

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.306 of 2007

DATE	ORDER WITH SIGNATURE(S) OF JUDGE(S)
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FOR FINAL ARGUMENTS

31.08.2023

Mr. Mansoor-ul-Arfin, advocate for plaintiff
Ms. Seema Waseem along with Mr. Mudasser Ali, advocates
for defendants

This suit is pending since 2007 and vide order dated 18.02.2010, an application under Order 7 Rule 11 CPC, predicated on the ground of limitation, was dismissed as being misconceived. Against the said order High Court Appeal No. 67 of 2010 was preferred and the same was disposed of on 26.01.2011 with directions to the learned Single Judge to decide the following as a preliminary issue within 90 days:

“Whether the suit is not maintainable for being barred by Article 91 of the Limitation Act”

The matter eventually came before this Court on 23.8.2023, when direct notice was issued to the defendant No.5 for today.

Per learned counsel for plaintiff, the suit is not barred by limitation *inter alia* as knowledge of the creation of mortgage was acquired on 28.11.2005, as pleaded in paragraph 28 of the plaint read with paragraph 15 thereof, and limitation begins to run from the time of acquisition of knowledge, hence, the suit was preferred well within time on 14.3.2007.

Per learned counsel for defendants, the suit is barred by virtue of Article 91 of the Limitation Act, as it was sought to be demonstrated that knowledge of the creation of mortgage was always available with the plaintiff and in all events much prior to that pleaded in the plaint. Reference was made to copy of a statement dated 12.4.2004 and it was sought to be demonstrated therefrom that the plaintiff himself was interested in acquiring a loan against mortgage of the property under consideration. It was also argued that notice of another suit, being Suit No.379/2003, was served upon the plaintiff on 16.4.2003 and 24.4.2003, hence, the plaintiff had knowledge at least at that time if not before.

Heard and perused. This suit is pending since 2007 and the only matter before this Court presently is the determination of a preliminary issue, ostensibly framed on 26.01.2011. Since no issues have been framed herein (hence no evidence led), therefore, the present determination could only be rested on the pleadings.

The plaint articulates that knowledge of the creation of mortgage was acquired on 28.11.2005. Paragraph 28 thereof pleads the said date as being that on which the cause of action initially accrued. Paragraph 15 provides the narrative as to how the said information was obtained. It is

specifically pleaded that the said information was only obtained when the defendant No.5 filed a statement in another suit demonstrating the existence of the mortgage under consideration. The defendants' counsel remained unable to dispel the timing of accrual of cause of action as pleaded by the plaintiffs.

The statement referred to by the defendants' learned counsel has not been demonstrated to represent knowledge of any mortgage having crystallized. Furthermore, the said statement is dated 12.4.2004, which in any event would befall the matter within the pale of limitation.

The service of notices upon the plaintiff in some other suit, stated to be in respect of a dispute regarding some cheques, has not been demonstrated to convey any knowledge of crystallization of any mortgage.

It was also argued by the defendants' counsel that since the plaintiff had the same address as one of the parties in Suit No.379/2003, hence, the plaintiff herein be deemed to have constructive knowledge of any information to which the said person may have been privy. With respect, such a proposition could not be demonstrated to have any sanction in law.

In view of the foregoing, the preliminary issue framed for determination is answered in the negative in favor of the plaintiffs and against the defendants as nothing could be demonstrated to find the suit to be barred by limitation per Article 91 of the Limitation Act, 1908.

Adjourned; to be fixed for framing of issues.

Judge

asim/pa