

**ORDER SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT
AT HYDERABAD**

R.A No.71 of 2020

Sodho Khan Vs. Raja Imtiaz Ali and others.

1. For order on CMA No.1049/2020.
2. For hearing of main case.

18.01.2021

Syed Ghulam Hyder Shah advocate for applicants.

ARSHAD HUSSAIN KHAN, J: - The applicant through instant Revision has challenged the Judgment & Decree both dated 23.01.2020 passed by learned 2nd Additional District Judge, Sanghar maintaining the Order dated 20.09.2017 passed by 1st Senior Civil Judge, Sanghar, whereby plaint of the suit filed by applicant being F.C. Suit No.66 of 2016 [Re-Sodho Khan & others v. Raja Imtiaz Ali & others] was rejected under Order VII rule 11 CPC on the application of respondent No.1/defendant No.1, hence, the applicant preferred instant revision application with prayer to set aside the aforementioned orders and decree and remand the case to the trial Court with direction to decide the same on merits after framing issues, leading evidence of both parties.

2. Brief facts leading to the filing of this revision application are that the applicants/plaintiffs filed suit for declaration, cancellation, possession, mense profit and permanent injunction against the respondents/defendants and others, in the court of learned 1st Senior Civil Judge Sanghar, stating therein that late Sodho Khan was allotted plot (area 12010 sq. ft.) by Secretary Board of Revenue Sindh vide Circular No.S/163/83/Rev/ (II)/2308 dated 14.10.1982 and such entry dated 08.02.1988 in Taluka Form-II is available in record of Mukhtiarkar Sanghar. According to the applicants/plaintiffs, illegal occupation over an area of 544 sq. ft by respondent No.1/plaintiff No.1 on basis of sale by respondent No.2/defendant No.2, surfaced in the report submitted by respondent No.4 in F.C. Suit No.141/2015 [Re-Sodh Khan & others v. Ghulam Safdar and others] filed by Sodho

Khan through his legal heirs. Hence, the applicants/plaintiffs filed the suit seeking following prayers:-

- a) That this Honourable Court may be pleased to declare that in view of report dated 26.04.2016, submitted by Mukhtiarkar (Revenue) in F.C. suit No.141/2015, Re-Sodho Khan v. Ghulam Safdar & others defendant No.01 is in occupation of plot of plaintiffs illegally and sale transaction in favour of defendant No.01 vide Registered Sale Deed No.535, dated 09.04.2016, M.f. Roll NO.U-1444/21935 is liable to be cancelled, so also entry in the name of defendant in Deh Form-II, Taluka Sanghar may also be cancelled.
- b) That this Honourable Court may be pleased to restore the possession of 544 sq. ft. of plaintiff after demolishing construction over the said area.
- c) That the defendants may be restrained from selling, leasing, transferring and alienating the suit plot in whatsoever manner by themselves or through their agents, associates, subordinates, supporters and successors in interest by issuing permanent injunction against them.
- d) That the costs of the suit be borne by the defendants.
- e) Any other relief, which this Honourable Court deems fit and proper may be awarded to the plaintiff.

3. After issuance of notice of the above said suit, the respondent No.1/defendant No.1 preferred application under Order VII rule 11 CPC for rejection of the applicant's plaint on the ground that suit is time barred; it has been filed against a dead person; without disclosure of cause of action and barred by section 42 of Specific Relief Act. The said application was contested by the applicant/plaintiff. Learned trial court after hearing the learned counsel for parties, vide its order dated 20.09.2017 rejected plaint of suit. The applicant/plaintiff then challenged the said order and decree before appellate Court in Civil Appeal No.108 of 2017 and the learned 2nd Additional District Judge, Sanghar after hearing the counsel for applicant/plaintiff and respondent No.1/defendant No.1, while maintaining the order and decree of learned trial Court, dismissed the said Civil Appeal. The applicant/plaintiff has challenged the above said orders and decrees in the present revision application.

4. Learned counsel for the applicant, *inter alia*, contended that the suit is not barred by any law; cause of action is disclosed in the plaint and the illegal occupation over the subject area of applicant is admitted in the report of Mukhtiarkar Revenue, Sanghar, hence, the

application under VII rule 11 CPC ought to have been dismissed and the parties to suit could have been given opportunity of bringing on record their evidence, as such, he prayed for setting aside the impugned orders.

