

# IN THE HIGH COURT OF SINDH AT KARACHI

High Court Appeal No.422 of 2017

[Mst. Hajani Sherbano, through her Legal Heirs *versus* Qazi Muhammad Fareed & Others]

**Present:**

**Mr. Muhammad Faisal Kamal Alam, J.**

**Ms. Sana Akram Minhas, J.**

Dates of hearing : 23.01.2026, 30.01.2026 and 03.02.2026.

Appellant : Mst. Hajani Sherbano (late) through her Legal Heirs Muhammad Asif and 5 others, through Mr. Anwar Mansoor Khan, Advocate, along with Ms. Umaima Mansoor Khan and Zeeshan Bashir, Advocates.

Respondent No.1 : Qazi Muhammad Fareed, through Mr. Farooq H. Naek, Advocate, along with Syed Qaim Ali Shah and Ghulam Murtaza Bhanbhro, Advocates.

Respondent Nos.2 to 6 : *Nemo.*

## **JUDGMENT**

**Muhammad Faisal Kamal Alam, J:** The Appellant has challenged the Judgment [*passed on 24.10.2017*] of the learned Single Bench, rejecting the Plaintiff of Suit No.920 of 2017 [preferred by the present Appellant as Plaintiff (“**Appellant’s Suit**”)], *inter alia*, on the ground that since the Plaintiff of an earlier Suit No.85 of 2011 [filed by the present Respondent No.5, namely Al-Riaz Cooperative Housing Society Limited (“**Al-Riaz Society**) – “**Al-Riaz Society’s Suit**”], in respect of the same immovable property, was rejected, therefore, the Appellant’s Suit was not maintainable. The subject matter of the present Appeal and above *LIS* is a Plot No.136, Block 7 and 8, Karachi Memon Cooperative Housing Society Limited, Usman Essa Bhoy Road, Karachi, measuring 1181 square yards (“**Subject Plot**”).

2. It would be advantageous to reproduce the Prayer Clause of the Appellant’s Suit\_

- a) *Declaration that the plaintiff is lawfully allottee and entitlement to ownership and restoration of possession of plot of land bearing No.136, Block 7 & 8, Karachi Memon Cooperative Housing Society Limited (wrongly claimed part of Al-Riaz Cooperative Housing Society Limited), Usman Essa Bhoy Road, Karachi, measuring 1181 Sq. Yds. or thereabout being holder of share and transferee/assignee of allotment from M/s. Haji Abdul Karim Usman through Muhammad Bashir Jan Muhammad;*
- b) *Declaration that the encroachment and trespass committed by the Defendant No.1 over Plot No.136, Block 7 & 8, Karachi Memon Cooperative Housing Society Limited, Usman Essa Bhai Road, Karachi, measuring 1181 Sq. Yds. is illegal and void, therefore, the Defendant No.1 has no right to retain physical possession thereof and is liable to restore the physical possession to the plaintiff;*
- c) *Possession of Plot No.136, Block 7 & 8, Karachi Memon Cooperative Housing Society Limited, Usman Essa Bhai Road, Karachi, measuring 1181 Sq. Yds.;*
- d) *Mesne profit in the sum of Rs.4,000/ per day until the Defendant No.1 or any one claiming through or under him vacates and hands over physical possession of Plot No.136, Block 7 & 8, Karachi Memon Cooperative Housing Society Limited, Usman Essa Bhai Road, Karachi, measuring 1181 Sq. Yds., to the plaintiff;*
- e) *Permanent injunction restraining the defendants and in particular Defendants No.2 and 3 and/or their subordinates from allowing the Defendant No.1 and/or his assigns from use and utilization of Plot No.136, Block 7 & 8, Karachi Memon Cooperative Housing Society Limited, Usman Essa Bhai Road, Karachi, measuring 1181 Sq. Yds., and/or raising construction thereon in any manner whatsoever;*
- f) *Permanent injunction restraining the Defendants and/or any one claiming through or under them from continuing possession or use of Plot No.136, Block 7 & 8, Karachi Memon Cooperative Housing Society Limited, Usman Essa Bhai Road, Karachi, measuring 1181 Sq. Yds., with mandatory injunction for restoration of physical possession of the said plot to the plaintiff;*
- g) *Mandatory injunction directing the Defendant No.1 and/or his assign to deliver-up for cancellation the*

*Allotment Letter No.180 dated 21.6.1982, Sub-license No.2 dated 3.6.2010 and/or any other document pertaining to the above referred plot as may be setup to raise claim adverse to the title of plaintiff pertaining to the subject plot;*

- h) *Costs of the proceedings; and*
- i) *Any other or further relief/reliefs as may be considered fit and appropriate by this Hon'ble Court in the circumstances of the case.*

3. An application [CMA No.10916 of 2017] under Order VII Rule 11 of Civil Procedure Code, 1908 (“CPC”) was filed in the Appellant’s Suit by the present private Respondent No.1 (“Respondent-Fareed”) – who was Defendant No.1 in the Appellant’s Suit – *inter alia*, on the ground that the Appellant’s Suit is barred under Section 14 and 91 of the Limitation Act, 1908 (the “LA”), Sections 42, 54 and 56 of the Specific Relief Act, 1877 (the “SRA”), so also in terms of Section 70 of the then Cooperative Societies Act, 1925. It was contested by the Appellant’s side though unsuccessfully.

