

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Justice Saman Rafat Imtiaz

II Appeal No.303 of 2025

Muhammad Yousuf son of Muhammad Siddique

Versus

Muhammad Waris Khan Gabol through L/Rs(1(a) to 1(i) & Another

Appellant: through Raja Ali Asghar, advocate
Respondents: through Mr. Muhammad Shahid Akhtar & Ms. Gul Afshan Junejo, advocates
Date of hearing: 19.05.2026
Date of Judgment: 17.08.2026

JUDGMENT

Saman Rafat Imtiaz, J.- Through this Second Appeal under Section 100 of the Code of Civil Procedure, 1908, the Appellant has impugned the Judgment dated 18.08.2025 and Decree dated 23.08.2025 passed in Civil Appeal No.346/2024 by the District and Sessions Judge, Karachi East, whereby the Order dated 21.08.2024 passed by the learned Senior Civil Judge-X, Karachi East rejecting the plaint filed in the Respondent No. 1's Civil Suit No.114 of 2024 was set aside and the suit was restored to its original position and both the parties were directed to appear before the trial Court to proceed with the case on merits and in accordance with law.

2. The facts as per the memo of appeal briefly stated are that the Sale Deed dated 5-8-2013 bearing Registration No. 3319, M.F Roll No. U-68054/8830 (hereinafter referred to as the "**registered Sale Deed**") was executed by the predecessor-in-interest [Muhammad Waris Khan Gabol] of Respondent No.1(a) to (i) [(a) Muhammad Akram Gabol, (b) Mst. Bakhta, (c) Muhammad Waseem Gabol, (d) Muhammad Amir Gabol, (e) Mst. Sadaf, (f) Mst. Rozeena, (g) Mst. Haseena, (h) Miss. Saima, (i) Miss. Rubina], in his lifetime, in favour of the Appellant [Muhammad Yousuf] in respect of one, open, sub-divided residential plot bearing No. A-6/1, measuring 116.11 square yards out of total area of 769 square yards situated in Haji Leemo Goth, Block-3, Gulshan-e-Iqbal, Karachi (hereinafter referred to as the "**Suit Plot**"). After such sale, the process of mutation was also completed and possession is with the Appellant.

3. After passage of eleven years, the Respondent No.1, being the legal heirs of the seller filed Civil Suit No 114 of 2024 for Declaration, Cancellation, and Permanent Injunction against the Appellant, praying *inter alia* for a declaration of

cancellation of the registered Sale Deed by alleging that the Suit Plot was owned by their father who is now deceased whereas the Sale Agreements dated 21-10-2006 and 18-07-2013 as well as the registered Sale Deed dated 5-08-2013 are forged, bogus and liable for cancellation, which they came to know about on 8-12-2023 and as such served a legal notice dated 16-12-2023 upon the Appellant but to no avail as the Appellant's goons are now trying to occupy the Suit Plot. The Appellant filed the written statement and also an application under Order VII, Rule 11, CPC praying for rejection of plaint by alleging that the suit is time barred under Articles 91 and 120 of the Limitation Act. The learned Trial Court allowed the application vide Order dated 21.08.2024 and rejected the Respondent No. 1's plaint on the ground that the suit was time barred by finding that it does not appeal to the prudent mind that the legal heirs of the seller would be unaware despite the Appellant enjoying possession of the Suit Plot since 2013 and that the seller Respondent No. 1 has not disclosed the date of their father's (the seller) death but even otherwise the seller never challenged the registered Sale Deed in favour of the Appellant during his lifetime, therefore the legal heirs cannot challenge the same. However, on appeal, the learned First Appellate Court allowed the appeal filed by the Respondent No. 1 and has set-side the said order vide the impugned Judgment dated 18.08.2025 and Decree dated 23.08.2025 and remanded the matter, pursuant to which, the trial is now underway, hence the instant appeal.

4. The learned counsel for the Appellant submitted that under Article 91 of the Limitation Act, the period of limitation for cancellation is three years, therefore, the suit filed by Respondent No.1 is barred by limitation and the impugned Judgment and Decree are liable to be set aside. The learned counsel for Appellant read out the relevant portion of the impugned Judgment whereby it has been noted that according to the Respondent No. 1 physical possession of the Suit Plot is with them and submitted that nowhere in the plaint did the Respondent No.1 claim to have possession, as such the learned First Appellate Court has misread the evidence.

5. On the other hand, the learned counsel for Respondent No.1 submitted that possession of the Suit Plot is with them but he was unable to point out from the plaint as to which paragraph the same has been asserted in. The learned counsel for Respondent No.1 submitted that the suit was within time as time would begin to run only from the date of knowledge, which was in 2023 and as such the Impugned Judgment and Decree does not warrant interference.

6. I have heard the learned counsel for the parties and perused the material available on the record.



7. Perusal of the impugned judgment shows that pre-dominantly three reasons prevailed with the learned First Appellate Court i.e. (i) that according to Respondent No. 1/Plaintiff possession of the Suit Property is with them; (ii) that limitation to challenge the validity of the registered Sale Deed would commence from the date of knowledge which was in the year 2023 when the Respondent No. 1 served legal notice upon the Appellant; and (iii) that the plaint cannot be rejected in piecemeal if one of the prayers is found maintainable.

