

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Muhammad Shafi Siddiqui
& Jawad Akbar Sarwana JJ

High Court Appeal No.180 of 2020

Mst. Bhalan and Four Others

v.

Muhammad Asif Sakaria and Five Others

Appellant No.1:	Mst. Bhalan w/o Muhammad Jokhio (Late)
Appellant No.2:	Bilal s/o Muhammad Jokhio (Late) through his legal heirs (i) Raheem (ii) Jelnd, (iii) Ghagi, (iv) Muhammad Rahim, (v) Hajiyani, and (vi) Muradan
Appellant No.3:	Mst. Murada Bibi d/o Muhammad Jokhio (Late)
Appellant No.4:	Mst. Shahzadi d/o Muhammad Jokhio (Late)
Appellant No.5:	Mehro d/o Muhammad Jokhio (Late)
	all through their Attorney, namely, Muhammad Haroon Kamal through Mr Muhammad Ali Phulpoto, Advocate
Respondent No.1:	Muhammad Asif Sakaria s/o Ghulam Muhammad Sakaria, through Muhammad Mushtaq Qadri, Advocate
Respondent No.2:	Mukhtairkar, Malir Town, Nemo
Respondent No.3:	Station House Officer, P.S. Murad Memon Goth, through Addl. A.G.
Respondent No.4:	Alam Khan Jokhio, through Nemo
Respondent No.5:	Shakeel S/o Alam Khan through Nemo
Respondent No.6:	Qaim S/o Alam Khan through Nemo

Intervenor: Irfan s/o Rehman Khan through
Mr Zia ul Haq Makhdoom,
Advocate

Date of hearing: 07.11.2023

Date of decision: 22.11.2023

J U D G M E N T

Jawad A. Sarwana, J.: Through this Appeal, the five (5) Appellants/Plaintiffs, all legal heirs of Late Muhammad Jokhio s/o Bilawal Jokhio (“legal heirs of Muhammad”), have challenged the Order dated 12.08.2020 passed by the High Court of Sindh at Karachi in Civil Suit No.2638/2016 whereby the learned Single Judge after hearing the parties on Respondent No.1’s (“Muhammad Asif Sakaria” / “Sakaria”) Application under Order 7 Rule 11 CPC (CMA No.16672/2017), rejected the Plaint because it was hopelessly barred by time and dismissed the suit along with all applications. Aggrieved by the Impugned Order, the legal heirs of Late Muhammad have filed this appeal.

2. The brief facts of the appeal are that as of 13.07.1939, Bilawal Jokhio s/o Mohammad owned shares in Agricultural land bearing Survey Nos.1, 2, 3, 4, 5, 6. 226, 227 and 241 situated in Deh Kharhkro, Tapo Konkar, Taluka, Karachi East, District Malir, Karachi, which formed the subject matter of the suit (the “Suit Properties”). During his lifetime in the year 1956, Bilawal Jokhio gifted to his son, Mohammad, Survey nos. 6, 226 and 227. Based on the Form-VII filed with the Plaint, the legal heirs of Muhammad were/are owners of:

- i) Survey No.1 measuring 5 acres 31 ghuntas
- ii) Survey No.2 measuring 8 acres 18 ghuntas
- iii) Survey No.3 measuring 9 acres 27 ghuntas
- iv) Survey No.4 measuring 6 acres 4 ghuntas
- v) Survey No.5 measuring 8 acres 17 ghuntas
- vi) Survey No.6 measuring 7 acres 1 ghunta
- vii) Survey No.226 measuring 9 acres 33 ghuntas
- viii) Survey No.227 measuring 6 acres 36 ghuntas

ix) Survey No.241 measuring 2 acres 4 ghuntas

3. In the year 1992, Muhammad Jokhio and other shareholders sold their shares in the Suit Properties relating to Survey Nos.5 and 6 through an attorney, namely, Mohammad Ramzan @ Ramzoo s/o Mojoo Jokhio by registered conveyance deed dated 01.03.1992 executed by three sons of Alam Khan Jokhio (Respondent No.4), namely (i) Shakeel (Respondent No.5), Qaim (Respondent No.6) and (iii) Mumtaz. They also parted with the Suit Properties, namely, Survey Nos.1, 2, 3, 4, 226, 227 and 241 through registered sale dated deed 16.03.1992 executed with the sons of Alam Khan Jokhio (Respondent No.4), namely, (i) Shakeel (Respondent No.5), Qaim (Respondent No.6), (iii) Mumtaz, (iv) Ghulam Muhammad, (v) Yar Muhammad, (vi) Abdul Majeed, (vii) Younus, and (viii) Ali. Finally, Respondent No.1 ("Muhammad Asif Sakaria" / "Sakaria") purchased the Suit Properties from the aforesaid Respondents Nos.4, 5, 6 and the sons of Respondent No.4 as mentioned above through two Registered Sale Deeds dated 20.12.2005 and 03.10.2007, respectively.