5. The applicant through the instant revision application has challenged the concurrent orders of the courts below. It is well settled that revision is a matter between the higher and subordinate Courts, and the right to move an application in this respect by the Applicant, is merely a privilege. The provisions of Section 115, C.P.C., have been divided into two parts; First part enumerates the conditions, under which, the Court can interfere and the second part specify the type of orders which are susceptible to revision. From bare reading of the section 115, C.P.C., it is manifest that on entertaining a revision petition, the High Court exercises its supervisory jurisdiction to satisfy itself as to whether the jurisdiction by the courts below has been exercised properly and whether the proceedings of the subordinate Court do suffer or not from any illegality or irregularity. Reference may be placed in the case of Muhammad Sadiq v. Mst. Bashiran and 9 others (PLD 2000 SC 820).

6. From perusal of the impugned orders, it appears that learned courts below, after hearing the counsel for the parties and taking into account the material facts as well as law on the point, have passed speaking orders. For the sake of ready reference relevant portion of the impugned orders of trial Court as well as appellate Court are reproduced as under:-

Relevant portion of order dated 20.09.2017 passed by the trial court.

“Perusal of plaint reveals that the plaintiff seeks possession of certain area on the basis of allotment dated 14.10.1982 as the same was alleged to have been allotted in the name of plaintiffs father. No copy of allotment order and Form-II is attached with the plaint. Admittedly since 1982 the father of plaintiffs never raised such objection that defendant No.1 is in illegal possession of 544 sq fts of suit plot on the contrary the defendant No.1 has produced copy of Conveyance deed dated 31.01.1976 and 19.12.2013 in his favour.

Admittedly plaintiffs or their father was remained silent since 1982 for a period of 35 years which is against the law. Even then the suit for possession under Specific Relief Act can be filed within a period of 10 years. A part from this record shows that the defendant possess the title of his own property.

Merely dragging any person in civil litigations is against the law. Admittedly suit is hopelessly time barred and falls under the purview of Limitation Act as it has been held in cas reported in NLR-2008 Civil Karachi-250, which reads as under:-

Question of limitation is always not mixed question of law and fact. Where question of limitation is apparent on face of record, Court can proceed without any

further inquiry. Matters of limitation cannot be left to pleadings of parties. A duty is imposed on Court to notice the point of limitation, whether the plea of limitation was or was not raised (NLR-2008 Civil KAR-250).

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A part from this the plaintiffs have not produced any Registered document in their favour and un-Registered document has no value as it has been held in the case of Rasool Bux and others Versus Muhammad Ramzan and others reported in 2007 SCMR-85 as under:-

---49 Registered documents-Scope-Registered documents has sanctity attached to it and strong evidence is required to cast as person on its genuineness-Such documents is not only binding on the parties in the documents but is equally applicable to a third party.

It is well settled law reported in 2002 SCMR-338 that "it is requirement of law that incompetent suit shall be buried at its inception. It is in the interest of litigated party and Judicial Institution itself. The parties are saved with their time and necessary expenses and code to get more time to devote it for genuine causes."

In the light of above discussion the above application stands allowed and resultantly the plaint is rejected U/O 7 Rule 11 CPC with no order as to costs."

Relevant portion of order dated 23.01.2020 passed by the lower appellate court.

" POINT NO.1.

