

IN THE HIGH COURT OF SINDH AT KARACHI

H.C.A. No. 170 of 2018

[M/s Bagh-e-Korangi (Pvt) Ltd. V. Pak Development Corporation & others]

Present:
Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Muhammad Osman Ali Hadi

Date of hearing : 25.04.2025
Date of decision : 25.04.2025
Appellant : Through Ms. Nazia Hanjrah, Advocate.
Respondent No.1 : Through Mr. Usman Tufail Shaikh, Advocate.

ORDER

Muhammad Osman Ali Hadi, J: The instant Appeal arise out of Order dated 30.04.2018 (“**the Impugned Order**”) passed in Suit Nos. 384/1987 & 202/1987 (“**the Suits**”), in which the Appellant’s applications under Order I Rule 10 Code of Civil Procedure 1908 (CMA Nos. 9090/2007 & 9091/2007), were dismissed.

2. The brief facts are that the Appellant is claiming rights on immovable property relating to 250 Acres and 37 Ghuntas of Agricultural Land bearing Survey Nos. 3-16, 166, 167, 391-395, 114, 118, 182, 190, 191, 1, 2, 17-20, 378-381, 99 (Part), 113, 179, 180 & 254, Na Class 115 (Part) situated in Deh Sharabi and Deh Phiai, Tappo Landhi, Taluka Karachi (“**the Property**”).

3. It is the case of the Appellant that they hold a legitimate claim over the Property, by virtue of agreements of sale dated 25.04.1987, 26.04.1987 and 27.04.1987 with Respondent No. 4 (“**Sale Agreements**”), who, they submit, was entitled to sell the Property to them. They further claim that an Irrevocable General Power of Attorney for the Property was issued in favour of the nominee of the Appellant on 26.04.1987, by Respondent No. 4 (with whom the Appellant has the Sale Agreements).

4. Learned Counsel for the Appellant contended that the Suits were filed by various persons / parties staking claim on the Property. Counsel for the Appellant stated they have a right to appear in the pending Suits, as according to her, Respondent No. 4 did not appear to be properly pursuing the matter, in light of which they may lose their vested interest in the Property, due to the inactions of Respondent No. 4.

5. Learned Counsel next stated that under the provisions of Order XXII Rule 10 of the Code of Civil Procedure 1908, (“**CPC 1908**”) she can be impleaded as an

assignee, and accordingly the Impugned Order in this regard has erred in law by overlooking the same. In support of her contentions, she has placed reliance upon 1992 SCMR 652 and 1997 SCMR 170.

6. Conversely, learned Counsel for Respondent No. 1 has opposed the contentions of the Appellant. He submits that the Suits were filed in the year 1987, and accordingly the Appellant is barred under the law of limitation from joining the proceedings in the year 2007, i.e. 20 years after the alleged Sale Agreements came into effect.

7. Learned Counsel for Respondent No. 1 next contended that as per the Appellant's own assertions, the alleged Sale Agreements were entered into in April 1987, and the Suits were filed afterwards, i.e. in May, 1987. He submits that the Appellant should have remained vigilant and approached the Court for their claim, if any, at such time. He further submits the Appellant currently have no right or title to the Property, and as such there is no requirement for them to be impleaded as a party, and that the Impugned Order is correct in holding the same. He has relied upon 2018 CLC 1487 in support of his contentions.

8. We have heard the learned Counsels and have found the case of the Appellant to stand on weak footing. The first observation of ours is that the Appellant is relying purely on the basis of Sale Agreements. It is trite law that a sale agreement in itself offers no right or title on property, and until such privilege is first established, the party claiming under such a sale agreement would not hold any ground to create a *lis* on the property. In this regard, this Bench itself recently passed a judgement in the unreported case being H.C.A. No 117 of 2020, where we also cited *Muhd. Yousaf v Munawar Hussain*¹ in which the Hon'ble Supreme Court held:

5. ... Judged in this background, it is obvious that the petitioner/plaintiff seeks a declaratory decree on the basis of an agreement to sell and in the same breath further declaration is sought that the sale of the disputed shop by the respondents Nos.1 to 5 in favour of the respondents Nos.6 to 10 was against his rights. In this view of the matter, the right course for the petitioner would have been to institute a suit for specific performance if at all such agreement was executed. The agreement to sell by itself cannot confer any title on the vendee because the same is not a title deed and such agreement does not confer any proprietary right, and this, it is obvious that the declaratory decree as envisaged by section 42 of the Specific Relief Act, cannot be awarded because declaration can only be given in respect of a legal right or character. The only right arising out of an agreement to sell is to seek its specific performance and in case the vendee has been put in possession, the same is protected under section 53-A of the Act." (Emphasis supplied).

¹ 2000 SCMR 204

9. The second legal obstacle faced by the Appellant is that they have approached the Court extremely belatedly. The maxim "*vigilantibus et non dormientibus jura subveniunt*" (law is for the vigilant not those who sleep over their rights) would be applicable to the matter at hand. The Appellant has admittedly approached the Court 20 years past execution of the alleged Sale Agreements, without any plausible justification. In the case of *Akhtar Nasir Ahmed v Province of Punjab*² the Apex Court elaborated that persons who are negligent in asserting their rights, effectively forfeit their ability to challenge matters which could've been addressed much earlier, and that such delays cannot be taken lightly.³ Furthermore it is observed by us, that even if the Appellant filed a case for specific performance against Respondent No. 4, *prima facie*, the same would stand time barred⁴, and hence even on this ground there would appear no benefit in allowing the Appeal.

10. We further find the reliance placed by the learned Counsel for the Appellant on Order XXII Rule 10 of the CPC 1908 to be misplaced. The said provision would be applicable only when there is some kind of assignment, which has not been demonstrated here. Moreover, the said provision of the CPC would be applicable to a person / party who has developed an interest during pendency of a suit. The Appellant's alleged interest in the Property was created prior to the Suits, and no interest has been assigned or otherwise created by the Suits themselves. The said provision is a discretionary relief, and the courts have held that merely having some financial interest in the result of a litigation would not be a ground entitling a party to be joined to the proceedings⁵. Therefore, in our opinion this provision of law would also not come to the aid of the Appellants.

11. We find the Appellant has been unable to show any impediment in the Impugned Order, which has deliberated the contentions raised and adjudicated on the matter accordingly. Hence we find no reason to interfere with the same.

12. Accordingly, for reasons above-mentioned, we find the instant Appeal to be without merit, and hereby dismiss the same.

JUDGE

JUDGE

M. Khan

² PLD 2024 SC 1268

³ *Ibid.* @ Para 12

⁴ Article 113 of the Limitation Act 1908

⁵ *Muhd. Sharif v Dr Khurshid Anwar Mian* 1996 SCMR 781