

# **IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**

**Civil Revision No. S – 219 of 2010**

**Mian Mumtaz Rabbani v. Sardar Ali and others**

Date of hearing: **14-01-2022**

Date of announcement: **14-01-2022**

Mr. Tariq G Hanif Mangi, Advocate for the Applicant.  
Mr. Manoj Kumar Tejwani, Advocate for private Respondents.  
Mr. Ahmed Ali Shahani, Assistant Advocate General

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

**Muhammad Junaid Ghaffar, J.** – This Civil Revision Application has been filed by the Applicant impugning judgment dated 15.6.2010 passed by the 5<sup>th</sup> Additional District Judge, Sukkur in Civil Appeal No.29 of 2005, whereby the order and decree dated 21.5.2005 and 28.5.2005, respectively, passed by the 2<sup>nd</sup> Senior Civil Judge, Sukkur, in F.C. Suit No.75 of 2004, through which the application of Respondent under Order 7 Rule 11 CPC was allowed by rejecting the plaint has been maintained and the Appeal has been dismissed.

2. Heard both the Learned Counsel for the parties and perused the record.

3. This Civil Revision appears to be time barred by 24 days. I have gone through the contents of CMA No.836/2010 filed for condonation of delay, and convinced that the delay was beyond the control of the Applicant due to personal reasons; hence, the application is allowed by condoning the delay.

4. It appears that the Applicant filed a Suit for declaration, cancellation and injunction. Upon issuance of summons, an application was filed by the Respondents under Order 7 Rule 11 CPC which has been allowed by the trial court and has been maintained by the Appellate Court.

5. Though the prayer in the Suit was drafted in a manner so as to make the suit for declaration along with cancellation; however, in essence it was in respect of cancellation of a sale deed dated 13.3.1997. This was done to overcome the barrier of limitation as it is 3 years under Article 91 of the Limitation Act, 1908, for cancellation and 6 years for declaration. Even otherwise, the prayer of declaration along with cancellation in the given facts

was also not maintainable as it is his case that the suit land was owned by him and when he left for Islamabad permanently, it was handed over to his father who was all along supervising the said land. It is stated in the plaint that the sale deed of which the cancellation was being sought was executed by the father of the Plaintiff (as an attorney); hence, there was no occasion to seek a declaration of ownership as well inasmuch as once the plaintiff was successful in his prayer of cancellation; then no other declaration was needed. It is an admitted position that the sale deed in question was executed by the father of the Plaintiff in favor of Respondents by himself as an attorney. The period of limitation applicable is 3 years and admittedly the suit has been filed beyond the period of limitation for which there is no justification. Even during arguments, the Applicants Counsel could not satisfactorily respond except that the trial court had mixed up the two Suits of the Plaintiff, whereas, the Suit was also for declaration; hence, he ought to have been permitted to lead evidence. However, this contention appears to be misconceived and unwarranted as the question of limitation cannot be overlooked merely for the reason that the title of the Suit is also for declaration and a prayer has also been made. Here, as noted, there is no issue of declaration as admittedly the property was owned by the Plaintiff and his father as an attorney sold it and executed a registered sale deed in favor of the Respondents. If at all he had a case, it was against his own father / attorney for misusing his power of attorney, which is not the case here. In fact, the father was never sued as a defendant nor was joined as a plaintiff. Lastly, it is also not appealable to a prudent mind that the father after executing the sale deed had not informed the Plaintiff immediately that he had done so. The averment that he was only informed by his father when he returned in 2003 from Islamabad is beyond comprehension. Hence, the matter was always in the knowledge of the plaintiff, who was required to be vigilant in pursuing his attempt of seeking cancellation of the said sale deed.

6. In view of hereinabove facts and circumstances of this case, it appears that both the Courts below have arrived at a fair and just conclusion; whereas, on the face of it the Suit was time barred for which no justifiable reason was assigned; hence, the plaint was liable to be rejected as being barred in law. Accordingly, this Civil Revision Application, being misconceived was **dismissed** by means of a short order on 14.1.2022 and these are the reasons thereof.

J U D G E