9) The grievance of the plaintiffs is that they have been deprived of their plot bearing No.12010 sq. ft. which was allotted to their father Sodho Khan by the Secretary Board of Revenue Sindh, vide circular No.S/163/82 Rev (ii)/2308 dated 14.10.1982 bearing Entry No.1988-B in Village Form-II, and have contended that the defendants claim is based on fraudulent sale deed, hence, they seek cancellation of sale deed mutation entries thereof made in the year 1976 in favour of respondents No.2, the plaintiffs have filed the suit against the defendants after a period of more than 35 years, which is hopelessly time barred. Moreover, no document is attached with plaint to show that the father of plaintiffs namely Sodho Khan on 14.10.1982 was allotted any land, but no any allotment order and Form-II is attached with the plaint while the defendant No.1 possess the title document of his own property and has produced copy of Conveyance deed dated 31.01.1976 and sale deed dated 19.12.2013 in his favour, and since 1982 the father of plaintiffs never raised such objection that defendant No.1 is in illegal possession of 544 sq. ft. of suit plot and were remained silent since 1982 for a period of 35 years. Moreover the suit for possession under Specific Relief Act can be filed within a period of 10 years, while the period of limitation for filing suit for cancellation of such document is three years Under Article 91 of Limitation Act. Even Article 120 provides a period of six years for filing such suits for declaration. It is a law point and in such cases Limitation point cannot be ignored. Moreover, as far as the version of plaintiff/appellant that the alleged mutation entries are outcome of fraud, it is his oral version, there is no any evidence oral or documentary in this regard. Moreover, the question rise as to why the appellants/plaintiffs remained silent for such long period and have not taken efforts to get transferred/changed mutation (Fouti Khata Badal) in their name up to the year 2016, hence, in such circumstances, such version of plaintiff/appellant does not appeal to a prudent mind. It is in the interest of litigated party and Judicial Institution itself that the parties are saved with their time and unnecessary expenses and court to get more time to devote it for genuine causes". I place my

reliance upon case law reported in 2002-SCMR-338 wherein it is held;

“It is requirement of law that incompetent suit shall be buried at its inception as held in case reported in 2002 SCMR-338. It is in the interest of litigated party and Judicial Institution itself and the parties are saved with their time and unnecessary expenses and court to get more time to devote it for genuine causes”

10). In view of above discussion, the suit of plaintiffs/appellants is time barred and not maintainable, having no cause of action to file the suit and the plaintiff of his suit was/is liable to be rejected u/o 7 Rule 11 CPC being time barred, it was the duty of trial Court to notice the point of limitation that a suit for declaration can be filed within six years and limitation period for cancellation of document is three years. It has been held in case of Yakoob V/S Mst. Zamrud Bano reported in 1986-NLR-Karachi-398;

(b) Limitation Act (ix of 1908. Art. 91. Specific Relief Act (1 of 1877), S. 39- cancellation of sale deed- Suit filed in 1973 for cancellation of sale deed executed in 1961, held would be time barred- such suit would be filed within three years of execution of sale deed (1402)

It has also been held in case reported in PLJ-2008-Karachi-127;

Question of limitation is not a mixed question of law and facts and where the question of limitation is apparent on the face of record the court can proceed without any further inquiry.

It is also held in case reported in NLR-2008 Civil Karachi-250;

Question of limitation is always not a mixed question of law and facts. Where question of limitation is apparent on face of record, the Court can proceed without any further inquiry. Matters of limitation cannot be left to pleadings of parties. A duty is imposed on Court to notice the point of limitation, whether the plea of limitation was or was not raised.

11) Upshot of above discussion is that as per discussed reasons the impugned order passed by the learned trial Court is proper and legal in accordance with law. The trial Court did not commit any illegality or irregularity as such, the same does not require interference of this Court. Under such circumstances the point NO.1 is answered in negative.

POINT NO.2.

12) In view of my findings on point No.1, the impugned order and are hereby maintained. Resultantly, the appeal in hand stands dismissed with no order as to costs. Let the decree be prepared accordingly.”

7. It is also settled law that an incompetent suit should be laid at rest at the earliest moment so that no further time is wasted over what is bound to collapse not being permitted by law. It is necessary incidence that in the trial of judicial issues i.e. suit which is on the face of it incompetent not because of any formal, technical or curable defect but because of any express or implied embargo imposed upon it by or under law should not be allowed to further encumber legal proceedings. Reference can be placed on the cases of Ali Muhammad and another v. Muhammad and another [2012 SCMR 930] Ilyas Ahmed v. Muhammad Munir and 10 others [PLD 2012 Sindh 92].

8. The upshot of the above is that there is no illegality or gross irregularity and infirmity in the concurrent findings of both learned

courts below; more particularly, the impugned orders are not passed without jurisdiction. The applicant has also failed to point out any error and or any illegality, infirmity or jurisdictional error in the impugned orders, which could warrant interference by this Court in exercise of its revisional jurisdiction. Consequently, the revision application in hand, being devoid of any force and merit, is **dismissed** along with all pending applications.

JUDGE

Abdullah Channa/PS