

IN THE HIGH COURT OF SINDH AT KARACHI

IInd Appeal No.341 of 2023

[Syed Sohail Bukhari v. Mst. Tabbasum Shahnawaz and others]

Alongwith

IInd Appeal No.322 of 2023

[Muhammad Naeem Anjum v. Maj. G. (Retd.) S.M.H. Bukhari and others]

Date of hearing	: 07.08.2025
Date of decision	: 22.09.2025
Appellant (in IInd Appeal 341/2023)	: Through Mr. Yasir Ahmed Shah, Advocate
Respondent Nos.1-4 (in IInd Appeal 341/2023) and Respondent Nos.2-5 (in IInd Appeal 322/2023)	: Through Mr. S.M. Iqbal Qadri, Advocate
Respondent No.5 (in IInd Appeal 341/2023) and Appellant (in IInd Appeal 322/2023)	: Through Mr. Abid Qureshi and Ms. Fatima Abid, Advocates
State	: Through Mr. Shariq Mubashir, AAG

JUDGMENT

Muhammad Osman Ali Hadi, J: Through the instant 2nd Appeal, the Appellant has challenged the Judgment dated 26.08.2023 (“**the Impugned Judgment**”) which was passed by the District Judge/Model Civil Appellate Court, Thatta (“**1st Appellate Court**”). In the Impugned Judgment, the learned Appellate Court overturned order dated 30.09.2022 (“**1st Order**”) passed in Civil Suit No. Nil/2022 by the Senior Civil Judge, Thatta.

2. The main point of contentions raised by the Appellant is that he is the legal heir and son of (late) Major (Retd.) S.M.H. Bukhari, who he states, was owner of land bearing Survey Nos.467, 468, 469, 470, total admeasuring 37 Acres 12 Ghuntas out of 64 Acres in Deh Khariseer Tapo Gharo, Mirpur Sakro (“**the Property**”). Learned counsel appearing on behalf of the Appellant contended that the Appellant (by virtue of being legal heir of Major [Retd.] S.M.H. Bukhari) has filed the instant Appeal, as the Property belonged to his late father and he is aggrieved by the Impugned Judgement which relates to the potential ownership of the Property. His primary contention is that the Suit filed by the Respondents 1 – 4 for specific performance of a Sale Agreement

purporting to the Property was time-barred, which was correctly held by the Trial Court in the 1st Order.

3. Counsel contended that the Respondent Nos.1 to 4 are the legal heirs of (late) Mr. Muhammad Shahnawaz Khan, whom the Respondents state purchased the Property from Mr. Bukhari vide Sale Agreement dated 23.05.2007¹ (“**the Sale Agreement**”). Respondent Nos. 1 to 4 filed Civil Suit No. -Nil/2022 in the Court of Civil Judge, Thatta seeking, *inter alia*, specific performance of the Sale Agreement, claiming they held a right to the Property, by virtue of being legal heirs of the (late) Muhammad Shahnawaz Khan. They further submitted that the (late) Mr. Shahnawaz Khan had paid (late) Mr. Bukhari certain sale consideration for purchase of the Property.

4. After filing of the said Civil Suit, the Senior Civil Judge passed order dated 30.09.2022 (“**1st Order**”), whereby the plaint was rejected under Order VII Rule 11 CPC. The Senior Civil Judge placed reliance upon Article 113 of the Limitation Act 1908, and held that the Sale Agreement stated a 2½ months’ time period for completion of the sale, after which a suit could have been brought within three years. As per counsel for the Appellant, the said period would have expired on 07.08.2007, and in this regard he has referred to Clause 2 of the Sale Agreement dated 23.05.2007². Learned counsel for the Appellant has submitted that the learned 1st Appellate Court has erred by overturning the 1st Order of the Trial Court, and has erroneously held that limitation was a mixed question of law and facts which could only be resolved after recording of evidence. Counsel stated that there was a fixed date for performance in the Sale Agreement in light of which no further evidence was required. He submitted the 2 ½ month limitation period stipulated in the Sale Agreement had long passed, and the Civil Suit was squarely hit by limitation. Learned counsel has referred to various documents on record, such as a Legal Notice dated 03.03.2011³; a Letter regarding cancellation of the Sale Deed dated 17.08.2007⁴; another Legal Notice

¹ Available at page 49 of the file.

² Available at page 51 of the file.

³ Available at page 119 of the file.

⁴ Available at page 103 of the file.

dated 10.12.2021⁵, which he submits show the *mala fide* and threatening behaviour of the Respondents, against which no relief should be granted to them [as per counsel for the Appellant].

