

**IN THE HIGH COURT OF SINDH
AT KARACHI**

SUIT NO. 96 OF 2013

Plaintiff : Mst. Hayat Bibi and others
through Mirza Sarfaraz
Ahmed, Advocate.

Defendant No.1 to 3 : Muhammad Muneer and
others, through Raj Ali Wahid,
Advocate.

Defendant No.7 : Malir Development Authority,
through Naheed Akhtar,
Advocate.

Date of hearing : 01.04.2024

ORDER

YOUSUF ALI SAYEED, J. – The plaint presented in the matter on 23.01.2013 represents an amalgam of disjointed statements. As can best be discerned, the Plaintiffs have thereby sought performance of a Joint Venture Agreement dated 13.12.1999 (the “**JVA**”) in respect of a certain parcel of land so as to advance a monetary claim in that regard, while simultaneously assailing the genuineness of a sale transaction shown as having taken place as between them and the Defendants Nos. 2 and 3 in respect of the same land, with declarations thus being elicited as to the forgery of certain documents underpinning the impugned transaction, being a Sale Agreement said to be dated 01.06.2000, a General Power of Attorney registered on 15.04.2004, a further General Power of Sub-Attorney said to be dated 03.03.2009, as well as a Form-II dated 16.02.2008 said to have been registered pursuant to those documents.

2. As it transpires, neither the so-called General Power of Sub-Attorney of 03.03.2009 nor Form-II dated 16.02.2008 appear to have been filed with the plaint, nor have been mentioned therein other than in the prayer clause, except for it being stated in Paragraph 18 thereof alluding to. A change of title/entries. Furthermore, a perusal of the other documents that have been impugned reflects the Sale Agreement to in fact be dated 01.07.2000 (the "**Sale Agreement**") and the document referred to as a General Power of Attorney registered on 15.04.2004 to in fact be a General Power of Sub-Attorney (the "**Sub-Power**").

3. That Sale Agreement shows the Plaintiffs, acting through the Plaintiff No.2, to have transacted with the Defendants Nos. 2 and 3 for the sale of the subject land, whereas the Sub-Power in turn shows a delegation of power and authority by the Plaintiff No.2 in favour of the very same Defendants. That being clarified, the case set up by the Plaintiffs is that an Irrevocable General Power of Attorney had been executed on 25.08.1999 by the Plaintiffs Nos. 1 and 3 to 9 in favour of the Plaintiff No.2 in respect of the subject land, who had in turn admittedly entered into the JVA with the Defendants Nos. 2 and 6 for the development of a housing project thereon, with possession of the land being handed over to them. Be that as it may, the Plaintiffs nonetheless goes on to use a collective term when stating in Paragraph 11 that certain disputes arose soon thereafter and that "the defendants" failed to abide by their payment obligations, lastly refusing a demand for payment made by the Plaintiffs in the year 2007 and also goes on to advance claims for recovery of sums thereunder against the Defendants Nos. 1 to 5 jointly, albeit the Defendants Nos. 1, 4 and 5 not being parties to the JVA and the Plaintiffs otherwise containing no averment whatsoever against them .

4. The pleadings then abruptly skip on to the year 2013, with it being said that the Plaintiff No.2 was arrested on 08.01.2013 from the subject land in the context of FIR No.166/12 registered at P.S. Memon Goth, and it being alleged in paragraph 15 of the plaint that it then came to the fore during the course of the ensuing investigation that forgery had been committed in the form of the Sale Agreement and Sub-Power, but without the culpable party being identified. Indeed, the aforementioned paragraph conspicuously contains a blank space where the identifying number of the particular defendant ought to have been mentioned specified.
5. The Defendants Nos.1 to 3 filed their written statement on 29.06.2013, whereby they assailed the maintainability of the Suit on the touchstone of limitation in view of Section 3 of the Limitation Act 1908 read with Articles 91, 92 and 11 of the First Schedule thereof. They also moved CMA No. 7711/13 under Order 7 Rule 11 CPC on that score, which came to be allowed vide an Order dated 08.08.2016 made in the absence of representation from the side of the Plaintiffs, only for the Order to then be set aside on appeal, with the matter being remanded for decision afresh after hearing the parties.
6. Proceeding with his submissions on that application, learned counsel for the Defendants Nos.1 to 3 submitted that all the claims advanced by the Plaintiffs were barred by limitation in terms of the aforementioned Articles. Furthermore, it was submitted that the validity of the registration of the Sub-Power had been verified in Civil Suit No. 195/2013 pending as between the parties in the Court of the 1st Senior Civil Judge, Malir, Karachi, and that the Defendants Nos. 2 and 3 had executed a Sale Deed registered on 27.12.2007 in pursuance of the Sub-Power whereby the subject land had been conveyed in favour of the Defendant No.1, with the Form-II entry following in his favour accordingly, with copies of those documents being filed with the written statement.

7. For his part, learned counsel for the Plaintiff was unable to advance any cogent submission to explain the errors and omissions in the pleadings and merely fell back on the plea that he had not been representing the Plaintiffs at the outset and the Plaintiff had accordingly been drafted by another counsel.

8. Having examined the matter, it falls to be considered that even if the contention of the Plaintiffs that they came to firstly have knowledge of the Sale Agreement and Sub-Power during the course of the investigation of FIR No.166/12 is accepted as being correct, the subsequent execution of the Sale Deed registered on 27.12.2007 has rendered the Plaintiffs challenge to those documents inconsequential in the absence of a challenge to the Sale Deed. A perusal of the Plaint reflects that what has been assailed is merely the Form-II entry and not the actual document creating title. No such challenge has been made despite the fact that the Plaintiffs ought to have been aware of the Sale Deed at the time of filing of the Suit in as much as they were aware of the Form-II entry made in pursuance thereof. Even otherwise, failing all else, the Plaintiffs definitely came to have knowledge of the Sale Deed upon filing of the written statement of the Defendants Nos. 1 to 3, yet made no timely effort to seek to amend their Plaint in order to assail the same. As for the JVA, it is apparent that the claim advanced by the Plaintiffs in that regard is barred by limitation as per the very contents of the Plaint. In view of the foregoing, CMA No. 7711/13 stands allowed, with the plaint being rejected accordingly.

JUDGE