

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

2nd Appeal No.S-112 of 2024

[HadiBux (deceased) through LRs vs. Abdullah and others]

1. For order on office objection (s)
2. For order on C.M.A No.2342/2024
3. For order on C.M.A No.2343/2024
4. For hearing of main case

Date of hearing: 14.10.2025

Date of Order: 14.10.2025

Date of reasons: 17.10.2026

Mr. ZafarIqbalSeenharo, Advocate for the appellants

ORDER

JAWAD AKBAR SARWANA, J: Learned counsel for the appellants is aggrieved by the Orders passed by the lower forum, wherein, in the first instance the trial Court in F.C Suit No.Nil of 2023, vide Order dated 21.10.2023, rejected the plaint on the various grounds articulated therein. The appellate forum i.e 2nd Additional District Judge, Tando Allahyar vide Order dated 14.5.2024, confirming order of the trial Court.

2. Learned counsel for the appellant has submitted that the learned trial Court, without issuing summons, summarily rejected the plaint within approximately two weeks from the date of filing of the suit, even though he contends that the issues raised in the plaint were triable and merited recording of evidence. He submits that no such opportunity was extended to him by the trial Court. Further, counsel concedes that although the appeal filed against the order of the trial Court was barred by time, it was accompanied by an application under Section 5 of the Limitation Act, 1908, wherein cogent reasons were assigned for the delay and condonation was sought. He argues that

the appellate Court did not consider the same and essentially dismissed the appeal on the ground of limitation, which he submits is a mere technicality and ought not to have obstructed the challenge to the trial Court's order dated 21.10.2023.

3. Heard counsel. I have perused the plaint filed in F.C. Suit No. Nil of 2023. It is contended by the appellants/plaintiffs that they had accrued a right in the property through their mother, Mst. Fatima, who had a share in the subject property. Counsel's contention was that the brother of Mst.Fatima had gifted her share allegedly without her consent and the alleged gift is totally illegal, unlawful and does not fulfill the essential ingredients of a valid gift. It is noteworthy that the gift was executed on 17.03.1983. Further, it is also to be noted that Mst. Fatima passed away on 20.12.1999.

4. The trial Court, while considering the points raised by counsel as articulated above, observed in the first instance that although the subject property stood inherited in the name of Mst.Fatima, she had other siblings apart from Muhammad Bachal, who allegedly received the gift contrary to her consent. The trial Court noted that none of the other siblings of Mst.Fatima, excluding Muhammad Bachal, were aggrieved by the transfer of property and were also not impleaded in F.C. Suit No. Nil of 2023. The trial Court further observed that Mst.Fatima had passed away on 20.12.1999 and if aggrieved by the gift dated 17.03.1983, she had not challenged the same during her lifetime. The trial Court held that this was material to the plaint and in the absence of such challenge, irrespective of evidence, the necessary party having not filed any complaint during her lifetime the same was not acted upon by her legal heirs after her death. Additionally, the trial Court noted that the appellants had approached the revenue hierarchy and invoked its jurisdiction, while simultaneously

approaching the civil Court. The trial Court observed that once the revenue hierarchy had been triggered, the remedy provided within that framework had to be exhausted and that both remedies could not be elected or proceeded with simultaneously. Notwithstanding the foregoing, the trial Court finally concluded that the suit was filed in the year 2023, which was hopelessly time-barred. The trial Court also noted that the appellants/plaintiffs had prayed for possession, but they were not in possession. Last but not least, the trial Court considered the implications of Paragraph No. 11 of the plaint and observed that the ground for challenge was based on mere illegality concerning the Gift Deed and no specific fraud or allegation of a fake Gift Deed had been pleaded by the plaintiffs. It was contended that the plea of illegality was a right of the deceased during her lifetime and since she took no action, it could not be exercised by her legal heirs after her death. It transpires that Civil Appeal No. Nil of 2023, filed against the impugned order of the trial Court was barred by time. The trial Court observed that a vested right had accrued to the respondents, which could not be easily disturbed. The trial Court did not accept the contention of the appellants that the delay in filing the appeal was explained in the affidavit, which stated: *"the appeal was prepared and was ready to be filed but unfortunately I became seriously ill, remained confined to bed and was under treatment of Hakeem"* Counsel for the appellants conceded that this was a cogent explanation for the delay, which was essentially of only two days. During the course of arguments, counsel was put on notice that if appellant No. (a) Muhammad Ashraf had fallen ill, the remaining two brothers, appellant No. (b), Noor Muhammad and appellant No. (c), Abdul Qadir, could have engaged counsel to file the appeal, being

equally interested parties in challenging the trial Court's order. Learned counsel accepted the observation of this Bench.

Given the above reasons, there does not appear to be any irregularity or defect in the two impugned orders passed by the lower forum. Accordingly, this appeal is **dismissed** in *limine* along with the listed applications.

JUDGE

AHSAN K. ABRO