4. According to the Complaint, the legal heirs of Muhammad Jokhio, on 16.05.2003, came to know about an "embezzlement" in respect of the Suit Properties through a report of Deputy District Officer ("D.D.O.") (Revenue) attached to the Complaint as Annexure "D" (available on pages 37-47 of the suit file). On 09.06.2015, the legal heirs of Muhammad filed an application with the concerned Mukhtiarkar (Respondent No.2), citing the D.D.O.'s enquiry report attached to the Complaint as Annexure "E" (available on pages 49-53 of the suit file). Thereafter, on 22.10.2016, the Appellants/Plaintiffs filed Suit No.2638/2016 seeking a declaration of title in the suit properties, cancellation of the above-mentioned registered conveyance deeds and permanent injunction to restrain the Respondents from dispossessing them from the Suit Properties. As already mentioned hereinabove, the learned Single Judge concluded in the Impugned

Order that the Plaint filed was hopelessly time-barred and dismissed the Suit.

5. During the course of arguments, Counsel for the legal heirs of Muhammad admitted that the cause of action first arose to the Appellants on 16.05.2003. He argued that the date was irrelevant because his clients enjoyed peaceful possession of the Suit Properties, and there was no disturbance. He claimed that the legal heirs of Muhammad had submitted in 2015 to the concerned Mukhtiarkar, an application in relation to the Suit Property based on the D.D.O's enquiry report dated 16.05.2003. When there was no response from the Mukhtiarkar, the Appellants/Plaintiffs filed the suit against the Respondents, which was well within time. The Counsel stressed that the suit was not barred by limitation, and the grounds which have been taken in the application of Respondent No.1 did not come within any angle of application under Order 7 Rule 11 CPC. He added that Respondent No.1 was neither the owner of the Suit Properties nor in physical possession of the same. Hence, the suit as filed was within time.

6. Counsel for Respondent No.1 opposed Appellants'/Plaintiffs' submissions. He contended that the Appellants/Plaintiffs had mentioned in Para 17 of the Plaint that the cause of action accrued on 16.05.2003; and, consequently, the suit was liable to be dismissed.

7. We have heard the learned Counsel for the Appellants/Plaintiffs, Respondent No.1, and the learned Additional A.G., reviewed the record as available in the Appeal file and read the Impugned Order.

8. At the outset, it is important to note that during the course of arguments, Counsel for the legal heirs of Muhammad candidly admitted the contents of paragraph 17 of the Plaint, wherein the Appellants admitted that "the cause of action arose to the Appellants,

firstly on 16.05.2003 when the Plaintiffs [legal heirs of Muhammad] came to know through a report of the Deputy District Officer (Revenue) that there is some embezzlement of the land of Plaintiffs [Appellants].” The legal heirs of Muhammad have not denied that the cause of action in the suit arose on 16.05.2003. There is neither any denial of the date of cause of action mentioned as “16.05.2003” in the Objections supported by the Affidavit sworn and filed on 20.01.2018 by Ms. Bhalan, widow of Muhammad (Appellant/Plaintiff No.1) nor any denial in the instant Appeal which is supported by a verification under oath on 12.09.2020 by the Attorney of the Appellants, Mr. Muhammad Haroon Kamal. Thus, the fact that the cause of action first arose on “16.05.2003” has neither been controverted nor denied and stands admitted. No evidence was/would be required to prove the same. Therefore, the suit, as framed in terms of the relief prayed, was hopelessly time-barred.

9. The learned Single Judge has identified another aspect of this matter, which he has not elaborated upon and causes doubt regarding the Appellants/Plaintiffs assertions set out in the Plaint. This is that the Appellants/Plaintiffs claimed that the date of cause of action of 16.05.2003 emerged from the D.D.O.’s enquiry report of the same date, but that report did not concern the Suit Properties. The D.D.O.’s Report dated 16.05.2003 mentioned totally different survey numbers. It did not relate to the Suit Properties at all, which formed the subject matter of the Suit. Yet no explanation is provided by the Appellants/Plaintiffs as to why they have tried to connect their knowledge about the “embezzlement” regarding the Suit Properties to a D.D.O.’s enquiry report dated 16.05.2003, which does not even concern them. Further, apart from the D.D.O.’s enquiry report itself (Annexure “D” of the Plaint), there is another document relied upon by the Appellants/Plaintiffs which mentions the D.D.O.’s enquiry report, and this is the Appellants/Plaintiffs Application filed with the Mukhtiarkar (Annexure “E” of the Plaint). The said application also cross-references the D.D.O.’s enquiry report on its second last page.

