

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

IInd Appeal No.S-105 of 2024

[Muhammad Ilyas since deceased through his LRs v Awais Ali & 5 others]
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Syed Zeeshan Ali Shah, Advocate for the LRs of the Appellant.
Mr. Mehboob Ali Leghari, Advocate a/w Respondent No.1.

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Date of hearing **17.12.2025**

Date of Judgment **26.12.2025**

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JUDGMENT

Shamsuddin Abbasi, J:- The plaint in suit filed by the deceased appellant/plaintiff against respondent/ defendant No.1 and others for specific performance of contract and permanent injunction was rejected under Order VII Rule 11, C.P.C. vide order dated 06.11.2021, penned down by the learned Senior Civil Judge-II, Umerkot and the appeal preferred there against being Civil Appeal No.39 of 2021 was also dismissed by judgment dated 11.12.2024, handed down by the learned Additional District Judge-II (MCAC), Umerkot and aggrieved by the concurrent findings of the two Courts below the appellant has filed the present IInd Appeal under Section 100, C.P.C.

2. F.C. Suit No.109 of 2019 was filed by the plaintiff/appellant (now deceased) seeking specific performance of an agreement to sell dated 19.09.2009, alleged to be executed by the defendant /respondent No.1 Awais Ali in favour of the plaintiff/appellant for sale of plot measuring 3600 square feet, carved out of B.No.234/1, situated in Deh Chhajro, Taluka Kunri, District Umerkot (hereinafter referred to as the "said plot"). The respondent No.1 represented himself to be the owner of the said plot and agreed to sell the same for a total sale consideration of Rs.5,50,000/-, out of which an amount of Rs.1,50,000/- was paid as earnest money in the presence of witnesses Allah Bachayo and Behru Lal while a further sum of Rs.3,00,000/- was paid through three cheques and the remaining balance amount of Rs.1,00,000/- was agreed to be paid at the time of execution of the sale deed in favour of the plaintiff /appellant. The plaintiff /appellant performed his part of contract by repeatedly requesting the defendant/ respondent No.1 to receive the balance sale consideration and execute the sale deed, but he avoided on one pretext or the other and ultimately acted dishonestly and while the plaintiff/appellant was present at the site some strangers came there and attempted to dispossess him forcibly and upon his resistance went away extending threats of dire consequences whereupon the plaintiff/appellant approached the

defendant/respondent No.1, who again refused to perform his part of contract and failed to execute the sale deed in his favour. Consequently, the plaintiff/appellant approached the concerned quarters for execution of a registered sale deed in his favour and upon failure thereof filed the suit seeking the following relief(s):-

"(a) This Hon'ble Court may be pleased to direct the defendant No.1 personally to perform his part of contract by executing regular/final sale deed in respect of suit plot admeasuring 3600 sq. feet (60 x 60) (0-03.306 Ghunta) arising out of B.No.234/1 on east-south corner situated in deh Chhajro, Taluka Kunri, District Umerkot in favour of plaintiff after receiving remaining sale consideration of FRs.1,00,000/-, present the same for registration before defendant No.4 as defendant No.1 has already received the sale consideration amount of Rs.4,50,000/-, in case of his failure this Honourable Court may get the same job done through its Nazir, on behalf of defendant No.1, after receiving expenses and remaining sale consideration of Rs.1,00,000/-.

(b) To grant permanent injunction against the defendant No.1 restraining and prohibiting him from dispossessing the plaintiff from the suit plot or creating third party interest in the suit plot by himself or through his men, agents, attorney, subordinates in any manner whatsoever.

(c) To direct the Muktiarkar Kunri not to issue sale certificate and mutating the suit plot in favour of any other person in Revenue record respectively, except to plaintiff.

(d) Court to restrained the defendants No.4 and 5 from registering the regular/final sale deed in respect of suit plot in favour of any other person and also Micro filming Photo registering the same etc respectively during pendency of this suit except the plaintiff.

(e) Costs of the suit be borne by the defendant No.1.

(f) Any other relief which this Honourable court may deem fit and proper may be awarded to the plaintiff.

3. The respondent/defendant No.1 contested the suit by filing his written statement, wherein he has denied the claim of the appellant/plaintiff and also filed an application under Order VII, Rule 11, C.P.C. seeking rejection of plaint mainly contending that the matter was sub judice before the High Court of Sindh at Karachi and that pursuant to a compromise decree the plot in question has been sold to one Asif, who is stated to be the lawful owner and prayed for dismissal of suit as being not maintainable and barred by limitation.

4. The learned trial Court after hearing the parties allowed the application filed by respondent No.1/defendant and rejected the plaint under Order VII Rule 11, C.P.C. vide order dated 06.11.2021. Against such rejection, the appellant/plaintiff

preferred appeal which was also dismissed by judgment dated 11.12.2024, hence this IInd Appeal.

