

IN THE HIGH COURT OF SINDH AT KARACHI

R.A. No. 211 of 2011

[Saeeduddin Qureshi & others ...v... Ahmed Haris Qureshi & others]

Date of Hearing : 11.01.2024
Applicants through : M/s. S.M. Jahangir & Muhammad Aslam, Advocates.
Respondents through : Mr. Riaz Hussain Soomro, Advocate.

ORDER

Zulfiqar Ahmad Khan, J:- Applicant has preferred this revision application under the provision of 115 of the Code of Civil Procedure, 1908 (“CPC”) against the Judgment dated 23.05.2011 passed by learned Additional District Judge-IV Central, Karachi in Civil Appeal No.96/2010.

2. Precise facts of the case at hand is that the applicant filed a suit No.619/2008 for declaration, permanent injunctions and damages against the respondents. It was pleaded that subject property being No.9/1, at plot No. ST/46, Sector 11/1, Saleem Center, North Karachi, Karachi was handed out to him by the late father of the respondents on the strength of acknowledgement dated 28.03.1997. The learned trial court having recorded that evidence of the parties found the suit filed by the applicant as not maintainable as well as barred by time and dismissed the suit vide Judgment & decree dated 28.04.2010. Civil Appeal No.96/2010 was filed before learned Additional District Judge-IV Central, Karachi and vide Judgment dated 23.05.2011 the same was also dismissed, hence the applicant is before this court under revisional jurisdiction against the concurrent findings.

3. The crux of contentions of learned counsel for the applicants is that the applicant was handed out the subject property by the father of the respondents which was his share as father of the applicant and father of the respondents were brother inter se and that an acknowledgement dated 28.03.1997 was also executed by father of the respondents, therefore, vested rights of the applicants are involved in the present *lis* but the learned lower fora failed to appreciate the evidence and rendered the impugned findings, hence, intervention by this Court is required.

4. In contrast, learned counsel for the respondents contended that not only the suit filed by the applicants was barred by limitation as well as the present revision application is also time barred which be dismissed at once. He further contended that the applicants during the course of cross-examination admitted that the alleged acknowledge dated 28.03.1997 was not witnessed by any one as well as well the said document is also not in his name, therefore, the claim of the applicants are false one which was examined by the learned lower fora through well-reasoned concurrent findings, hence no intervention of this Court is required.

5. I have heard the learned counsel for the parties and have also scanned the available record. In order to examine whether in the findings recorded by the learned Appellate Court complete and substantial justice has been afforded or not? I have also scrutinized the precision and meticulousness of the judgments and decrees of the learned Trial and Appellate Courts with a fair opportunity of audience to the learned counsel for the applicant to satisfy me as to what

illegality, perversity or irregularity was committed by the aforesaid Courts in their respective judgments and decrees.

6. The jurisdiction vested in the High Court under Section 115 C.P.C is to satisfy and reassure that the order is within its jurisdiction; the case is not one in which the Court ought to exercise jurisdiction and, in abstaining from exercising jurisdiction, the Court has not acted illegally or in breach of some provision of law or with material irregularity or by committing some error of procedure in the course of the trial which affected the ultimate decision. The scope of revisional jurisdiction is restricted to the extent of misreading or non-reading of evidence, jurisdictional error or an illegality of the nature in the judgment which may have material effect on the result of the case or if the conclusion drawn therein is perverse or conflicting to the law. In the case of *Atiq-urRehman Vs. Muhammad Amin* (PLD 2006 SC 309), the Apex Court held that the scope of revisional jurisdiction is confined to the extent of misreading or non-reading of evidence, jurisdictional error or an illegality of the nature in the judgment which may have a material effect on the result of the case or the conclusion drawn therein is perverse or contrary to the law, but interference for the mere fact that the appraisal of evidence may suggest another view of the matter is not possible in revisional jurisdiction. There is a difference between the misreading, non-reading and misappreciation of evidence, therefore, the scope of the appellate and revisional jurisdiction must not be confused and care must be taken for interference in revisional jurisdiction only in the cases in which the order passed or a judgment rendered by a subordinate Court is found perverse or suffering from a jurisdictional

error or the defect of misreading or non-reading of evidence and the conclusion drawn is contrary to law.

7. Reverting to the merits of the case at hand, applicant's counsel has remained unable to dispel the bar of limitation in preferring the preset revision application as the impugned Judgment was rendered on 23.05.2011, whereas, the present revision application was preferred on 01.10.2011 after the period of limitation prescribed under the prescriptions of Section 115 of the Code, 1908. Learned counsel submits that since valuable rights are involved, therefore, the applicants ought to have been nonsuited on a mere technicality of limitation. The delay in preferring the suit has been adequately particularized in the initial order of the learned trial court. Learned counsel articulated no cavil to the narration of delay and remained unable to dispel the preponderant delay in presenting the instant revision application within time.

