JUDGMENT SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Civil Revision No. 290 of 2022

Mst. Shaheen Qureshi and others

Versus

The Mukhtiarkar, Taluka City Hyderabad and Others

For the Applicants:	Kamran Qureshi, Applicant No. 3 for himself and as the Attorney of the remaining Applicants.
For the Respondents:	Mr. Muhammad Yousif Rahopoto, AAG Sindh.
Date of Hearing:	11-03-2025.
Date of Judgment:	13-05-2025.

JUDGMENT

Miran Muhammad Shah, J: The Applicants filed a suit for declaration, correction of area and mandatory and permanent injunction before the learned IInd Senior Civil Judge, Hyderabad, in which they claimed that a property, being House No. B31/1759, Foujdari Road, Hyderabad[1], which, according to their plea measures 1885 square feet, has been wrongly written in the official records by the Respondents as measuring 315 square feet. The first time that this allegedly incorrect area of the suit property was reflected in the record was in 14-03-1973[2] and then this measurement was continuously written as such on 09-07-2007 and 08-06-2011[3]. The Applicants sought correction of the area of the suit property for the first time on 15-04-2021 and then made further applications to the Respondents in the same year. However, upon their failure to have their applications decided in their favour through the Respondents, the Applicants filed the aforementioned civil suit, which was rejected

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[1] "suit property"
[2] Plaint, para 5
[3] ibid., paras 7 and 8

as unnumbered by the learned Senior Civil Judge by Order dated 17-05-2022. According to the learned Senior Civil Judge's Order, it appears that an earlier suit claiming similar reliefs was also filed by the Applicants and it was also rejected under r. 11 of O. VII of the Civil Procedure Code, 1908[4]. Against that Order, the Applicants filed Civil Appeal No. 155 of 2021 before the learned Vth Additional District Judge, Hyderabad, which too was declined. However, instead of pursuing further remedies against that Order, the Applicants instituted the aforementioned suit.

2. The Order dated 17-05-2022 of the learned Senior Civil Judge was challenged by the Applicants in Civil Appeal No. 122 of 2022 before the learned District Judge, Hyderabad. Surprisingly, in their memorandum of appeal[5], the Applicants have introduced a new plea at paragraph 22, which reads:

> "That in the first week of April 2021 the appellants came to know that the private respondents are negotiating with some strangers to sell out their shares in the suit property without area correction suit property 1759 Ward-B, Hyderabad, accordingly the appellants again approached the respondent No. 5 and 6 to take action on their application but they filed report dated 16-11-2021 and other site note area correction suite property 1759 ward B Hyderabad the appellants..."

Interestingly, there are no private respondents in this case.

3. The said appeal was heard by the learned Vth Additional District Judge, Hyderabad, who dismissed the appeal by Judgment dated 26-11-2022 and Decree dated 31-10-2022. Against the learned Senior Civil Judge's Order and the learned Additional District Judge's Judgment and Decree, the Applicants have filed this civil revision. The grounds, as far as I have been able to decipher from the memorandum of the revision application, are that the entries of which correction has been sought interfere with the rights of the Applicants and they were very well entitled to file a civil suit under s. 53 of the Sindh Land Revenue Act, 1967[6]; that no limitation runs where *malice* has been alleged against the revenue officers; that the Applicants seek to enforce their right of inheritance and

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[4] "CPC"
[5] Main revision application, Annexure B
[6] "1967 Act"

limitation would not run against it; that the report dated 16-11-2021 of the Mukhtiarkar was not made a part of the case, according to which, the case would have become maintainable; that the law favours adjudication on merits and not on technicalities.

4. Heard. Perused.

5. For the purposes of r. 11 of O. VII of the CPC, the law dictates that only the contents of the plaint or any other admitted facts may be considered and that the contents of the plaint be presumed as true and no allegation countering the facts of the plaint may be entertained. Thus, if a perusal of the facts pleaded in the plaint in a suit shows *ex facie* that the suit is covered by any of the conditions provided in r. 11 of O. VII of the CPC, then the suit must fail at its inception and the plaint must be rejected. In *Ali Sher v Fakhre Alam Shah*[7], an earlier bench of this Court held that:

> "It is well settled principle of law that while considering the application under Order VII, Rule 11, CPC the averments of plaint are to be considered as true and thereafter, if the plaint comes within any clause of Order VII Rule 11, CPC then it should be rejected..."

