

IN THE HIGH COURT OF SINDH AT KARACHI
(APPELLATE JURISDICTION)

High Court Appeal No.259 of 2005

(*Bashir Akhtar (Deceased) v. Y.R. Enterprises & Others*)

Before:

Muhammad Faisal Kamal Alam J &
Sana Akram Minhas J

Appellant:	Bashir Akhtar (Deceased) Through, Mr. Shahbakht Pirzada, Advocate
Respondent No.1:	Y.R. Enterprises None
Respondent No.2:	Khawaja Rashid Hussain None
Respondent No.3:	Yawar Idrees None
Respondent No.4:	Muhammad Ilyas Latif Mr. Muhammad Ilyas, Advocate
Respondent No.5:	Khalid Saeed None
Respondent No.6:	Pakistan Defence Officers Housing Authority None
Respondent No.7:	Mazhar Mehmood None
Respondent No.8:	Haji Younus None
Respondent No.9:	Ahsan Iqbal None
Respondent No.10:	Arthur Jehangir None
Respondent No.11:	Nisar Ahmed None
Respondent No.12:	Aslam Motiwala None

Date(s) of Hearing / Re-Hearing: 13-1-2026, 14-1-2026, 21-1-2026 & 11-5-2026

Date of Announcement: 15-6-2026

J U D G M E N T

1. **Sana Akram Minhas, J**: The Appellant – who, upon his demise (in November 2008) during the pendency of the litigation, is now represented by his legal heirs – assails the Judgment and Decree dated 26.8.2005 (“**Impugned Judgment**”) passed by a learned Single Judge of this Court (in its then Original Civil Jurisdiction). The Appeal is confined to the extent that, notwithstanding the finding of fraud against the Respondents No.1 to 3, the Impugned Judgment omits the relief of specific performance and restricts the Appellant’s remedy to monetary compensation. Notably, the Impugned Judgment has not been challenged by any of the Respondents (of whom Respondents No.1 to 3 and 5 were proceeded against ex parte, having failed to appear and contest the proceedings).

2. The present Appeal arises out of Suit No.609/1998 (*Bashir Akhtar v. Y.R. Enterprises & Others*) (“**Underlying Suit**”), instituted before this Court (in its then Original Civil Jurisdiction) on 9.5.1998 for “*Declaration, Cancellation, Specific Performance, Permanent Injunction and Damages*”. An Amended Plaint¹ was subsequently filed on 16.12.1998, whereby the Respondents No.7 to 12 were impleaded as parties on their own application. The immovable property forming the subject matter of the present dispute is a commercial plot bearing No.C-7-C, Khyaban-e-Sehar, Phase 7, DHA, Karachi, measuring 200 square yards (“**Commercial Suit Plot**”).

Impugned Judgment: Decree Of Monetary Relief Without Addressing Claim For Specific Performance

3. Following a full-fledged trial involving the framing of issues² and recording of evidence, the Single Judge through the Impugned Judgment, concluded that

¹ The Amended Plaint was filed after the intervenor application under Order 1 Rule 10 CPC (CMA No.6619/1998) filed by the Respondents No.7 to 12 was allowed by the Court vide order dated 19.11.1998 and they were impleaded as parties.

² Issues framed vide order dated 22.3.1999:

- 1) Whether the defendants 1 to 3 and 5 have received Rs.93,00,000/- from the plaintiff on different dates for sale of the suit property plot bearing No.C-7-C, Khyaban-e-Sehar, Phase-VII, DHA, Karachi measuring 200 sq. yds., if so, to what effect?
- 2) Whether suit plot bearing No.C-7-C, Khyaban-e-Sehar, Phase -VII, DHA, Karachi was sold and transferred in the name of the defendant No.4, collusively and fraudulently out of the money received from the plaintiff, if so, to what effect?
- 3) Whether the construction raised on the suit plot with the money received from the plaintiff, if so, to what effect?
- 4) Whether all the defendants have acted in collusion with each other and booking of the flats, shops, and issuance of the sub leases are all made collusively, if so, to what effect?
- 5) Whether the defendants Nos.4 & 12 are bonafide purchasers of suit plot or not?

the Respondents No.1 to 3, being business acquaintances of the Appellant, had perpetrated fraud and accordingly decreed the Underlying Suit against them. However, without addressing the claim for specific performance, the Single Judge awarded monetary relief aggregating Rs.14.3 million (Rupees One Hundred And Forty-Three Lacs). The said amount comprised refund of Rs.9.3 million (Rupees Ninety-Three Lacs) – which had been paid by the Appellant to Respondents No.1 to 3 in relation to immovable property transactions – and damages of Rs.5 million (Rupees Fifty Lacs), with both amounts carrying mark-up at the rate of 15% per annum.

The Former Owner And Present Purchaser Of Commercial Suit Plot

4. The Respondent No.5 (“**Seller**”) was the owner/vendor of the Commercial Suit Plot and subsequently sold the same to the Respondent No.4 (“**Buyer/Brother-in-law**”), who claims title thereto and is presently in the position of purchaser thereof. The said transaction was effected through Respondents No.1 to 3, who were real estate consultants; the Respondent No.1 being a partnership firm and Respondents No.2 and 3 being its partners.