4. Mr. Anwar Mansoor Khan, Advocate, along with Ms. Umaima Mansoor Khan and Mr. Zeeshan Bashir, Advocates, have argued that the impugned Judgment is a result of misinterpretation of statutory provisions as well as undisputed record. Much emphasis is laid on the scope of Section 8 of SRA, and the term ‘*entitlement*’ used therein, which according to the Legal Team of the Appellant, has a much wider meaning, but was not considered at all in the impugned Judgment; contends Article 3 of LA [*prescribing limitation of six months*] only applies when a Suit is brought under Section 9 of SRA, but for a plaint of the nature, as instituted by the Appellant, it would fall under Section 8 of SRA, for which the applicable limitation period is 12 years in terms of Article 148 of the LA; hence, observation in the impugned Judgment is erroneous. The learned Counsel in fact has bifurcated his arguments into two parts, to elaborate the concept of the term ‘*entitlement*’ and to address the issue of limitation and *res judicata*. Following documents from the Paper Book have been referred for the first line of arguments\_

SR. NO.	PARTICULARS
1.	The original allottee addressed a letter dated 04.01.1955 to Respondent No.4 – Karachi Memon Cooperative Housing Society Limited, enclosing a cheque for second instalment in respect of the Subject Plot
2.	‘FORM OF SURRENDER’, mentioning the Haji Abdul Kareem Usman [First Allottee], this document is to be read with Share Certificate dated 31.07.1958 issued by Respondent No.4 – Society confirming the fact that Haji Abdul Kareem Usman is the Allottee, executes the above document in favour of Bashir Jan Muhammad for re-allotment of Plot in favour of the latter. This document is of 15.11.1954.
3.	Allotment Certificate dated 23.10.1982 in favour of Bashir Jan Muhammad, in respect of the Subject Plot [page-227].
4.	Form of Surrender dated 19.11.1983 by above transferee Bashir Jan Muhammad in favour of the present Appellant [Hajiani Sherbano wife of Haji Moosa, page-235].
5.	Mutation/ Transfer Letter dated 2-05-2009 issued by the Respondent No.6 [Societies Union] in favour of present Appellant [page 219].
6.	After the Public Notice when no Objection was received, above Respondent No.6 –vide its Correspondence of 02.05.2009 issued a Certificate that requisite formalities have been completed in respect of the Subject Plot and recommended, <i>inter alia</i> , for grant of lease, sale, commercialization. [page-271].
7.	Respondent No.6 addressed a Letter of 4-05-2009 to [the then] District Coordination Officer, confirming that the Subject Plot stands in the name of present Appellant [page-273].

Counsel has argued that undisputedly the principal lessor of the Subject Plot is the Respondent No.7-Federal Government through its Ministry of Housing and Works (“**Ministry of Works**”), which addressed a Missive of 06.10.2010 [page-459] in connection with an ongoing inquiry [at the relevant time] to Anti-Corruption Establishment (“**ACE**”), verifying that the Subject Plot falls within the jurisdiction of Respondent No.4 (Memon Cooperative Housing Society Limited – “**Memon Society**”) and that earlier it was transferred in the name of one Bashir Jan Muhammad, whereafter in May 2009, the Memon Society requested for transfer of the Subject Plot in the name of present Appellant, which could not be transferred for want of certain queries. Has referred to a letter of Al-Riaz Society of 22.05.2008, in which it was confirmed that various plots were allotted to it by Respondent No.6, namely the Karachi Cooperative Housing Society Union Limited (“**Societies Union**”), which had been allocated a large area of the land by the Government of Pakistan [this being an undisputed fact]. However, very significantly, the plots mentioned in this correspondence did not include the Subject Plot, for which it is stated that this has been allotted to Respondent-Fareed.

In support of second limb of their stance, the Legal Team referred to the earlier litigation; that the Appellant's Suit, was neither time barred nor hit by the principle of *res judicata* [Section 11 of CPC].

