

ORDER SHEET
HIGH COURT OF SINDH AT KARACHI

IInd Appeal No.222 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGE
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Hearing/Priority

1. For order on CMA No.2902/2023
2. For order on office objections
3. For hearing of CMA No.7247/2022
4. For hearing of main case

01.10.2026

Mr. Faisal Shehzad, Advocate for the Appellant
Mr. Muhammad Umar Lakhani, Advocate for the Respondent No.1
along with Mr. Ishfaq Ahmed Advocate
Mr. Muhammad Aqil Zaidi, Advocate for KDA

Saman Rafat Imtiaz; J: Through this IInd Appeal, the Appellant has impugned the Judgment and Decree dated 12.11.2022 (**“Appellate Court Impugned Judgment and Decree”**) passed by the learned IInd Additional District Judge, Karachi, East (**“Appellate Court”**) dismissing the Appellant’s Civil Appeal No.125 of 2020 whereby the Judgment and Decree dated 20.08.2020 (**“Trial Court Judgment and Decree”**) passed by the learned Xth Senior Civil Judge, Karachi, East (**“Trial Court”**) in Civil Suit No.1077 of 2015 filed by the Respondent No.1 was maintained.

2. Brief facts, as per memo of appeal, are that as per the Respondent No. 1(i) to (iv)’s [Muhammad Baseer Shah Baseerat, Hussan Ara, Zakira Nazneen Shah and Kousar Bushra Maqbool] plaint filed in Civil Suit No.1077 of 2015 for declaration, cancellation of documents, recovery of possession, mesne profits and permanent injunction, their deceased father, Syed Maqbool Ahmed Shah was the legal and lawful owner of Quarter No.35/121, Korangi Township, Karachi (**“suit quarter”**). The suit quarter was allotted by Karachi Development Authority (KDA) vide Book No.1 Sr. No.35 dated 15.06.1961 and the deceased Syed Maqbool Ahmed Shah was handed over the constructive possession of the suit quarter and the deceased deposited all the charges and required fee to the KDA. The deceased died of cancer on 23.05.2002 and left the Respondent No.1(i) to (iv) as lawful successors of his property. It was further stated that he may not have been in the position to construct the suit quarter due to financial problems and did not disclose the said fact to his legal

heirs due to the tender age of his children. That in the month of January, 2015, the Respondent No.1(i) son of deceased Syed Maqbool Ahmed Shah renovated his house and the original documents of allotment including other documents were found / discovered. Without wasting time, the said legal heirs of the deceased Syed Maqbool Ahmed Shah went to visit the suit quarter but unfortunately the said legal heir found the predecessor-in-interest of the Appellants [Zarina Begum, Rehana Iqbal, Sarwar Waqar, Samina Khan, Rubina Khursheed, Rukhsana Wasi and Fozia Qadir], namely Mst. Sultana Begum in illegal possession of the same. The said legal heir of the deceased Syed Maqbool Ahmed Shah approached the predecessor-in-interest of the Appellant for the purpose of enquiring the factual position as well as to get vacant possession but family residing therein came out from the house in aggressive mood and threatened the said legal heir of dire consequences. It is further submitted that the parties appeared before the Assistant Commissioner and placed their replies respectively. The Respondent No. 1 placed the original allotment order along with all relevant documents. However, the predecessor-in-interest of the Appellant denied the ownership of the deceased by alleging that the deceased sold the suit quarter to her, however, the predecessor-in-interest of the Appellant failed to place any documents showing the sale of property in her favour and instead claimed ownership as the suit quarter was transferred in her name from the allotment of the deceased through Transfer of Quarter with Lease of the Plots dated 05.10.1989. The predecessor-in-interest of the Appellant presented consent Award Decree against / between the predecessor-in-interest of the Appellant and her real brother namely Ashfaq. The Respondent No. 1 stated in their suit that the said consent order /decree between the brother and her real sister is not effective against the deceased in any manner. Whereas, KDA in his report dated 04.03.2015 reported that the suit quarter was allotted to deceased Syed Maqbool Ahmed Shah son of Muhammad Azam Shah vide book No.1 Sr. No.35 dated 15.06.2015 but later on the same was transferred in the name of the predecessor-in-interest of the Appellants. The Respondent No. 1 prayed for (i) a declaration that he is legal and lawful allottee of the suit quarter and did not sell out the same to the Appellant; (ii) cancellation of the transfer lease dated 25.10.1989 in the name of the Appellant; (iii) direction to the Appellant to hand over possession of the suit quarter to him, (iv) direction to the Appellant to pay mense profit, and (v) restraining the defendants from interfering with the rights of the Respondent No.1 in any manner. The learned Trial Court after hearing the parties decreed the suit in favour of the