Admitted Relationship Between Respondents No.2 And 4

5. Significantly, the Buyer/Brother-in-law (Respondent No.4) is closely related to the Respondent No.2 (one of the real estate consultants), the latter being married to the former’s sister. This relationship was specifically pleaded by the Appellant in the Plaint³, the application for injunction, and the Affidavit-in-Evidence. The same was unequivocally admitted by the Buyer/Brother-in-law at the outset of his cross-examination and was further acknowledged before this Court by learned Counsel for Buyer/Brother-in-law when specifically queried during the course of arguments.

Factual Background – Case Set Up By Appellant In His Plaint

6. The pertinent facts are:
- i) After his retirement in 1987, the Appellant became engaged in business and real estate investments. Owing to his close relationship

6) Whether the plaintiff may have paid token amount for the suit plot effect the rights of the defendants No.7–12 who paid for the suit plot, and construction thereon?

³ Incorrect Respondent/Defendant numbers appear in the Plaint and the Affidavit-in-Evidence, whereas the correct numbering is reflected in the injunction application. Notwithstanding the said discrepancy, the relationship between the relevant parties stands established from the cross-examination of Respondent No.4 and was further acknowledged by his Counsel before this Court during arguments.

with Respondent No.3 – whose father, like the Appellant, had served as a Captain with the *Pakistan International Airlines Corporation* – the Appellant reposed confidence in Respondents No.1 to 3 (real estate consultants) and began investing through them, including by making advance payments and lending money.

- ii) In March 1997, the Respondents No.1 to 3 offered the said Commercial Suit Plot to the Appellant for a total consideration of Rs.4.3 million (Rupees Forty-Three Lacs), representing the Seller (Respondent No.5) as the lawful owner. Pursuant thereto, the Appellant, through the Respondents No.1 to 3, paid the entire sale consideration to the Seller – comprising Rs.3.5 million (Rupees Thirty-Five Lacs) in cash and Rs.0.8 million (Rupees Eight Lacs) through **Pay Order No.669851 dated 10.4.1997 drawn on United Bank Ltd (“UBL Pay Order”)** and issued in favour of the Seller (Exhibit P/4). The receipt of these payments was expressly acknowledged by Respondents No.1 to 3 vide receipts dated 24.3.1997 (Exhibit P/2) and 10.4.1997 (Exhibit P/3). The issuance of the UBL Pay Order in favour of the Seller (Respondent No.5) was further certified by United Bank Limited (Defence Garden Branch, Karachi) vide its Manager’s certificate/letter dated 11.3.1998 (Exhibit P/4).
- iii) However, despite repeated demands and requests, the transfer of the Commercial Suit Plot was continuously deferred on the basis of false assurances and misrepresentations.
- iv) In addition to the above, the Appellant also paid Rs.5 million (Rupees Fifty Lacs) for two other plots (“**Two Other Plots**”) viz.
 - (a) Plot No.36, Khyaban-e-Muhafiz, Phase 7, DHA, Karachi (measuring 2000 square yards);
 - (b) Plot No.104, 10th Street, Phase 6, DHA, Karachi (measuring 2000 square yards)

shown by Respondents No.1 to 3, who failed to complete those deals and instead issued a receipt dated 13.10.1997 (Exhibit P/5) with a promise to refund the said Rs.5 million.
- v) Upon inquiry from Respondent No.6 (DHA), the Appellant discovered that documents pertaining to the Two Other Plots were forged, and that the Commercial Suit Plot had already been transferred by the Seller (Respondent No.5) to Buyer/Brother-in-law (Respondent No.4) using the same UBL Pay Order provided by the Appellant.

- vi) These facts clearly demonstrated collusion amongst the Respondents No.1 to 5 – particularly Respondents No.1 to 3 and the Buyer/Brother-in-law (Respondent No.4). Acting in concert, they diverted the Commercial Suit Plot in favour of the Buyer/Brother-in-law without consideration and unlawfully procured the lease in his name.
- vii) An FIR was registered; the Appellant was later discharged under Section 169 of the *Criminal Procedure Code, 1898*. While the Respondent No.2 absconded, the Respondent No.3 (Yawar Idrees), in his confessional statement dated 21.1.1998 under Section 164 of the said *Code, 1898* (Exhibits P/7 and P/8), admitted receipt and use of funds (including from the Appellant) for purchase and construction of properties in his own name without consideration.
- viii) Documentary evidence demonstrated that the Respondents No.1 to 3, the Buyer/Brother-in-law (Respondent No.4) and the Seller (Respondent No.5) received Rs.4.3 million, from the Appellant, but fraudulently transferred the Commercial Suit Plot to Buyer/Brother-in-law, who lacked independent means, and raised construction using the Appellant's funds. The Appellant suffered financial loss and mental agony and claimed interest in the Commercial Subject Plot and construction.
- ix) Subsequent acts, including lease⁴ (i.e. registered "C" Lease dated 4.6.1997), construction, and sub-leases or transfers in favour of Respondents No.7 to 12, were alleged to be fraudulent and void as they stemmed from the initial illegal transfer and continued collusion.
- x) The Appellant maintained that, having paid full consideration, all such transactions were liable to be cancelled and, inter alia, sought transfer of the Commercial Suit Plot with construction in his favour.