The Appellant initiated the litigation to protect her interest in the Subject Plot by filing a Criminal Complaint No.105 of 2009 ("**IDA Complaint**"), under Sections 3, 4 and 5 of the Illegal Dispossession Act, 2005 – "**IDA**" against present Respondent-Fareed, both the Societies, Societies Union and SHO. After a contest it was dismissed vide Order dated 29.11.2014 [*pages-295 and 381 of the Paper Book*]. Against it, Criminal Acquittal Appeal No.328 of 2014, was preferred unsuccessfully, but eventually Criminal Appeal No.44-K of 2012, filed by the present Appellant before the Honourable Supreme Court, was disposed of by setting aside the impugned Decision of this Court and remanding the matter to the Trial Court for decision afresh. Thereafter, it is contended, that record is silent. Points out to the subsequent, self-rectified stance of Al-Riaz Society when it filed its Suit No.85 of 2011, seeking cancellation of the allotment letter and Sub-License of the Subject Plot earlier issued by it in favour of Respondent-Fareed, plaint whereof was rejected, but no appeal was filed. Instead the Appellant instituted her above Suit. Has referred to the testimony of the representative [Sohail Sarwar] of the Ministry of Works, who has deposed that the Subject Plot was transferred in the name of present Appellant by the Societies Union way back on 22.11.1983, but, the Ministry of Works did not issue no objection certificate for want of further documentation; he was not cross-examined. A complaint was lodged before the ACE [Anti Corruption Establishment], culminating into an Inquiry Report [*page-465 of the Paper Book*], with the Conclusion [*Page-483*], that Al-Riaz Society did not own or possess the Subject Plot but in fact it belonged to Memon Society which allotted the Subject Plot to the present Appellant, who was in physical possession of it. However, there is no record available about further steps taken in this regard under the law after the Inquiry Report. Referred to Constitution Petition No D-3164 of 2015, filed by Respondent-Fareed in respect of Subject Plot, but without impleading the present Appellant. This was disposed of vide Consent Order dated 13.10.2016, by directing the Sindh Building Control Authority ("**SBCA**") to decide the case of the present Respondent-Fareed in the light of the record produced [*pages-531 and 557 of the Paper Book*]. This Order was challenged by the present Appellant before the Apex Court in Civil

Petition No.860-K of 2016, and the same was disposed of vide Order of 07.03.2017 [page-559] by observing that the Consent Order in the said Constitution Petition had no binding effect on the Appellant's rights and for the purposes of seeking clearance and declaration of the title in issue, '*she may seek the proper remedy before the appropriate Court of law which matter shall be decided by the Court being uninfluenced from the impugned consent order*'. States that after the above last Order of the Honourable Supreme Court, the Appellant instituted her above Suit (i.e. Suit No.920 of 2017) on 29.03.2017 [Plaint is available in the record at page-587 of the Appeal File]. Further states that by no stretch of imagination the Appellant's Suit is either time barred or hit by *res judicata*, because no final determination of rights and interest was made by any of the Courts in the earlier litigations. The Legal Team of the Appellant has cited the following case law in support of their arguments\_

- i. **PLD 2025 SC 302**  
[*Ahmed Ali Talpur versus Sub-Register Latifabad, Hyderabad and others*] – **Talpur Case**;
- ii. **PLD 1995 SC 629**  
[*Irshad Ali versus Sajjad Ali and 4 others*];
- iii. **1999 SCMR 2396**  
[*Tariq Mahmood Chaudhry, Kamboh versus Najam-un-Din*];
- iv. **1992 SCMR 1828**  
[*Abdul Murad Khan versus Mst. Noshaba and 9 others*];
- v. **2013 SCMR 1493**  
[*Haji Abdul Sattar and others versus Farooq Inayat and others*];
- vi. **2019 SCMR 998**  
[*Government of Punjab through Secretary Communication and Works Department Lahore and another versus Munir Ahmad Tariq and others*] – **Munir Tariq Case**;
- vii. **2021 CLC 553**  
[*Muhammad Usman Siddiqui versus Mukaram Alam Siddiqui and 2 others*];
- viii. **2018 MLD 1099 [Sindh]**  
[*Muhammad Ibrahim through Attorney versus Province of Sindh through Chief Secretary, Government of Sindh, Sindh Secretariat, Karachi and 6 others*];
- ix. **2016 SCMR 1931**  
[*Shaikh Muhammad Naseem versus Mst. Farida Gul*];
- x. **PLD 2012 Sindh 399**  
[*Jam Suhnaal and another versus Muhammad Aqil and another*];

- xi. **2025 SCMR 34**  
[*Khurshid Ali and others versus Miangul Adnan Aurangzeb (deceased) through L.Rs. and others*] – **Khurshid Ali Case**;
- xii. **2019 SCMR 84**  
[*Taj Wali Shah versus Bakhti Zaman*] – **Wali Shah Case**; and
- xiii. **PLD 2002 Karachi 511**  
[*Shafi-ur-Rehman and 2 others versus Fateh Muhammad*];

5. Mr. Farooq H. Naek, learned Counsel along with Mr. S. Qaim Ali Shah and Mr. Ghulam Murtaza Bhanburo, Advocates, argued on behalf of the private Respondent-Fareed and controverted the above stance. Has commenced his arguments by pointing out from the Complaint filed in the Appellant's Suit, that it is an admitted fact that the Appellant was dispossessed on 12.05.2009, yet the Appellant's Suit was filed on 29.03.2017, that is, after eight years, which is clearly a time barred claim in terms of Article 120 of the LA, setting a limitation period of six years for filing such suits; that each day of delay has to be justified by the Plaintiff [in the present case, the Appellant], if a person is seeking condonation of delay, which was not done by the Appellant and the impugned Judgment is correct and does not suffer from any error either on facts and law. He further referred to the record to show that at all material times the Appellant was in complete knowledge about the other proceeding relating to the Subject Plot, yet, instituted her own Suit after so many years. The above Criminal Complaint filed by the Appellant under IDA, in which the plea was to restore possession, was dismissed by the learned Trial Court, and the Respondent-Fareed, in order to protect his own right and interest in the Subject Plot, instituted Suit No.763 of 2009 ("**Respondent-Fareed's Suit**") [page-485 of the Paper Book] impleading Muhammad Asif [present Attorney and legal heir of the deceased Appellant as Defendant No.2], which Suit was decreed in favour of the Respondent-Fareed [Decree dated 26.03.2010, at page-503]. This was followed by yet another litigation in the shape of Al-Riaz Society's Suit (i.e. *supra*, Suit No.85 of 2011) – in which present Appellant was Defendant No.3 – the plaint of which was also rejected by Order dated 18.01.2013. As a result, the learned Single Bench, seized of the Appellant's Suit, was left with no option, but to reject the Complaint of the Appellant's Suit / *LIS* vide the impugned Judgment, as issues involved therein were already decided in the above referred earlier litigations / court cases. Supported the impugned Judgment for excluding