Respondents vide Judgment and Decree dated 20.08.2020. Against the said Judgment and Decree passed by the learned Trial Court, the Appellant filed Civil Appeal No.125 of 2020 which was allowed by the learned Appellate Court vide Judgment and Decree dated 02-03-2021, whereby suit of the Respondent No. 1 was dismissed. The Respondent No.1 preferred IInd Appeal No. 54 of 2021 before this Court. This Court vide Order dated 22-09-2022 by consent of the parties remanded the matter to the learned Appellate Court to decide the matter afresh after hearing the parties. Thereafter, the learned Appellate Court vide the Impugned Judgment and Decree dismissed the Appellant's appeal while maintaining the Judgment and Decree dated 20.08.2020 of the learned Trial Court, hence the instant appeal.

3. The learned counsel for the Appellant submits that the Appellants stated in their written statement that their predecessor-in-interest Mst. Sultana Begum purchased the suit quarter from the predecessor-in-interest of the Respondent No.1 in the year 1969 in consideration of R.20,000/- paid in cash and that the documents relating to the sale transaction were lost which was duly reported in Roznamcha. Thereafter there was a dispute between the predecessor-in-interest of the Appellants and her brother. The predecessor-in-interest of the Appellants filed Suit No.4005 of 1982 against the said brother in which the arbitration award was made rule of Court whereby it was held that the Appellant has purchased the suit plot from the deceased Syed Maqbool Ahmed Shah and the brother of the Appellant was restrained from disturbing the peaceful and lawful possession of the Appellant. It was further directed that the Appellant would make an application to KDA for allotment of the suit quarter and KDA would consider her case favourably for her bona fide purchase of the suit quarter for consideration. Thereafter KDA executed transfer lease dated 25.10.1989 in favour of the Appellant. He emphasized that the deceased Syed Maqbool Ahmed Shah did not object to the possession of the Appellant or the said transfer in her favour during his life time and it was only after his demise in 2002 that the present Respondents who are his legal heirs for the first time challenged the transfer lease as well as the possession by way of Civil Suit No.1077 of 2015. He submits that, therefore, the said suit was time barred.

4. On the other hand, the learned counsel for the Respondent No.1 submits that admittedly the suit quarter was allotted to the predecessor-in-interest of Syed Maqbool Ahmed Shah whereas there is no evidence of any

sale agreement between him and the Appellant's predecessor-in-interest. No witnesses were produced to establish the sale transaction between the parties nor proof of payment of consideration. He further submits that KDA filed its written statement whereby they confirmed that the suit quarter was allotted in the name of Syed Maqbool Ahmed Shah vide Book No.1, Sr. No.35, dated 15.06.1961 and that the Appellant's predecessor-in-interest applied for transfer/regularization in January, 1983, under the decision of learned XXth Civil Judge, Karachi, in Suit No.4005 of 1982. He, therefore, argues that the suit filed in 2015 was within the limitation period prescribed in Article 91 of the Limitation Act whereby three years have been prescribed for cancellation or setting aside of an instrument not otherwise provided for which is reckoned from when the facts entitling the plaintiff to the instrument cancelled or set aside became known to him. He submits that after death of the predecessor-in-interest of the Respondent, the legal heirs who are the present Respondents, became aware that the suit quarter was also in the ownership of their late father but which is now in possession of the Appellant's predecessor which, therefore, led to the discovery of the impugned lease transfer deed. He therefore argued that the suit was within time.

