

IN THE HIGH COURT OF SINDH AT KARACHI

Civil Revision Application No.S-83 of 2023

[Mst. Kaneez Fatima V. Syed Muhammad Taufiq and another]

Applicant : Through Mr. Sikandar Khan, Advocate.
Respondent No.1 : Through Mr. Mian Ashfaq Ahmed, Advocate.
Respondent No.2. : Through Mr. Salahuddin Chandio, A.A.G.
Date of Hearing : **21.09.2026**
Date of Decision : **26.10.2026**

J U D G M E N T

Abdul Hamid Bhurgri, J.- The present matter and connected C.P. No.S-674/2023, though arising out of the same property, were tagged together and heard simultaneously. However, having regard to the distinct nature of the proceedings, the questions involved and the separate jurisdictions exercised by the Civil Court and the Rent Controller, I consider it appropriate to decide both matters through separate judgments, so that the respective controversies may be examined independently in the light of the pleadings, evidence and applicable law, without overlapping the issues involved.

2. The legality and propriety of the judgment and decree dated 26.05.2023 passed by the learned Additional District Judge-V (MCAC), Karachi-West, in Civil Appeal No.289 of 2020 have been brought under challenge by the applicant in the present civil revision application under Section 115, C.P.C. By the impugned judgment, the appeal preferred by respondent No.1 was allowed and the judgment and decree dated 24.09.2020 passed by the learned XVth Senior Civil Judge, Karachi-West, in Civil Suit No.471 of 2018, whereby the applicant's suit for declaration, cancellation of a registered sale deed and consequential reliefs had been decreed, were set aside.

3. The dispute between the parties concerns House No.15/A (15/5), Block-A-1, Sector-E, Qasba Township, Manghopir Road, Orangi Town, Karachi. Respondent No.1 claims to have purchased the property through a registered sale deed dated 02.10.2014 for a consideration of Rs.10,00,000/-. The applicant,

however, instituted Civil Suit No.471 of 2018 seeking cancellation of the said sale deed on the ground that her signatures had been obtained through fraud and misrepresentation regarding the nature and contents of the document. Respondent No.1 contested the suit, maintaining that the sale deed had been validly executed and registered against valuable consideration. After recording evidence, the learned trial Court decreed the suit on 24.09.2020. The learned first appellate Court reversed the judgment and decree through the impugned judgment dated 26.05.2023, inter alia, on the ground that the suit was barred by limitation.

4. Learned counsel for the applicant contends that the learned first appellate Court failed to properly determine the question of limitation in the light of the applicant's specific allegations concerning fraud, misrepresentation and the date of knowledge of the disputed sale deed. It is submitted that the applicant came to know of the true nature of the document only when respondent No.1 produced the same in the rent proceedings instituted against her in 2017. According to learned counsel, the suit was instituted within the prescribed period calculated from the date of such knowledge. It is further contended that the first appellate Court failed to adequately consider the evidence and the findings recorded by the trial Court.

5. Conversely, learned counsel for respondent No.1 supports the impugned judgment and decree, contending that the applicant admittedly signed the registered sale deed dated 02.10.2014 and was fully aware of the transaction. It is maintained that the suit was instituted beyond the prescribed period of limitation and that the allegations of fraud and misrepresentation were neither established nor sufficient to invalidate the registered document. Learned counsel submits that the first appellate Court rightly reversed the judgment and decree of the trial Court and that no case for interference under Section 115, C.P.C., has been made out.

6. I have heard learned counsel for the parties and examined the judgments of the Courts below and the material available on record.

7. The principal question arising for determination is whether the learned first appellate Court properly adjudicated the

question of limitation in the light of the nature of the relief claimed, the applicable statutory provisions and the disputed circumstances concerning the applicant's knowledge of the sale deed. The applicant's case, as reproduced in the judgment of the trial Court, was that although her signatures appeared on the disputed document, she had been misled regarding its nature and contents and came to know of the alleged sale deed when respondent No.1 produced it along with his affidavit and annexures in Rent Case No.204 of 2017. The rent proceedings are stated to have been instituted on 17.10.2017. The precise date on which the applicant acquired the relevant knowledge, however, is a matter requiring determination from the pleadings and evidence.

8. Article 91 of the First Schedule to the Limitation Act, 1908, prescribes a period of three years for a suit seeking cancellation or setting aside of an instrument, commencing from the date when the facts entitling the plaintiff to such relief become known to him. The scope of the said provision was considered by the Honourable Supreme Court in **Mst. Hamida Begum v. Murad Begum**¹, wherein the relevant knowledge was examined in relation to the accrual of a cause of action enabling the plaintiff to seek cancellation. The principle was also considered in **Qazi Altaf Hussain v. Ishfaq Hussain**². Thus, the starting point of limitation under Article 91 is not invariably the date of execution of the instrument. Rather, the Court must determine when the facts legally entitling the plaintiff to seek cancellation became known. Where such knowledge is disputed, its date and legal consequences must be determined upon examination of the pleadings and evidence. Equally, the mere assertion of a subsequent date of knowledge does not, by itself, establish that the suit is within limitation.

9. In the present case, the applicant's asserted position is that she acquired knowledge of the disputed sale deed through the rent proceedings instituted in 2017, whereas the suit seeking cancellation was instituted thereafter. If the legally relevant knowledge is found to have arisen in 2017, institution of the suit in 2018 would fall within the prescribed period of three years under Article 91. However, whether the applicant acquired knowledge at

¹ *Mst. Hamida Begum v. Murad Begum (PLD 1975 Supreme Court 624).*

² *Qazi Altaf Hussain v. Ishfaq Hussain (1986 SCMR 1427).*

that stage or was already aware of the relevant facts at an earlier point is a matter to be determined upon examination of the pleadings and evidence. The learned first appellate Court was, therefore, required to determine the legally relevant starting point of limitation rather than treating the date of execution of the sale deed as necessarily decisive.

