

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT,
ISLAMABAD.

Civil Revision No. 197 of 2015

Shaukat Hussain Bhatti & another

Versus

Khalid Latif & others

Petitioners By : Mian Imran Masood, Advocate.

Respondents By : G. Shabbir Akbar, Advocate.

Date of Decision : 02.03.2020.

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LUBNA SALEEM PERVEZ, J. - This Civil Revision Petition has been filed against the judgment dated 04.02.2015, passed by learned Additional District Judge-VII (West), Islamabad, in Appeal No. 129/2014, whereby the judgment dated 04.10.2014, passed in Suit No. 1163/2010, by the learned Civil Judge 1st Class-West, Islamabad was upheld.

2. Necessary facts of the case are that the Petitioner claimed to be the owner of the immoveable property bearing Shop No. 7, measuring 17x50, RATTA MANSION, constructed over plot No. 69-W, Jinnah Avenue, Blue Area, Islamabad, having purchased from Respondent No. 1 through his Attorney Muhammad Hanif, vide registered sale deed No. 2800 dated 26.09.1997, bearing Book No. 1, Volume 941, pages 1 to 9 (*hereinafter referred to as the "Suit Shop"*). Petitioners since, 1997 were living abroad, therefore, the title of the Suit Shop could not be transferred in their names. It appears that in the year 2012, Petitioners filed Civil Suit before the learned Trial Court when, as per pleading, Respondent No. 2 (the CDA) refused to change the title and transfer the Suit Shop in the names of Petitioners. Subsequently, the ANF, after acceptance of their application under Order I Rule 10, vide order dated 02.06.2012, joined as Respondent No. 4. Respondent Nos. 2 & 4 contended that the Suit Shop was freezed by the ANF, vide order dated 24.07.1995, and thereafter confiscated the same, vide judgment dated 30.08.2003, passed by Learned Judge, Special Court,

Customs, Rawalpindi and later forfeited in favor of Federal Government in a criminal case titled “*The State versus Khalid Latif*”, vide judgment dated 12.07.2010, passed by Learned Judge Special Court, Customs Taxation, Anti-Smuggling Court, Rawalpindi/Islamabad.

3. Learned Civil Judge, after hearing the arguments and examining the evidence produced by the parties, in a lengthy trial concluded issue Nos. 1 & 2 against the petitioners, by declaring the suit to be barred by limitation, vide judgment dated 04.10.2014. His findings are as under:

“In view of evidence led by the parties and record available, it reveals that the plaintiff were fully aware about the fact that the suit shop was ordered to be freeze by the learned Customs Court, but despite that they purchased the suit shop from the defendant No. 1. Furthermore, admittedly the alleged sale deed was executed in the year 1997, but the plaintiffs have approached the court in the year 2010 and remained silent for about 13 years. No solid reason for delay in filing the suit has been brought on record by the plaintiffs. Only the ground taken by the plaintiffs in delay of filing of the suit is that the plaintiff are living abroad, but no proof regarding this fact has been produced before the court as well as in evidence of the plaintiff. No copy of passport or ticket or either thing which prove that they are living abroad. This is apparent that the suit is barred by limitation as cause of action accrued to the plaintiffs in the year 1997, but they opted to file suit on 04.01.2010. “.

4. The appeal against the above judgment was also dismissed, vide impugned judgment dated 04.02.2015, passed by the learned Additional District Judge who held as under:

“Appellants/plaintiffs have alleged that they have purchased the suit shop from the respondent/defendant No. 1 on the force of a registered sale deed No. 2800 dated 26.09.1997 but record shows that the suit shop was frozen by the Anti-Narcotic Force Establishment and in this regard, Chairman Capital Development Authority was intimated through letter dated 24.07.1997 which is Ex.D1. Similarly, the copy of the judgment deliver by Special Judge Customs Taxation, Anti-Smuggling, Rawalpindi, on 30.08.2003 shows that the suit shop to the extent of share of the Respondent No.1 was confiscated. Appeal against the said judgment was dismissed on 08.4.2008 by the Hon’ble Lahore High Court, Rawalpindi Bench and similarly, the criminal petition No. 298/08 against the order of Lahore High Court, Rawalpindi Bench was dismissed by August Supreme Court of Pakistan on 30.04.2009; hence, it can be safely said that the suit shop belonging to Respondent No. 1 has been confiscated by the Government of Pakistan under due process of law. The agreement between the appellants and the Respondent No. 1 was entered on 26.09.1997 much after the delivery of notices regarding the freezing of the suit shop; hence the said agreement cannot be termed as a correct one in the eyes of law. The trial court has rightly held that appellants/plaintiffs have filed the suit in the year 2010 i.e. after passing of thirteen year of the execution of agreement and as such the limitation comes in their way.”