Restraining Orders During Pendency Of Underlying Suit And Subsequent Contempt Proceedings

- 7. Following institution of the Underlying Suit, a Single Judge of this Court, by order dated 18.5.1998⁵, directed the parties to maintain status quo and further

⁴ The record of the Underlying Suit shows DHA's Transfer Order/Mutation Letter dated 23.4.1997 and registered "C" Lease dated 4.6.1997 executed in favour of Respondent No.4 (Buyer/Brother-in-law) in respect of the Commercial Suit Plot

⁵ The Order Sheet incorrectly records the date as 18.4.1998, since the Suit itself was instituted on 9.5.1998. The Reader's Diary and notices issued in the proceedings reflect the correct date of the status quo order as 18.5.1998

restrained the Respondents from creating any third-party interest in the Commercial Suit Plot.

8. Subsequently, vide order dated 16.6.1999, another Single Judge recorded the undertaking furnished by Counsel for Respondents No.7 to 12 "*not to occupy the possession of these flats*".
9. Thereafter, on 22.6.1999, the parties were once again directed to maintain status quo, while by another order dated 20.9.1999, the Respondents were further restrained from "*parting with the possession of the suit property*".
10. The aforesaid orders continued to remain operative throughout the pendency of the Underlying Suit until pronouncement of the Impugned Judgment.
11. The record further reflects that contempt proceedings were initiated against the private Respondents on account of the alleged breach of the said injunctive and restraining orders.

Present Status: Abscondence And Non-Payment Of Decretal Amount

12. The Respondent No.1 (Y.R. Enterprises, the partnership firm) and the Respondents No.2 and 3 (its partners) are still absconding and have, to date, failed to deposit any portion of the decretal amount.

Respective Submissions

13. Learned Counsel for the Appellant contended that the Impugned Judgment failed to adjudicate upon the relief of specific performance in respect of the Commercial Suit Plot. According to him, once the Impugned Judgment itself had concluded that the Appellant had been defrauded by Respondents No.1 to 3, there remained no lawful or equitable basis to confine the Appellant merely to monetary compensation. He further submitted that the doctrine of constructive trust, as incorporated in Section 82 of *Trusts Act, 1882*, was fully attracted to the facts and circumstances of the case. Without prejudice to the foregoing submissions, Counsel argued that the Impugned Judgment and Decree ought not to have been restricted to Respondents No.1 to 3 alone, but should also have been extended against the transferee, i.e. Buyer/Brother-in-law (Respondent No.4) and Respondent No.12 (Aslam Motiwala; the self-proclaimed financier/purchaser of the Commercial Suit Plot).
14. Conversely, learned Counsel appearing on behalf of Buyer/Brother-in-law contended that the Buyer/Brother-in-law was a bona fide transferee/purchaser

for value, having purchased the Commercial Suit Plot on behalf of, and with the funds provided by his partner, namely the Respondent No.12 (Aslam Motiwala). He submitted that although the Sale Agreement dated 10.4.1997 ("**Sale Agreement**") (Exhibit P/6) executed between Buyer/Brother-in-law and the Seller reflected a sale consideration of Rs.0.8 million (Rupees Eight Lacs), the actual consideration was subsequently revised and an aggregate amount of Rs.4.1 million (Rupees Forty-One Lacs), was allegedly paid towards the transaction. He accordingly prayed that the present Appeal be dismissed and the Impugned Judgment and Decree be maintained.

Primary Questions For Determination

15. The principal questions for determination in this Appeal are:
- i) Whether the consideration for the Commercial Suit Plot flowed from the Appellant, and if so, whether Respondent No.4 (Buyer/Brother-in-law – transferee) and/or Respondent No.12 (financier) can claim protection as a bona fide purchaser for value under Section 41 of the *Transfer of Property Act, 1882* ("**TPA 1882**")?
 - ii) Whether the learned Single Judge was justified in refraining from adjudicating the Appellant's entitlement to specific performance and, instead, awarding monetary compensation?
 - iii) Without prejudice, whether Respondents No.4 and 12 are liable under the Impugned Judgment, and whether the monetary relief awarded therein to the Appellant warrants enhancement?

Opinion Of The Court

16. The submissions advanced by Counsel for the respective parties have been duly considered, and the record examined.

Evidence Of Appellant

17. As per the evidence on record produced by the Appellant, an aggregate sum of Rs.4.3 million (Rupees Forty-Three Lacs) was paid by the Appellant to the Respondents No.1 to 3 towards consideration for the Commercial Suit Plot. The said payments stand substantiated through contemporaneous receipts issued by Respondents No.1 to 3, namely:
- Receipt dated 24.3.1997 (Exhibit P/2) acknowledging receipt of a sum of Rs.3.5 million (Rupees Thirty-Five Lacs) in cash; and

- Receipt dated 10.4.1997 (Exhibit P/3) acknowledging receipt of a further sum of Rs.0.8 million (Rupees Eight Lacs) through a UBL Pay Order issued in favour of the Seller (Respondent No.5).