the benefit of Section 14 of LA [*that is, time spent before the wrong forum is to be excluded*] to the Appellant and contends that since in the present case, the Appellant herself earlier opted to first file an IDA Complaint and then later filed her Suit No.920 of 2017, after eight years, thus, it was hopelessly time barred. Argued that principle of *res judicata* is applicable on all fours, *in particular*, Explanation IV of Section 11 of CPC, because the Appellant's Suit is also barred by the rule of constructive *res judicata*, as developed through various judicial pronouncements. Elaborated his arguments, that Appellant cannot be allowed to choose time and forum to seek redressal of her purported grievance, as per her own discretion. Referred to the documents relied upon by the Legal Team of the Appellant, and contends that the above Inquiry Report of ACE is of no legal value, because further proceedings never took place, so also the testimony of the above representative of the Lessor (namely, Sohail Sarwar of Ministry of Works), has no significance, because he was not cross-examined and even otherwise the above IDA Complaint was dismissed in favour of Respondent-Fareed. Highlighted the significance of a registered Lease, which is a title document and has been executed by the Respondent Lessor in favour of Respondent-Fareed, thus the Appellant has not and never had any right or interest vis-à-vis the Subject Plot, because no such document admittedly was ever executed in her favour. To further elucidate this point, the learned Counsel has placed on record the Agreement of 14.1.1954 ("**Official Agreement**") between the Ministry of Works (Respondent No.7) and the Societies Union (Respondent No.6), under which large tracts of land [measuring 1175 acres] in Karachi was given to the Societies Union, for its development and allotment to various Societies (who were members of Societies Union) and for further onward allotments to individual members; in Paragraph-6 whereof, the importance of a lease has been highlighted, which presently is in favour of Respondent-Fareed. Cited the following case law to augment his arguments\_

- i. **1993 MLD 36**  
[*Habib Bank Ltd. versus Mst. Munawar Sultana and another*] – **HBL case.**
- ii. **2004 SCMR 1043**  
[*Fida Hussain through Legal Heirs Muhammad Taqi Khan and others versus Murid Sakina*] – **Sakina Case.**

- iii. **PLD 2013 SC 489**  
[*Hasnain Nawaz Khan versus Ghulam Akbar and another*] – **Hasnain Case**
- iv. **2025 SCMR 955**  
[*Mst. Ramzanu Bibi versus Ibrahim (deceased) through L.Rs. and others*] – **Ramzanu Bibi Case**
- v. **2002 SCMR 338**  
[*S.M. Shafi Ahmad Zaidi through Legal Heirs versus Malik Hassan Ali Khan (Moin) through Legal Heirs*] – **Shafi Case**
- vi. **NLR 1995 SCJ 339**  
[*Wali, ETC. versus Akbar, ETC.*] – **Akbar Case**
- vii. **AIR 1934 Lahore 701**  
[*Qarum and others versus Dewa Singh and another*] – **Dewa Singh Case**

6. Arguments heard and record perused.

7. **Points for Determination\_**

- i. *Whether the Appellant's Suit is barred by law?*
- ii. *Has the impugned Judgment applied the law correctly, in particular, in view of the overlapping litigations?*
- iii. *What should be the Decision?*

8. The crux of case law cited by the learned Counsel for the Appellant is, that while expounding the provisions of Order VII Rule 11 of CPC, the Hon'ble Supreme Court in the *Talpur* case [*supra*] held that, in a case where mixed questions of law and fact are involved, the correct approach is to allow the suit to proceed, determining the *LIS* either by framing the preliminary issues or through regular trial; whether plaintiff approached the court with clean or unclean hands is irrelevant for rejection of plaint when triable issues are discernible for proper adjudication. The Hon'ble Supreme Court set aside the order of rejection of plaint passed by Trial Court and affirmed up to the High Court. The controversy involved in this judgment was, that a suit for Declaration, Cancellation, Mandatory and Permanent Injunction was filed against one of the respondents, who was father of the petitioner, alleging that a house was gifted to the petitioner.

In the case of *Khurshid Ali* [*supra*], the Apex Court is of the view that when the plaintiff is dispossessed from the property but his title is not

disputed, a suit for possession lies, but if title is also clouded, the plaintiff has to file a suit for Declaration, Possession and Injunction.

