

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

Present:  
Mr. Justice Muhammad Shafi Siddiqui, CJ  
Mr. Justice Jawad Akbar Sarwana

High Court Appeal No. 370 of 2022

Shaikh Khalid Safdar & another

Versus

Ali Hassan & others

Date of Hearing: 16.01.2025

Appellants: Through Barrister Sarmad Khan Azad along with Ms. Fozia Murad Advocates.

Respondent No.1: Through Mr. Ghulam Rehman Korai Advocate.

Respondent No.2: Through Barrister Nabeel Ahmed Khan Advocate.

Respondents No.3 to 5: None present.

**J U D G M E N T**

Muhammad Shafi Siddiqui, CJ.- In a suit bearing No.341 of 2009 for declaration, injunction, administration, partition and possession, appellants prayed that Bungalow bearing No.9/II, Zamzama Street No.3 & 8, Phase-V, DHA, Karachi (hereinafter referred to as the property) is an undivided property of the deceased father of appellants and respondent No.1 etc. and they are entitled to their respective shares under the law of inheritance. They (appellants) also sought declaration that the respondent No.1 at some point in time was enjoying the title as only Benami (ostensible) and that the subsequent alleged gift to respondent No.2 would not vitiate the lawful claim of the legal heirs of the deceased, late Shaikh Muhammad Safdar. The appellants have raised some consequential prayers in addition to the above substantial relief.

2. While the suit was pending and proposed issues were filed by the appellants/plaintiffs the impugned order dated 29.09.2022 was passed by learned Single Judge whereby the subject suit and the claim therein

was considered as time barred as being filed beyond the period of three years from the date of registration of the sale deed and/or gift deed in favour of respondents No.1 and 2 respectively and application under order VII Rule 11 CPC was allowed and the plaint of suit was rejected.

3. We have heard learned counsel for the parties and perused material available on record.

4. There is no dispute that the learned Single Judge in his wisdom has considered the application of Article 91 of the Limitation Act and the consequently three years from the date of the cause that was shown to have triggered on 11.09.2007 was noticed. Without probing/commenting much about the facts of the case - specially in respect of the amount wherefrom the property was acquired initially in the name of respondent No.1 and then followed by a registered gift in favour of respondent No.2, it is of extreme importance to see the requirements of Article 91 of the Limitation Act. This Article is distinct from many of the Articles by its language alone. Learned Single Judge in the fifth typed page of the impugned order has relied upon the word "knowledge" of the plaintiffs/appellants about the registration of the instrument followed by registration of the gift deed.

5. Chronological history of the documents, relevant for the purpose of deciding this appeal, are as under:-

1. Agreement to sale December 1980 - Nazli and Ali Hussain (elder brother/respondent No.1) (Page 241)
2. Sub-Lease (Form "A") in favour of Ali Hussain dated 21.2.1981 (Page-251)
3. Lease (Form "B") in favour of Ali Hussain dated 26.09.1995 (Page-263)
4. Deed of assignment executed by Ali Hussain dated 09.9.1982 (Page-277)
5. Mutation letter 21.3.2009 in the name of Mrs. Rubina Ali (wife of respondent No.1) etc. (Page 301 onwards)
6. Registered oral gift dated vide registered No.1301 dated 07.02.1996 (Page 431)

6. The legislature in its wisdom has purposely and distinctly used the language of this Article which is somehow dissimilar substantially with most of the Articles, which emphasizes on knowledge of registration. The third column of the Article provides the date from which period begins to run and that is not disclosed as to the knowledge of registration of the instrument; rather “facts entitling the plaintiffs to have the instrument cancelled (or set aside become known to him)”. Bracketed portion is not relevant.

7. As this matter pertains to the entitlement of plaintiffs/appellants to have the instrument cancelled, it is in no way dependent upon the knowledge of litigant about the registration of the instrument. The pleadings show that there was an agreement that was executed between three brothers being sons of the deceased i.e. appellants and respondent No.1. It is available at page 55 which shows to be signed by appellant No.2 for self and on behalf of appellant No.1 and respondent No.1. The defiance of this understanding could well be a cause triggering time of Article 91 which may have entitled the plaintiffs/appellants to have the instrument cancelled. That aspect of the matter was not at all considered by the learned Single Judge while passing the impugned order.

8. Since the substantive question of law and facts have been left out to be resolved by the learned Single Judge we deem it appropriate to set aside the impugned order and remand the case back for a trial on the Original Side after framing of issues, which may also include the issue of limitation, to be decided by following above observations and the guidelines.

9. Appeal is allowed under the above circumstances.

Dated: 21.01.2025

**Chief Justice**

**Judge**