18. The issuance of the aforesaid UBL Pay Order in favour of the Seller (Respondent No.5) was further independently verified and certified by the concerned Branch Manager of United Bank Limited vide his certificate/letter dated 11.3.1998 (Exhibit P/4). The said banking document lends additional corroboration to the Appellant's case and conclusively demonstrates the source, issuance, and intended application of the consideration amount paid towards acquisition of the Commercial Suit Plot.
19. Accordingly, the unimpeached documentary evidence (Exhibits P/2 to P/5) available on the record conclusively establishes that the Appellant paid an aggregate sum of Rs.9.3 million to Respondents No.1 to 3, comprising, inter alia, Rs.0.8 million through the UBL Pay Order issued in favour of the Seller and a subsequent payment of Rs.5 million.

Evidence Of Respondent No.4 (Buyer/Brother-in-law): Sale Agreement Executed With Respondent No.5 (Seller) And Appellant's UBL Pay Order

20. Pursuant to the Sale Agreement dated 10.4.1997 (Exhibit P/6) executed between the Seller and the Buyer/Brother-in-law, the former sold the Commercial Suit Plot to the latter for a "full and final sale consideration" of Rs.0.8 million. The Sale Agreement further records that vacant and peaceful possession of the Commercial Suit Plot was delivered to the Buyer/Brother-in-law on the same date.
21. Crucially, the sale consideration is expressly recorded in paragraph 1 of the Sale Agreement as having been paid through **Pay Order No.669851**. This Pay Order happened to be the same UBL Pay Order dated 10.4.1997, drawn on United Bank Limited, which had been issued by the Appellant in favour of the Seller towards the purchase of the said Commercial Suit Plot. **Thus, the only contractual consideration recorded in the Sale Agreement itself is traceable to Appellant's funds.** As stated above, the issuance of the UBL Pay Order in favour of the Seller (Khalid Saeed i.e. Respondent No.5) was duly confirmed by United Bank Limited vide the concerned Branch Manager's certificate/letter dated 11.3.1998 (Exhibit P/4).
22. The Buyer/Brother-in-law, in paragraph 6 of his Affidavit-in-Evidence – and in clear departure from the contents of the Sale Agreement (Exhibit P/6) executed by him – asserts that a total sale consideration of Rs.4.1 million was paid towards the Commercial Suit Plot – comprising Rs.3.075 million (Rupees

Thirty Lacs and Seventy-Five Thousand) allegedly paid through four (4) pay orders and the balance amount of Rs.1.025 million (Rupees Ten Lacs Twenty-Five Thousand) in cash. However, beyond these bare assertions, the documentary record is conspicuously silent regarding any such alleged payments made by the Buyer/Brother-in-law to the Seller. Significantly, not a single document evidencing the alleged four (4) pay orders was either annexed to the Affidavit-in-Evidence of the Buyer/Brother-in-law or exhibited during his Examination-in-Chief conducted by his own Counsel – documents which could easily and conveniently have been produced had they genuinely existed and had the alleged transactions in fact occurred. Likewise, no documentary proof whatsoever has been produced in support of the alleged cash payment of Rs.1.025 million. The non-production of evidence which would naturally be expected to be within his possession warrants the drawing of an adverse inference against the version advanced by the Buyer/Brother-in-law.

23. The learned Single Judge's finding of alleged payment of an enhanced sale consideration by Respondents No.4 (Buyer/Brother-in-law) and 12 (in Issue No.5), based solely on oral assertions, is legally unsustainable as it runs contrary to the express terms of the written Sale Agreement, which unequivocally records the price as the "*full and final sale consideration*". Once the parties have reduced their bargain into a clear written instrument, its terms constitute the best evidence of the transaction and cannot be varied, contradicted or supplanted by oral testimony. The evidentiary principles stipulated in *Articles 102 and 103 of Qanun-e-Shahadat Order, 1984*, and the oral evidence rule bar reliance on oral assertions to displace or rewrite the contents of a written contract⁶. In the present case, in the absence of any contemporaneous documentary corroboration, the reliance placed on mere oral statements to infer an increased consideration not only undermines the sanctity of the written Sale Agreement but also impermissibly substitutes conjecture for documentary proof. Accordingly, the finding based on such oral assertions is legally untenable and is hereby set aside.

Admitted Relationships Of Buyer/Brother-in-law (Respondent No.4) With Respondent No.2 (Real Estate Consultant) And Respondent No.12 (Aslam Motiwala)

24. As noted in paragraph 5 above, it is undisputed that Buyer/Brother-in-law (Respondent No.4) is the real brother-in-law of Respondent No.2 (one of the real estate consultants). The relationship was specifically pleaded by the

⁶ 1988 SCMR 753 (*Akhtar Hussain Zaidi v. Muhammad Yaqinuddin*); 1997 SCMR 1570 (*Hazratullah v. District Council, Haripur*); 2002 YLR 2653 (*Sahib Ali v. Pakistan Steel Mills Corporation*); 2014 SCMR 1217 (*Elahi Bakhsh v. Muhammad Iqbal*); 2021 CLC 1856 (*Muhammad Sharif v. Ghulam Farid*)

Appellant, admitted in cross-examination by Buyer/Brother-in-law, and acknowledged by his Counsel before this Court during arguments.