In *Wali Shah* case, the Hon'ble Supreme Court, *inter alia*, has elucidated the scope of Section 8 of the SRA [*ibid*], ruling that language of Section 8 has extended the scope of the right to seek possession by those persons, who are eligible or qualified under the law, including owner, lessor, lessee, mortgagee, trustee or beneficiary of a trust. Paragraph-28(ii) of the reported judgment is relevant, which holds that, “*By employing the word 'entitled' in section 8 of the Act of 1877, the legislature has expanded the scope for those who may seek possession of immovable property under the said section. This right is not only restricted to owners, but to all who are entitled to possession under the law.*” Although the *Munir Tariq* case is a service matter, nevertheless the Hon'ble Supreme Court had ruled that the defence of constructive *res judicata* as envisaged in Section 11 of CPC, will only be attracted where the conclusive decision has earlier been made by the court both on questions of fact and law.

9. **Whereas**, the précis of the case law relied upon by the Counsel for Respondent-Fareed is that the Courts do not have power to extend the period of limitation fixed by the relevant statute. In *Dewa Singh* case [*ibid*], the learned Lahore High Court considered the applicability of Art 32 of LA [*providing a limitation of two years for filing a suit in respect of a property where another person changed its use*] and Article 120 [*six years limitation in cases where no period is provided in the Schedule*]. In this Case, the defendants raised construction on path ways of which both plaintiffs and defendants were owners, consequently, plaintiffs filed suit for permanent injunction, which was partly decreed, but was set-aside in appeal. This Case law is not relevant for the present controversy, as admittedly, both the Appellant and Respondent Fareed are agitating their respective claims and the Subject Plot is not in their common ownership.

In HBL case [*ibid*], it is held, that the benefit of Section 14 of the LA is extended to those litigants who have approached a forum having no jurisdiction, in good faith and earlier litigation is not a result of carelessness and negligence.

Mutation entries do not confer title in favour of any person but it is merely an official record for fiscal purposes [*Ramzanu Bibi Case, ibid*].

The Hon'ble Supreme Court in Zaidi case [*supra*], has maintained the plaint rejection decision of this Court by ruling that without a clear title, a suit for possession cannot be filed, and since the land in question given by the Government to the society [of the reported case] was surrendered back to the Government, the plaint was correctly rejected, because the petitioner did not have independent right, except through the Society. Limitation period under Article 120 [*ibid*] of LA will start from the date when a plaintiff feels aggrieved, which means that the right to sue accrues when the right in respect of the declaration sought, is denied or challenged by the defendant. Even the Suit for Declaration with consequential relief will be governed by Article 120 of the LA. Depending upon the facts and circumstances of each case, a suit for declaration of title to a particular property is subsisting right '*and the right to bring the declaratory suit is a continuing right, so long as the right to the property itself is subsisting*'.

10. The impugned Judgment is now considered. It has rejected the Plaint of Appellant's Suit on the grounds that right to sue for recovery of possession accrued to the Appellant on 12.05.2009, in terms of Section 9 of the SRA, i.e. when she was dispossessed, but, instead of filing a suit, she instituted a proceeding under IDA by filing the above IDA Complaint [Criminal Complaint No.105 of 2009, details whereof are stated in the foregoing paragraphs]. **Secondly**, the Appellant was Defendant No.3 in Al-Riaz Society's Suit No.85 of 2011 [filed for cancellation of Sub-Lease of Respondent-Fareed], the Plaint whereof was rejected vide Order dated 18.01.2013 [*supra*] but even then the Appellant did not file her own Suit for Possession within three years from the last mentioned date, nor preferred an appeal against the said rejection of plaint of Al-Riaz Society's Suit. **Thirdly**, Appellant acquired knowledge about existence of registered instrument in favour of Responded-Fareed on 30.12.2010 [when Al-Riaz Society instituted its Suit No.85 of 2011], but instead of promptly acting in this regard, she waited for seven years to file her own Suit on 29.03.2017. Consequently, the Appellant's Suit, seeking relief of cancellation under Section 39 of SRA is barred under Article 91 of the LA, which prescribes three years' time to bring an action for cancellation of a registered instrument. **Fourthly**, the learned Single Bench is of the view that the last Order passed in above CPLA No.864-K of 2017, observing that Appellant can seek the remedy and the Consent Order of C.P. No. D-3164 of 2015

[*ibid*], filed by the Respondent-Fareed [against SBCA and other government functionaries without impleading the Appellant], has neither extended the limitation period nor condoned the delay. Consequently, Section 14 of the LA will not aid the Appellant for condonation of delay, because it only helps those litigants, who are pursuing their remedy *bona fide* before a forum lacking jurisdiction, and not in cases similar to that of the Appellant, whose Criminal Acquittal Appeal against the Decision given in Criminal Complaint [*supra*] was still pending in this Court [at the relevant time]. *Fifthly*, since Appellant never approached the Court within time when her title was under cloud since 2009, and as against this, the Respondent-Fareed setup his own title in the intervening period, therefore, the Appellant's Suit was also barred under Section 42 of SRA [relating to seeking a Declaration].

