

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Suit No. 86 of 2015

Order with signature of Judge(s)

1. For hearing of CMA No.4780/2017
2. For hearing of CMA No.9605/2017

30.08.2018

Mr. Afaq Yousuf, Advocate for the plaintiffs
Syed Qasim Hasan Jaffri, Advocate for Defendant No.1(i) & (ii)
Mr. Parvez Ahmed Mastoi, AAG alongwith Ms. Rakshanda Waheed,
State Counsel

1. This application moved under Order VII Rule 11 CPC seeks rejection of the plaint on two grounds; one being that the Suit is barred under Article 118 of the Limitation Act which provides six [06] years for challenging an alleged adoption and since at the time of filing of the Suit the Defendant No.1(ii) was 14 years of age therefore the window of 06 years had been closed thus the plaint be rejected on the point of limitation, and secondly rejection is sought on the ground that the controversy at hand had already been adjudicated in Civil Suit bearing No.1541 of 2009 by judgment dated 24.02.2014 in terms of which a suit filed by the present plaintiffs against the defendants in respect of the suit property was dismissed by the Court of IInd Senior Civil Judge Karachi East under Order XVII Rule 3. Counsel for the Defendant Nos.1(i) and (ii) went through the controversy between the parties at length and submitted that these two grounds are sufficient for the rejection of the plaint.

Learned counsel for the plaintiffs on the other hand submitted that in the earlier suit bearing No.1541 of 2009 the defendants themselves moved an application under Order VII Rule 10 challenging the pecuniary jurisdiction of the trial Court and when such application was rejected, they preferred a Revision dated 13.11.2013, which was decided by order dated 05.12.2014, where the Revisional Court reached to the conclusion that since value of the property was in fact beyond the pecuniary jurisdiction of the trial Court, impugned order

dismissing the Order VII Rule 10 application was set-aside and the Revisional Court directed that the plaint be returned to be filed before any Court of competent jurisdiction. Against which order no appeal was preferred by any party thus order attained finality. Per counsel, thereafter the instant suit was agitated on 17.01.2015 before this Court, therefore the judgment dated 24.02.2014 is of no consequences.

Learned counsel for Defendant No.1(i) & (ii) in rebuttal took this Court to Prayer (a) of the instant suit where the Defendant No.1(ii) is sought to be declared an adopted child arguing that such prayer could not be granted after the window of six [06] years opened by Article 118 of the Limitation Act having been closed.

Heard both the counsel and reviewed the record.

Admittedly, dispute between the parties commenced by the plaintiffs' filing of a suit for declaration, partition and permanent/mandatory injunction before the Court of IInd Senior Civil Judge Karachi East against the defendants in respect of two properties, of which suit property being Plot No.26, Block-A, Bhitai Colony, Korangi Crossing, Karachi, was also in dispute. When the said suit was filed, the defendants on their own motion moved an application under Order VII Rule 10 alleging that the said Senior Civil Judge's Court had no jurisdiction since value of the property was above the pecuniary jurisdiction of that Court, thus infact they never submitted themselves to the jurisdiction of the that Court and when the said Court dismissed their Order VII Rule 10 CPC application, they challenged such order through Civil Revision No.72 of 2013 where they succeeded in having the Revisional Court pronounce an order in their favour holding that the trial Court infact had no pecuniary jurisdiction to entertain the suit, which order attained finality.

Substantiating their claim that the trial Court had no jurisdiction since the property was overvalued from trial Court's pecuniary limit, the order of the

Revisional Court however only came on 05.12.2014, but in the intervening period the trial Court dismissed plaintiffs' suit on account of non-prosecution and under Order VII Rule 13. This sudden turn of events in favour of the defendants having been taken as a ground by these defendants for declaration that the instant Suit be barred under Section 11 CPC, to me least to say is purely opportunistic and having no legal footing. Admittedly, the defendants (the applicant) never submitted themselves to the jurisdiction of the trial Court and if outcome of the trial Court was any different, they would have never accepted it since a Revision was preferred which was decided in their favour. By merely having decided the suit on non-prosecution and under order VII Rule 13, in my humble view does not give any benefit to the defendants who never submitted themselves to the trial Court's jurisdiction as well as they cannot be permitted to hold two different stances in the same *lis*, where at one hand they never admitted to the jurisdiction of the trial Court and on the second hand they claiming to be benefited by the judgment coming out from the same Court. On these grounds, as far as objection raised through the instant Order VII Rule 11 application based of Section 11 CPC is concerned, I do not see any legitimacy therein.

With regard to the limitation posed by Article 118 of the Limitation Act that the instant suit where a challenge is made to the adoption of a person aged 14 and where the law provided a limitation of six [06] years from the date of such knowledge, without commenting on the "date of knowledge", it is pertinent to note that this suit essentially does not exclusively challenge the act of adoption but it primarily challenges the alleged illegal transfer of property by the Defendant No.1(ii) as an outcome of such adoption.

Learned counsel for the plaintiffs in particular having shown his willingness to not to press Prayer (a), in my humble view still has an arguable case as essentially the plaintiffs are aggrieved by the said defendant having transferred and mutated valuable properties in his name, for which this suit was

the only way forward to adjudicate the *lis* between the parties, which could only be done after bringing relevant evidence and no interest of justice will be served by rejecting the plaint. On this ground too, I do not see any strength in the Order VII Rule 11 application, which is accordingly dismissed in toto.

2. Adjourned.

JUDGE

Barkat Ali, PA