

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

R.A. No. 318 of 2023

[Naveed Ali v. Mohammad Juman & others]

Applicant : Naveed Ali through Mr. Muhammad Awais
advocate

Respondents : Muhammad Juman and others
Nemo

Date of hearing
& Order : 23.04.2024

ORDER

YOUSUF ALI SAYEED, J. - Through this Civil Revision Application, the Applicant has sought to impugn the Judgment dated 26.09.2023 made by the learned Additional District Judge, Hala, dismissing Civil Appeal No. 29 of 2022 filed by him against the Order dated 07.09.2022 made by the learned Senior Civil Judge, Hala, allowing an Application under Order 7 Rule 11 CPC filed in the underlying Suit, bearing F.C. Suit No. 26 of 2021 matter, so as to reject the plaint of.

2. The crux of the case set up through the plaint and the grounds for its rejection are encapsulated in the aforementioned Order dated 07.09.2022, with the relevant excerpt thereof reading as follows:

5. Heard. Record perused. Admittedly the plaintiff was inducted in suit property as tenant of defendants so also the plaintiff deposited rent in favour of defendants through MRC No.02 of 2020 in Court of Rent Controller regarding suit property, therefore the plaintiff being tenant of defendants cannot deny the title of the defendants by virtue of Article 115 at Qanoon-e-Shahadat Order 1984. Moreover, Admittedly suit property was leased out by the Defendant No.2 to deceased Muhammad Juman and it is alleged by the Plaintiff the LRs of deceased Muhammad Juman fraudulently got mutated suit property in their names in record of rights without re-allotment by the defendant No.02 who is owner of suit property, be that as it may, the alleged fraud if any is played by the defendants upon the defendant No.02 and alleged mutation dated 16.03.2018 can at the most, for the sake of arguments, be taken as void or voidable against the defendant No.02 and not against Plaintiff, as such defendant No. 02 may seek cancellation of alleged mutation of defendants and the Plaintiff was nothing to do with said mutation or the original allotment of deceased Muhammad Juman, neither the allotment of

deceased Muhammad nor mutation of defendant is void de voidable against the Plaintiff nor the same is causing serious injury to the Plaintiff, therefore plaintiff has no locus standi to file the suit as the essential condition of causing serious injury in section 39 of Specific Relief Act 1877 (hereinafter referred SRA 1877) lacks in this suit. The Honourable Supreme Court of Pakistan in case of Laila Qayoom (PLD 2019 Supreme Court 449) has held that sine the essential condition of causing him serious injury mentioned in section 39 of SRA 1877 was not met, therefore plaintiff suit seeking cancellation of the documents was not maintainable". Moreover plaintiff has sought cancellation of allotment order dated 04.12.1969 & entry dated 10.08.1970 of deceased Muhammad Juman & mutation dated 16.03.2018 of the defendants by filing this suit on 24.04.2021 after more than three years of the last mutation entry dated 16.03.2018, although cancellation can be sought within three years in terms of Art. 91 of Limitation Act 1908, as such suit of Plaintiff is also time barred. In these circumstances, since the plaint does not disclose cause of action and the suit is time barred, therefore the application U/o VII Rule 11 CPC is hereby allowed and plaint in hand stands rejected accordingly with no order as to costs.

3. The Appeal preferred by the Applicant also culminated in dismissal, as aforementioned, with the learned Appellate Court observing *inter alia* that:

“10. Admittedly appellants-plaintiffs also sought cancellation of alleged allotment / lease order dated 4-12-1969 coupled with entry dated 10-8-1970 of deceased Muhammad Juman followed by a mutation dated 16-3-2018, which means that they also filed a suit beyond limitation of three years as embodied Article 91 Limitation Act, 1908.

11. Consequently based on judicious scrutiny of material brought on record and law applicable thereto I am clear in my mind that appellants / plaintiffs have got no existing title or right in suit property hence their suit is barred by Section 42 Specific Relief Act itself as well as they filed suit for declaration and cancellation beyond limitation so their suit being time barred is also barred by Limitation Act, which well attracted Order VII Rule 11 CPC clause (a) & (d) thereof because it is by now a well settled principle of law that limitation is not a mere formality but it is mandatory provision of law.

4. Under the given circumstances, no illegality or material irregularity is discernible in the matter, with the Revision being dismissed accordingly, along with the pending miscellaneous applications.

JUDGE