Possession

8. Despite opportunity the learned counsel for Respondent No.1 was unable to identify any paragraph of the plaint in which they have claimed possession of the Suit Plot. Since the Suit Plot is an open plot of land, only constructive possession can be exercised thereupon. Nevertheless, examination of the plaint does not even reveal any claim of having constructive possession. On the other hand, the Appellant categorically stated in his written statement that he is in possession of the Suit Plot since the year 2013. It was only in appeal that the Respondent No. 1 claimed to have possession. Therefore, the Appellate Court appears to have misread the record to the extent of the finding that the possession is with the Respondent No. 1.

Period of Limitation

9. Although the learned counsel for the Appellant argued that the suit filed by the Respondent No. 1 was time barred under Article 91 of the Limitation Act, 1908, I am of the considered view that Article 92 is attracted as cancellation was sought of a registered sale deed¹. Article 92 of the Limitation Act, 1908 provides three years limitation period to file a suit to declare the forgery of an instrument issued or registered, which period commences when the issue or registration become known to the plaintiff.

10. The registered Sale Deed was executed by the predecessor- in-interest of the Respondent No. 1 in the year 2013. The Respondent No. 1 have not given the date of death of their predecessor-in-interest, nevertheless, it is undisputed that he never challenged the registered Sale Deed in favour of the Appellant in his lifetime.

11. According to the Respondent No. 1 they came to know about the registered Sale Deed on 8-12-2023 but the plaint does not reveal how the Respondent No. 1 came to know about the registered Sale Deed in favour of the Appellant on such date or why they consider the same forged and bogus as signatures of the predecessor-in-interest have not been denied although prayer for their verification

¹ *Muhammad Bashir Vs Sattar Bibi*, PLD 1995 Lahore 321



has been made. The plaint simply states that 'on 8-12-2023 it transpired upon the plaintiff that the defendant No. 1 with malafide intention and due to ulterior motive got prepared forged & bogus documents i.e. Sale Agreement dated 21-10-2006 & 18-07-2013 and surprisingly with connivance of land department defendant No. 1 got prepared so-called registered Sale Deed...' and further that they served a legal notice dated 16-12-2023 upon the Appellant but no positive response was received and now the Appellant's 'gunda elements' are trying to illegally occupy the Suit Plot.

12. No details of how the Respondent No. 1 came to know about the alleged forgery on 8-12-2023 or source of information nor particulars of fraud or forgery have been provided², which are mandatorily required under Order VI, Rule 4, CPC. The Sale Deed is a registered document to which sanctity of the law is attached albeit rebuttable, however strong evidence is required to rebut the same. Mere assertion or general allegations³ that it is forged is not sufficient whereas in the instant case the plaint contains no facts on which evidence may be led to prove the date of knowledge; source of information about the alleged forgery; or particulars of forgery and fraud, which are essential and necessary⁴ under Order VI, Rule 4, CPC and non-compliance of which leads to dismissal⁵. The rule of common sense and notions of fair play also demand that allegation of fraud should not be allowed to be levelled unless precise information is supplied to the person against whom it is levelled so that he is not taken by surprise⁶.

13. Even for the sake of argument if Article 91 of the Limitation Act, 1908 is considered it provides three years limitation period to file a suit to cancel or set aside an instrument or document, which period commences when the facts entitling the plaintiff to have the instrument cancelled or set aside become known to him. The learned counsel for Respondent No.1 failed to satisfy the Court as to what right, if any, the Respondent No.1 acquired upon death of their predecessor-in-interest to seek cancellation of the registered Sale Deed which their deceased father never challenged in his life time⁷. A person is entitled and empowered to dispose of his/her property within his/her lifetime as per their will and accord. Simply because the legal heirs were not aware of such sale does not make it forged or bogus. If such proposition were to be accepted, every sale/transfer would be challenged by legal heirs after death of the original owner.

² *Manzoor Ahmed Vs Hanifan Bibi*, 1985 MLD 1255

³ *Waheed Ullah Khan Vs Kalim Ullah*, 2012 MLD 35

⁴ *Safia Bibi Vs Muhammad Tufail*, 2025 YLR 1217; *Muhammad Yasin Vs Muhammad Ismail*, 2024 CLC 922; and *Civil Aviation Authority Vs AER RIANITA INTERNATIONAL*, 2017 CLC 1461

⁵ *Muhammad Malik Vs Karam Ellahi*, PLD 2011 (AJ&K) 1; *Wahed Ullah Khan (Supra)*

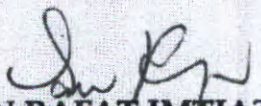
⁶ *Ibid.*

⁷ *Muhammad Hafeez Vs Muhammad Ramzan*, PLD 2025 Lahore 581; *Mst. Erum Latif Vs Imtiaz Khan*, 2023 CLC 252

Piecemeal rejection

14. This brings me to the last reason given by the learned Appellate Court that the plaint cannot be rejected piecemeal. Perusal of the prayers made by Respondent No.1 in their suit does not reveal any prayer which is within time or in compliance of Order VI, Rule 4, CPC. The basic objective of Order VII, Rule, 11, CPC is that an incompetent suit may be laid to rest at its inception so that no further time is wasted on what is bound to collapse and a plaintiff is not allowed to drag another party through the rigors of a false and frivolous litigation⁸.

15. In light of the foregoing discussion, the instant appeal is allowed and the Impugned Judgment dated 18.08.2025 and Decree dated 23.08.2025 are set aside while the Order dated 21.08.2024 of the learned Trial Court is hereby restored.


(SAMAN RAFAT IMTIAZ)
JUDGE

Announced in open Court on 18th of August, 2026

⁸ Muhammad Yasin (*Supra*)

