

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD**  
**IInd Appeal No.21 of 2020**

<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
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1. For hearing of CMA-353/2022.
2. For hearing of main case.

**17.04.2023.**

Mr. Muhammad Humayoon Khan, Advocate for Appellant.  
Mr. Wali Muhammad Khoso, Advocate for Respondents.  
Mr. Ayaz Ali Rajpar, Assistant A.G.

**ORDER**

**MUHAMMAD FAISAL KAMAL ALAM- J,-** This IInd Appeal is filed against the two Orders of First Appellate Court and the learned Trial Court, rejecting the second Plaint of the Suit No.1726 of 2019 on the ground that it is barred by limitation.

2. Learned Counsel for the Appellant has argued that both the Courts below have not considered the fact that in terms of the compromise Decree, entire payment was made and possession was with present Appellant. He further states that property in question has been transferred amongst the private Respondents, inter se, as evident from the Sale Deed dated 28.05.2019 (At Page-133). He has cited the following case law:-

- (i) 2009 SCMR 1268 (PEER DIL and others v. DAD MUHAMMAD).
- (ii) 2022 MLD 1328 (NASEEM AHMED MALIK (Deceased) through legal heirs and others v. SAEED IQBAL and others).
- (iii) 2019 CLC 566 (TARIQ GUL v. ZARAR-UL-YAMIN KHAN).
- (iv) 2019 CLC 1243 (Mst. FARIDA and another v. Mst. KHALIDA and 2 others).

- (v) 2009 CLC 769 (SHAH ZAMAN KHAN and others v. JAMROZ KHAN and others)
- (vi) PLD 2016 Sindh 26 (SHAHZAD and another v. IVTH ADDITIONAL DISTRICT JUDGE, KARACHI (EAST) and 5 others.

3. Whereas, Mr. Wali Muhammad Khoso, Advocate appearing for private Respondents has read the impugned Orders to show that Appellant was indolent in approaching the Court for his purported right and interest in the subject property. He states that admittedly compromise Decree was passed on 06.04.2000 and the Plaint was filed in the year 2019, that is, after 19 years and in the intervening period, valuable right and interest in respect of the subject property, accruing in favour of Respondent-Darya Khan by virtue of the registered instrument, viz. above Sale Deed. He has cited the following case law:-

- (i) 2020 SCMR 483 (MUHAMMAD SIDDIQUE (DECEASED) through LRs and others v. Mst. NOOR BIBI (DECEASED) through LRs and others.
- (ii) 2007 SCMR 741 (Raja ALI SHAN v. Messers ESSEM HOTEL LIMITED and others)
- (iii) PLD 1977 Karachi 747 (ALI MUHAMMAD and 6 others v. SECRETARY, BOARD OF REVENUE, SIND, HYDERABAD and 9 others)

4. Learned A.A.G has appeared only on behalf of formal Respondents.

5. Arguments heard. Record perused.

6. Summary of the Case Law cited by the Respondents' Counsel is, that it is mandatory duty of the Court to first examine whether a plaint can be rejected under Order 7, Rule 11 of CPC [inter alia, if barred by law] or it can be returned, under Order 7, Rule 10 [Civil Procedure code]; this can be done at any stage of the proceeding. Petitioner was not owner of the land in

question which is situated in Shamlaat Deh, which is in the joint ownership of village and the land is reserved for graveyard, consequently plaint was correctly rejected, as it was filed by the plaintiff [of the reported Judgment] in his individual capacity and not in representative capacity. In a declaratory suit only pre-existing rights can be agitated for the purposes of seeking a declaratory decree and no fresh rights can be created by grant of a decree.

7. Two factors have been overlooked by the Courts below. Firstly, the continuous possession is with present Appellant who paid the entire sale consideration in Court, as recorded in Paragraphs 2 and 4, of the Compromise Application, which merged into a Compromise Decree dated 06.04.2000 (At Page-129). However, subsequently, a new Sale Deed is executed in respect of the subject property between Paternal Uncle and Aunt in favour of Respondent No.13. To a certain extent, I agree with the observation made in the impugned Orders, that law should not favour indolent but only vigilant, but here in view of the above discussion, the situation is different. When a person, in the present case, the present Appellant has paid the entire sale consideration and possession is also with him, then Section 53-A of the Transfer of Property Act also comes to his rescue. The judgment of Hon'ble Supreme Court in the case of PEER DIL and others v. DAD MUHAMMAD (*Supra*) has clearly given the guideline that in such matters, where parties have settled their dispute through a Compromise Decree, either Review or Suit, is to be filed, in case of breach. Had the possession was not handed over to the Appellant coupled with the fact that the entire sale consideration has been received by Respondents, the case of private Respondents would be on a very strong footing and in that eventuality perhaps both the impugned Orders could have been maintained, unless there was some exceptional circumstance. However, in the present

case, in view of the above two factors and Section 53-A, the time will continue to run, unless the grievance is redressed. If the Appellant did not approach the Respondents for execution of Sale Deed, the latter could have also taken certain efforts, but the same subject property regarding which the entire sale price has been received, prima facie cannot be further transferred, when the possession is also with the Appellant.

8. Consequently, I allow this Appeal, set aside both the impugned Orders, remanding the case to the learned Trial Court for decision afresh. The entire case should be decided preferably within two (02) months after framing of issues and no adjournment should be granted, once the evidence commenced. If any side does not come forward to lead the evidence or cross-examination, the same should be marked as Nil and / or his side to lead evidence should be closed.

9. It is clarified that any observation in this Order is of tentative nature and will not prejudice the proceeding before the Trial Court.

The Appeal stands disposed of in the above terms.

JUDGE

Shahid