

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Civil Revision Application No 84 of 2013

Syed Usman Hussain Tirmizi & otherApplicants
Vs.

The State & others.....Respondents

29.08.2024

Mr. Rizwan Rasheed, Advocate for the applicants.

Mr. Muhammad Qasim Iqbal, advocate for the Respondent No.3.

Respondent No.2 (e) Mazhar Mehmood in person.

ORDER

Muhammad Iqbal Kalhoro, J:- Applicant entered into a sale agreement with respondent No.2 (since dead) represented by his legal heirs from respondents No.2 A to J present in the Court through their attorney Mazhar Mehmood one of the legal heirs in respect of Plot No.M-II.E/1242, admeasuring 2400 Sq. Yards (Paradise Silk Milk) Annexure-E consisting of two portions titled as portion-A and portion-B. Portion-A consisted of 653 Sq.Yards. Portion-B comprised remaining area.

2. As per the sale agreement portion-A was in possession of husband of respondent No.3 in the capacity of tenant. It was agreed by the parties, which is expressly mentioned in Para-3 of the sale agreement, that portion-A is occupied by Malik Mazhar, husband of respondent No.3, and the proceedings are in progress in the court of law at Karachi and on its vacation by the vendor, he shall give one month's notice to the vendee to arrange the balance payment viz. Rs.565,000/- so that the sale transaction in respect of portion-A could be finalized. So far as portion-B is concerned its transaction was completed between the parties after payment of entire remaining amount and the possession whereof was handed over to the applicant. Hence, there remained no dispute in so far as portion-B was concerned between the parties.

3. The vendee/respondent No.2 however could not get vacant possession of portion-A of the plot, the matter lingered on, and applicant

kept on waiting to enable respondent No.2 to perform his part of agreement envisaged in the aforesaid sale agreement executed on 02.11.1987 by getting vacant possession of the portion-A.

4. Subsequently respondent No.2 entered into a sale agreement executed in February, 1991 regarding portion-A with respondent No.2 as she was in occupation of the same after death of her husband. Applicant as soon as came to know of it filed a civil Suit for specific performance of contract bearing No.351 of 2003 (Old No.469 of 1991). Against which respondent No.3 also filed a civil Suit for specific performance of contract bearing No.1083 of 2002 (Old No.932 of 1991 against respondent No.2. Both the suits were consolidated by the learned 1st Senior Civil Judge Karachi, West and by a judgment dated 31.08.2010, the learned Judge decreed the suit of applicant and dismissed the suit of respondent No.3.

5. Against the consolidated judgment and decree respondent No.3 filed Appeal No.226 of 2010, which came up on the file of 3rd Additional District Judge Karachi, West for hearing. After hearing the parties the learned Additional district Judge passed the impugned judgment, whereby he has not only dismissed the appeal preferred by respondent No.3 against the consolidated judgment and decree dismissing her suit but dismissed the suit of applicant No.1 decreed by the learned Senior Civil Judge, on the point of limitation. Taking up the relevant point for discussion, the learned appellate Court has observed "It is also pertinent to point out that Rs.70,000/- were paid on 07.11.19987 as per sale agreement and it was part payment of portion-A then civil Suit No.469 of 1991 was filed after about three years of the said sale agreement dated 07.11.1987, therefore, it was also time barred suit." The appellate Court has further observed in the same breath that learned Senior Civil Judge did not consider such legal point and decreed the suit of applicant on misappreciation of law. This impugned judgment has led the applicant to file this revision application.

6. Learned counsel for the applicant has argued that filing of the suit for specific performance of contract is regulated by Article 113 of the Limitation Act, which has two conditions set for fixing the limitation for filing of the suit. Per condition No-1 the suit is to be filed within three years form the date fixed for the performance; per condition No-2 when

no such date is fixed, within three years when the plaintiff has noticed that performance is refused. According to learned counsel in the case of applicant condition No.2 is applicable as no time frame was fixed in the sale agreement executed on 07.11.19987 for performance of the contract either by the applicant or by respondent No.2 or his legal heirs in respect of portion-A of the property. According to him, the learned Appellate Court has misinterpreted the limitation period while deciding this point in appeal and has wrongly dismissed the suit. Learned counsel submits that since the learned appellate court has not touched merits of the case and on the point of limitation has dismissed his suit wrongly. He would be satisfied if the case is remanded to the extent of thrashing out merits of the case by the appellant court and deciding the appeal to the extent of his suit afresh. Learned counsel for the applicant in support of his arguments has referred to the case law reported as PLD 2012 S.C.247.

7. Learned counsel for respondent No.3 does not appear to oppose this proposal and has requested that respondent No.3 be given full opportunity to contest the said matter. One of the legal heir namely Mazhar Mehmood is present and has submitted that the applicant himself through various letters has cancelled the sale agreement, on the basis of which he instituted a suit for specific performance of contract, hence the suit was not maintainable. However, his arguments have been refuted by learned counsel for the applicant by referring to the consolidated judgment passed by the learned Senior Civil Judge observing that the said person did not produce either power of attorney on behalf of remaining respondents, failed to cross-examine the plaintiff/applicant and even did not come in the witness box to adduce his evidence.

8. Be that as it may, after hearing the parties and perusing the proceedings available on the record, I am of the view that the observation of the appellate Court in dismissing the suit of applicant on the point of limitation is based on an error. Para-3 of the sale agreement dated 07.11.1987 conveys in clear terms the intention of the parties relating to completion of transaction over portion-A of the property. At the time of sale agreement, portion-A was in occupation of husband of respondent No.3 and some proceedings over its vacation were pending in the Court at Karachi. It was agreed by the parties that as soon as the vendor succeeded

in getting the vacant possession thereof he would issue a notice to the vendee/applicant and within one month thereof the vendor/applicant would be obliged to pay the remaining sale consideration. The performance of contract on the part of applicant was subject to vacation of portion-A firstly and secondly on receiving the notice within one month thereof to be given to him by respondent No.2 for the payment of remaining sale consideration. In the light of such clear terms and conditions not envisaging the date fixed for performance, the limitation period for filing the suit for specific performance of contract was to be counted as per condition No.2; after refusal by the vendor to sell portion-A to the applicant, which in this case would be deemed to happen only when the applicant came to know of subsequent sale agreement by respondent No.2 with respondent No.3 purportedly executed in February, 1991 in respect the same portions of the property. The applicant filed the suit within two months thereof in April 1991, therefore, his suit was not time barred and the learned appellate court erred in counting the limitation for filing the suit from execution of sale agreement dated 07.11.1987.

9. I, therefore, in the light of above facts and circumstances set aside the impugned judgment to the extent of dismissing the suit of applicant on the point of limitation, remand the case to the learned appellate court with the direction to afford an opportunity of hearing to all the parties afresh and decide the suit of applicant purely on merits without being influenced by the previous order. This exercise shall be completed within a period of three months without fail and compliance report shall be filed through MIT-II of this Court.

This Civil Revision Application, accordingly in the above terms is disposed of along with pending application.

JUDGE