5. Counsel then submitted that the Property was already sold in the year 2018 to Mr. Muhammad Naeem Anjum (Respondent No.5), who has also filed the accompanying 2nd Appeal No. 322 of 2023 (tagged along with) against the same Impugned Judgment. Counsel finally contended that all formalities for selling the Property were complied with in the year 2018, and that the said Property was duly transferred to Respondent No.5 in accordance with law. He submitted that the Impugned Judgment is erroneous and that there is a bar under the law, referring to Order VII Rule 11 Code of Civil Procedure 1908 (“CPC”) read with Article 113 of the Limitation Act 1908, providing three years’ time to file the suit for specific performance. He submitted the Civil Suit was filed beyond the permissible 3 year period. In this regard he averred that the 1st Order dated 30.09.2022 was correct, and that the Impugned Judgment was wrong in overturning the same. He prayed the Impugned Judgement should be *set aside*. In support of his contentions, he has relied upon certain case laws⁶.

6. Learned counsel appearing for the Respondent Nos. 1 - 4 supported the Impugned Judgement and stated that the 1st Order was incorrect. Counsel has submitted that whilst under Clause 2 of the Sale Agreement there was a date set of 2 ½ months for payment of the balance amount, Clauses 4, 5 & 6 should also be noted. These Clauses would observe the vendor (Mr. Bukhari) was responsible to obtain a fresh Form-VII for the Property, prior to final payment. He submits Clauses 4, 5 & 6 were not complied within the 2 ½ month period, and the breach committed by the Appellant had remained on-going, and hence the limitation period as stated by the Appellant was not in effect. Learned counsel submitted that various documents which are on record have been relied upon by the Appellant before the Trial Court, and as such evidence was required to be assessed by the Trial Court before adjudicating the issue of limitation. Counsel lastly concluded that the

⁵ Available at page 133 of the file.

⁶ 2016 SCMR 910, 2000 SCMR 1305, PLD 2015 SC 212 and PLD 2012 SC 247.

Appellant had received a significant amount exceeding Rs.6,000,000/- from Mr. Muhammad Shahbaz Khan (predecessor of the Respondent), and that they were ready to pay the further amounts for the Property, but the same was delayed due to actions of the Appellant. Counsel contended that the Impugned Judgment by the 1st Appellate Court is accurate and correct, and that the matter should be remanded to the Trial Court for proper adjudication. In support of his contentions, he has relied upon Section 55 of the Contract Act 1872, as well as several case laws⁷.

7. Learned counsel for the Appellant exercised his right of rebuttal and reiterated his earlier stance, but also referred to Order VII Rule 6 CPC, in which he states that no ground for exemption from limitation law was ever claimed by the Respondent Nos.1 to 4, and therefore no leeway in this regard can be granted to the Respondent Nos.1 to 4.

8. I have heard the learned counsels and have gone through the record / documentation. There are 2 considerations to be ascertained in this 2nd Appeal:

- i. Whether the Impugned Judgement passed by the 1st Appellate Court has erred under law? AND
- ii. Whether the qualifications for invoking a IInd Appeal have been met by the Appellant?

It appears clear that there was a Sale Agreement between the predecessors of the Appellant and Respondent Nos.1 to 4 dated 23.05.2007. It is further clear that Mr. Bukhari, the predecessor of the Appellant, had received a significant amount of funds from Mr. Shahnawaz Khan (predecessor of Respondent Nos. 1- 4) pursuant to the Sale Agreement. This can be observed from copies of the receipts and acknowledgment with the Sale Agreement⁸, as well as copies of various pay-orders attached therewith⁹. In the case of *Abdul Ghani*¹⁰ a Division

⁷ PLD 1995 SC 314, 2014 YLR 1927, 2017 CLC (N) 175, PLD 1902 SC 01.

⁸ Available at pages 55 and 57 of the file.

⁹ Available at pages 59 to 67 of the file.

¹⁰ 2019 CLC 1721

Bench of this Court held that in a case where a *prima facie* fiduciary relationship existed between the parties, the civil court should settle the matter on merits, and that limitation was a mixed question of law and facts. And that outrightly a plaint should not be rejected under the provisions of Order VII Rule 11 CPC.

9. Furthermore, a Conveyance Deed between Mr. Bukhari and Mr. Khan regarding the Property dated September 2007, is available on record.¹¹ It is pertinent to note date of the Conveyance Deed is beyond the 2 ½ months stipulated in Clause 2 of the Sale Agreement,¹² which timeframe formed the basis of reliance by the Appellant in their arguments, as well as by the Trial Court in the 1st Order. This shows that even the initial parties, i.e. Mr. Bukhari and Mr. Khan, had extended the 2 ½ month timeframe as per Clause 2 of the Sale Agreement, by themselves conducting documentation / transactions such as the Conveyance Deed, post the stipulated time period.