25. Another undisputed aspect emerging from the Buyer/Brother-in-law's own testimony is that, in paragraph 6 of his Affidavit-in-Evidence, he describes himself as the "*working partner*" and Respondent No.12 as the "*financing partner*". He further reiterates in paragraph 7 that the Commercial Suit Plot is jointly owned by himself and Respondent No.12.
26. The Respondent No.12, in his Affidavit-in-Evidence, does not deny the aforesaid relationship with the Buyer/Brother-in-law. In fact, in paragraph 5 thereof, he admits that they are partners in the construction business and asserts that, under their arrangement, the Buyer/Brother-in-law was the "*working partner*" entitled to a share in the profits of the business, whereas Respondent No.12 was liable to bear all losses. Furthermore, in his cross-examination, Respondent No.12 states that he is the owner of the Commercial Suit Plot and claims to have made payment towards the same in cash and through pay order. Importantly, Respondent No.12, in his cross-examination, remained evasive with respect to the Appellant's UBL Pay Order (Exhibit P/4). He did not specifically deny the same and merely stated that he did not "*know whether the pay order was given by the Plaintiff [Appellant]*".
27. Notably, however, and in a manner similar to the Affidavit-in-Evidence of the Buyer/Brother-in-law, not a single document was produced by Respondent No.12 in support of his asserted financing arrangement or alleged partnership, despite the fact that such evidence was expected to be within the exclusive knowledge and possession of Respondent No.12, thereby warranting an adverse inference against his version. No document whatsoever – including any document evidencing alleged payments by Respondent No.12 or the claimed partnership arrangement – was either annexed to his Affidavit-in-Evidence or exhibited during his Examination-in-Chief conducted by his Counsel.

Source Of Sale Consideration For Commercial Suit Plot – Conclusive Evidence That Funds Flowed From Appellant

28. From the evidence adduced and witness examination discussed above, the following undeniable factual position emerges:
 - i) Firstly, that the Appellant affirmatively established payment of an aggregate sum of Rs.4.3 million specifically towards the Commercial Suit Plot through contemporaneous receipts (Exhibits P/2 and P/3) and an independently verified banking document/certificate (Exhibit P/4),

which was subsequently followed by a further payment of Rs.5 million (Exhibit P/5);

- ii) Secondly, that the UBL Pay Order (Exhibit P/4) issued by the Appellant in favour of Seller was the very same pay order expressly incorporated in the Sale Agreement (Exhibit P/6) executed between Seller and Buyer/Brother-in-law and formed part of the consideration recorded therein;
- iii) Thirdly, that the Buyer/Brother-in-law's version of having paid Rs.4.1 million through multiple pay orders and cash is unsupported by a single documentary evidence and remains a bare assertion;
- iv) Fourthly, the Respondent No.12, while claiming ownership, financing arrangements, alleged partnership/business dealings and independent payments through pay order and cash towards the Commercial Suit Plot, likewise failed to place on record any documentary material whatsoever to substantiate such claims.
- v) Lastly, the evidentiary record read as a whole, therefore, unmistakably and consistently points towards the Appellant being the one and only source of consideration for acquisition of the Commercial Suit Plot, whereas the rival claims advanced by Buyer/Brother-in-law and Respondent No.12 remain wholly unsubstantiated by any documentary evidence and inherently unreliable.

29. A careful appraisal of the evidentiary record reveals that no documentary proof whatsoever has been produced by the Buyer/Brother-in-law or Respondent No.12 to substantiate the alleged payments made by them towards the Commercial Suit Plot. Their assertions of having made substantial payments, whether through pay orders or cash, remain uncorroborated by any contemporaneous banking record, receipt, or independent verification. In contrast, the material on record consistently establishes the Appellant as the sole source of consideration. The Impugned Judgment, therefore, rests on a demonstrably unsustainable factual basis in accepting the unsubstantiated version of the Buyer/Brother-in-law and Respondent No.12, in the complete absence of any documentary evidence whatsoever.

30. Further, the observation recorded in the Impugned Judgment under Issue No.5 that the Buyer/Brother-in-law acted as a benami on behalf of Respondent No.12 is not under challenge, as it has no bearing on the issues arising herein; however, the finding that Respondent No.12 had paid the entire sale consideration to Seller (Respondent No.5) is not borne out from the evidence on record and, is therefore, incorrect.

Respondent No.4 (Buyer/Brother-in-law) And Respondent No.12: Bona Fide Purchaser Defence And Collusion With Respondents No.1 To 3

31. Under Section 41 of *Transfer of Property Act, 1882* (“**TPA 1882**”), the protection afforded to a transferee from an ostensible owner may be invoked only where the following essential ingredients are satisfied⁷:
- i) The transferor was the ostensible owner of the property;
 - ii) Such ostensible ownership existed with the express or implied consent of the real owner;
 - iii) The transfer was made for consideration; and
 - iv) The transferee, acting in good faith, took reasonable care to ascertain that the transferor had power to make the transfer.
32. Consequently, the protection available to a bona fide purchaser/transferee for value is ordinarily confined to a person who:
- i) has furnished valuable consideration from his own lawful source;
 - ii) has acted in good faith; and
 - iii) has acquired the property without notice of any prior right, claim, or equitable interest of another.
33. Conversely, where an alleged purchaser/transferee:
- i) has not furnished consideration from his own resources;
 - ii) has merely utilized the funds or payment instrument of another; and
 - iii) has accepted title in his own name despite the consideration not having proceeded from him,
- the fundamental requirement of being a “*purchaser for value*” is not satisfied.
34. Examined in light of the foregoing principles, the plea of the Buyer/Brother-in-law that he is a bona fide purchaser for value (or that Respondent No.12, as the alleged financier and beneficial owner is entitled to claim the benefit of such a defence) cannot be sustained because:
- i) The Buyer/Brother-in-law’s own Sale Agreement (Exhibit P/6) expressly records that the consideration was paid through UBL Pay Order No.669851 (Exhibit P/4);
 - ii) The documentary and banking record (Exhibit P/4) conclusively establishes that the said UBL Pay Order was issued by the Appellant in favour of the Seller (Respondent No.5); and

