

**COURT OF SHEIKH RASHID MAJEED,
DISTRICT JUDGE, MUZAFFARABAD, AJ&K**
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File No: 85 - Civil Appeal
Date of Institution: 28.07.2017
Date of Decision: **01.11.2017**

(1) Ghulam Farid, (2) Ghulam Mustafa, (3) Fiaz sons, (4) Nabila, (5) Ayesha, (6) Zohra, (7) Farzana daughters, (8) Akther Bibi widow of Ghulam Haider, (9) Sultana Zeba, (10) Taj Bibi daughters of Ghulam Haider, R.O Naluchi, Tehsil and District Muzaffarabad, AJ&K. (Applicants No. 2, 3, 6 & 7 are minors through their real mother appellant No. 8, whereas appellants No. 9 & 10 through attorney)
(APPELLANTS)

VERSUS

(1) Muhammad Ishfaq S/O Abdul Ghafoor, (2) Naseem Akhter wife of Muhammad Iqbal, R/O Naluchi, Tehsil & District Muzaffarabad, (3) Tehsildar Revenue Muzaffarabad, (4) Saleem Akhter Gillani, Patwari Circle Naluchi, (5) Additional Custodian, Evacuee Property, Azad Jammu and Kashmir, (6) Patwari Circle Gojra/Naluchi.

(RESPONDENTS)

CIVIL APPEAL

PRESENT:

1. Shabbir Hussain Khan, Advocate for the Appellants
2. Ikhtlaq Hussain Mughal, Advocates for the Respondents

JUDGMENT:

The captioned appeal has been filed against judgment and decree dated 29.04.2017 of Civil Judge, Court No. I, Muzaffarabad, whereby said Court has dismissed the suit filed by the plaintiffs.

2. BRIEF FACTS of the case necessary for disposal of instant appeal are that plaintiffs/ appellants

herein filed a declaratory suit for cancellation of sale deed dated 30.05.1995. It was claimed in the plaint that suit land was in ownership and possession of father of plaintiffs. After death of father of plaintiff, plaintiff is looking after the suit land. Plaintiff is owner in possession of suit land without any intervention. Plaintiff No. 1, transferred land measuring 5 Marla from survey No. 1066 through sale deed dated 08.05.2015. When vendee started the constructed work in suit land, defendant No. 1 & 2 claimed their rights about suit land. Defendant No. 1 checked the whole revenue record and came to know that defendant No. 1 & 2 with the connivance of other defendants have prepared sale deed dated 06.04.1995. Sale deed dated 06.04.1995 has been prepared by committing fraud and forgery. Defendant No. 1 on the basis of sale deed dated 06.04.1995 has transferred 10 Marla out of suit land through sale deed dated 05.06.2012 in favour of defendant No. 12. It was further claimed that the whole forgery and fraud about preparation of documents came into the knowledge of plaintiffs on 19.07.2015. Lastly, it was prayed that a declaratory decree along with permanent injunction be granted in favour of plaintiffs.

3. On institution of above said suit, trial Court summoned defendants. Defendants appeared before the trial Court and submitted written statement whereby they fully opposed the contents of plaint. Trial Court in light of divergent pleadings of the parties, framed issues and fixed the case for arguments on legal issues.

4. Trial Court, after hearing arguments on legal issues dismissed the suit. Feeling themselves aggrieved

by said impugned order and decree, appellants have filed instant appeal.

5. Arguments heard.

6. I have heard the learned Counsel for the parties, record of the case is also examined. Perusal of record reveals that trial Court while deciding issues No. 1 & 2 has dismissed the suit. In light of arguments advanced by the learned Counsel for the parties. Issues No. 1 & 2 are resolved as under:-

Issues No. 1: *Whether plaintiff has cause of action? (OPP)*

The burden of this issues was placed on the shoulder of plaintiffs/ appellants. It is well established that to determine existence or non existence of cause of action, only plain reading of plaint is required. While determining cause of action, Court has to presume each and every allegations levelled in the plaint as correct. Plaintiffs/ appellants had challenged the validity and legality of different sale deeds execute in favour of defendants. Plaintiffs/ appellants are also claiming to be in possession of suit land. If plaintiffs/ appellants while producing solid evidence prove that sale deed dated 06.04.1995 and 05.06.2012 are fake, fictitious and bogus then relief can be granted in favour of plaintiffs/ appellants. After plain reading of the plaint, I have reached at the conclusion that plaintiffs have cause of action. Plaint filed by the plaintiffs

discloses cause of action. Trial Court fell in legal error by holding that plaintiffs have no cause of action. Decision of trial Court on this issue is against celebrated principles of law which could not be allowed to hold the field. Hence, decision of trial Court on issue No. 1 is set-aside and this issue is decided in favour of plaintiffs/appellants.

Issue No. 2: *Whether suit filed by the plaintiffs is time barred. (OPP)*

This issue has not been properly framed, which is re-framed as under:

Whether the suit filed by the plaintiffs is within limitation. (OPP)

The burden to prove this issue was placed on the shoulders of plaintiffs. Perusal of contents of plaint reveals that plaintiffs in paragraph 3 of their plaint have categorically alleged that they came to know about the forged sale deed dated 06.04.1995 on 19.07.2015. In paragraph 7 of the plaint, plaintiffs have again taken the plea about date of knowledge. It is also pertinent to mention here that plaintiffs/ appellants along with their suit have also filed an application for condonation of delay. However, said application for extension condonation of delay remained unattended by the trial Court. Plaintiffs/ appellants in contents of plaint have specifically alleged fraud. When fraud is alleged then factum of fraud can be determined after recording of

evidence of the parties. Trial Court at the initial stage has declared that suit filed by the plaintiffs is time barred which is not justified. In the case in hand, question of limitation is mixed question of law and facts and should have been resolved after recording of the evidence. So, decision of trial Court on this issue is set-aside and it is ordered that this question be decided after recording evidence of the parties.

HENCE, this appeal is hereby accepted. Impugned judgment and decree date 29.04.2017 of trial Court is hereby set aside. Case is remanded to trial Court with a direction to decide the case on merit after recording evidence of the parties.

Parties are directed to appear before the trial Court on **14.11.2017**. Record of trial Court be sent back after annexing a copy of this judgment. File be consigned to record room after its due completion.

ORDER ANNOUNCED.

(Sheikh Rashid Majeed)
District Judge, Muzaffarabad