10. Even as per a Legal Notice sent by Mr. Shahnawaz Khan to the Appellant dated 03.03.2011,¹³ stated that late Mr. Bukhari was responsible for first obtaining a fresh Form-VII for the Property, after which all further final payments etc. were to be made. The outcome of this entire range of transactions and cross-commitments remained unaddressed by the Trial Court.

11. It is settled law that the question of limitation can be of both mixed law and fact. A perusal of the 1st Order shows that whilst various documentation (including the Sale Agreement) was relied upon by the learned Trial Judge in some aspects, a proper scrutiny was not conducted and various other key aspects were not properly considered. For this, evidence would be required. In the case of *Rao Mubd. Rashid v Province of Sindh*¹⁴ the Hon'ble Supreme Court held:

“10. No doubt, keeping in mind the dictum laid down by this Court, the learned Tribunal dismissed all the

¹¹ Available at page 69 of the file.

¹² Which was stated to be 7th August 2007

¹³ Available at page 119 of the file.

¹⁴ 2024 SCMR 1864

appeals on the notion that departmental appeals were barred by time and we have no cavil, obviously, to such proposition of law set down by this Court but coherently, in our conscience, the question of limitation apparently in this case does not seem to be in the plainest or purest form but on the face of it, emerges as a mixed question of law and fact which has congregated certain factual controversies that are neither based on facts virtuously nor unreservedly grounded in the law, thus require both legal and factual appraisal and exploration for the proper determination of the appeals. The procedure is a mere device with the object to facilitate and not to obstruct the administration of justice, therefore, to advance the cause of justice, any technical construction of law or rules that leaves no room for reasonable elasticity of interpretation should be guarded against and any construction which reduces the statute to a futility must be avoided; mindful of the reminiscence and resonance of the principle that the role of procedure in any system of justice is to assist, not obstruct, the granting of rights to the people, as held by this Court in the case of *Imtiaz Ahmad v. Ghulam Ali* (PLD 1963 SC 382).”

“11. As a whole, mixed questions of law and fact activate the intermingling of the scrutiny of question of law as well as the factual resolution. A plea of limitation cannot be decided theoretically or presumably without adverting to the starting point of limitation in each case separately. Even under Order VII, Rule 11, C.P.C., before rejection of plaint, the foremost consideration for the Courts is always the meaningful construction of the averments made in the plaint....”

12. Article 113 of the Limitation Act 1908 states that unless a specific date is mentioned, the limitation period for specific performance is three years from when performance of a contract has been refused to be specifically performed. In the instant case, reliance was placed by the Trial Court only on Clause 2 of the Sale Agreement, which provided a 2 ½ months’ time for payment. However, the other relevant portions of the Sale Agreement at Clauses 4, 5 and 6 could not have been ignored.

13. For purposes of convenience, the relevant Clauses 1 to 6 of the Sale Agreement are reproduced hereunder:-

“NOW THEREFORE THIS WITNESSETH AS UNDER:-

1. That the Vendor has already received from the Vendee a sum of Rs.5,00,000/- (Rupees Five Lac only) by Cheque No.1674805 dated 02 April 2007 drawn on Bank Al-Habib Limited Khayaban-e-Shamsher Branch Karachi and today a further sum of Ra.10,00,000/- (Rupees Ten Lacs only) by Pay Order No.POKBK-0029806 dated 12 May 2007 drawn on Bank Alfalah Limited Korangi Branch, both the sum totalling to Rs.15,00,000/- (Rupees Fifteen Lacs only) being the advance part-payment towards sale consideration of the said property, the receipt thereof the Vendor doth hereby fully admit and acknowledge separately.
2. That the remaining and balance payment of Ra.90,01,815/- (Rupees Ninety Lac one Thousand eight hundred and fifteen only) shall be paid by the Vendee to the Vendor at the time of completion of sale formalities including registration of Conveyance Deed in favour of the Vendee or his nominee before the Sub-Registrar concerned within 2.5 months from the date of signing of this agreement.
3. On receipt of full and final payment the Vendor shall hand over peaceful physical and vacant possession of the said property.
4. That the Vendor above named shall be responsible for obtaining of fresh form-VII from concerned office/department at his own cost and expenses prior to the date of final payment.
5. That the Vendor above named shall be responsible for obtaining of fresh demarcation letter of above said property i.e. 37 acre to 12 ghunta prior to the date of final payment.
6. That the Vendor above named also be responsible for obtaining of NOC for sale from Mukhtiarkar concerned or any other department etc., at his own cost and expenses prior to the date of final payment.”