But in this application to the Mukhtiarkar, the Appellants/Plaintiffs refer to D.D.O.'s report as dated 16.05.2013 and not 16.05.2003. To this end, neither the Plaint, nor the Affidavit sworn by Ms. Balan (Appellant No.1/Plaintiff No.1) in support of her Objections to CMA No.16672/2019 nor the Appeal itself address this apparent anomaly. There is total silence on this aspect of the matter. The Appellants/Plaintiffs have not taken any ground in the appeal that the learned Single Judge has got the date of the first cause of action wrong. Counsel provided no clarification for the Appellants/Plaintiffs. Rather, the Appellants have re-iterated the contents of the Plaint, thereby reaffirming the position taken by the Appellants/Plaintiffs that the cause of action first arose on 16.05.2003 even though the D.D.O.'s enquiry report has nothing to do with the Suit Properties. Appellants/Plaintiffs filed no application to amend the Plaint.

10. Finally, the learned Single Judge also observed in the Impugned Order that even though Mohammad parted with the Suit Properties, he did not challenge the registered conveyance deeds during his lifetime. There are two aspects to this point. First, according to the Appellants/Plaintiffs, the cause of action first arose on 16.05.2003 when they (actually Mohammad) learned that there was "some embezzlement of the land of the Plaintiffs [Appellants]." The "embezzlement" alleged by the Appellants/Plaintiffs in 2003 would have been in relation to the registered conveyance deeds of 1992, and still, Mohammad did not take any positive action to safeguard his rights up to the time of his death (he passed away on 13.01.2005). The second point is that the next conveyance of the Suit Properties took place through sale deeds duly registered in the years 2005 and 2007. The sale was registered after the death of Muhammad. This time, it was the onus of the legal heirs of Muhammad to remain vigilant, especially when apparently they had knowledge of the "embezzlement" in the year 2003. There is nothing on record to show that Muhammad and the legal heirs of Muhammad were not indolent. Nothing on record demonstrates their vigilance.

All this did not inspire confidence in the learned Single Judge, and frankly, we are not impressed by the conduct of the Appellants/Plaintiffs, who have been apparently sleeping on their rights notwithstanding the registered sale deeds executed to perfect the transfer of the Suit Properties first from Muhammad to Respondent Nos.4 to 6 and others, and thereafter subsequently from them to the Respondent Nos.1.

11. In the circumstances, we cannot read into the Plaint what is not pleaded. If the cause of action date is mentioned as "16.05.2003", and no one has objected to it, we must accept it. The Appellants/Plaintiffs (in 2016) sought cancellation of the registered Sale/Conveyance Deeds dated 1992, 2005 and 2007. Thus, the learned Single Judge has correctly applied the law of limitation to the case in hand and concluded that the suit filed by Appellants/Plaintiffs was time-barred. The admission made by the legal heirs of Muhammad in clear terms in the Plaint disentitles the Appellants/Plaintiffs from raising any challenge to the Impugned Order of the trial court. Respondent No.1 rightly noticed that the suit was barred by limitation and the Appellants/Plaintiffs have failed to bring on record any explanation or justification after the clear admission made by the Appellants/Plaintiffs how the lis could be argued to be filed within time. The Impugned Order of the learned Single Judge is based on sound principles and proper appreciation of the law.

12. Finally, according to the narratives as to the title of the Suit Properties stated in Form-VII attached to the Plaint all transfers of the Suit Properties took place in 1992, 2005 and 2007 by way of registered sale/conveyance deeds. The onus was on the Appellants/Plaintiffs to show a prima facie case was made out based on the Plaint and documents filed in support thereof. The Appellants/Plaintiffs were well aware of the presumption of truth associated with a sale/conveyance deed that is duly registered under

the Registration Act, 1908. The Appellants/Plaintiffs neither produced nor relied upon any document which prima facie could be deemed or interpreted to rebut such a presumption. This aspect of the matter did not and does not help the cause of the Appellants/Plaintiffs.

13. No legal grounds have been made out to set aside the Impugned Order. The learned Single Judge has not fallen into any error while passing the Impugned Order, which requires interference.

14. It is pertinent to mention here that at the time of the hearing of this appeal, an application under Order 1 Rule 10 CPC filed by an intervener was also pending hearing. However, since the learned Single Judge heard no intervener, we have not passed any order on the said application.

15. In view of the above, the Impugned Order does not suffer from any illegality or material irregularity which calls for any interference. Accordingly, this Appeal is dismissed along with all listed applications.

16. The parties are left to bear their own costs,

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