5. It is contended on behalf of the appellant that the learned trial Court was fully competent to entertain and decide the suit which squarely falls within the second category of Article 113 of the Limitation Act as time was not the essence of the contract. It is next submitted that the appellant has paid a sum of Rs.4,50,000/- to respondent No.1 leaving a balance amount of Rs.1,00,000/-, which fact stands substantiated by the bank report placed before the learned appellate Court. It is also submitted that the agreement to sell was duly attested by two witnesses and that the findings recorded by the two Courts below to the effect that the suit plot belong to one Asif on the basis of a compromise decree passed by this Court are contrary to the report of the concerned Muktiarkar/Assistant Commissioner (Revenue), Kunri, which reflects that the land bearing Survey No.234/1, measuring 02-21-47 acres, stands in the name of respondent No.1, which establishes existence of sale agreement and that the controversy could only be adjudicated upon after recording evidence on merits. Per learned counsel, the impugned order and judgment suffer from illegality and material irregularity, non-application of judicial mind and are not sustainable in law, hence the same are liable to be set aside and the matter may be remanded to the learned trial Court with direction to decide the same on merits after recording evidence.

6. The learned counsel for the respondent No.1, on the other hand, has controverted the submissions raised by the learned counsel for the appellant and submitted that the impugned orders are in accordance with the law and liable to be maintained. He, therefore, prayed for dismissal of appeal.

7. I have given my anxious consideration to the submissions of both the sides and perused the entire material available before me with their able assistance.

8. A bare perusal of the record reveals that the appellant filed a suit for specific performance and permanent injunction on 05.11.2019, based on a sale agreement dated 19.09.2009, executed by respondent No.1 in respect of a plot measuring 3600 square feet, carved out of Survey No.234/1, deh Chharjo, Taluka Kunri, District Umerkot. In terms of the said agreement, the total sale consideration was fixed at Rs.5,50,000/-, out of which the appellant alleged to have paid Rs.4,50,000/-, leaving a balance of Rs.1,00,000/-, which was agreed to be paid at the time of execution of the registered sale deed in his favour. The very nature of this stipulation demonstrates that no specific

time was fixed for performance and consequently the time was not the essence of the contract.

9. The statutory framework governing limitation for a suit seeking specific performance is contained in Article 113 of the Limitation Act, 1908, which prescribes a limitation period of three years. For ready reference, Article 113 is reproduced below:-

| Description of suit | Period of limitation | Time from which period begins to run |
|--|----------------------|--|
| 113. For specific performance of a contract. | [Three years] | The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused. |

10. The commencement of limitation under Article 113 depends upon two distinct contingencies (i) where a specific date for performance is stipulated in the contract, the limitation begins to run from such fixed date and (ii) where no such date is fixed, the limitation commences when the plaintiff has notice of refusal by the defendant to perform his part of the contract. In the case in hand, admittedly, no date is fixed in the agreement for execution of the registered sale deed. The appellant has pleaded that after payment of Rs.4,50,000/-, he repeatedly approached the respondent No.1 for execution of the sale deed, however, the respondent kept delaying the matter on false assurances and it was only one week prior to the filing of the suit that some strangers came at the plot and attempted to forcibly dispossess the appellant and upon his resistance they extended threats of dire consequences. It is further averred that the appellant again approached the respondent No.1 for execution of the registered deed, who refused to perform his part of contract, which furnishes a clear cause of action and the first unequivocal notice of refusal, therefore, the limitation begins to run not from the date of agreement but from the date when performance is refused.

11. It is correct that the prescribed period of limitation for a suit for specific performance is three years, however, in the present case, the suit is not merely based upon an agreement to sell but also upon possession delivered in pursuance thereof, coupled with a prayer for permanent injunction to protect such possession. The law is settled that limitation bars the remedy not the right and does not extinguish a subsisting right particularly where time is not the essence of the contract and the purchaser continues his right of possession and mere bar of limitation does not operate to defeat the appellant's claim and

the suit cannot be dismissed as time barred. The law of limitation, in the facts of the present case, does not stand in the way of the appellant in seeking relief of specific performance of contract, based on a sale agreement.

12. As regards the contention that in view of the compromise decree passed by this Court in Suit No.958 of 2007 the plot in question belongs to one Asif and, therefore, the very existence of the sale agreement between the appellant and the respondent No.1 does not arise. This contention does not appear to be well founded at this stage. The record reflects that the appellant's claim is confined only to an area measuring 3600 square feet (0-03.306 ghuntas), whereas under the said compromise decree only 1-20 acres was sold, which clearly indicates that the subject matter of the present suit is not co-extensive with the property covered by the compromise decree. This position is further substantiated by the report of the concerned Muktiarkar, which shows that the respondent No.1 remained owner of the remaining land and during the pendency of the present litigation sold a portion of the suit land in favour of one Rohan Ali in the year 2023. This *prima facie* supports the appellant's contention regarding the subsistence of respondent No.1's ownership and the existence of the sale agreement. I am, thus, of the view that the controversy raised by the parties involves disputed questions of fact, which cannot be conclusively resolved without recording evidence. It is a well settled principle that in cases involving controversial questions of fact or law, where a plaintiff discloses a cause of action, it cannot be rejected summarily under Order VII, Rule 11, CPC. The proper course for the Court in such cases is to frame issues on questions of law and fact and decide the matter on merits in the light of evidence in accordance with law. Even otherwise, rejection of a plaintiff on technical grounds would amount to depriving a person of their legitimate right to avail a legal remedy for redressing a wrong done in respect of a legitimate right.

13. For what has been discussed above, I am of the view that the appellant has been able to make out a case for interference. This *Ind Appeal* is, therefore, allowed. Consequently, the impugned order and judgment, passed by the two Courts below, are set aside and the matter is remanded to the learned trial Court with direction to decide the suit on merits after recording evidence of the parties in accordance with law.