⁷ PLD 2011 SC 296 (*Tassaduq Hussain v. Lal Khatoon*); 2014 SCMR 33 (*Muhammad Iqbal v. Khair Din*); 2017 SCMR 81 (*Ghulam Rasool v. Noor Muhammad*); PLD 2022 SC 699 (*Nausher v. Province of Punjab*); 2022 SCMR 1433 (*Gulzar Ahmad v. Muhammad Aslam*); 2025 SCMR 1694 (*Rahim Khatoon v. Muhammad Yasin*)

- iii) It is neither the case of the Buyer/Brother-in-law that he procured the said UBL Pay Order from his own funds, nor that the Appellant obtained or issued the same on his behalf.
35. In these circumstances, it is unnecessary to examine the remaining ingredients of Section 41 in any greater detail, for the plea of the Buyer/Brother-in-law fails at the threshold. Once the very consideration underlying the transfer is shown to have proceeded from the Appellant, and not from the Buyer/Brother-in-law or on his behalf, the essential ingredient of a transfer for consideration, so far as the Buyer/Brother-in-law is concerned, stands unproved.
36. The protection contemplated by Section 41 of TPA 1882 is, therefore, unavailable to the Buyer/Brother-in-law, and his plea that he is a bona fide purchaser for value is rejected. Likewise, Respondent No.12's assertion that he financed the transaction and is its beneficial owner does not improve his position, as he too cannot claim the protection afforded to a bona fide purchaser for value.
37. Thus, the documentary trail underlying the very consideration reflected in the Sale Agreement leads not to the Buyer/Brother-in-law, but directly to the Appellant. Even assuming, without conceding, that the Buyer/Brother-in-law (or for that matter the Respondent No.12) were unaware that the UBL Pay Order had been issued by the Appellant, such assumption does not materially advance their case. At the very least, the Buyer/Brother-in-law, and the Respondent No.12, were fully aware of the true state of affairs, namely:
- i) that the UBL Pay Order did not originate from them;
 - ii) that they themselves had not furnished the consideration recorded in the Sale Agreement; and
 - iii) that title to the Commercial Suit Plot was nevertheless being transferred in Buyer/Brother-in-law's favour.
38. A person who knows that he has not paid the purchase price, yet accepts transfer of valuable immovable property in his own name, can scarcely claim the status of an innocent purchaser for value. The foregoing circumstances reinforce the conclusion already reached that the Buyer/Brother-in-law and Respondent No.12 do not satisfy the requirements of a bona fide purchaser for value and are, therefore, not entitled to the protection contemplated under Section 41 of TPA 1882.
39. Further, the evidence on record not only negate their claims of being bona fide purchasers for value but also lends substantial support to the Appellant's

contention that the transfer in favour of the Buyer/Brother-in-law was effected through utilization of the Appellant's funds and in concert with Respondents No.1 to 3. Thus, any implication, observation, or finding in the Impugned Judgment, particularly under Issue No.5, that the Buyer/Brother-in-law and Respondent No.12 acted bona fide or were bona fide purchasers for value is wholly untenable and incorrect.

No Evidence Of Complicity Of Seller (Respondent No.5)

40. Although the Appellant has alleged collusion on the part of the Seller (Respondent No.5), the evidentiary record falls short of proving any participation by him in the fraudulent conduct attributed to the remaining Respondents. The findings recorded herein against the Buyer/Brother-in-law (Respondent No.4) and Respondent No.12 do not, by themselves, imply any complicity, collusion, or lack of bona fides on the part of the Seller.
41. There was no direct agreement, oral or written, between the Appellant and the Seller, nor any direct contact between them, and none has been pleaded by the Appellant. The Seller merely accepted the UBL Pay Order as "*full and final sale consideration*" under the Sale Agreement (executed between the Seller and Buyer/Brother-in-law), and there is nothing on record to suggest that he was privy to or aware of any alleged non-bona fide arrangement inter se the other parties or that he was aware that the UBL Pay Order mentioned in the Sale Agreement belonged to the Appellant. In any event, unlike cheques, pay orders, on their face, do not disclose the identity of the drawer (i.e. the person at whose instance they are issued), and the transaction, in its apparent form, would have appeared to be a standard payment instrument discharging the agreed consideration. Having received the consideration for the Commercial Suit Plot, the Seller thereafter ceased to have any concern, interest, or involvement with either the said Plot or the inter se dispute between the remaining parties in the Underlying Suit, which explains his non-appearance and his having been proceeded against ex parte.

