

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

Suit 1114 of 2009

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Date	Order with signature of Judge(s)
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1. For hearing of CMA No.2516/2015.
2. For hearing of CMA No.5066/2021.
3. For hearing of CMA No.4457/2017.
4. For hearing of CMA No.3949/2021.
5. For hearing of CMA No.5069/2013.
6. For hearing of CMA No.15401/2019.
7. For hearing of CMA No.13908/2022.
8. For hearing of CMA No.13907/2022.
9. For orders on CMA No.11891/2023.

**19.09.2023**

Mr. Afaque Ahmed, advocate for plaintiffs.  
Syed Hassan Ali, advocate for the defendant 1.

1. This is an application under Order VII, Rule 11, CPC. The facts of the case are that this suit is primarily for specific performance of a sale agreement dated 27.12.1988 in respect of the Shop No.481 measuring 14x10 feet, outside KMC Vegetable Market, Karachi. Interestingly, the prayer clause seeks to assert the plaintiff's title in respect of another property, being Shop No.1, block C-1, New Vegetable Market, Super Highway, Karachi. It is *prima facie* apparent that the property mentioned in the prayer clause is distinct and independent to the property mentioned in the sale agreement.

Learned counsel for the defendant/applicant submits that the suit is barred under Order VII, Rule 11, *inter alia*, no cause of action has been demonstrated and further that the said claim is barred by limitation. On the contrary, the plaintiffs have pleaded that the property mentioned in the sale agreement to be considered to be the same as that mentioned in the prayer clause, as the relevant market had shifted in the interim period. It is further added that the question of limitation does not arise because there was no time period given for the completion of the transaction mentioned.

Heard and perused. It is *prima facie* evident that the property mentioned in the sale agreement is not that in respect whereof the prayer clause has been framed. On the contrary the said property was allotted to the defendant/present applicant on 10.12.2001, as demonstrated from page 25 of the court file, and the said date was more than three years post the execution of the purported sale agreement. Learned counsel for the plaintiffs is unable to substantiate as to how the sale agreement in

question gave any cause of action in respect of the property mentioned in the prayer clause.

Adverting to the issue of limitation, it is noted that the plaintiffs have filed this suit in the capacity of legal heirs of one Mr. Fazal-Ur-Rehman Qureshi. Per plaintiffs' counsel, the sale agreement was executed in 1988 and Mr. Fazal-Ur-Rehman Qureshi died in 2009, however, the predecessor-in-interest never took any action to assert any right with respect to the suit property during his life time. No justification in such regard was articulated by the learned counsel. It could not be articulated as to how a cause of action could be actuated on the mere death of Mr. Fazal-Ur-Rehman Qureshi, more so when none of the ingredients for any extension of limitation period could be demonstrated.

In view of the foregoing, this application is allowed and the plaint is rejected per Order VII Rule 11 (a) & (d) of the CPC; consequently the remaining applications are dismissed.

JUDGE