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ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
Civil Revision Appln. No.S-02 of 2019.

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE
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Applicant : Muhammad Bux, through Mr.Mazher Ali Bhutto, advocate.

Respondent 1-B : Mst. Kazbano, through Mr.Shafiq-ur-Rehman, advocate.

Date of Hearing : 03.02.2020

Date of Order : 03.02.2020

J U D G M E N T

ZAFAR AHMED RAJPUT, J- Impugned in this Civil Revision Application is the judgment and decree dated.01.12.2018 and 04.12.2018, respectively whereby the learned District Judge, Kamber-Shahdadkot @ Kamber, while dismissing Civil Appeal No.39 of 2018, maintained the order dated.10.09.2018, whereby the learned Senior Civil Judge, Warrah, rejected the plaint in F. C. Suit No. Nil of 2018.

2. Briefly stated facts of the case are that the applicant filed Civil Suit No. Nil of 2018 for specific performance of contract and permanent injunction against the respondents alleging therein that vide agreement dated.17.08.2006, he entered into a sale agreement with respondent No.1 in respect of agricultural land admeasuring 01-13 Acres, out of S.No.26/4, situated in Deh Kathiya Bazar, Tapo Nasirabad "A", Taluka Nasirabad, for total sale consideration of Rs.302100/- and at the time of agreement, he paid Rs.100,000/- to defendant No.1 in presence of witnesses and in consequence whereof

the possession of suit land was handed over to him. It was also alleged that the balance sale consideration was to be paid on 23.07.2007 to defendant No.1 and it was condition of the said sale agreement that in case respondent No.1 failed to perform his part of contract he would pay the double amount of sale consideration to applicant. It is also alleged that on 25.07.2007 the applicant along with his witnesses went to defendant No.1 and offered him the remaining sale consideration to defendant No.1 and requested for some times as he wanted to resolve some family issues. The respondent No.1, however, showed his need of some amount and on his request the applicant paid Rs.100,000/- more as part payment of remaining sale consideration on 23.07.2007. It was case of the applicant that thereafter, he time and again approached respondent No.1 to perform his part of contract who kept him on false hopes and then in the year 2015 he expired leaving behind him the defendant No.1-A & 1-B. who also refused to perform their part of contract. Hence cause of action accrued to him to file the civil suit.

3. The learned trial Court having perused the alleged sale agreement put the counsel for the applicant on notice to satisfy the Court on the point of limitation and thereafter vide order dated.10.09.2018, the learned trial Court rejected the plaint in the suit by observing the same barred by limitation. Against that order the applicant preferred Civil Appeal No.39 of 2018, which was heard and dismissed by the learned Sessions Judge Kamber Shahdadkot @ Kamber, vide judgment dated 01.12.2018. It is thereafter the applicant has preferred this civil Revision Application.


4. It has been contended by the learned counsel for the applicant that in fact the respondent No.1, through his legal heirs failed to perform his part of contract due to some family dispute and thereafter the respondent No.1-A and 1-B were not in legal capacity to

perform the part of contract as Foti Khata Badl of respondent No.1 was effected in favour of respondent No.1 and thereafter Foti Khata Badl was effected on 05.03.2018 in favour of respondent No.1-A & 1-B. He has further stated that the time for limitation to maintain the suit for specific performance of contract begins under Article 113 of Limitation Act from the day of denial of the party who is under obligation of any contract and in the present matter the specific date of denial of performance of contract on the part of respondent No.1-A & 1-B is 25.08.2018, therefore, the suit filed by the applicant was within time, hence the impugned judgment and order passed by the Courts below are liable to be set aside with direction to learned trial Court to proceed with the Civil Suit of the applicant and decide the same in accordance with law.

5. On the other hand learned counsel appearing for respondent No.1-B has fully supported the impugned judgment and order passed by the Courts below. He denied execution of any sale agreement between defendant No.1 and applicant. He has maintained that had there been execution of any genuine sale agreement between the parties on 17.08.2006, the applicant would have filed the suit for specific performance of his contract within a period of three years as provided under Article 113 of the Limitation Act, but even he failed to file the same in the life time of defendant No.1, who admittedly expired in the year 2015, after 09 years of the alleged agreement.

6. Heard the learned counsel for the parties and perused the material available on record.

7. It reflects from the pleadings of the applicant plaintiff that the alleged sale agreement was executed between the parties on 17.08.2006, wherein it was specifically written that the respondent No.1 would execute registered sale deed in favour of the applicant on 25.07.2007, after receiving balance sale consideration of Rs.202100/-.



Article 113 of the Limitation Act, 1908, provides Limitation of 03 years for filing the suit for specific performance from the date fixed for the performance, or if no such date is fixed when the plaintiff has noticed that performance is refused. Since in the instant case date of 25.07.2007 was fixed for the performance, no other date when the plaintiff noticed that the performance was refused can be considered for the purpose of maintaining suit for specific performance of contract and hence the suit of the applicant was barred by time by 08 years as the last date for filing of the suit was 24.07.2010, even it is considered that subsequently the applicant paid an amount of Rs.100,000/- more to respondent No.1 on 25.07.2007. It may also be observed that the appellant No.1 was alive up to 2015, but the applicant did not file such suit in his life time. Since the applicant's suit was rightly considered by the Courts below barred by time by more than 08 years, I do not find any merit in this Civil Revision Application, hence the same is dismissed accordingly.

8. Above are the reasons of my short order dated.03.02.2020, whereby instant Civil Revision Application was dismissed.


Judge

M.Y.Panhwar/ **