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Judgment Sheet
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Civil Revision No.22159/2017
(DHA Lahore Versus Ayesha Qayyum)

J U D G M E N T

Date of Hearing	16.10.2017
Petitioner by:	Mr. Tariq Masood, Advocate.
Respondent by:	Mr. Javaid Sultan Chaudhry, Advocate.

Atir Mahmood, J. Brief facts of the case are that on 20.05.2016, the respondent filed a suit against the petitioner for cancellation of registered conveyance deed bearing No.7248 dated 20.12.2006 and mutation No.1211 sanctioned thereupon on 22.12.2006 and possession of the property be given to the plaintiff-respondent.

2. On 23.12.2016, the petitioner authority entered appearance before the court and filed application for rejection of the plaint under Order VII Rule 11, CPC. The application was resisted by the plaintiff-respondent by filing written reply on 24.01.2017. The said application was dismissed on 15.03.2017. Hence this revision petition has been filed by the petitioner-defendant.

3. Arguments heard. Record perused.

4. The contention of learned counsel for the petitioner is that the suit of the respondent is hit by Articles 91, 92 and 93 of the Limitation Act, 1908 (hereinafter called “the Act”) wherein the limitation of three years has been provided. The said Articles are reproduced below:

“91. To cancel or set aside instrument <u>otherwise</u>	or set an <u>not</u>	Three years	When the facts entitling the plaintiff to have the instrument cancelled or set aside
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| | <u>provided for.</u> | become known to him. |
| 92. | To declare the Three forgery of an years. instrument issued or registered. | When the issue or registration becomes known to the plaintiff. |
| 93. | To declare the Three forgery of an years instrument attempted to be enforced against the plaintiff. | The date of the attempt.” |

(Underline is mine)

Bare reading of Articles 92 and 93 of the Act reveals that these Articles apply to the suits wherein forgery or attempt to enforce a forged document has been assailed. Here in this case, there is no question or allegation of forgery or attempt to enforce a forged instrument as the conveyance deed referred to hereinabove is not disputed by either sides, therefore, Articles 92 and 93 do not attract in this case. Thereafter, Article 91 remains in picture only. This Article pertains to the suits wherein cancellation or setting aside of an instrument has been sought but these suits should not have otherwise been provided for in this Act for the purposes of limitation.

5. The suit of the respondent is for possession after cancellation of the registered conveyance deed bearing No.7248 dated 20.12.2006 and mutation No.1211 sanctioned in pursuance thereof on 22.12.2006. The said registered sale deed at its pages 68 to 71 reads as under:

“The value of land given in the sale deed is not the value paid to the land owner but given for the purpose of Registration as the land is purchased on exemption.”

The contention of learned counsel for the respondent is that no consideration amount or alternate land/plots have yet been paid/given to the respondent despite repeated demands and notice sent to the petitioner. The petitioner has neither denied the said averment nor disputed the sale deed as the petitioner has even not bothered to file the

written statement before the trial court and has straightforwardly filed the application under Order VII Rule 11, CPC solely on the ground that the suit was barred by time as the impugned sale deed was registered on 20.12.2006 whereas the suit was filed on 20.05.2016 after 10 years of registration of the sale deed. According to him, the suit of the respondent-plaintiff is for cancellation of document, therefore, Articles 91, 92 and 93 of the Act, wherein limitation of three years has been provided, are attracted. As noted above, the suit of the respondent is for possession after cancellation of the documents on the ground that despite repeated demands and notice to the petitioner, she has not been compensated through consideration amount or alternate land/plots by the petitioner as it was promised at the time of execution of the sale deed. In my view, the non-payment of due amount or non-delivery of promised land/plots is a matter which comes within the ambit of 'recurring cause of action', therefore, on each denial or non-response by the petitioner to redress the grievance of the respondent, fresh cause of action is accrued to the respondent, therefore, question of limitation, which is a mixed question of law and fact, cannot be decided while deciding the application under Order VII rule 11, CPC. Even otherwise, since the respondent-plaintiff has alleged breach of condition through the suit for possession, the same, in my considered view, comes within the domain of Article 143 of the Act wherein limitation of 12 years is provided. The said Article reads as under:

“143. Like suit*, when the plaintiff has become entitled by reason of any forfeiture or breach of condition.	Twelve years	When the forfeiture is incurred or the condition is broken.”
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As noted above, this suit is for possession of the property after cancellation of the instrument and the limitation for filing such like suit has been provided in Article 143 of the Act. In this view of the matter, the contention of learned counsel for the petitioner that the suit of the

**Suit for possession*

respondents falls within the ambit of Articles 91, 92 and 93 of the Act has no force which is accordingly discarded.

6. For what has been discussed above, this civil revision is bereft of any force. The same is accordingly **dismissed**.

(ATIR MAHMOOD)
Judge

*Akram**