

IN THE HIGH COURT OF SINDH AT KARACHI

CP No.D-2431 of 2023

(Karim Dad Khan (Deceased) v. Mansab Dad Khan & Others)

1. For Orders on Office Objection
2. For Orders on CMA No.11654/2023 (Exemption App.)
3. For Orders on CMA No.11655/2023 (Stay App.)
4. For Hearing of Main Case

Present:

Muhammad Shafi Siddiqui &
Sana Akram Minhas JJ

Petitioner: Karim Dad Khan (Deceased)
Through Mr. Fareed Ahmed, Advocate

Respondents: Mansab Dad Khan & Others
Nemo

Date of Hearing: 27-5-2024

Date of Decision: 27-5-2024

ORDER

1. **Sana Akram Minhas, J:** The deceased Petitioner's son and legal heir Muhammad Saqib Khan ("**MSK**") is aggrieved by an order of the Additional District Judge, Karachi (East) dated 28.3.2023 ("**Impugned Order**"), which dismissed MSK's Civil Revision Application No.64/2022 (*Karim Dad Khan through LRs v. Mansab Dad Khan & Others*) ("**Revision Application**") as being time barred and upheld the Trial Court's five (5) orders dated 7.3.2020, 23.9.2020, 24.10.2020, 29.5.2021 and 19.4.2022 ("**Five Orders**"). The Revision Application was instituted on 27.4.2022.
2. The underlying proceedings appear to be as follows:
 - a) The deceased Petitioner (MSK's father) and the private Respondents No.1 to 6 are siblings. After the demise of their mother (Ms. Hafeez-un-Nisa on 10.6.1991), the distribution of her immovable property became a contentious issue among her legal heirs. This disagreement prompted private Respondents No.1 to 5 to initiate a partition suit (Civil Suit No. 668/2011 – *Mansab Dad*

Khan & Others v. Karim Dad Khan & Another (“**Suit 668**”) against both the deceased Petitioner and deceased Respondent No.6.

- b) The matter persisted, and on 29.3.2013, the Trial Court issued a judgment and preliminary decree partially granting Suit 668 and simultaneously awarding a sum of Rs.103,586/- to the deceased Petitioner as construction costs incurred by him in building the house. Subsequently, both parties filed separate appeals (Civil Appeals No.131 & 132 of 2013) against the Trial Court’s decision. However, the first Appellate Court, in its judgment and decree dated 3.12.2014 and 4.12.2014 respectively, upheld the Trial Court’s decision while reducing the sum awarded to the deceased Petitioner (from Rs.103,586/- to Rs.99,086/-).
 - c) The deceased Petitioner then challenged the judgment and decree of the first Appellate Court before the High Court of Sindh at Karachi through Civil Revision No. S-1/2015 (*Karim Dad Khan v. Mansab Dad Khan & Others*). On 27.10.2017, the High Court partially allowed the Civil Revision. It increased the amount of expenses incurred by the deceased Petitioner on the cost of construction (from Rs.103,586/- to Rs.348,000/-) but upheld the conclusions of the two lower courts. The High Court dismissed the deceased Petitioner's claim for the cost of construction based on prevailing market value, stating it was beyond his pleadings, as he had not raised it in his written statement.
 - d) Thereafter, the Supreme Court maintained the High Court's decision, and Civil Appeal No.3-K/2018 (*Karim Dad Khan (Deceased) through LRs v. Mansab Dad Khan & Others*) instituted by MSK (as legal heir of the deceased Petitioner) was dismissed by order dated 27.6.2019.
3. Following the Supreme Court's dismissal of the deceased Petitioner’s Civil Appeal (instituted through the legal heir MSK), the Trial Court issued a series of orders, including the Five Orders. Subsequently, the private Respondents No.1 to 5 acquired shares of the deceased Petitioner and deceased Respondent No.6 in the immovable property at market value (with a deduction of Rs.348,000/- payable to the deceased Petitioner). The said Respondents were then declared the purchasers, and the sale was duly confirmed by the Trial Court on 13.2.2021. The Nazir of the Trial Court issued a sale certificate to them in September 2021. MSK belatedly contested four out of the Five Orders (dated 7.3.2020, 23.9.2020,

24.10.2020, 29.5.2021) through the Revision Application (instituted on 27.4.2022). However, the Impugned Order dismissed these challenges as time-barred.

4. Pursuant to the order dated 29.5.2021, the Nazir issued a sale certificate on 30.9.2021 on behalf of the deceased Petitioner and deceased Respondent No.6 (Defendants No.1 & 2 in Suit 668) in favour of the private Respondents No.1 to 5 (Plaintiffs in Suit 668). Thereafter, the only remaining task in the proceedings was to transfer the certified copies of title documents of the immovable property and hand over possession of the remaining half of the property to the private Respondents No.1 to 5 (as they were already in possession of half the property). This final step was also completed by the order dated 19.4.2022 (which was the fifth order out of the Five Orders) challenged in the Revision Application.
5. In light of the aforementioned circumstances, when the Counsel was pressed regarding the statute of limitations and asked to justify how four out of the five orders could be contested via a Revision Application after the expiration of said limitations, the Counsel was left without an adequate response. Instead, he diverted attention to the merits of the case, questioning the validity of the judgment and preliminary decree dated 29.3.2013, which had been upheld throughout the legal proceedings, including those at the Supreme Court level as far back as on 27.6.2019. The Counsel argued that decisions should be based on merit and substance rather than technicalities. However, we beg to differ. The statute of limitations is not a trivial technicality; it stands as a cornerstone legal principle designed to ensure fairness and finality in legal proceedings. Once period of limitation expires, valuable rights accrue to the other party by operation of law and such right cannot be taken away lightly¹.
6. Considering that four out of the Five Orders were time-barred and the Revision Application had become infructuous regarding the fifth order (as explained in paragraph 4 above), the present Constitution Petition, filed on 13.5.2023, is also affected by *laches*. This is due to its submission nearly four years after the issuance of the first four orders and more than one year after the fifth order.
7. MSK's lackadaisical attitude demonstrates a lack of seriousness and suggests an intent merely to entangle and embroil the private

¹ 2022 SCMR 1615 (*SKB-KNK Joint Venture v. Water & Power Development Authority*); 2023 SCMR 1665 (*Musarat Parveen v. Muhammad Yousaf*); 2024 SCMR 518 (*Chief Executive Officer NPGCL v. Khalid Umar Tariq*)

Respondents in prolonged, obdurate litigation, especially since most of the original siblings have expired. It seems that the legal heir of the deceased Petitioner is pursuing baseless and vexatious litigation, akin to flogging a dead horse.

8. In light of the above, the instant Constitution Petition No. D-2431/2023 lacks merit and is therefore ***dismissed***, along with all pending applications. The Petitioner is ordered to pay costs of Rs. 35,000/-, to be deposited within fourteen (14) days with the Sindh High Court Clinic.
9. The Office is directed to return the record and proceedings (R&P) of the said Suit No.668/2012 to the learned Trial Court.

JUDGE

JUDGE

Karachi
Dated: 27th May, 2024