**11. In order to appreciate the above findings in the impugned Judgment, we will now consider the decisions/orders of earlier litigations in a chronological order.**

12. The Suit No.763 of 2009 was filed by Respondent-Fareed [*page-439 of the Paper Book*], in which the Appellant was not impleaded but instead Muhammad Asif (present Attorney/legal heir of the Appellant) was joined as Defendant No.2. This Suit was for Permanent Injunction, praying for restraining the present Appellant's Attorney/legal heir (and not the Appellant) and other officials from interfering with the possession of the Respondent-Fareed vis-à-vis the Subject Plot, asserting that it had been leased in his favour. The Decree dated 26.3.2010 [*at page-503 of the Paper Book*], decreed the Respondent-Fareed's Suit only to the extent that the defendants therein were restrained from dispossessing him 'without due course of law'.

13. Simultaneously, IDA Complaint preferred by the Appellant was decided on 29.11.2014 – which was subsequent to the above Decree passed in the Respondent-Fareed's Suit. The learned Trial Court has dismissed the IDA Complaint on the ground that the present Appellant failed to prove two basic ingredients of *actus reus* and *mens rea*, coupled with the fact that the Respondent-Fareed [accused] did not possess any '*antecedents of being property grabbers*'; *inter alia*, because there is an ownership dispute between the Appellant [Complainant in the IDA Complaint], as she failed

to produce a registered sale deed as compared to the Respondent-Fareed [accused] who produced a Sub-License. But at the same time, it was observed **that a separate remedy under the law is provided**. In this Judgment of IDA Complaint, the factor that went against the present Appellant was part of cross-examination of Appellant's present Attorney/legal heir that was reproduced, in which he had stated that he did not file any Lease Deed or Sale Deed in respect of the Subject Plot; and furthermore, the official witness of Ministry of Works (Respondent No.7) had deposed that documents forwarded by the Memon Society were returned as there was deficiency. The record shows that the Judgment was challenged before this Court and ultimately before the Hon'ble Supreme Court, which set aside the decision and remanded the case for a fresh determination / decision. Thereafter, the record is silent about what eventually happened in the said IDA Complaint and nor any of the learned Advocates have provided any further information in this regard.

14. Subsequently, Al-Riaz Society filed its above Suit No.85 of 2011, plaint whereof is on the record [*pages-509 to 517 of Paper Book*], wherein Al-Riaz Society – which had earlier allotted the Subject Plot to Respondent-Fareed followed by a Sub-License – had now sought cancellation of both the Allotment Letter dated 21.06.1992 and Sub-License issued by it in favour of Respondent-Fareed, with a further prayer for handing over peaceful possession of the Subject Plot to the Appellant. Al-Riaz Society had averred in its Plaint that its previous management had erroneously allotted the Subject Plot to Respondent-Fareed, which though was taken note of in the plaint rejection Order dated 18.01.2013, nevertheless the plaint was rejected on the ground that Al-Riaz Society [plaintiff therein] could only safeguard its own right to legal character or property, and not that of a third party, **as the dispute appeared to be amongst defendants** impleaded in Al-Riaz's Suit, viz. present Appellant, Respondent-Fareed and Respondent Memon Society. It is also observed that the Al-Riaz Society had no right or title in the Subject Plot. This observation attained finality as no Appeal thereto is either available on the record, nor anything contrary is stated by either side. If this observation has attained finality (namely, that Al-Riaz Society has no right or title in the Subject Plot), then this would raise question on the status of present Respondent-Fareed himself, who was allotted the said Subject Plot by none

else but Al-Riaz Society, although the Lease is executed by the Principal Lessor [*supra*].

15. Last in the series is C.P. No. D-3164 of 2015, instituted by Respondent-Fareed against SBCA and other official authorities without impleading the present Appellant, despite the fact that a series of contentious litigation preceded the filing of the said Constitution Petition between Respondent-Fareed and the Appellant. As stated in the foregoing paragraphs, the Hon'ble Supreme Court had given its observation about availing the remedy by the Appellant. The Order of the Honourable Supreme Court is of 07.03.2017 and the Plaint in the Appellant's Suit (i.e. the present *LIS*) has been promptly filed on 29.03.2017, that is, after two weeks.

16. The 99 years' **Lease Deed in Form-B in favour of Respondent-Fareed** [*at page-957 of the Paper Book*], is executed by the representative [Sohail Sarwar] of Ministry of Works as Lessor and Respondent-Fareed as Lessee. The Document does not bear the date, except the one mentioned on the stamp paper, which is 13.11.2013. The first recital of this Lease Deed states that Al-Riaz Society granted Respondent-Fareed a Sub-License in respect of the Subject Plot and since the latter has completed the building although not paid the full and final development charges, the Lease Deed has been executed in his favour. It is relevant to mention here that this is the very Sub-License [mentioned in the Lease Deed], of which Respondent Al-Riaz Society had sought cancellation through its above Suit No.85 of 2011, and secondly, it was argued during proceeding that **to-date the Subject Plot is an open land and not a built-up property.**

17. It is also necessary to discuss here the other relevant documents, although, it is argued by Mr. Farooq H. Naek, Advocate, that photocopies of the record cannot be considered because they lack evidentiary value. However, we do not agree with this contention, for the reason that the stage of admissibility and inadmissibility of the evidentiary value of a particular document [usually after the conclusion of the evidence] was never reached, as the Appellant's Plaint was rejected at the outset. *Secondly*, the undisputed record can be considered for deciding this Appeal.