5. The Learned Counsel for the Petitioners argued that due to dispute between Respondent Nos. 1 & 4, the change of title of the suit shop has been refused; that he is the bona fide purchaser/owner in possession of the suit shop on the strength

of a sale deed registered before Joint Sub-Registrar, Islamabad, and has paid the full sale consideration to Respondent No. 1; that the Petitioners live abroad, therefore, could not process the transfer of title in time; that notice dated 01.05.2010 was issued by the Respondent No. 4 to the tenant of the Petitioners for depositing the rent to them, against which the Writ Petition No. 2450/2010 was filed before this Court, whereby, the notice was set aside, vide Judgment dated 15.10.2012; that all the formalities were fulfilled and NOC was obtained from CDA before registration of the sale deed; that the Petitioners are paying the property taxes and utility bills and that the findings in the impugned judgments are the result of misreading and non-reading of evidence and thus the Courts below exercised the jurisdiction not vested in them.

6. Respondent No. 1 despite substituted service provided in law has not put appearance, perhaps for reasons borne out from the record that he is convicted and sentenced to undergo imprisonment in the narcotics case by the UK authorities. Respondent Nos. 3 & 4 despite notices has not shown attendance, hence, they are proceeded against ex-parte. Only learned Counsel for Respondent No. 2 appeared and argued the case, he supported the judgments of the courts below and submitted that since, the suit shop has been freezed by the ANF, vide order dated 24.07.1995, i.e. prior to its purchase by the Petitioner, therefore, the sale deed though registered has no legal value. Learned counsel submitted that subsequently the freezed property was confiscated in favour of Federal Government on the order of the learned Judge Special Court, Customs, Rawalpindi, vide judgment dated 30.08.2003, in a criminal case titled *State versus Khalid Latif*, vide judgment dated 12.07.2010, which orders are also confirmed by the Hon'ble High Court and then by Hon'ble Supreme Court and submitted that due to freezing order by the concerned court in criminal petition against Respondent No. 1, the property now could not be transferred to any other person due to its forfeiture in favour of Government, duly confirmed by the Hon'ble Supreme Court of Pakistan.

7. Arguments heard and the available record perused.

8. Petitioners claim to be the owner in possession of the suit shop on the basis of sale deed dated 26.09.1997, registered with Joint Sub-Registrar, Islamabad, vide No. 2800 in Book I, volume No. 941 on pages 01 to 09, however, they

asserted that change of the title in the records could not be affected as they live abroad. Petitioners, after refusal of transfer of the property in their names by Respondent No. 2, have filed suit for declaration and permanent injunction regarding the suit property. During the trial proceedings, the ANF through application under Order I Rule 10 CPC joined as necessary party i.e. Respondent No.4 and in support of the contention produced order dated 24.07.1995, issued by Ministry of Interior and Narcotics Control, Anti-narcotics Force, Government of Pakistan forfeiting the suit shop in favour of the Government.

9. After hearing the arguments of the rival parties it became pertinent to go through the entire record, evidence and statements appended with record of the case. The documents support the contention of Respondent No. 4 that, vide order dated 24.07.1995, two properties were attached; one out of which was Ratta Mansion 69-W, Jinnah Avenue, Blue Area Islamabad (suit shop is one of the shops in this Mansion) in terms of section 6 (4) (5) of the Anti-Narcotics Force Ordinance, 1995 read with section 94 of code 1898, by invoking section 31 of the Prevention of Smuggling Act, 1977. For facility of reading, section 31(1) is also reproduced below:-

“31. Notice to person holding property suspected to be acquired by smuggling.—(1) Whenever a Special Judge receives information that within the limits of his jurisdiction any person, either in his own name or in the name of any relative or associate, is holding property which is reasonably suspected to be acquired by smuggling, the Special Judge may issue to such person a notice calling upon him to show cause, within such time as may be specified in the notice, which shall not be less than thirty days, why the whole or any part of such property should not be declared to be property acquired by smuggling and to be forfeited to the Federal Government.”.

10. After freezing of the above property of Respondent No. 1, the case was decided against Respondent No.1 after holding proper trial and it was held that the property on plot No. 69-W, Blue Area Islamabad, was purchased through drug proceeds and was confiscated to the extent of shares of Respondent No. 1, vide order dated 30.08.2003, passed by the learned Special Court, Customs, Rawalpindi. Against the said order Criminal Appeal No. 438/2003 was preferred before Hon’ble Lahore High Court Rawalpindi Bench which too was dismissed, vide judgment dated 08.04.2008, whereby, their lordships have been pleased to observe as under:-

“I have gone through the records. There is no denial that Khalid Latif was apprehended and convicted for drug trafficking by a British Court and was sentenced to 16 years R.I. Similarly, a case stood registered against his father Muhammad Shafi vide Ex.PK for the same offence. Muhammad Shafi was

declared a proclaimed offender in the said case. The appellant in the witness box tried to explain that he had been running a dairy business earning 7,70,000 Pounds annually. However, he admitted in the cross-examination that the said business was declared bankrupt. He has also referred to some jobs being done by him in Britain but failed to co-relate the said salaried income with the acquisition of the said properties. To my mind, it stood sufficiently established on record within the meaning of section 31 of the Anti-Smuggling Act, 1997 that the properties were acquired by father and son through drug related income.”

