

JUDGMENT SHEET
IN THE HIGH COURT OF SINDH, KARACHI

H.C.A. No.129 of 2020

Date	Judgment with signature of the Judge
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Sikander Ali & othersVs. Waris Ali & others

17.02.2025.

M/s Muhammad Taseer Khan and M. Amin Motiwala, advocates for Appellants.

Mr. Fahad Hussain, advocate for respondents.

Syed Hussain Shah, AAG.

J U D G M E N T

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MUHAMMAD IQBAL KALHORO J: Appellants field a suit before this court on original side against respondents for declaration, cancellation and permanent injunction seeking following reliefs:-

- A. For a Declaration that the Suit property has always been and is still the property of the partnership firm/plaintiff No.3, and that the deceased defendant No.3 was never the sole or absolute owner of the Suit property;
- B. For a Declaration that the plaintiffs 1 and 2 are the lawful co-owner of the Suit property having 1/3rd share each therein, and that the remaining 13rd share in the Suit property belongs to the defendants 2(a) to 3(h) being the legal heirs of the deceased defendant No.3;
- C. For a Declaration that the defendants 3(a) to 3(h) had no right, power, authority or locus standi to enter into any Agreement in respect of the Suit property with the defendant No.2, and that such Agreement was malafide, collusive and void abinitio;
- D. For a Declaration that the defendants 3(a) to 3(h) had no right, power, authority or locus standi to transfer or convey the rights, title or interest in the Suit property in favour of the defendant No.2, and that the defendant No.2 has not acquired any right. title or interest whatsoever in the Suit property;
- E. For a Declaration that the alleged transfer of the Suit property in the name of the defendant No.2 by the defendant No.4 is illegal and void abinitio, and similarly, the alleged sale and/or transfer of the Suit property by the defendant No.2 in favour of the defendant No.1 and to defendant No.6 to 11 is also illegal and void abiniio;
- F. For Cancellation of the alleged Sale Deed of the Suit property in favour of the defendant No.2, and/or all such Agreement/Deeds transferring the Suit property in favour of the defendant No. 1, 6 to 11 and/or in favour of any third party;
- G. For Permanent Injunction restraining the defendant 1,2 and 3(a) to 3(g), 6 to 11 from claiming any right, title or interest in the Suit

property, and/or from raising construction thereon, and/or from creating any type of third party interest therein. The defendants 4 and 5 may also be restrained from transferring the Suit property in favour of the defendant No.1 and/or in favour of any third party;

- H. For any other / additional relief(s) that this Hon'ble Court may deem fit and proper in the facts and circumstances of this case; and
- I. Costs of the Suit.

2. In response to a notice, respondents filed written statement contesting merits and challenging maintainability of the suit. However, issues were framed and appellants were called upon to lead evidence but they failed to respond. Finally, on 06.12.2019, noting consistent and regular absence of the appellants demonstrating lack of interest on their part to produce evidence, learned single judge of this court proceeded to dismiss the suit for want of evidence vide impugned order dated 06.12.2019 and decree drawn on 13.12.2019. This order and decree have been challenged by the appellants through the instant appeal filed on 13.07.2020 after the limitation of 20 days prescribed under Article 151 of Limitation Act for filing appeal from the decree or order of the High Court in the exercise of its original jurisdiction. Seeking condonation of delay in filing appeal, the appellants have filed an application U/s 5 of Limitation Act supported by affidavit filed by attorney of appellants namely Sadiq.

3. A perusal of his affidavit shows that the reason for filing the appeal with delay is absence of the appellants from the country and their living in Dubai since long. In the said backdrop, attorney of the appellants has alleged that when on 19.06.2020 he was passing by the area, he found the building and houses standing on the property No.86 situated in Depot Lines/N.I. Lines Cantonment Area, Karachi (Suit property) were demolished by the respondents, hence he immediately informed appellant No.2 who instructed him to contact his advocate Mr. Raja Qureshi. On inquiry, he was found long dead and no one left to attend his cases, hence he rushed to the relevant staff of the court, who informed him about dismissal of the suit by the impugned order for want of evidence. Then, after getting special power of attorney from the appellants, on their instructions, he filed the appeal after obtaining certified true copies of the order and decree. It is further stated in the supporting affidavit that before dismissal of the suit, no notice was issued to the appellants to appear and produce evidence and since the appellants were residing in Dubai, they were not aware of either death of their advocate or process of the court requiring their appearance for evidence. It is further

stated that the subject property is owned by M/s Charan Enterprises, appellant No.3 which is a partnership firm formed by appellants No.1 & 2 and the deceased Muhammad Ismail, the predecessor of respondents. The suit property was not the sole and absolute property of deceased Muhammad Ismail as alleged by respondents, therefore, limitation would not be a hurdle in the case to defeat merits of the case. This application u/s 5 of Limitation Act has been vehemently opposed by the respondents by filing written objections to it.

4. Learned counsel for appellants in his arguments has reiterated the grounds already encapsulated in supporting affidavit of the attorney of the appellants. While, his arguments have been opposed by learned counsel for respondents.