18. The undisputed mutation history of the Subject Plot vis-à-vis the Appellant's entitlement thereto cannot be overlooked, especially, when Al-Riaz Society itself has sought cancellation of its very own Allotment Letter and Sub-License issued by it to Respondent-Fareed. The missive dated 22.05.2019 [at page-291 of the Paper Book] of Al-Riaz Society is relevant, in which plots allotted to it by the **Ministry of Works** (Respondent No.7) **through Societies Union** (Respondent No.6) are mentioned, **excluding the Subject Plot**, regarding which it is merely stated that it has been allotted to Respondent-Fareed on 21.6.1982 and subsequently Sub-Licensed in his favour. Similarly, the correspondence(s) dated 2<sup>nd</sup> and 4<sup>th</sup> May, 2009 of Societies Union [*supra*], **acknowledging mutation/transfer in favour of the Appellant together with the Correspondence dated 06.10.2010** [page-459 of the Paper Book] of the Principal Lessor/Respondent Ministry of Works are also of significance, addressed to ACE, wherein, it is stated that Subject Plot was earlier allotted to one Bashir Jan Muhammad by the Memon Society and in May 2009, the Societies Union requested for transfer of the Subject Plot in the name of the Appellant, but the case was returned after scrutiny with certain observations / queries. At this stage, it is becoming evident and *prima facie* established that the Societies Union even acknowledged that the Subject Plot falls within the territorial jurisdiction of Memon Society, and also from the above missive of Al-Riaz Society, it appears that the Subject Plot was never allotted to it, and the said Al-Riaz Society made an effort to rectify its error of subsequent allotment to the Respondent-Fareed, by filing its above Suit No.85 of 2011, coupled with the fact [as also observed in the above paragraphs of this Judgment], that the Single Bench while rejecting the Plaint of Al-Riaz Society, has observed that Al-Riaz Society had no right or interest in the Subject Plot.

19. One of the main undisputed factual and legal aspects of this entire controversy is the above Official Agreement, under which a large area of land in Karachi was handed over to Societies Union (Respondent No.6), for further development and onward allotment to the other housing societies, such as Memon Society and Al-Riaz Society, and the Subject Plot admittedly falls within that big chunk of land, which was subsequently allotted by the Societies Union to Memon Society (and not to Al-Riaz Society). When the Societies Union – the parent Union Society of all other societies – itself has issued the Mutation Letter of 2-05-2009 [ibid] in

favour of the Appellant, then, at least it *prima facie* confirms the **entitlement of the Appellant** vis-à-vis the Subject Plot.

While we do agree with the submission of Mr. Farooq Naek, Advocate, that a mutation entry is not a title document – as this is a well-settled rule and supported by the Case law cited above – however, this argument is inapplicable in the present proceedings, because we are not adjudicating the ownership/title of any party, that is, either that of the Appellant or Respondent-Fareed. The above discussion at least *prima facie* establishes a **legitimate nexus between the Appellant and the Subject Plot**, while leaving a question mark on how the Subject Plot was allotted and leased to the Respondent-Fareed. The facts preceding to the execution of the above Lease, cannot be ignored, *inter alia*, as the Subject Plot still / to-date remains an open plot and in terms of Clause 6, sub-clause 1, [*as read over to us by the learned Counsel of Respondent Fareed*], leases are issued only after completing the construction. Hence, the factum of Lease Deed was required to be ascertained more thoroughly.

20. With regard to the Decree passed in Respondent-Fareed's above Suit, it cannot preclude the present Appellant from filing her *LIS*, because to-date, no declaration of ownership has been given in favour of Respondent-Fareed, as his Decree is only for a Permanent Injunction, 'subject to due process of law' [as observed earlier]. This means that the said Decree cannot prevent any other legitimate claimant [in this case the Appellant] from seeking remedy in respect of the Subject Plot and a decision by a competent forum [having jurisdiction] would prevail.

As far as IDA Complaint preferred by the present Appellant is concerned, the same was dismissed in view of the factors already stated above, with an observation that remedies under a separate law are available.

Similarly, as far as the Decree in Al-Riaz Society's Suit is concerned, the Plaint was rejected, because the Single Bench was of the view that the relief sought by Al-Riaz Society was sought by it for a third party and not for itself.

The above Constitution Petition, preferred by the Respondent-Fareed also casts some doubt on his bona fides, because in that Petition, the present Appellant was not impleaded, although at the relevant time both parties were entangled in a series of litigations. The Consent Order [in above C. P. No. D-3164 of 2015], was diluted by the Apex Court vide Order dated

07.03.2017 [*supra*], giving way to the Appellant to seek remedy, followed by the institution of the above *LIS* [by way of Appellant's Suit] after a couple of weeks.

