

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Civil Revision Application No.S-01 of 2014

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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1. For hearing of C.M.A. No.02/2014.
2. For hearing of main case.

Applicants : Muzamil Kartio & another.

Respondents : Mst. Hidayat Khatoon & others.

Messrs Gulab Rai C. Jessrani & Vinod Kumar G. Jessrani, advocates for applicants.

Mr. Ameer Ahmed Narejo, State Counsel.

Date of hearing : 08.09.2017.

Date of Order : 08.09.2017.

ORDER.

Through this civil revision application under Section 115, CPC, the applicants have impugned the order dated 06.11.2013 passed by the II-Additional District Judge, Mehar in Civil Appeal No.35/2010, whereby the order dated 09.3.2010 passed by Senior Civil Judge, Mehar in F.C. Suit No.48/2007, through which on an application under Order 7, Rule 11, CPC, order for rejection of plaint has been maintained and upheld.

2. After issuance of notices to the respondents, no one affected appearance and thereafter publication was ordered and vide order dated 19.5.2017 the service against private respondents was held good. Therefore, instant Revision is being decided on the basis of available record.

3. Learned Counsel for the applicants submits that both the Courts below have erred in law by rejecting the plaint in applicants' suit

as the suit was filed within three years of knowledge gained by applicants regarding alleged sale deeds dated 21.6.1934, 04.09.1936 and 22.3.1934 in favour of the respondents. He further submits that earlier the respondents had filed F.C. Suit No.18/2005 against the present applicants, wherein they had claimed that the property in question is in their possession as lessees and they are entitled for such possession till the year 2015 as per the lease conditions. He further submits that at that time no such claim was asserted by the respondents regarding the alleged sale deeds, which only came to the knowledge of the applicants when they filed written statement in the applicants' suit. He submits that Article 91 of the Limitation Act provides a 3 year period for seeking cancellation of a document and such period is to be counted from the date of knowledge and not from the date of the document in question.

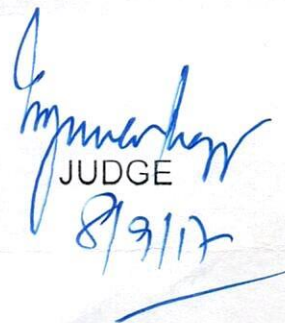
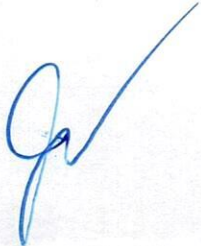
4. I have heard the learned Counsel for the applicants and perused the record.

5. The primary consideration which prevailed upon the learned Senior Civil Judge while rejecting the plaint appears to be the date of the sale deeds; whereas the learned Judge has also dilated upon the fact that there is allegation of fraud and misrepresentation on the part of the applicants. Moreover, the learned Judge has not appreciated the fact that Article 91 of the Limitation Act provides a 3 year period for seeking cancellation of a registered document and such period has to be reckoned from the date of knowledge and not from the date of the document, of which the cancellation is being sought. The question that whether any fraud was committed as alleged by the applicants or not could not have been decided while hearing an application under Order 7, Rule 11, CPC. Moreover, it has come on record that the respondents

while filing their suit bearing No.18/2005 have never claimed that they owned the property on the basis of any registered sale deed and their case was only to the extent of being lessees of the applicants until the period of 2015. The question that whether the applicants are owners of the property could have only been decided after recording evidence, as in their plaint they claim ownership of the property in question on the basis of inheritance, whereas the respondents have never filed any suit for declaration of ownership on the basis of alleged sale deeds. The appellate Court has also failed to appreciate the question of limitation in its true perspective and while upholding the order of the Senior Civil Judge the appellate Court has also fallen in error by taking the dates of the alleged sale deeds regarding limitation in this matter.

6. In view of hereinabove facts and circumstances of this case and on perusal of material on record, I am of the view that both the Courts below have erred in law by rejecting the plaint of the applicants in their suit bearing No.48/2007 and accordingly the orders passed by the Senior Civil Judge dated 09.3.2010 in F.C. Suit No.48/2007 and by the appellate Court dated 06.11.2013 in Civil Appeal No.35/2010 are hereby set aside and the plaint of the applicants in the suit is restored, which shall be disposed of on merits after settlement of issues and leading of evidence in accordance with law.

7. This civil revision application stands disposed of in above terms, along with listed application.



JUDGE
8/9/17