

THE HIGH COURT OF SINDH, KARACHI

Suit No. 458 of 2021

[Muniba Iqbal versus Pride Builders and Developers & others]

Plaintiff : Muniba Iqbal through Mr. Asif Ali Khawaja, Advocate.

Defendants 1 & 2 : Nemo.

Defendant No.3 : Karachi Development Authority through M/s. Mehmood Khan Yousufi and Rehmat-un-Nissa, Advocates.

Defendants 4 & 5 : Aamir Rasheed and Tasneem Uddin through M/s. Asim Iqbal and Farmanullah Khan, Advocates.

Dates of hearing : 29-08-2022, 27-09-2022 & re-hearing on 22-12-2023

Date of decision : 04-01-2024

ORDER

Adnan Iqbal Chaudhry J. - This order decides CMA No. 21029/2021, an application by the Defendants 4 and 5 for rejection of the plaint under Order VII Rule 11 CPC.

2. It is pleaded by the Plaintiff that on 30.03.1995 she had booked Plot No. GC SB-18, measuring 400 sq. yds. in Gulshan-e-Rufi, Sector 19-B, Scheme No.33, Karachi [**suit plot**], a real estate project of the Defendant No.1; that by 30.11.1999 she paid to the Defendant No.1 the installments of the price of the suit plot; that the Defendant No.1 avoided to transfer/sub-lease the suit plot to the Plaintiff; that in 2020 the Plaintiff learnt that the Defendant No.1 had sub-leased the suit plot to the Defendants 4 and 5 *vide* registered deed dated 22.11.2017 and she confronted the Defendant No.1 by letter dated 02.10.2020; that by public notice dated 26.11.2020 the Defendant No.1 called upon the allottees of the project to clear their dues for obtaining sub-leases

of their respective plots; that these events indicated to the Plaintiff that she had been defrauded by the Defendant No.1; hence the suit.

3. Heard learned counsel.

4. As against the Defendant No.1, the suit is essentially for specific performance of the booking agreement of the suit plot (prayers clauses E and F). As against the Defendants 4 and 5, the suit is for cancellation of the registered sub-lease of the suit plot held by them, dated 22.11.2017 (prayer clause C). That sub-lease is executed by one Rehmatullah as the registered Attorney of co-owners Jameel Ahmed, Sher Zameen, Usman and Syed Zahid Raza, and it does not mention the Defendant No.1 as vendor who is arrayed in the suit as a partnership firm. It was thus submitted by learned counsel for the Defendants 4 and 5 that the Plaintiff has no cause of action against them. However, it may well be that the executant or the co-owners named in the sub-lease were carrying on business in partnership under the name and style of the Defendant No.1, a question of fact yet to be determined.

5. The other ground urged for rejection of the plaint is that the suit is time-barred. As already stated, the suit is for specific performance and cancellation. For the relief of cancellation, the limitation of 3 years under Article 91 of the Limitation Act does not run from the date of the instrument, but “when the facts entitling the plaintiff to have the instrument cancelled or set aside became known to him”. It is pleaded by the Plaintiff that she came to know of the impugned sub-lease around October 2020. Until it is shown that such averment is false, it has to be taken as correct. As regards the argument that the Plaintiff’s case does not merit relief for cancellation, that aspect cannot be examined for rejection of the plaint.

6. Regards the relief for specific performance, the documents annexed to the plaint which constitute the alleged booking agreement between the Plaintiff and the Defendant No.1, do not fix a date for

performance *i.e.* for execution of the sub-lease of the suit plot. Therefore, limitation would be governed by the second part of Article 113 of the Limitation Act where the 3-year limitation commences “when the plaintiff has notice that performance is refused”. Though it is pleaded in para 8 of the plaint that time and again the Defendant No.1 avoided a sub-lease to the Plaintiff, such time-line is vague. Thus, in the circumstances of the case, whether the relief for specific performance is time-barred is a question of fact which cannot be determined at this stage. Again, for the present, the merits of specific performance are no consideration for it is settled law, as reiterated in *Abdul Karim v. Florida Builders (Pvt.) Ltd.* (PLD 2012 SC 247), that for rejection of the plaint it is primarily the contents of the plaint that have to be examined.

7. In view of the foregoing, the grounds urged for rejection of the plaint do not succeed. CMA No. 21029/2021 is dismissed.

JUDGE

Karachi
Dated: 04-01-2024

Announced by & on: