IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Civil Rev .Application No.S-83 of 2012

Applicants	:	Syed Anwar Ali (deceased) through his legal heirs, through Mr. Manoj Kumar Tejwani, Advocate
Respondents 1 & 2	:	Jaro and Qadir Bux (deceased) Through their legal heirs Through Mr. Mushtaque Ahmed Shahani, Advocate
The State	:	Through Mr. Ghulam Mustafa Abro, Assistant Advocate General
Date of hearing	:	22.04.2024
Date of Decision	:	21.05.2024

JUDGMENT

ARBAB ALI HAKRO, J.- Through this Revision Application under Section 115, the Civil Procedure Code 1908 ("C.P.C"), the applicant has called into question the Judgment dated 11.4.2012 and Decree dated 17.4.2012, passed by the Court of Additional District Judge, Moro ("the appellate Court") whereby, an appeal preferred by the applicant was dismissed, consequently the Order and Decree dated 09.3.2010, passed in F.C Suit No.03/2010 (Old F.C Suit No.48/2009) by Senior Civil Judge, Moro ("the trial Court") rejecting the plaint under Order VII Rule 11 of the Code was maintained.

2. The facts are briefly as follows: According to the agreement to sell dated 19.3.1981, one Jaro, the predecessor of respondents No.1(a) to (f), agreed to sell agricultural land bearing Survey No.198/1 to 4 and 200 admeasuring 07-26 Acres situated in Deh Mango Taluka Bhiria District Naushahro Feroze ("the suit land") to Syed Anwar Ali Shah, the predecessor of the applicants, for a total sale consideration of Rs.22,950/-. Rs.5,000/- was paid by the predecessor of the applicants to the predecessor of

respondent No.1, who handed over possession of the Suit land. The remaining amount was to be paid by the predecessor of the applicant to the predecessor of respondent No.1 when the registered Sale Deed would be executed in his favour on the lifting of the ban on the Suit land, as the same was resumed land and its 25-years ban on sale was set to expire in the year, 1997. It was averred in the plaint that on 16.4.1994, the predecessor of respondent No.1 demanded the remaining consideration from the predecessor of the applicants as he was in need of money. Therefore, the predecessor of the applicant gave him Rs.7,950/- in the presence of witnesses, and such receipt was acknowledged. After lifting the ban in the year 1997, the predecessor of the applicant approached the predecessor of respondent No.1 for the execution of the registered Sale Deed in his favour upon receipt of the remaining balance consideration, but he sought time on various pretexts. However, subsequently, the predecessor of the applicants came to know that the predecessor of respondent No.1 was negotiating to sell the Suit land to some other persons at a higher rate. Therefore, the predecessor of the applicants filed T.C Suit No.24 of 1999 before the Court of Civil Judge, Bhiria for Specific Performance of Contract, in which the predecessor of respondent No.1 filed an application under Order VII Rule 11 C.P.C, by taking the ground that he had sold the suit land to respondent No.2 through a registered Sale Agreement. The Civil Judge, after hearing, rejected the plaint under Order VII Rule 11 C.P.C vide Order dated 15.10.1999, which the predecessor of the applicants challenged before the learned District Judge, Naushahro Feroze. The learned Additional District Judge, Naushahro Feroze, ultimately allowed this and directed the joining of respondent No.2 Qadir Bux as a defendant in the Suit. Afterwards, the predecessor of the applicants withdrew T.C Suit No.24/1999 due to some formal defects with permission to file afresh, and then he filed a second T.C Suit No.05/2000 (New No.12/2008) before the Court of Civil Judge, Bhiria. In that Suit, the predecessor of respondent No.1 and respondent No.2 filed applications under Orders VII Rule 10 and VII Rule 11 C.P.C. While deciding said applications, the Civil Judge of Bhiria called for a report from the concerned Mukhtiarkar in respect of the market value of the Suit land to ascertain the jurisdiction, who reported that the market value of the Suit land at the time

of filing the Suit in the year 2000 was Rs.100,000/- per acre. Due to this, the plaint was returned to the predecessor of the applicants for want of jurisdiction vide Order dated 26.01.2009. Hence, he filed the present third Suit before the trial Court.

3. Upon receipt of the summons, Respondent No.2 filed an application under Order VII Rule 11 C.P.C for the rejection of the plaint on the grounds that it is barred under Article 113 of the Limitation Act, 1908 ("the L.A"). The predecessor of the applicants contested this application by filing his objections in the form of a Counter Affidavit. After hearing both the learned counsel for the parties, the trial Court rejected the plaint vide Order and Decree dated 09.3.2010. Aggrieved by this Order & Decree, the predecessor of the applicants preferred an appeal to the appellate Court. However, this was also dismissed vide impugned Judgment dated 11.4.2012 and Decree dated 17.4.2012. The applicants are now challenging the concurrent findings of the two Courts below through this instant revision application.

