

# THE HIGH COURT OF SINDH, KARACHI

## **Suit No. 154 of 2018**

[Muhammad Yousuf Naz v. Ms. Neelam and others]

Plaintiff : Muhammad Yousuf Naz through  
Mr. Abdul Wahab Baloch, Advocate.

Defendants 1-7 : Nemo.

Defendants 8-9 : Muhammad Ayub Khan and  
Muhammad Afzal Khan through  
Mr. Khalid Jawed Khan, Advocate.

Date of hearing : 20-02-2025

Date of decision : 20-02-2025

## **ORDER**

**Adnan Iqbal Chaudhry J.** - This order decides CMA No. 19095/2024 by the Defendants 8 and 9, an application under Order VII Rule 11 CPC for rejection of the plaint on the ground that the suit is time-barred.

2. The suit was presented on 06-01-2018 for specific performance of a sale agreement dated 28-04-2005. Though the Plaintiff makes other prayers as well, but all of those are consequential to the relief for specific performance. Therefore, as held in the case of *Dr. Muhammad Javaid Shafi v. Syed Rashid Arshad* (PLD 2015 SC 212), if the main relief is time-barred then the dependent or consequential relief will also be time-barred.

3. The sale agreement reflects the Defendant No.1 as vendor and the Plaintiff as vendee in respect of two tracts of land in Deh Joreji, National Highway, Karachi, one ad-measuring 24 acres and the other 26 acres. The Defendants 8 and 9 claim to be owners of the tract of 24 acres having purchased it from the Defendant No.2 who had acquired title from the Defendant No.1. The case of the Defendants 8 and 9 is that the sale agreement is forged and fabricated and was never executed by the Defendant No.1.

4. Since the sale agreement did not stipulate a 'date fixed' for its performance, limitation for a suit for specific performance is

governed by the second part of Article 113 of the Limitation Act, 1908 which provides a period of 3 years from the date the plaintiff has notice of refusal to perform.

5. It is acknowledged in the plaint that:

*“9. That on such publication of the said Notice the said Saleem Akhtar received objections of Defendant No.1 through her Advocate and also by personal letter thereby the defendant No.1 denied the said transaction between the plaintiff and the defendant No.1 and also refuted about the execution of Agreement to Sale dated 28.4.2005 between the parties and also informed that by way of litigation the matter regarding the demised property/land is subjudice before the Hon’ble High Court of Sindh at Karachi.”*

Therefore, admittedly, when the Plaintiff had invited objections to the sale by public notice dated 11-09-2006 (Annexure P/5 & P/6), he had received from the Defendant No.1 notices dated 13-09-2006 (Annexure P/7) whereby she denied the execution of the sale agreement. These notices to the Plaintiff in the year 2006 were clearly notice of refusal to perform the sale agreement. To get around limitation, the case set-up in the plaint is that the suit property was sub-judice in Suit No. 1486/2004 pending between the Defendant No.1 and a third-party. Though that is no ground to exclude limitation for a suit by the Plaintiff, nonetheless it is again acknowledged in para 11 of the plaint that Suit No. 1486/2004 was withdrawn on 09-04-2007 and yet the Plaintiff waited for another 10 years and 8 months to file suit.

6. The cause of action to file suit had arisen to the Plaintiff on or about 13-09-2006 when he had received notice from the Defendant No.1 that she denied the sale agreement. In view of section 9 of the Limitation Act, a subsequent inability to sue did not stop limitation. The plaint also does not justify exclusion of any period in computing the limitation. The suit filed on 06-01-2018 is way beyond limitation and therefore barred by section 3 of the Limitation Act. Resultantly, CMA No. 19095/2024 is allowed and the plaint is rejected under Order VII Rule 11(d) CPC.

**JUDGE**

Karachi

Dated: 20-02-2025

SHABAN\*