

JUDGMENT SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.

R.A.No. 124 of 2014

DATE	JUDGMENT WITH SIGNATURE OF JUDGE
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1. For katcha peshi
2. For hearing of CMA 850/14

Mr. Ejaz Ali Hakro Advocate for applicants

Date of hearing: 23.09.2014.

Date of Judgment 30 .09.2014.

NAZAR AKBAR, J:- The applicants have preferred this revision application against the order of District & Sessions Judge, Umerkot in C.A. No. 07 of 2013 whereby the order of rejection of plaint under Order VII Rule 11 CPC in F.C. Suit No. 68 of 2012 passed by Senior Civil Judge, Umerkot was set-aside and the suit was remanded to the trial Court for decision on merits. The respondent No.1 has preferred suit No. 68 of 2012 against the applicants with the following prayer:-

- a) Declaration that the plaintiff is owner of the suit land and the impugned sale deed dated 13.05.1991 purportedly executed by father of plaintiff during her minority in favour of defendants No.01 & 02 is illegal, void, fraudulent and does not confer title upon defendants No.01 & 02.
- b) Order cancellation of impugned sale deed, adjudge the same to be void, fraudulent, or no legal effect and order it to be delivered and given up.
- c) Order the defendants No.01 & 02 to either put plaintiff in joint possession or alternatively in separate possession of the suit land in case of their failure to do so, the Honourable Court may get the same job done through Nazir of the

Honourable Court by ordering ejectment of defendants No.01, 02 or any other claiming through them, for the suit land.

- d) Award mesne profits to the plaintiff at the rate of Rs.20,000/- per acre per year w.e.f. Kharif 2011 till the plaintiff is put in possession of the suit land.
- e) Issue permanent injunction against defendants No.01 & 02 restraining and prohibiting them from alienating the suit land through any mode of transfer, transferring its possession to anyone else, creating third party interest and from creating any sort of encumbrance thereon, personally or through any other person, agent, servant, attorney or in any manner whatsoever.
- f) Issue injunction restraining defendants No.03 and 04 from lending any assistance to defendants No.01 and 02 enabling them to alienate, transfer the suit land or create any sort of encumbrance thereon personally or through any subordinate.
- g) Award cost of the suit to plaintiff.
- h) Grant any other relief which the plaintiff may be found entitled under facts and circumstances of the case.

2. The learned appellate Court while reversing the order of the trial Court found that the rejection of plaint on the point of limitation was erroneously decided without looking at the contents of para-11 of the plaint wherein the respondent No.1 has specifically alleged that she came to know about fraudulent sale deed on 03.05.2012 though the same was registered in 1991 when she was minor.

3. The learned counsel for the applicants has insisted that the learned Appellate Court should have dismissed the appeal in terms of Section 3 of the Limitation Act, 1908 since the suit was not maintainable being barred by limitation, as the respondent No.1 has sought cancellation of sale deed executed in 1991 through the suit filed by her in 2012 almost after 20 years. Learned counsel for the applicants

has contended in para-5 of the grounds that that the Appellate Court has not cited any Article of Limitation Act, 1908 by which the suit has been held not time barred. However, the impugned order clearly indicates that the learned Appellate Court had Article 91 of the Limitation Act, 1908 before him while holding that the application of Order VII Rule 11 CPC was not proper in the given facts. Similarly, in ground No.7 the applicant has claimed that respondent No.1 has not alleged fraud in execution of registered sale deed against the applicant. This contention is misconceived and contrary to the contents of plaint. The applicant has relied on the following case law:-

- (1) Haji Abdul Karim through Attorney and 4 others v. Messrs Florida Builders (Pvt) Ltd. Karachi **(2009 YLR 451)**
- (2) Hakim Muhammad Buta and another v. Habib Ahmad and others **(PLD 1985 S.C. 153)**

and contended that the question of limitation is not always a mixed question of law and facts and where the question of limitation is apparent on the face of the record Court cannot proceed further without any further inquiry and the matter relating to the limitation of filing of suit cannot be left on the pleadings of the parties but it is the duty of the Court to take notice of limitation.