In another case, *Messrs Bengal Corporation v Messra DDG HANSA*[8], it was held that:

> "...The accepted principle for the rejection of the plaint is that the Court has to confine itself only to the averments made in the plaint and has to take the contents thereof to be true and cannot go beyond the same. If on taking the averments made in the plaint, it finds the plaint to be barred by law, the Court can reject the plaint but cannot do so by resolving the contested facts. If any authority is required on the subject, reference may be made to the case of Monim Bai v. Abdul Sattar NLR 1990 AC 196 decided by a Division Bench of this Court."

6. If the aforementioned principle is applied to this case, things become very clear. The Applicants have themselves admitted that the allegedly incorrect area of the suit property was first recorded in the year 1973 and then again and again until 2011. However, the Applicants did not pursue any remedy whatsoever until the year

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[7] 2009 YLR 1748 (Karachi)
[8] PLD 1992 Karachi 75

2021—for more or less ten (10) years from the last entry in the record. In this respect, the learned Additional District Judge was right to observe that even the predecessor of the Applicants remained silent in this matter during his lifetime and did not come forward. Under Article 120 of the Limitation Act, 1908, the limitation period to institute a suit for declaration is six (06) years, which in this case had elapsed long before the suit was instituted (even if the same is counted from the year 2011 when the last entry was made).

7. I am mindful that there is a legal principle that limitation is a mixed question of law and fact and may only be decided after a full-blown trial of a case. However, the said principle is not a hard-and-fast one and its application ultimately comes down to the facts and circumstances surrounding every case in its own right. Where, as here, the contents of the plaint clearly show that a suit is barred by time, then there would be no benefit in letting a suit go forward to trial. In my view the issue of limitation varies from being a pure issue of law to being a mixed issue of law and fact on a case to case basis. Where there is controversy surrounding limitation, it becomes a mixed issue to be resolved only after evidence, however, where dates and circumstances relevant for computing limitation are apparent from the plaint itself, it becomes a pure legal issue which may be summarily decided under r. 11 of O. VII of the CPC.

8. The Applicants have grounded their revision application in the argument that limitation does not run against the right of inheritance and that it also does not run where malice has been alleged on the part of the revenue authorities. Both these arguments are invalid and do not help the case of the Applicants. In the present case, the Applicants have not sought the enforcement of their right of inheritance but have sought correction of entries which were well within their knowledge since 2011 (and possibly even before that). Moreover, the plaint does not contain any allegation of *mala fide* or malice on the part of the revenue authorities. From a perusal of the revision application, it appears that the Applicants have confused the period for institution of civil suits under the Limitation Act and the limitation period for exhausting remedies before the revenue hierarchy under the 1967 Act. Both of these are different and cannot

be confused. For these same reasons, I am of the view that the judgments cited by the Applicants are distinguishable and not applicable to the case in hand.

9. The law of limitation is not merely a formal law but must be observed strictly to ensure a conducive functioning of the judicial system in the interest of public policy. Limitation does not kill an existing right of a party. However, it does prevent a party from seeking judicial relief to enforce that right on the account of that party's own negligence and laxity. It is a rudimentary principle that the law favours only the vigilant and not the indolent; therefore, if a party demonstrates indolence in having its rights enforced, then the law of limitation kicks in and would undoubtedly prevent that party from seeking relief for a delayed grievance.

10. In the present case, for example, it is striking that (allegedly) the area of the suit property was reduced in the record from 1885 square feet to 315 square feet (by almost 80%) and it continued to be as such from the beginning until 2011 but none of the parties concerned came forward timely to seek relief. The suit of the Applicants was stillborn from its inception, and in *Khawaja Muhammad Ali v Sir Jehangir Kothari Trust through Trustees*[9] it has been held that a stillborn suit must be buried immediately without a formal ceremony. Therefore, both the learned Courts below were right in passing their respective decisions, which are maintained.

11. This civil revision must fail and is dismissed along with pending interlocutory applications, if any. There is no order as to costs.

SD/-MIRAN MUHAMMAD SHAH
JUDGE

[9] PLD 2013 Karachi 592