

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

II<sup>nd</sup> Appeal No. 197 of 2019

Date	Order with Signature of Judge
<i>Mst. Nargis Fatima, Advocate and others.....Appellants</i>	
<i>Versus</i>	
<i>Khuda Buksh and another .....Respondents</i>	
Date of hearing	:02.05.2025
Date of announcement of order	:29.05.2025

Mr. Anwar Hussain, Advocate for the Appellants  
No.2 to 4.

Mr. Sikander Khan, Advocate for the Appellant No.1.  
Mr. Muhammad Zahid Khan, Advocate for the  
Respondent No.1.

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**J U D G E M E N T**

1. Instant II<sup>nd</sup> Appeal has been filed against the judgment dated 10.10.2019 passed in Civil Appeal No.54/2018. The said Civil Appeal emanated from order dated 13.02.2018, which was passed in Civil Suit No.535 of 2017 in which the plaint filed by the present Appellants was rejected under Order VII Rule 11 CPC.

2. Brief facts of the case are that the Appellants filed the above noted Suit with the following prayers:-

- a. "To declare that the defendant No.1 is bound to comply with the agreement dated 8.3.2010 executed between him and father of plaintiffs and Defendant No.1 is liable to transfer the suit property in the names of the plaintiffs.
- b. Decree of Specific performance of contract may be passed against Defendant No.1 directing him to execute necessary Conveyance Deed and/or final title deed in favour of the Plaintiffs in respect of the House No.13-C, admeasuring 200 sq. yards, situated at Block No:2, P.E.C.H.S., Karachi and in case the Defendant No.1 fails to execute the Conveyance Deed/Sub-lease in respect of the said flat, the Nazir of this Hon'ble Court may be directed to execute the same.
- c. To grant permanent injunction against defendant No. 1 his agents, servants, assigns, attorneys, or any-person acting for and on his behalf and representatives from creating 3rd party interest

over the property in question House No.13-C, admeasuring 200 sq. yards, situated at Block No: 2, P.E.C.H.S., Karachi in any manner whatsoever in nature without due course of law and disturbing peaceful possession of the plaintiffs.

- d. Cost of the suit.
- e. Any other relief(s) which this Honorable Court may deem fit and proper under the circumstances mentioned in the main plaint may be awarded.”

3. Thereafter, an application was preferred under Order VII Rule 11 CPC by Respondent No.1. The said application was allowed vide order dated 13.02.2018. Thereafter, the above noted Civil Appeal was filed and the same was dismissed vide Impugned judgment.

4. Learned counsel for the Appellants has argued that both the orders of the Courts below require interference as the same are beyond the permissible scope of Order VII Rule 11 CPC. Learned counsel further conceded that the sale agreement in question was dated 08.03.2010 and the suit was filed in the year 2017, however, in this regard learned counsel has argued that during this period the Appellants approached the Respondent several times. However, the Respondent did not pay any regard to the contention of the Appellants. He has further stated that the Courts below have mis-applied the provision of law cited at the bar and the Suit filed by the Appellants is not liable to be rejected in the above noted provision of law. It is further argued by the learned counsel that the above noted sale agreement was executed between the Appellants' father and the Respondent No.1 and no date of performance was mentioned in the said agreement. In that regard learned counsel stated that since no date of performance was mentioned, therefore, cause of action arose in the month of July, 2016 i.e. date of refusal, after which he filed above noted suit within the limitation period prescribed by law. He has lastly argued that the suit property was purchased by the late father of the Appellants in his lifetime in the name of Respondent No.1, who is also the son-in-law. He has averred that Mst. Nargis Fatima (Appellant No.1) is the wife of the Respondent No.1, and the said Respondent is merely an ostensible owner.

5. Conversely, learned counsel for the Respondent has argued that plaint is liable to be rejected as the same is beyond the period of limitation as prescribed under Article 113 of the Limitation Act. The sale agreement, according to the learned counsel, is forged and fabricated and the signature of the Respondent and the late father of the Appellants are “managed”. It was further contended that the scope of the appeal is limited and the concurrent findings of the courts below require no interference.

6. I have heard both the learned counsels and examined the record. I have more particularly perused the orders of both the Courts below. Before dilating on the submissions of both the learned counsels, it is imperative to state that earlier the instant appeal was filed by the five (05) Appellants, two (02) of which, namely, Syed Gulzar Ali and Abbas Ali, did not press the same and filed Affidavits that the sale agreement, specific performance of which is being sought, was a forged document and was only coined by the Appellant No.1, Nargis Fatima, who is the wife of Respondent No.1. The said Affidavit further reflects that there was animosity between the Appellant No.1 and the Respondent, therefore, said Suit was filed. I have not deliberated on the contents of the Affidavit and neither is the same relevant for the purposes which will become apparent in the subsequent paragraphs. However, it is pertinent to mention the same without giving any finding in this respect.