4. I have examined the impugned order as well as the memo of plaint. The respondent No.1 has alleged fraud and mis-representation in sale of her property and collusion of Sub Registrar in execution of sale deed. This is also an admitted position that the sale was not made by her because in 1991 she was minor and she had no means to know and

understand the transaction of sale which was carried out by her father. She has categorically alleged in para-12 of plaint that her father had never disclosed to her that he had sold this property. In para-13 of plaint it has been explained by respondent No.1 that the sale was by all means void sale as the seller / father who had executed the sale deed was never lawfully authorized to sale the suit property and thus he was also a party to the fraud, The property of minor was sold without permission of the court and thus the sale was not lawfully done. She has explained in paras 6 and 7 of plaint that what was her knowledge about the property and according to her information the applicants were her tenants in the suit property, therefore, she was never aware of the sale until May 2012. All these facts from the plaint constitutes a ground for maintaining the suit for cancellation of sale deed executed in 1991 about a property of a minor by her father unlawfully since no permission was obtained by the father of respondent No.1 and she for the first time came to know about it in May 2012. A valuable property was involved and the contentions raised by the applicants in the plaint regarding the date of knowledge of fraudulent sale of the property cannot be excluded from the consideration by the Court to dismiss the suit on the point of limitation. In situation like this as emerges from the plaint, the learned Appellate Court has rightly held that the case of respondent No.1 was covered by Article 91 of the Limitation Act, 1908.

91. To cancel or set aside an instrument not otherwise provided for.	Three years	When the facts entitling the plaintiff to have the instrument cancelled or set aside become known to him
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5. The learned Appellate Court holding that in the given facts of the plaint this case was covered by Article 91 of the Limitation Act, 1908 has relied on the following case law:-

1. Abdul Waheed v. Ramzanu and others (**2006 SCMR 489**)
2. Muhammad Altaf and others v. Abdul Rehman Khan and others (**2001 SCMR 953**)
3. Noordad and 6 others v. Muhammad Sadiq and 40 others (**2013 YLR 2829 Supreme Court (AJ&K)**).
4. Haji Abdul Sattar and others v. Farooq Inayat and others (**2013 SCMR 1493**)
5. Zahid Hussain v. Mst. Noor Jehan and others (**SBLR 2010 Balochistan 90**).

The appellate Court has even quoted relevant passages from the citations covering different aspects of the provisions of Order VII Rule 11 CPC in upsetting the findings of the trial Court.

6. As to the contention of learned counsel that **Section 3** of Limitation Act, 1908 mandates that the courts should take notice of limitation and if the suit on the face of it is found barred by time it shall be dismissed. There is no cavil to this proposition However, the requirement of **Section 3** of the Limitation Act, 1908 to dismiss a suit instituted after period of limitation is to be decided with reference to the provisions contained in **Section 4 to 25** and in the case in hand the question of limitation on accepting the averments of pliant as correct was also subjected to the provisions of **Section 18** of Limitation Act, 1908 and thus the adverse impact of **Section 3** of the Limitation Act,

1908 was controlled. These two Sections **3 and 18** of the Limitation Act, 1908 are reproduced herein-below:-

3. **Dismissal of suit, etc., instituted, etc., after period of limitation.** Subject to the provisions contained in Sections 4 to 25 (inclusive), every suit instituted, appeal preferred, and applications made, after the period of limitation prescribed therefor by the First Schedule shall be dismissed, although limitation has not been set up as a defence.

18. **Effect of fraud.-** Where any person having a right to institute a suit or make an application has, by means of fraud been kept from the knowledge of such right or of the title on which it is founded.

or where any document necessary to establish such right has been fraudulently concealed from him,

the time limited for instituting a suit or making an application-

- (a) Against the person guilty of the fraud or accessory thereto, or
- (b) Against any person claiming through him otherwise than in good faith and for a valuable consideration.

shall be computed from the time when the fraud first became known to the person injuriously affected thereby, or, in the case of concealed document, when he first had the means of producing it or compelling its production.

7. In the plaint fraud has been alleged and knowledge of fraud has been claimed as May 2012 and therefore, the limitation started for cancellation of the instrument of sale in 2012. The order of Trial Court was therefore, rightly set aside by the 1st Appellate Court in view of the provisions of **Section 18** read with **Article 91** of the Limitation Act, 1908 as well as the authoritative judgments of superior courts. The order of remand of Suit to the trial Court in the given facts and law was perfectly in line with the judgment of superior courts. Consequently,

this revision application is dismissed with no order as to costs along with pending applications.

JUDGE

K.H.M