

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

Revision Application No.S-113 of 1995
[Muhammad Haroon through LRs versus Ali Asghar & others]

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For applicants: Mr. Parkash Kumar, advocate.
For respondent No.1: Mr. Pir Bux Bhurgari, advocate.
For respondents No.2, 7 to 9: Mr. Hakim Ali Siddiqui, advocate.
For Province of Sindh: Mr. Rafique Ahmed Dahri, Asst. A.G.
Date of hearing: 25.09.2023.
Date of announcement: 28.09.2023.

JUDGMENT

Muhammad Shafi Siddiqui, J.- In the year 1988, applicants' predecessor, Muhammad Haroon (plaintiff of the Suit), sought enforcement of an agreement allegedly executed on 26.08.1968, in presence of two witnesses, namely, Raza Muhammad Khan and Kadir Bux Hangroo. The Suit was defended by one Kauro Khan, whereas the two alleged executants did not file any written statement. The trial court framed the following issues:

- “1. Whether the plaintiff is entitled for the relief as claimed?
 2. Whether the defendants have entered into any agreement with the plaintiffs?
 3. Whether the sale in favor of defendant No.7 to 9 is/was a bogus forged and fictitious and liable to be cancelled?
 4. Whether the suit is in proper form?
 5. Whether the suit is bad for non-joinder and mis-joinder of parties?
 6. Whether the suit is barred by time?
 7. Whether the suit property alleged to be sold in favor of plaintiff on 26.8.1968 is illegal, null, void, and not enforceable under M.L.R?
 8. What should the decree be?”
2. One of the crucial issues that was left to be incorporated is issue of limitation, which was even pleaded in paragraph No.3 of the written statement.

The issues were dealt with accordingly, and trial court decreed the Suit as prayed. Aggrieved of it, the defendant through legal heirs filed Civil Appeal No.49/1994, and the appellate court dealt with the issues separately and allowed the appeal, dismissing the Suit of the plaintiff on other counts, such as the applicants/plaintiffs failed to prove the sale agreement. Hence, this revision application is filed against conflicting findings of two courts below.

3. I have heard learned counsel for the parties and perused material available on record.

4. To me, the first and foremost consideration is whether the Suit was barred by time, and in this regard, no issue was framed despite a specific defence taken by one of the defendant of the Suit, i.e. applicant in paragraph No.3 of the written statement. In this regard, Mr. Parkash, learned counsel for the applicants, submits that there was no "date fixed" for the performance of the agreement, hence, limitation could be counted from denial to perform and until filing of Suit no formal or informal denial was made, hence the Suit is within time. He relied upon PLD 1995 Supreme Court 314 (***INAM NAQSHBAND versus Haji Shaikh IJAZ AHMED***).

5. I have perused the alleged agreement, which itself has not been proved by the respondents otherwise. Paragraph No.4 of the alleged agreement suggests that the balance amount shall be paid by the purchaser before the Registrar, which is within one year time when the agreement could be materialized, and final sale deed could be executed. The agreement was executed on 26.08.1968, and if a particular date is not assigned for its performance, then to ascertain the "cap" for performance time, that has been provided by the agreement itself is 25.08.1969, on which date the agreement was required to be materialized. It is respondent's case that if a "fixed date" is not assigned in agreement, then the last date of execution and registration of the sale deed is a cap, whereafter the time for execution of the sale deed kicks-off. It is respondent's case that applicant's case falls in the first part of third column of

Article 113 of the Limitation Act, which has provided a time frame for completion of transaction.

6. What is material in the first tier of third column of Article 113 is that beneficiary may have a legitimate cause to ask for performance on the maturity of cut off time frame i.e, the maturity of time to complete the transaction. So, if the time kicked-off on 25.08.1969, it would have been filed on or before 25.08.1972, i.e, three years' time from the "time frame" provided. The second tier of Article 113 would only come into play if a maturity of date, for its performance could not be deduced. It is lastly urged that during all this period, there was no communication at all, for enforcing the agreement. These arguments may well have some logic however it is to be measured as per Article 113. Hon'ble Supreme Court in its judgment has discussed the intent of 1st tier of 3rd column of Article 113 as under:

"The High Court was of the view that the case did not fall under first clause. The words "date fixed" in the first clause of the third column of Article 113 of the Limitation Act are of great significance. The 'date fixed' means a particular date fixed expressly by the parties for the performance of the agreement. In the instant case, no particular date was expressly fixed by the parties. No doubt, the agreement was to be performed within one week from the date of agreement but this did not tantamount fixing a date for the performance of the agreement. So, it can safely be said that in the instant case no date was fixed for the performance of the contract within the meaning of first clause of the third column of Article 113 of the Limitation Act. So, the case was not governed by first clause of the third column of this Article. Point at No. (i) raised by the learned counsel for the petitioner is answered accordingly."

Thus such interpretation binds us to be followed and unless, according to above judgment a "specific date" is given, the 1st tier of column three will not come into play.

7. Insofar as the merits of the case are concerned, the agreement purportedly was executed on 26.08.1968, and the evidence of the material witness, that is, Raza Muhammad Khan, who was alive at the relevant time, was not brought on record, though the other witness of agreement (Kadir Bux) claimed to have expired. Some of the amount claimed to have been paid cash i.e, two thousand and Rs.13,000/- was deposited in the account, however no

record of bank deposit is produced / available. If such amount of Rs.13,000/- was deposited in the account of one of the executants, i.e. Noor Muhammad and lost, as the documents claimed to have been destroyed during heavy rains, no application for summoning the official record of the account of Noor Muhammad of National Bank was made. The receipt of Rs.2,000/- is of 22.09.1968, whereas the agreement is of prior time, that is, 26.08.1968, hence, it cannot be conceived how an amount of Rs.2,000/- was shown part of sale consideration of Rs.15,000/- and noted in the agreement dated 26.08.1968 when receipt does not show that it was paid earlier and acknowledged later in time.

8. If some of the defendants/executants not filed written statement there was nothing to prevent the plaintiffs from summoning them and examining them on oath. The inscriber of the agreement was also not summoned by the plaintiffs. In all, the agreement of sale has not been proved through evidence which could have been brought/provided and the best evidence thus is kept away. The view formed by the appellate court is on the basis of the evidence and material available on record, the jurisdiction of this court cannot be stretched to form another view. Section 115 of CPC provides a limited scope of jurisdiction which could only be exercised if a clear case of misreading and non-reading of evidence is made out which in my view has not been made out. It is a cumulative effect of the evidence and the material placed before me which is to be given effect which does not call for interference.

9. In view of the above, no interference is required and the revision application is dismissed.

JUDGE