14. While the date of the Sale Agreement was 23.05.2007, and it has been submitted by the Appellant that the expiration for the payment was 07.08.2007; a mere reading of clauses 4, 5 and 6 of the Sale Agreement illustrate that the Appellant (through his predecessor) was to fulfil certain conditions before final payment was disbursed. Admittedly, those conditions were not fulfilled. Therefore, with so many factual discrepancies on record, it would only be prudent for the Court to first establish the rights of the parties pursuant to evidence available, which was not done in the 1st Order. The concluding part of the 1st Order

simply relied upon Article 113 of the Limitation Act 1908 and Clause 2 of the Sale Agreement, whereas it ought to have considered the other portions / factors mentioned *ibid*.

15. Lastly but equally pertinently, a Second Appeal is a restricted field, and it is absolutely essential for a party invoking this *fora* to establish a clear defect in law or procedure; or failure to determine such material irregularity committed by the 1st Appellate Court below which requires interference. In the case of *Gulzar Ahmad v Ammad Aslam*¹⁵ a 3 Member Bench of the Apex Court held:

“7. Compliant with section 100, C.P.C., the second appeal only lies in the High Court on the grounds that the decision is being contrary to law; failure to determine some material issue of law, and substantial error or defect in the procedure provided by the Code or law for the time being in force which may possibly have emanated an error or slip-up in the determination or decisiveness of the case on merits. Meaning thereby, it does not lie to question the findings on facts. In the case of *Madan Gopal v. Maran Bepari* (PLD 1969 SC 617), this court held that if the finding of fact reached by the first appellate court is at variance with that of trial court, such a finding by the lower appellate court will be immune from interference in second appeal only if it is found to be substantiated by evidence on the record and is supported by logical reasoning, duly taking note of the reasons adduced by the first court which have been disfavored in the contrary finding. It was further held that interference would be justified if the decision of the lower courts is found to be contrary to law or some usage having the force of law has failed to determine some material issue of law. Whereas in another case reported as *Amjad Ikram v. Mst. Asiya Kausar* (2015 SCMR 1), the court held that in case of inconsistency between the trial court and the appellate court, the findings of the latter must be given preference in the absence of any cogent reason to the contrary as has been held by this court in the judgments reported, as *Madan Gopal and 4 others v. Maran Bepari and 3 others* (PLD 1969 SC 617) and *Muhammad Nawaz through LRs. v. Haji Muhammad Baran Khan through LRs. and others* (2013 SCMR 1300).”

16. Even in this regard, the Appellant has also failed. The Appellant has not provided any legal rationale for interference with the Impugned Judgement. In fact, it would have been more expeditious and beneficial had the Appellant not filed in the instant 2nd Appeal, as the matter would have been already been remanded back and heard on

¹⁵ 2022 SCMR 1433

merits, and most likely be on course to a conclusion. Instead, by filing this 2nd Appeal, the Appellant themselves have delayed matters.

17. In light of the aforementioned, I have found that no ground for interference nor any legal impediment has been established by the Appellant, vis-à-vis the Impugned Judgment.

18. It is hereby clarified that this is not to say whether or not the suit filed by Respondent Nos.1 to 4 against the Appellant was maintainable or not, but simply that documents available on record and examination of the Sale Agreement (including the actual date of alleged refusal for performance of the Agreement) along with contentions of all parties ought to have been properly considered by the Trial Court before outrightly rejecting the plaint in such a basic manner. Even the relief of specific performance (as being claimed by Respondents No. 1 - 4) is not an absolute right, but one that rests in judicial discretion and always with reference to the facts of a particular case,¹⁶ and must be proven by them. However, due process must be followed in accordance with law, and in the given circumstances it would appear the Impugned Judgement was correct in remanding the matter back to the Trial Court to adjudicate on merits.

19. In conclusion, I have not found any fault with the Impugned Judgement. Accordingly, this instant 2nd Appeal is dismissed and the Impugned Judgment is upheld. It is however hereby also added for purposes of clarity that the learned Trial Court is at liberty to frame the issue of limitation, which may be properly decided on its merits (as opined in this Judgement), taking into account all facts and circumstances in congruence with law.

20. Let a copy of this order also be placed in 2nd Appeal No. 322 of 2023, which is tagged herewith. The said 2nd Appeal No. 322 / 2023 has also challenged the same Impugned Order, and is also accordingly dismissed, to which this Judgement shall apply *mutatis mutandis*.

¹⁶ Reference to a 3 Member Bench Judgement cited as PLD 2011 SC 323 @ Para 17

Appeal dismissed

JUDGE

B-K Soomro