4. At the outset, learned counsel for the applicants argued that impugned judgments and decrees passed by both the Courts below in hastily manner and are suffering from material illegalities and irregularities; besides based on surmises and conjectures; that both the Courts below did not consider nor discuss the scope of Order VII Rule 11 CPC while rejecting the plaint of the suit; that learned trial Court rejected the plaint of the suit on the ground of limitation, which was subsequently maintained by learned Appellate Court without considering factual and legal aspects of the case; that the limitation is mixed question of law and fact, which can only be decided after adducing evidence but both the Courts erred not to apply judicious mined; that it is settled proposition that the matter should be decided on merits rather on technicalities. At the end, learned Counsel for the Applicants believes there are reasonable grounds to suspect a significant miscarriage of justice. Therefore, Counsel prays that the impugned judgments and decrees passed by both the Courts below are contrary to law and liable to be set-aside by allowing instant revision application. In support of his contention, learned Counsel has placed reliance on the case law reported as 1995 SCMR 584, 2014 CLC 1418, 2015

CLC 71, 1982 CLC KAR 269, 2002 SCMR 1821, 2006 YLR LAH 2607, 2007 SCMR 1120, PLD 2002 SC 74, 2016 MLD Sindh 2013, 1991 SCMR 819 and 1995 SCMR 284.

5. On the other hand learned counsel for respondent contended that both learned lower Courts has rightly passed the impugned judgments and decrees by considering the factual as well as legal aspects of the case; that the suit was barred by limitation, which could not be plausibly explained by learned Counsel for the Applicants to strengthen his claim; that there is no any illegality, infirmity or frailty in the impugned judgments and decrees passed by learned both Courts below rather same are sound and well-reasoned, hence interference of this Court is not required; that there is concurrent findings and the jurisdiction of this Court is narrow; besides this Court cannot appraise the evidence recorded there. In the end, he prayed for dismissal of instant revision application. He placed reliance on 1995 CLC 130 & 2000 SCMR 1305.

6. Learned AAG, while adopting the arguments advanced by learned Counsel for the Respondents, supports the impugned judgments and decrees and contended that learned lower Courts have rightly rendered the same by considering factual as well as legal aspects of the case; that in concurrent findings, there appears some reasonable grounds for interference of this Court in its constitutional jurisdiction.

7. The contentions have been fastidiously scrutinised, and the accessible record has been carefully assessed to ascertain whether an adequate and comprehensive dispensation of justice was achieved; it is imperative to analyse the findings concurrently documented by the Courts below.

9. Upon meticulous examination of the case record, it is acknowledged that in the Agreement to Sell dated 19th March 1981, the date for the performance of the contract was not stipulated. Article 113 of the L.A is a pivotal provision in the realm of contract law. It presupposes the existence of a concluded contract between the plaintiff and the defendant, where the defendant has refused to perform their obligations under the contract, and the plaintiff has been notified of such refusal. The second column of Article

113 prescribes a limitation period of “three years” for filing a Suit for Specific Performance. This limitation period is crucial as it ensures that legal proceedings are initiated within a reasonable time frame, thereby preventing potential abuse of the legal process. The third column of Article 113 describes two distinct scenarios. The first part applies when a specific date or time for the performance of the contract is stipulated in the agreement. In such cases, the limitation period for a Suit for specific performance commences from the specified date, irrespective of whether the defendant has refused to perform their obligations under the contract and whether the plaintiff has been notified of such refusal. The second part of the third column applies when no specific date or time for performance is stipulated in the contract. In such cases, the limitation period commences from the date when the defendant refuses to perform their obligations under the contract or when the plaintiff is notified of such refusal. It is noteworthy that if no date or time is stipulated in the contract and the second part is invoked, the concept of time being of the essence of the contract does not apply. The parties can only make such a claim when a specific date or time is stipulated in the contract and the case falls under the first part of the third column. However, the first part does not explicitly state that the limitation period applies when time is of the essence of the contract. Therefore, whether time is of the essence of the contract in any particular case is irrelevant to determining whether the case falls under the first or the second part of the third column of Article 113 of the L.A. These two questions are independent and have no bearing on one another. This interpretation ensures that the provisions of Article 113 are applied in a fair and equitable manner, in line with the principles of justice and good conscience.

10. In the case at hand, a close examination of the Agreement to Sell reveals a written note indicating that the land in question was a reserve property at the time, thereby preventing the execution of a sale deed in favour of the applicants' predecessor. However, the agreement stipulates that once the Reserve Property is repealed, respondent No.1's predecessor will be obligated to execute a registered Sale Deed in favour of the applicants' predecessor. Both parties did not set a specific date for the performance of the contract; instead, they left it until the lifting of the ban.