8. It is the considered opinion of the Court that the prescriptions of limitation are not mere technicalities and disregard thereof would render entire law of limitation otiose¹. The Superior Courts have consistently maintained that it is incumbent upon the Courts to first determine whether the proceedings filed there before were within time and the Courts are mandated to conduct such an exercise regardless of whether or not an objection has been taken in such regard². The Superior Courts have held that proceedings barred by even a day could be dismissed³; once time begins to run, it runs

¹*Mehmood Khan Mahar vs. Qamar Hussain Puri & Others reported as 2019 MLD 249.*

²*Awan Apparels (Private) Limited & Others vs. United Bank Limited & Others reported as 2004 CLD 732.*

³ 2001 PLC 272; 2001 PLC 143; 2001 PLC 156; 2020 PLC 82

continuously⁴; a bar of limitation creates vested rights in favour of the other party⁵; if a matter was time barred then it is to be dismissed without touching upon merits⁶; and once limitation has lapsed the door of adjudication is closed irrespective of pleas of hardship, injustice or ignorance⁷. It has been maintained by the honorable Supreme Court⁸ that each day of delay had to be explained in an application seeking condoning of delay and that in the absence of such an explanation the said application was liable to be dismissed. It is pertinent to observe that the preponderant bar of limitation could not be dispelled by the applicants' counsel.

9. During the course of hearing, learned counsel for the applicants emphasized on Exh.P/1 which is an acknowledgment dated 28.03.1997 purported to have executed by father of the respondents basis upon which the subject property was handed out to the applicants, however, the applicant during the course of cross examination before the learned trial court went on to admit as follows:-

“It is correct to suggest that Ex. P/1 is conditional.

It is correct to suggest that there is no witness of Exh P/1.

It is correct to suggest that Exh. P/1 to P/4 are not in my name.

It is correct to suggest that I have not filed such document to show that Lasbella house was in the name of my father Badaruddin.

⁴ Shafaatullah Qureshi vs. Pakistan reported as PLD 2001 SC 142; Khizar Hayat vs. Pakistan Railways reported as 1993 PLC 106

⁵ Dr. Anwar Ali Sahito vs. Pakistan reported as 2002 PLC CS 526; DPO vs. Punjab Labour Tribunal reported as NLR 1987 Labour 212

⁶ Muhammad Tufail Danish vs. Deputy Director FIA reported as 1991 SCMR 1841; Mirza Muhammad Saeed vs. Shahabudin reported as PLD 1983 SC 385; Ch Muhammad Sharif vs. Muhammad Ali Khan reported as 1975 SCMR 259

⁷ WAPDA vs. Aurangzeb reported as 1988 SCMR 1354

⁸ Lt. Col. Nasir Malik vs. ADJ Lahore & Others reported as 2016 SCMR 1821; Qamar Jahan vs. United Liner Agencies reported as 2004 PLC 155.

It is correct to suggest that halaf nama Exh. P/1 was not written in my presence.

It is correct to suggest that KESC bill Exh. /10 to P/14 are not in my name.

It is correct to suggest that my brother Najamuddin handed over the possession of the suit shop only to improve my financial position.”

10. It is gleaned from appraisal of the foregoing that the applicant admitted to have obtain the possession of the subject shop just to improve his financial position as the applicants and respondents are relatives. He went on to admit further that the there is no witness of Exh. P/1 and the learned lower fora are also concurrent in this respect. It is a matter of record Exh. P/1 which is a mainstay of the applicant is neither a registered document nor has been witnessed by two attesting witnesses per prescriptions of Section 79 of the Qanun-e-Shahadat Order, 1984. Registration of a document would be compulsory, if same would be used as proof for creating, declaring, transferring, limiting or extinguishing in present or in future right, title or interest in an immovable property. According to Section 17 of the Registration Act, every document having value of more than Rs.100/- is required to be compulsorily registered and the document falling short of the requirement would not operate to create, declare, assign, limit or extinguish in present or in future any right, title or interest, whether vested or contingent to or in immovable property. According to Section 49 of the Registration Act, if the document is not registered as required under Section 17 of the Act, such document cannot be tendered in evidence⁹.

⁹ *Abdul Salam v. Muhammad Siddiq (2019 CLC 1623)*

11. Under Article 17(2)(A) of the Qanun-e-Shahadat Order, 1984, the matter pertaining to financial or future obligations, if reduced to writing, the instrument shall be attested by two men or one man and two women, so that one may remind the other, if necessary and evidence shall be led accordingly. Considering Section 17(2)(A) and Article 79 of Qanun-e-Shahadat Order, 1984, it became crystal clear that the Exh. P/1 in question could be proved only by producing two attesting witnesses. In Ghulam Nabi's case, (1993 CLC 314), it was held that execution of private document could be proved by examining scribe and an attesting witness, where such person having not been examined, the document in question would be deemed to have not been proved and could be excluded from consideration.

12. The learned counsel was unable to cite a single ground based upon which the jurisdiction of this Court could be exercised under section 115 of Code of Civil Procedure, 1908. There is no suggestion that either impugned order is an exercise without jurisdiction or a failure to exercise jurisdiction or an act in exercise of jurisdiction illegally or with any material irregularity. It is trite law¹⁰ that where the forum of subordinate jurisdiction had exercised its discretion in one way and that discretion had been judicially exercised on sound principles the supervisory forum would not interfere with that discretion, unless same was contrary to law or usage having the force of law. It is the considered view of this court that no manifest illegality has been identified in the order impugned and further that no defect has been pointed out in so far as the exercise of

¹⁰ Per Faqir Muhammad Khokhar J. in *Naheed Nusrat Hashmi vs. Secretary Education (Elementary) Punjab* reported as PLD 2006 Supreme Court 1124; *Naseer Ahmed Siddiqui vs. Aftab Alam* reported as PLD 2013 Supreme Court 323

jurisdiction is concerned of the subordinate forum. In view hereof, this revision is found to be misconceived and devoid of merit, hence, hereby dismissed, along with pending application(s).

Karachi
Dated 11.01.2024.

JUDGE

Aadil Arab