

**IN THE HIGH COURT OF SINDH,
AT KARACHI**

Present:

Nadeem Akhtar, J

Yousuf Ali Sayeed, J

HCA No.358 of 2022

Abdul Ghani & other.....Appellants

Versus

Waheeduddin Siddique (since deceased)

through his legal heirs & others.....Respondents

Dur Muhammad Shah, Advocate, for the Appellants.

Date of hearing : 13.10.2023

ORDER

YOUSUF ALI SAYEED, J. - The Appeal arises out of the Order made by a learned Single Judge on 01.09.2022 in Suit No.1500/2019 filed by the Appellants on the Original Side, rejecting the plaint as being barred under Section 3 of the Limitation Act, 1908 (the "**Act**").

2. A perusal of the impugned Order reflects that the Suit was found to essentially be one for cancellation, hence governed under Article 91 of the First Schedule of the Act, with it being observed by the learned Single Judge that the case set up through the plaint was that the Appellants had come to know of the relevant documents upon issuance of a letter dated 01.04.2014, hence the Suit was barred by more than two (2) years if the three (3) year period of limitation was computed accordingly, having been filed as belatedly as on 24.09.2019. The relevant excerpt from the impugned Order reads as follows:-

“6. The question now to be considered is, what of the relief of declaration sought in the suit for which the law prescribes a greater period of limitation (assuming the same can even be granted)? That question is addressed by the case of Dr. Muhammad Javaid Shafi v. Syed Rashid Arshad (PLD 2015 SC 212). There, it has been held by the Supreme Court that where the plaintiff seeks multiple reliefs in a suit, some time-barred and some within limitation, the test is to see which is the main relief and which relief is only ancillary, dependent or consequential, and if the main relief is time-barred, then the ancillary, dependent or consequential relief, even if attracting a larger period of limitation, has to go along with the main relief.

7. It is manifest from the plaint, the suit is primarily for cancellation of the title documents of the Defendants 1 and 2, and the other relief sought in the suit are either dependent on cancellation or consequential to it, for until and unless the documents of the Defendants 1 and 2 are cancelled, the underlying 10 acres of land does not become available for grant to village Darya Khan or the Plaintiffs. Therefore, the main relief of cancellation being clearly time-barred, none of the other reliefs sought can save the suit from dismissal under section 3 of the Limitation Act, 1908. The plaint is thus rejected.”

3. On query posed to learned counsel for the Appellants as to what error or infirmity afflicted the impugned Order, he conceded that the Suit had indeed been barred by limitation but nonetheless sought to argue that the bar ought not to be applied as the Appellants had a good case on merits in light of the judgment of the Supreme Court in the case reported as Naumatullah Khan Advocate and others v. Federation of Pakistan 2020 SCMR 513.

4. Having considered the argument, we find the same to be entirely misconceived, as the merits of a claim can only be considered once the hurdle of limitation is crossed, whereas the cited judgment has no bearing on that aspect.
5. That being so, the Appeal is found to be devoid of force and stands dismissed in limine accordingly, but with no order as to costs.

JUDGE

JUDGE

MUBASHIR