Consequently, the limitation of the Suit for specific performance, filed by the applicants' predecessor based on the said agreement to sell, falls under the purview of the second part of the third column of Article 113. In such a scenario, the Suit should have been instituted within three years from the date of refusal by respondent No.1's predecessor or from the date of notice of such refusal. Therefore, the commencement of the limitation in the present matter hinges on the date of refusal by respondent No.1's predecessor or the date on which the applicant's predecessor first received notice of such refusal. This starting point can only be determined through the parties' pleadings and documents.

11. Upon reviewing the records, it is evident that the predecessor of the applicants initially filed Third Class Suit No.24 of 1999 on 18th October 1999. In this Suit, he pleaded that a 25-year ban was still in effect. In paragraph No.10 of the plaint regarding the cause of action, the predecessor of the applicants claimed that the cause of action arose about a month prior when the predecessor of respondent No.1 started negotiation with other persons to sell the Suit land. However, the plaint of the aforementioned Suit was rejected vide Order dated 15th October 1999. An appeal against this Order was subsequently allowed per the Judgment dated 22nd November 1999, and the matter was remanded back to the trial Court. The Court directed the predecessor of the applicant to include the new purchaser, Qadir Bux, as a defendant in the Suit. Subsequently, the predecessor of the applicants withdrew the Suit with permission to file afresh, which was granted. He then filed the second Third Class Suit No.05 of 2000 on 15th February 2000. To compute the period of limitation from the date of the cause of action and the pleading of T.C Suit No.24 of 1999, it was noted that the ban was lifted in 1997. The above Suit was filed on 18th October 1999, withdrawn with permission to file afresh, and then the second T.C Suit No.05.2000 was filed on 15th February 2000. As per Order XXIII Rule 2 C.P.C, in any fresh suit instituted on permission granted under the last preceding rule, the plaintiff shall be bound by the law of limitation in the same manner as if the first Suit had not been instituted. The Court shall consider the period of limitation pleaded in the earlier Suit. Therefore, based on the records, it can be safely presumed that both the first and

second suits filed by the predecessor of the applicants were within the three years of limitation.

12. The records clearly show that the plaint of the second Third Class Suit No.05 of 2000 was returned by the learned Civil Judge on the grounds of jurisdiction, as per the Order dated 26th January 2009. The predecessor of the applicants did not challenge this Order. Instead, in compliance with it, he presented a third fresh F.C Suit No.48 of 2009 on 27th February 2009. Without a doubt, as per the above discussion and records, the first and second suits were filed within the time frame stipulated by Article 113 of the L.A. The predecessor of the applicants cannot be barred from filing a fresh suit/plaint under Order VII Rule 13 C.P.C. The trial and appellate Court's findings that the third/present Suit was time-barred are erroneous. As discussed earlier, no date for executing the Sale Deed in the Agreement to Sell was fixed. A receipt indicates that the vendee would execute the registered sale deed after lifting the ban. The contents of the plaint reflect that the ban was lifted in 1997, and the Sale Deed was executed by the predecessor of respondent No.1 in favour of respondent No.2 in 1999. When deciding an application filed under Order VII Rule 11 C.P.C for rejection of a plaint, the Court is only required to consider the contents of the plaint. Every fact mentioned in the plaint has to be considered true and correct, and even the written statement or a plea taken in the written statement cannot be taken into consideration. Even the fact/apprehension that the plaintiff may not ultimately succeed in establishing the averments made in the plaint cannot be grounds for rejecting the plaint under Order VII Rule 11 C.P.C. In this regard, reference can be made to the case of Jewan and 07 others vs Federation of Pakistan through Secretary, Revenue Islamabad and 02 others (1994 SCMR 826), wherein it was held that: -

> *"A plain reading of the Order VII, Rule 11, C.P.C. would show that the rejection of plaint under this prevision of law is contemplated at a stage when the Court has not recorded any evidence in the Suit. It is for this reason precisely, that the law permit consideration of only averments made in the plaint for the purpose of deciding whether tile plaint should be rejected or not for failure to disclose cause of action or the Suit being barred under some provision of law. The Court while taking action for rejection of plaint under Order VII, Rule 11, C.P.C. cannot take into consideration pleas raised by the defendant in the Suit in his decease, as at that stage the pleas raised by the defendants are only contentions in the proceedings unsupported by any evidence*

> *on record. However, if there is some other material before the Court apart from the plaint at that stage which is admitted by the plaintiff, the same can also be looked into and taken into consideration by the Court while rejecting the plaint under Order VII, Rule, 11 C.P.C.. Beyond that the Court would not be entitled to take into consideration any other material produced on record unless the same is brought on record in accordance with the rules of evidence."*