10. The Honourable Supreme Court in **Salamat Ali and others v. Muhammad Din and others**³ explained the scope of Section 18 of the Limitation Act, 1908, observing that the fraud contemplated by the provision is one which conceals the right to sue, as distinguished from fraud constituting the cause of action itself. A party seeking the benefit of Section 18 must plead the necessary particulars of fraud, including the relevant date of knowledge, and establish the same through evidence. The same principle was reiterated in **Mst. Rabia Gula and others v. Muhammad Janan and others**⁴, wherein it was emphasized that a general allegation of fraud, without the requisite particulars and proof, does not by itself postpone limitation. These principles are relevant where the benefit of Section 18 is invoked. They do not, however, dispense with the separate inquiry required by Article 91, which itself makes knowledge of the facts entitling cancellation the starting point of limitation.

11. It is equally well settled that Section 3 of the Limitation Act, 1908, casts a statutory obligation upon the Court to dismiss a suit instituted beyond the prescribed period, notwithstanding that limitation may not have been expressly raised as a defence. In **Khaleelullah and others v. Muhaim Khan and others**⁵, the Honourable Supreme Court reiterated the mandatory character of Section 3 and the duty of the Court to examine limitation in accordance with law. Nevertheless, where determination of limitation depends upon disputed factual circumstances, the Court must examine the relevant pleadings and evidence before reaching a conclusion.

12. In the present case, the learned trial Court framed a general issue concerning maintainability of the suit but did not separately frame an issue regarding limitation. The learned first

³ *Salamat Ali and others v. Muhammad Din and others (PLD 2022 Supreme Court 353).*

⁴ *Mst. Rabia Gula and others v. Muhammad Janan and others (2022 SCMR 1009).*

⁵ *Khaleelullah and others v. Muhaim Khan and others (PLD 2024 Supreme Court 600).*

appellate Court considered limitation with reference to the execution of the registered sale deed and the applicant's knowledge of the transaction. However, the material distinction between the applicant's admission of signatures and her assertion that she subsequently acquired knowledge of the true nature of the document required specific consideration. The first appellate Court was also required to identify the applicable Article of the Limitation Act, determine the legally relevant starting point and examine whether the applicant's asserted date of knowledge was established by the record. The impugned judgment does not adequately address these aspects of the controversy, although they were material to the conclusion reached on limitation.

13. It is pertinent to observe that an appeal is a continuation of the original proceedings, and the first appellate Court is competent to examine questions of both fact and law, reassess the evidence and determine the controversy arising between the parties. The jurisdiction of this Court under Section 115, C.P.C., is comparatively restricted and does not ordinarily warrant a fresh appraisal of the entire evidence or substitution of its own findings on disputed questions of fact. The failure to adequately determine the applicable starting point of limitation, which materially influenced the impugned appellate judgment, constitutes an error warranting interference in the exercise of revisional jurisdiction. In the circumstances, the appropriate course is to remit the appeal to the learned first appellate Court for a reasoned determination in accordance with law.

14. For the foregoing reasons, the impugned judgment and decree dated 26.05.2023 passed by the learned Additional District Judge-V (MCAC), Karachi-West, in Civil Appeal No.289 of 2020 are set aside, and the appeal is remanded to the learned first appellate Court for fresh decision, subject to the following directions:

- (i) The learned first appellate Court shall specifically formulate the question of limitation as a point for determination, having regard to the nature of the relief claimed and the applicable provisions of the Limitation Act, 1908, particularly Article 91 of the First Schedule.

- (ii) The learned first appellate Court shall determine the question of limitation on the basis of the pleadings, evidence and material already available on record, including the circumstances concerning execution of the disputed sale deed, the applicant's asserted knowledge through the rent proceedings and the legal effect thereof. The applicability of Section 18 of the Limitation Act, 1908, shall also be considered if the pleadings and circumstances so warrant.
- (iii) If the learned first appellate Court concludes that the suit was instituted beyond the prescribed period of limitation, it shall decide the appeal accordingly, without entering into an unnecessary determination of the merits of the rival claims concerning the disputed property, keeping in view Section 3 of the Limitation Act, 1908.
- (iv) If, however, the learned first appellate Court concludes that the suit was instituted within the prescribed period of limitation, it shall proceed to decide the appeal on merits, upon independent examination and appreciation of the evidence already adduced by the parties, addressing the material findings recorded by the trial Court and assigning reasons for its conclusions in accordance with law.
- (v) Should the learned first appellate Court find that an essential factual issue was omitted at trial and that further findings are indispensable for proper adjudication, it may adopt the procedure contemplated by Order XLI Rule 25, C.P.C., strictly in accordance with law, without permitting either party merely to fill lacunae in its case.

15. Considering that the parties have remained engaged in litigation since 2017–2018, and that the matter is being remanded to the learned first appellate Court for fresh decision, it is expected that the appeal shall be taken up expeditiously and decided, preferably within three months from the date of receipt of a certified copy of this

judgment, after affording the parties a reasonable opportunity of hearing and without granting unnecessary adjournments.

16. It is clarified that this Court has not expressed any opinion regarding the validity or genuineness of the disputed sale deed, the alleged payment of consideration, the allegations of fraud or misrepresentation, or the competing claims of ownership and possession. All such questions shall remain open for determination by the learned first appellate Court, if required, strictly in accordance with law, uninfluenced by any observations made herein.

17. The civil revision application is accordingly allowed to the extent indicated above, and Civil Appeal No.289 of 2020 is remanded to the learned first appellate Court for fresh decision in the terms stated herein. There shall be no order as to costs.

JUDGE

Ayaz Gul