5. We have considered submissions of the parties and perused material available on record. Admittedly under Article 151 of Limitation Act, period for filing the appeal against an order or a judgment of High Court exercising original jurisdiction is 20 days. The impugned order was passed on 06.12.2019 and then on 13.12.2019 the decree was drawn. An application for obtaining certified true copies thereof was filed on 11.07.2020 which is almost after seven months of the order and decree. The grounds to justify such delay postulated by attorney in his affidavit is that the appellants are residing in Dubai and were not in contact with their counsel Mr. Raja Qureshi, who had assured them of looking after their interest in the suit in their absence and intimate them if their presence was ever required for evidence. These facts however, have been stated by the attorney in his own affidavit and not by the appellants themselves through affidavits. Although, the attorney has filed special power of Attorney but to support his aforesaid statement, has not filed the affidavits of appellants to the effect that they were not aware of either death of their advocate or the dismissal of the suit for want of their evidence. If the attorney can file the power of attorney executed by the appellants living in Dubai, he could have easily filed their affidavits to support the facts narrated by him. Failure to do so has cast a dark spell on the story revealed by the attorney in his affidavit.

6. Not the least, when nothing has been brought on record to establish that appellants No.1 & 2's permanent residence in Dubai. Prima facie no documentary evidence in this regard has been filed to support such fact. Besides, the story narrated by the attorney that on 19.06.2020 when he passed by the suit property, he found the same to have been demolished by the

respondents is not without a suspicion in that he has not provided substantial details in this regard relating to the time when he was passing by the property and the reason of his visiting the same area on that particular day and whether he was alone or in company of some body, and he was travelling in a vehicle or walking through it. It is also strange to note that he got alarmed on seeing the suit property, when admittedly he was neither party nor was even acting as attorney in the suit on behalf of the appellants. Even his own affidavit does not suggest that he had any knowledge about pendency of the suit between the parties.

7. Without having any nexus or interest in the suit property, attorney of the appellants getting alarmed on seeing the suit property that too by chance does not seem credible enough to believe him. Particularly in the context when he has neither described the reason of his visit nor other details as to why on that particular day he happened to be in the area leading him to spot its demolition and causing him alarm. That said, his statement: he saw the property having been demolished by the respondents on 29.06.2020 is generalized in tenor and at the best vague for want of necessary details.

8. It is a settled proposition of law that delay of each day in approaching the court for filing a lis or an appeal etc. against the order etc. has to be explained. In this case, the appellants' attorney has miserably failed to account for the delay of each day in filing the appeal. Appellants' failure in contacting their advocate or pursuing the matter posits indolence and negligence on their part for which the opposing party cannot be penalized nor certain rights created in their favour thus taken away.

9. The Supreme Court in case of Muhammad Nawaz and others Vs. Mst. Sakina Bibi and others (1974 SCMR 223) has laid down that even a counsel's neglect to inform his client about fate of the case would not per se be a sufficient ground for condonation of delay when valuable rights accrue in favour of opposition party. In the case of Ahmed Din Vs. Ghulam Muhammad through legal heirs and others (2000 SCMR 647), the Supreme Court has held that petitioner's ground of living in a far off village and his lack of knowledge regarding dismissal of the appeal by High Court was a matter purely between him and his counsel, cannot be considered a sufficient ground for condonation of delay. In the case of Mst. Hajra Bibi & others Vs. Abdul Ghani (2002 SCMR 1405), it has been held that non supply of cause list to counsel for a party would not constitute a valid ground for condonation of delay in absence of affidavit of the person concerned. Finally, in the case of

Irshad Ahmed Vs. Pervez Akhter & others (2000 MLD 1), a Division Bench of this court has held that on account of dismissal of the suit, valuable rights accrue in favour of defendants which could not be taken away unless justifiable strong and convincing cause was shown to the court.

10. The reason to cite aforementioned case law on the point is to emphasize that the law of Limitation has to be construed in strict sense because due to negligence and indolence of one party in pursuing the matter in the court, the valuable rights are accrued in favour of the other party which cannot be done away with on flimsy and unsubstantiated grounds. The superior courts have been very strict in condoning the delay in filing appeal etc. against the order etc. without being satisfied about validity and sufficiency of the grounds raised for condonation of such delay.

11. In this matter as observed above, the vague and generalized statement has been given by the attorney in his affidavit regarding gaining knowledge of the dismissal of the suit. The appellants who have purportedly executed power of attorney in favour of their attorney have not come forward to file affidavits confirming the story narrated by their attorney. Then, there is nothing on record to show as to why for a long time the appellants failed to pursue the case and did not produce evidence despite given so many chances by the learned Single Judge of this court. This and in the light of reasons given supra, We, find this appeal hopelessly time barred. Consequently, we dismiss application u/s 5 of Limitation Act and as a result dismiss the appeal being time barred alongwith pending applications.

The appeal is accordingly disposed of alongwith pending applications.

JUDGE

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