the exercise of jurisdiction is concerned of the subordinate forum. In view hereof, this revision is found to be misconceived and devoid of merit, hence, hereby dismissed *in limine*, along with listed applications.

Judge

⁷ Per Faqir Muhammad Khokhar J. in *NaheedNusrat Hashmi vs. Secretary Education (Elementary) Punjab* reported as *PLD 2006 Supreme Court 1124*; *Naseer Ahmed Siddiqui vs. Aftab Alam* reported as *PLD 2013 Supreme Court 323*.