Non-Adjudication Of Specific Performance Claim: Nature Of Transaction And Subsequent Developments

42. The averments contained in the Plaint, particularly paragraphs 1, 2 and 6, demonstrate that the Appellant was primarily engaged in periodic investment transactions with Respondents No.1 to 3, rather than pursuing the acquisition, possession, or development of the Commercial Suit Plot as an end in itself. This is further borne out by paragraph 6 of the Plaint, wherein the Appellant specifically pleads that the Two Other Plots (referred to in paragraph 6 (iv) above) were likewise offered to him for investment purposes. The Appellant's

own case, therefore, portrays the transaction as an investment venture directed towards financial returns rather than one reflecting a genuine and sustained interest or desire to acquire the Commercial Suit Plot itself.

43. The pleaded and admitted chronology reinforces this conclusion. The consideration for the Commercial Suit Plot was paid earlier, in March-April 1997 (Exhibits P/3 and P/4), whereas the consideration for the Two Other Plots was paid several months later, in or about October 1997 (as reflected in paragraph 6 of the Complaint). The staggered nature of these payments, made in respect of different plots at different points in time, is consistent with the Appellant's participation in successive investment transactions offered by Respondents No.1 to 3, rather than with a singular and continuing effort directed towards acquiring the Commercial Suit Plot as a specific property.
44. The record thus reveals a relationship that was predominantly commercial and investment-driven, involving successive financial dealings over a period of time. In such circumstances, where the transaction was essentially motivated by investment and anticipated financial gain rather than by the acquisition and enjoyment of the subject property, the equitable relief of specific performance does not warrant exercise in favour of the Appellant.
45. Section 22 of *Specific Relief Act, 1877*, preserves the Court's discretion to grant or refuse specific performance in accordance with the recognised judicial and equitable principles. It is, therefore, a settled principle that specific performance is a discretionary and equitable remedy⁸, and the mere existence of a valid and enforceable agreement does not, by itself, confer an absolute right to such relief, the grant of which remains subject to judicial discretion to be exercised on the established principles of equity. The Court, while exercising equitable jurisdiction, is required to consider the conduct of the parties, the surrounding circumstances, the nature of the transaction, and whether enforcement would advance the ends of justice. Where compensation in money affords an adequate remedy, or where equitable considerations militate against enforcement, the Court may decline specific performance and grant appropriate alternative relief. In view of the foregoing, this Court is not persuaded to exercise its discretion in favour of the Appellant for the grant of specific performance, particularly in light of the commercial and investment-oriented character of the transaction and the absence of any direct agreement between the Appellant and the Seller.

⁸ 1994 SCMR 2189 (*Mussarat Shaukat Ali v. Safia Khatoon*); PLD 2014 SC 506 (*Liaqat Ali Khan v. Falak Sher*); PLD 2020 SC 401 (*Zakia Hussain v. Farooq Hussain*)

46. The question whether the Appellant is, inter alia, entitled to any enhanced monetary relief falls to be considered separately.

Section 82 Of Trusts Act, 1882: Legal Consequences

47. Section 82 of *Trusts Act, 1882* embodies the equitable principle that where the consideration for acquisition of property is furnished by one person while title is taken in the name of another, the beneficial interest ordinarily follows the consideration. The provision prevents a person who has not provided the consideration from unjustly retaining benefits derived from property acquired through the funds of another⁹.
48. The present case squarely attracts the equitable principle contained in the said provision. As discussed above, the evidentiary record conclusively establishes that the only consideration affirmatively proved through reliable documentary evidence emanated from the Appellant and formed an integral part of the acquisition of the Commercial Suit Plot – namely, the UBL Pay Order (Exhibit P/4), which was expressly incorporated in the Buyer/Brother-in-law's Sale Agreement (Exhibit P/6). Neither Buyer/Brother-in-law (Respondent No.4) nor Respondent No.12 has been able to establish any independent source of funds or any lawful contribution towards the acquisition of the said Plot.
49. In these circumstances, Buyer/Brother-in-law and Respondent No.12 cannot in law or equity be permitted to retain, enjoy or appropriate benefits derived from a transaction funded by the Appellant while simultaneously avoiding accountability for the same. The consequence flowing from the statutory obligation created by Section 82 is that they are bound to account for and restore the benefits received through the utilization of funds belonging to the Appellant.
50. It is clarified that this conclusion does not, however, automatically entitle the Appellant to a decree for specific performance. As already discussed above, specific performance remains a discretionary and equitable remedy, the grant whereof depends upon the totality of the circumstances of the case. For the reasons recorded in the foregoing paragraphs, this Court is not persuaded to exercise its discretion in favour of directing transfer of the Commercial Suit Plot to the Appellant. Nevertheless, the principles embedded in Section 82 of *Trusts Act, 1882* fully justify fastening restitutionary liability upon Buyer/Brother-in-law (Respondent No.4) and Respondent No.12 and ensuring

⁹ PLD 2021 Sindh 88 (*Feroze Sajan v. Farzana Sajan*); Unreported order of Sindh High Court dated 18.1.2025 in Suit No.878/2020 (*Bushra Hamid v. Farzana Nizam*)

that the Appellant receives complete monetary recompense for the benefits wrongfully diverted through the fraudulent transaction.

