

ORDER SHEET  
THE HIGH COURT OF SINDH AT KARACHI  
R.A. No.86 of 2016

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Date:                      Order with signature(s) of the Judge(s)  
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**Hq. priority case**

1. For hearing of CMA No.1620/2020
2. For hearing of CMA No.6991/2016
3. For hearing of main case

**14.10.2022**

Mr. Peer Tariq Ahmed, advocate for applicants  
Mr. Dahni Bux, advocate holding brief for Mr. Fayyaz Metlo,  
advocate for respondent No.1  
Mr. Aftab Ahmed G. Nabi, advocate for respondent No.3

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At the very outset learned, counsel for the applicants contends that applicants filed a suit for adverse possession, it was dismissed on the plea that adverse possession is not in the field, same was against the injunctions of Islam. However, he is not in possession of subject property and respondents though are claiming as owners have failed to file suit for recovery of possession within stipulated period and they have approached to the trial court by filing a civil suit after 36 years, which is highly time barred. An application u/o 7 VII Rule 11 CPC was preferred, that was allowed and the plaint was rejected. However, in appeal the appellate court allowed that appeal with directions to the trial court to conclude the *lis* after framing all the issues. Learned counsel for the applicant has emphasized para-10, which is reproduced as under:-

“10. Accordingly, the instant appeal stands allowed as prayed. The case is remanded to the trial court to decide the matter on merits by framing proper issues except issue of limitation and allow the parties to lead evidence on those issues in accordance with law. The instant appeal is disposed of with no order as to cost.”

The respondents filed objections that limitation is not applicable in the present case. Needless to mention here that issue of limitation being a mix question of law and facts, hence, *lis* shall be decided on merits. The appellate court was not competent to debar the trial Court regarding issue

of limitation, it is pertinent to mention here that issues are to be framed from the pleadings of respective parties. More so, this is not case, which is falling within the terms of "*case decided*" As applicants have right to contest case before the trial court, therefore, present revision application is dismissed. However, para-8 is modified and trial court would be competent to frame issues from the pleadings of the parties and shall provide an opportunity to the respective parties to lead their evidence and shall conclude the trial preferably within three months.

JUDGE

\*Rafiq/PA\*