13. It is indeed a matter of record that the plaint of the second Suit was returned due to a lack of jurisdiction. Both the lower courts failed to appreciate the provision of Article 14 (2) of the L.A, which states that "*In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it*." Therefore, the time consumed in the second Suit should be excluded as the plaint of the second Suit was returned for want of jurisdiction. The limitation period would pause from the date of filing the second Suit until the plaint was returned on 26th January 2009. It is a matter of record that the third/present Suit was filed within one month, i.e., on 27th February 2009. Thus, the third/present Suit is well within time by excluding the time consumed in the second Suit. Both the lower courts erroneously and illegally computed the period of three years from the date of the Agreement to Sell, which is contrary to the law. In the case of Aziz Ahmad and another vs Munir Ahmad and 2 others (1994 SCMR 2039), the Supreme Court of Pakistan has held as under: -

> *"It appears, from the record that Suit was filed on 30-6-1977 in the Court of Senior Civil Judge, Sheikhpura and keeping in view valuation of Suit as shown in the plaint, it was entrusted to the Civil Judge IInd Class for trial. Subsequently when chart of net profits was obtained to assess the value of the Suit for the purposes of court-fee and jurisdiction, it became clear that Suit was not triable by the Civil Judge lInd Class and ultimately plaint was returned on 5-6-1978 and on the same day was presented in the Court of competent jurisdiction. Initially when the plaint was presented in the Court of Senior Civil Judge, it was within time and in such circumstances mistake made with regard to the entrustment of the case in the forum not having pecuniary jurisdiction is to be considered as technical error. In such circumstances time consumed in the forum not having -pecuniary jurisdiction is rightly condoned under section 14 of the Limitation Act particularly when three Courts below are satisfied that defect*

> *of jurisdiction had occurred on account of technical mistake for which plaintiffs are not to be blamed."*

14. In the case at hand, the trial Court has invoked Article 91 of the L.A for the cancellation of the registered Sale Deed. In this case, the vendee has sought relief against the new purchaser under Section 27(b) of the Specific Relief Act. This section stipulates that enforcing a contract against a new purchaser is possible if the vendee can prove the sale agreement successfully. However, if the sale agreement is proven, then Article 91 of the L.A would not be applicable. This is because Article 91 is specifically for the cancellation of a registered instrument and does not apply when a sale agreement is proven. For the sake of argument, even if we assume that Article 91 of the L.A is applicable, the Suit for cancellation of the registered instrument must be filed within three years. Importantly, this three-year period commences from the date when the new purchaser is impleaded in the array of the defendant.

15. Regarding the applicant's competence, it is clear that the suit land was under a restricted grant at the time of executing the agreement to sell. However, the subsequent alienation of the Suit land in the name of the new purchaser/ respondent No.2 indicates that the ban was lifted. The exact date when this occurred, whether as pleaded by the predecessor of the applicant or otherwise, can only be determined after evidence is adduced. Both the lower courts have observed that the predecessor of respondent No.1 was not competent to sell the Suit land at the time of executing the agreement to sell. However, Section 43 of the Transfer of Property Act provides for the transfer by an unauthorised person who subsequently acquires an interest in the property transferred. In the present case, the predecessor of respondent No.1 subsequently sold the property to respondent No.2 and executed the registered Sale Deed. This suggests that despite the initial lack of competence, the transfer was made valid by the subsequent acquisition of interest in the property.

16. With the utmost respect, it is necessary to point out that the impugned orders passed by the Courts below, in this case, have demonstrated a level of perversity that necessitates intervention at this revisional jurisdiction. The concurrent findings against the applicants are

not based on factual discrepancies but on legal interpretations. This distinction is crucial, as it underscores the fact that the issue at hand is not one of differing perspectives on the facts of the case but rather a fundamental disagreement on the application and interpretation of the law. This disagreement is not trivial; it is of such magnitude that it warrants the attention and intervention of the revisional jurisdiction. The applicant's rights and interests are at stake, and the revisional Court must ensure that justice is served, not just in letter but in spirit as well. Therefore, despite the concurrent findings against the applicant, it is imperative to intervene and rectify the situation, ensuring that the law is applied correctly and justice is duly served.

17. For the foregoing reasons, the instant Revision Application is allowed, the impugned Order, Judgment and decrees of the Courts below are hereby set aside, and the case is remanded to the trial Court, with the direction that the Suit be decided on merits in accordance with the law.

18. Before parting with this Judgment, it clarified that it shall not influence the trial court in any way in deciding matter/lis. Moreover, as the suit/case has been lingering since 1999, the learned trial court is directed to dispose of the Suit of the plaintiffs within 04(four) months from receipt of this Judgment.

JUDGE

Suleman Khan/PA