Liability of Respondents No.4 (Buyer/Brother-in-law) And 12: Extension Of Decree

51. The Single Judge, by the Impugned Judgment, having recorded a categorical finding of fraud against Respondents No.1 to 3, decreed the Underlying Suit in favour of the Appellant for monetary relief. The said finding of fraud has not been dislodged before this Court and is accordingly maintained. However, the relief has been erroneously restricted to Respondents No.1 to 3, notwithstanding that the evidentiary record shows that the impugned transaction, in its operative execution and ultimate fruition, extended beyond them and culminated in benefits accruing to Respondent No.4 (Buyer/Brother-in-law) and Respondent No.12.
52. The record establishes that the consideration forming the basis of the transfer in favour of Buyer/Brother-in-law emanated from the same UBL Pay Order (Exhibit P/4) issued by the Appellant, which formed part of the transaction initially undertaken with Respondents No.1 to 3. The Buyer/Brother-in-law and Respondent No.12 have failed to demonstrate any independent consideration moved from them or on their behalf in respect of the Commercial Plot, and their pleas of bona fide purchaser for value accordingly remain unsubstantiated.
53. The record instead indicates that the Buyer/Brother-in-law and Respondent No.12 are beneficiaries of the same transaction structure which originated from the fraud committed by Respondents No.1 to 3. A beneficiary of a tainted transaction who fails to establish independent lawful consideration cannot, in equity, be permitted to retain such benefit at the expense of the defrauded party; equity in such cases operates not only against the primary wrongdoers but also against those within the chain of unjust enrichment.
54. Accordingly, the Decree requires to be modified to bring Respondents No.4 (Buyer/Brother-in-law) and 12 within its ambit. The monetary relief awarded in favour of the Appellant shall, therefore, be recoverable jointly and severally from Respondents No.1 to 3, Respondent No.4, and Respondent No.12.

Enhancement Of Damages To Ensure Complete Restitution

55. Where fraud, misappropriation, or wrongful deprivation of immovable property is established, the measure of compensation must reflect the actual loss suffered by the injured party and not merely the amount originally paid. The

objective of the law is to place the injured party, so far as money can do so, in the position he would have occupied had the wrongful conduct not occurred. This requires due regard to the appreciation in the value of the asset and the time value of money during the period of wrongful exclusion.

56. As regards the quantum of damages, this Court finds that the amount awarded in the Impugned Judgment falls substantially short and is wholly inadequate to compensate the Appellant for the loss suffered. The Appellant has remained unlawfully deprived of the Commercial Suit Plot since 1997, and has consequently been excluded for nearly three decades from both the property and the substantial appreciation in its commercial value. The subject property is a prime commercial plot situated in DHA Phase 7, Karachi, where commercial plots are inherently scarce and command a premium owing to their limited availability, strict enforcement of building regulations, and regulatory action against the misuse of residential plots for commercial purposes. These factors have consistently sustained high demand and contributed to significant escalation in the value of commercial properties over time, rendering any assessment based solely upon historical valuation incapable of achieving complete restitution.
57. In the circumstances of the present case, any award confined to the original transaction value or a nominal enhancement would result in a manifest failure of justice and permit the wrongdoers to benefit from the passage of time. This is particularly so where the property wrongfully withheld is a high-value commercial asset situated in a rapidly appreciating area. Having regard to the nature of the fraud, the Appellant's prolonged deprivation of valuable commercial property, the substantial increase in the value of commercial land in DHA Phase 7 during the intervening period, and the erosion in the real value of money attributable to inflation and currency depreciation¹⁰, this Court holds that complete, effective and realistic restitution can only be achieved by enhancing the damages from Rs.5 million (Rupees Five Million) to Rs.150 million (Rupees One Hundred and Fifty Million), together with mark-up at the rate of 15% per annum, as directed by the learned Single Judge, from the date of institution of the Suit (i.e. 9.5.1998) till realization.

¹⁰ PLD 2010 SC 952 (*Mehmooda Begum v. Hassan Sajjad*); PLD 2014 SC 506 (*Liaqat Ali Khan v. Falak Sher*); 2015 SCMR 21 (*Muhammad Iqbal v. Mehboob Alam*); 2016 MLD 1623 (*Zahoor-ud-Din v. Khalid Latif*); 2017 SCMR 902 (*Bahadur Sher Khan v. Shah Alam*); 2017 SCMR 1696 (*Muhammad Abdur Rehman Qureshi v. Sagheer Ahmad*); 2021 SCMR 686 (*Inayatullah Khan v. Shabir Ahmad Khan*); 2021 SCMR 1108 (*Muhammad Jamil v. Muhammad Arif*)

Conclusion

58. In view of the foregoing, the Impugned Judgment and Decree are **modified** as under:
- i) The damages awarded under the Impugned Judgment are enhanced from Rs.5 million (Rupees Five Million) to Rs.150 million (Rupees One Hundred And Fifty Million), carrying mark-up at the rate of 15% per annum, as directed by the learned Single Judge, to be calculated from the date of institution of the Suit (i.e. 9.5.1998) till realization.
 - ii) The monetary decree (comprising the refunded amount of Rs.9.3 million together with the enhanced damages awarded hereinabove), is extended to Respondents No.4 and 12, and the entire decretal amount shall be recoverable jointly and severally from Respondents No.1 to 3, Respondent No.4, and Respondent No.12.
59. The Appeal is **allowed to the above extent**, and the Impugned Judgment and Decree are **modified** accordingly, with costs throughout.

JUDGE**JUDGE**