

**ORDER SHEET.**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**

**JUDICIAL DEPARTMENT.**

**Civil Revision No.105/2020**

Muhammad Ali Mir

versus

Muhammad Yousaf & 2 others

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
(1)	11.03.2020	Syed Muhammad Saqlain Rizvi, Advocate for petitioner.

Through the captioned civil revision petition, Muhammad Ali Mir (petitioner) has called in question the judgment and decree dated 20.07.2019, passed by learned Senior Civil Judge (East), Islamabad and judgment and decree dated 05.12.2019, passed by learned Additional District Judge-V, Islamabad, whereby the suit filed by the petitioner for possession through specific performance of agreement to sell dated 05.07.2001 has been dismissed concurrently.

2. Learned counsel for petitioner, *inter alia*, contends that the petitioner entered into agreement to sell dated 05.07.2001 with Muhammad Yousaf (Respondent No.1) regarding Plot No.1457, measuring 5 Marla, situated in Sector O-9, National Police Foundation (NPF), against sale consideration of Rs.80,000/-, whereby the petitioner had paid Rs.36,000/- to Respondent No.1 as earnest money at the time of execution of agreement to sell while the remaining sale consideration of Rs.44,000/- was agreed to be paid at the time of execution of sale deed/transfer of plot; that the petitioner filed a suit for permanent injunction at Lahore, whereby authorized representative of NPF appeared before the Court on 12.07.2003 and

produced the record of the suit plot reflecting that the plot was sold out by respondent No.1 to respondent No.2 and the same was transferred in his name on 13.10.2001, whereafter the suit was returned to the petitioner with direction to file a suit before the competent court at Islamabad; that the petitioner had filed a fresh suit on 05.01.2006 at Islamabad, whereby Respondents No.1 and 3 were proceeded ex-parte and the last vendee i.e. Respondent No.2 contested the suit; that the petitioner appeared as PW-1 and has also produced two other witnesses namely Muhammad Javed and Syed Raza Ali Naqvi, PW-2 and PW-3, respectively, but the learned Trial Court has dismissed the suit being time barred in terms of Article 164 of the Limitation Act, 1908 without considering the fact that Respondent No.1 had handed over original documents of suit plot to the petitioner and even he has not delivered any NOC from the office of NPF, therefore, time is not the essence of contract; that the appellate court has also not appreciated this fact and dismissed the appeal preferred by the petitioner without considering the law on subject.

3. Arguments heard, record perused.

4. Perusal of record reveals that petitioner has filed a suit for specific performance of agreement to sell dated 05.07.2001 (Exh.P1) regarding suit plot i.e. Plot No.1457, measuring 5 Marla (Exh.P2) against total sale consideration of Rs.80,000/- and as per stance of petitioner, he had paid Rs.36,000/- to Respondent No.1 allottee, who had handed over the original allotment letter to him.

5. The petitioner had earlier filed a suit for permanent injunction at Lahore qua the same subject matter as per his own version referred in Paras No.3, 4 and 5 of the plaint, which has also been referred in the impugned judgment and same was returned in terms of Order VII Rule 10 CPC after recording of statement of authorized representative of NPF/Respondent No.3 namely Naveed Rasool on 12.07.2003, that the suit plot was already transferred in the name of Respondent No.2 on 13.10.2001.

6. The petitioner filed the present suit for specific performance on 05.01.2006 at Islamabad, as such the filing of second suit on the same subject matter is hit by Order II Rule 2 CPC, whereby the petitioner being plaintiff has to justify on record as to why he has not opted to claim the entire relief against the respondents and why he has relinquished and waived off the relief of specific performance in the earlier suit, although the same was available to him. In such circumstances, any such relief, if not claimed or omitted, then such party stood precluded from agitating such relief subsequently. Reliance is placed upon PLD 2001 SC 325 (Hashim Khan vs. NBP).

7. Besides the above referred legal position, the time limitation for filing of suit for specific performance is provided under Article 113 of the Limitation Act, 1908, which has been discussed in Issues No.2 and 3 by the learned Trial Court in a proper manner and as such, the suit is badly time barred in the light of judgment passed by the apex Court in case reported as PLD 2012 SC 247 (Haji Abdul Karim vs. Florida Builders). Even Otherwise, the limitation has to be run in terms of Article 113 of the

Limitation Act, 1908 which is based upon two parts, first part whereof provided three (03) years limitation period as enunciated in the cases laws reported as PLJ 2008 SC 145 (Siraj Din, etc. vs. Mst. Khurshid Begum, etc.), PLD 1983 SC 344 (Ghulam Nabi vs. Muhammad Yaqub), PLD 1995 SC 314 (Inam Naqshband vs. Haji Sheikh Ijaz Ahmad) and 2011 SCMR 249 (Muhammad Ramzan vs. Muhammad Qasim). It is settled law that where suit was patently barred by limitation, no recording of evidence was required and the Court could reject the plaint in terms of Order VII Rule 11 CPC. Reliance is placed upon 2016 SCMR 910 (Agha Syed Mushtaque Ali Shah vs. Mst. Bibi Gul Jan). As such, the suit filed by the petitioner was rightly dismissed.

8. Besides the question of limitation, it has also been considered from the record that the agreement Exh.P1 was allegedly executed in presence of two witnesses, but the petitioner has produced only one witness namely Muhammad Javed as PW-2, whereas the other attesting witness was not produced. In such eventuality, the agreement has not been proved in terms of Article 79 of the Qanun-e-Shahadat Order, 1984.

9. In view of above, the concurrent findings of both the Courts below are in accordance with law and no illegality has been demonstrated by the petitioner on record, therefore, the instant civil revision petition is DISMISSED *in limine*.

(MOHSIN AKHTAR KAKHANI)  
JUDGE