11. The above judgment was challenged before the Hon’ble Supreme Court and the hon’ble Apex Court, vide order dated 03.04.2009, also dismissed the appeal, hence the matter initiated on 24.07.1995 for allotment of Respondent No.1 attained finality in favour of the government.

12. Perusal of the record shows that orders regarding freezing as well as attachment of the properties were intimated to the CDA and other concerned authorities. However, the petitioner managed to purchase the property and get it registered through sale deed No. 2800 dated 26.09.1997, in Book No. 1 Volume No. 941 on pages 1 to 9 by Joint Sub-Registrar Islamabad.

13. In this regard it is relevant to reproduce Para No. 17 of judgment dated 15.10.2012, passed in Writ Petition No. 2450 of 2010 (filed by the present petitioner challenging notice dated 01.05.2010, issued to the tenant by the Ministry of Narcotics Control, Government of Pakistan):-

“17. For example, I while perusing Book No. 1, Volume No. 941[Emphasis Provided], which is being used for pasting the leaved of documents produced for registration, contains neither any seal of the Registrar nor Serial Number or signatures of any of responsible officer. It was very surprising for me when I observed in the above referred Volume that twenty paper strips were still lying vacant for further pasting. By taking undue advantage of the same, anybody can conveniently insert the managed documents by mentioning wrong endorsement on it and the same may subsequently be used as a document registered duly available in the office of Registrar. Likewise, the Register known as ‘Register No.1 (Thumb Impression Register)’, which is being used for presentation of the registries before the Sub-Registrar, does not contain seal, signatures, serial numbers over the leaves. Therefore, it may conveniently be replaced for managing fake entries therein. Another Register known as ‘Fee Collection Register’ being maintained for the purpose of levying fees. Again, it is lacking with such infirmities as mentioned above. Also, it is very strange enough to note that only a leaf for whole day transaction containing signature and seal of the Registrar, in my view, is insufficient effort to safeguard the rights of individuals.

14. The above observation of the Hon’ble High Court is sufficient to create significant suspicion in respect of the registration of the suit shop. Thus, I am of the opinion that the Ratta Mansion, including the suit shop, after its attachment in terms of section 31 of Prevention of Smuggling Act, 1997, by Respondent No. 4,

vide order dated 24.07.1995, intimation of which was timely conveyed to the other concerned authorities, have illegally been sold to Petitioners as after its attachment the suit shop becomes the disputed property and subsequently, vide order dated 30.04.2003, it becomes the property of the government (subsequently confirmed by the Hon'ble Supreme Court vide order dated 03.04.2009). The reliance of the petitioner on the registered sale deed has no sanctity in law as firstly the Respondent No. 1 had no lawful authority to sale the disputed suit shop on 26.09.1997, and secondly the manner of registration of the suit shop before the Sub-Registrar Islamabad, casts substantial question over its lawful registration. Respondent No.2 has rightly and lawfully refused to transfer the property in the names of the petitioners on the basis of the undisputed facts and legal position discussed above.

15. Before parting with the judgment I feel it appropriate to mention that although the Hon'ble Superior Courts of the country through different pronouncements have held that cases should be decided on merits, after hearing both the sides, and nobody should be condemned unheard, as maxim "*Audi alteram partem*", has consistently been followed by the courts, which was a principle of natural justice but, at the same time keeping in view the conduct of the petitioner, apparent from the facts and record of each and every case, showing his full knowledge about the proceedings and indicating his purposeful silence, the golden maxim that "*law aids vigilant and not the indolent*" cannot be overlooked. Moreover, it is also well settled law that delay of each and every day has to be explained specifically and not in vague terms. Whereas, in the present case the petitioners could not explain any plausible reason for a long delay of thirteen years in filing suit before the learned Trial Court except that they are living abroad and that too without any supporting evidence. Thus, in my view, the learned Courts below are justified in dismissing the suit as well as appeal filed by the Petitioners on the point of limitation. Guidance in this regard has been sought from the case law reported as Muhammad Saleem and others Vs. Mukhtar Ahmad (1996 SCMR 596), Cantonment Board, Rawalpindi Vs. Muhammad Sharif through Legal Heirs (PLD 1995 SC 472) and Mst. Hajran Vs. Sardar Muhammad (PLD 1970 SC 287).

16. For what has been discussed above, I concur with the findings of the learned Trial as well as Appellate Courts, recorded vide judgments dated

04.10.2014 & 04.02.2015, respectively, as being just and lawful. Moreover, petitioner has failed to point out any irregularity, illegality or jurisdictional defect in the same. Hence, present civil revision petition, being devoid of any merit is hereby dismissed.

(LUBNA SALEEM PERVEZ)
JUDGE

Approved for Reporting

Adnan

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