7. It is not disputed between the parties that the subject matter of the Suit is the sale agreement in question as noted above and it is also admitted that the above noted sale agreement was executed in the year 2010 and the Suit was filed in the year 2017, beyond the limitation period of three (03) years prescribed under Article 113 of the Limitation Act. I have specifically examined the plaint filed by the Appellants and it is evident that no date of refusal has been mentioned in the plaint. However, a generic averment has been made, whereby, it has been stated that in the month of June 2016, the Respondent No.1 was requested to receive the balance sale consideration. It is trite law that strengths and weakness of the case

cannot be examined under the permissible scope of Order VII Rule 11 CPC. I have perused the judgment of the learned trial Court and it is evident that the deliberation made in the said judgment is beyond the scope of the noted provision as expounded in the case of **Haji Abdul Karim & other v. Florida Builders (Private) Limited<sup>1</sup>**. Relevant excerpts of the noted judgement are reproduced below: -

*“12. After considering the ratio decidendi in the above cases, and bearing in mind the importance of Order VII, Rule 11, we think it may be helpful to formulate the guidelines for the interpretation thereof so as to facilitate the task of courts in construing the same.*

*Firstly, there can be little doubt that primacy, (but not necessarily exclusivity) is to be given to the contents of the plaint. However, this does not mean that the court is obligated to accept each and every averment contained therein as being true. Indeed, the language of Order VII, Rule 11 contains no such provision that the plaint must be deemed to contain the whole truth and nothing but the truth. On the contrary, it leaves the power of the court, which is inherent in every court of justice and equity to decide or not a suit is barred by any law for the time being in force completely intact. The only requirement is that the court must examine the statements in the plaint prior to taking a decision.*

*Secondly, it is also equally clear, by necessary inference, that the contents of the written statement are not to be examined and put in juxtaposition with the plaint in order to determine whether the averments of the plaint are correct or incorrect. In other words the court is not to decide whether the plaint is right or the written statement is right. That is an exercise which can only be carried out if a suit is to proceed in the normal course and after the recording of evidence. In Order VII, Rule 11 cases the question is not the credibility of the plaintiff versus the defendant. It is something completely different, namely, does the plaint appear to be barred by law.*

*Thirdly, and it is important to stress this point, in carrying out an analysis of the averments contained in the plaint the court is not denuded of its normal judicial power. It is not obligated to accept as correct any manifestly self-contradictory or wholly absurd statements. The court has been given wide powers under the relevant provisions of the Qanun-e-Shahadat. It has a judicial discretion and it is also entitled to make the presumptions set out, for example in Article 129 which enable it to presume the existence of certain facts. It follows from the above, therefore, that if an averment contained in the plaint is to be rejected, perhaps on the basis of the documents appended to the plaint, or the admitted documents, or the position which is beyond any doubt, this exercise has to be carried out not on the basis of the denials contained in the written statement which are not relevant, but in exercise of the judicial power of appraisal of the plaint.”(Emphasis added)*

8. The learned trial court, as noted above, went beyond the scope of the noted provision and even conducted an unnecessary and impermissible exercise, (at least at this stage) of comparing the signatures of the respective parties. The learned trial

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<sup>1</sup>PLD 2012 Supreme Court 247

court further erred in exercising powers under Articles 79 and 84 of the Qanun-e-Shahadat Order 1984 and thereafter rendering a finding on the genuineness of the said signatures. The belief in the “ultimate failure” of the suit has encouraged the learned trial court to render the finding elucidated upon above. The learned trial court has also presumed that even if all the opportunities are given the Appellants the said Appellants would be unable to prove their case. This, with respect, is a finding alien to the scheme of Order VII Rule 11 CPC. However, I will, at this juncture, refrain from rendering any observation regarding the merits of the claim of the Appellants, as the same may influence the finding of the learned trial court on merit.

9. For the aforesaid reasons the Impugned Judgement dated 10.10.2019 and Impugned Order dated 13.02.2018 are set aside, with a direction to the learned trial court to record the evidence of the respective parties, after framing of issues and render a judgment on merit within 60 days (excluding summer vacations) from today. Instant IInd Appeal is allowed in the above terms.

Judge

Nadeem