5. Mr. Muhammad Aqil Zaidi Advocate files memo of appearance on behalf of KDA which is taken on record.

6. Heard the counsel for the parties and perused the record.

7. It is undisputed that the suit quarter was originally allotted to the deceased predecessor-in-interest of the Respondent No. 1 namely Syed Maqbool Ahmed Shah. The original allotment orders were produced by the Respondent No. 1 in evidence. Insofar as the purported sale agreement of the Appellants' predecessor-in-interest with the said Deceased is concerned, neither the said agreement was produced in evidence nor was its execution proved through witnesses and no evidence of payment of sale consideration was proved by the Appellants.

8. On inquiry whether the KDA record was produced in evidence to establish that the suit quarter was originally allotted to the Respondent No. 1's predecessor-in-interest and whether there was any sale recorded by him in his lifetime, the learned counsel for the Respondent No.1 highlighted that there is no dispute that the suit quarter was originally allotted to Syed Maqbool Ahmed Shah. It is also not denied by the Appellants that the property was not

transferred in the name of their predecessor through any registered document or instrument executed by the deceased Syed Maqbool Ahmed Shah or on his behalf. At this point, the learned counsel for the Appellants, upon query of the Court, also confirmed the same and submits that the title document that they relied upon is the transfer/regularization deed executed in 1983 by the KDA in their favour pursuant to the decision in Suit No.4005 of 1982.

9. Perusal of the Decree dated 8-11-1982 passed in Suit No.4005 of 1982 by the Court of XXth Civil Judge, Karachi, shows that the parties to the said suit were the predecessor-in-interest of the Appellants and her brother. The decree made the arbitration award rule of court whereby it was observed that the predecessor-in-interest of the Appellant having purchased the suit quarter from the predecessor-in-interest of the Respondent No. 1 was the owner thereof whereas the brother of the Appellant was allegedly disturbing in the Appellant's possession of the suit quarter and therefore it was held that her brother the defendant should not pressure her to transfer the same without her consent. Admittedly the predecessor-in-interest of the Respondent No. 1 was not a party to the said suit. Therefore, the said decree does not establish whether the suit quarter was lawfully acquired by the predecessor-in-interest of the Appellant from the predecessor-in-interest of the Respondent No. 1.

10. In any event, even vide the decree whereby the arbitration award was made rule of Court, it was only held that the Appellant's brother would not press her for transfer of the suit quarter without her consent. It is also noted that the direction to KDA was not for execution of the transfer lease but for the Appellant to make an application for obtaining allotment and for the KDA to consider her case favourably. However, it appears that the KDA without application of mind or checking the record to ascertain the registered owner of the property executed the lease transfer deed. In such view of the matter there can be no doubt that the transfer lease dated 25.10.1989 has no sanctity in law as it was executed by the KDA in favour of the predecessor-in-interest of the Appellants in violation of the proprietary rights of the predecessor-in-interest of the Respondent No 1 and in violation the Decree dated 08.11.1982 and as such was liable for cancellation.

11. The Respondent No. 1 has explained in their plaint filed in their suit that the original documents of the allotment were found by the Respondent No. 1 (i) in January, 2015 during renovation of his house. Thereafter, on visit to the property, it was discovered that it was in possession of the predecessor-in-

interest of the Appellant. As such the Civil Suit No.1077 filed by the Respondent No. 1 on May, 2015 was within the limitation period prescribed under Article 91 of the Limitation Act, 1908 i.e. three years from the date when the facts entitling the plaintiff to have the instrument cancelled or set aside became known to him. Thus, I find that the suit filed by the Respondent No.1 was not barred by limitation. On merits, the above-discussion makes it clear and apparent that the impugned judgment and decree of the learned Appellate Court do not warrant interference of this Court; hence the instant appeal is dismissed along with pending applications.

JUDGE

Asif