21. Before and after her dispossession on 12.05.2009 from the Subject Plot, the Appellant addressed a Caution Notice and Complaint [dated 6.3.2009 and 13.5.2009] to Memon Society [pages 245 and 275] followed by the above IDA Complaint. Both Al-Riaz Society and Respondent-Fareed preferred their respective Suits with the results mentioned herein above. From the record of the *LIS*, it is quite clear that the **Appellant did not sit idle but made hectic, continuous efforts to get back the possession** of the Subject Plot. Filing of IDA Complaint was not a wrong forum but it is a special enactment for recovery of possession by the legitimate occupants and/or owners. While the claim of the Appellant was initially declined by the learned Trial Court, but eventually she succeeded before the Hon'ble Supreme Court when it remanded the case for decision afresh [*already discussed in the preceding paragraphs*]. None of the decisions in other litigations have put an embargo on anyone, including the Appellant, from instituting proceedings in accordance with law. Therefore, in our view, Section 14 of the LA has no applicability to the facts of present case and has incorrectly been invoked in the impugned Judgment.

22. None of the above litigations / court cases have conclusively determined or decided the right and interest of either party, namely, the Appellant or the Respondent-Fareed, vis-à-vis the Subject Plot. This fundamental aspect together with the above factual discussion mainly based on the undisputed record should have been given proper appreciation by the learned Single Bench in the impugned Judgment, but was not done. The jurisprudence that has evolved about the scope of Section 42 of SRA [seeking declaration in a suit] is, that the said provision has to be liberally interpreted [(i) 2004 CLC 1029 (Karachi). *Arif Majid Malik and others versus Board of Governors Karachi Grammar School*. (ii) 2015 YLR 550 (Sindh). *Naseem ul Haq versus Raes Aftab Ali Lashari*].

23. To an extent, we agree with the observation in the impugned Judgment and stance of the Legal Team of the Respondent No.1 [Respondent-Fareed], that the above last Order of the Hon'ble Supreme Court dated 07.03.2017 does not provide any unconditional or blanket

protection to the Appellant in pursuing its grievance, and the remedy if availed has to be decided on its own merits, including its maintainability at the first stage; however, at the same time, in a situation where an **overlapping and continuous litigation has been pursued in respect of a plot (in this case the Subject Plot)**, but without any definitive finding on the ownership in favour of any one individual, the opposing claimant, who has a claim also based on the official record, as in the present case, can file an independent Suit / legal proceeding, *inter alia*, as cause of action is recurring. To state it more accurately, as **held by the Apex Court** in *Ramzanu Case* [supra], “.....a new cause of action arises each time there is a significant challenge to the claimant’s (plaintiff) rights.” . Even if the title of the Appellant with the passage of time has become clouded, Suit of the nature, that is, the Appellant’s Suit is / was a proper remedy, as held by the Apex Court in *Khurshid Ali* case [supra]. The present set of facts are such where the observation in *Wali* case [ibid] is applicable, that the “*right to bring a declaratory suit is a continuous right, so long as the right to the property itself is subsisting.*” The Plaintiff of the Appellant’s Suit in view of the above narrated undisputed facts, was not barred by any provision of the LA – in particular, the finding in the impugned Judgment about Article 91 of the LA is contrary to record, when it states that the Appellant was in knowledge of the above Lease Deed since year 2010, which is not possible, since the Instrument itself is of 13.11.2013. Besides, there was no dismissal decree in respect of the said Lease Deed, as inaccurately determined in the impugned Judgement, because Suit of Al Riaz Society undisputedly was prior in time, seeking cancellation of the Allotment Letter and Sub-License [as already stated in the foregoing paragraphs]. Consequently, neither Article 91 [prescribing limitation period of three years for cancellation of an instrument] nor Article 120 of the LA [six years’ time in cases where no period of limitation is provided] are applicable. In fact, the latter Article 120 of LA [as cited by the Respondent Fareed side] has no relevance in the present case, in the presence of a specific provision, viz. **Article 142**, prescribing a limitation period of twelve years for seeking possession of an immovable property, “*when the plaintiff, while in possession of the property has been dispossessed....*”; this is exactly what happened here.

**In these circumstances, the question of limitation, if any, was / is a mixed question of fact and law, and the reported Decisions handed down in the cases of *Talpur, Khurshid Ali* and *Akbar* are relevant; in**

**the latter case, the Hon'ble Supreme Court has stated that question of declaration of title is a continuous right.**

24. Points for Determination, in view of the above discussion, are answered as under\_

- i. The Appellant's Suit is not barred by law, justifying rejection of Plaintiff.
- ii. The impugned Judgment has misapplied the afore-stated provisions of law, particularly, *inter alia*, in view of continuous, contentious and overlapping litigations.
- iii. The impugned Judgment is set aside.

25. Since in view of recent Provincial Legislation, Suits have been transferred to the District Courts, the Appellant's Suit No.920 of 2017 shall stand revived before the concerned Trial Court, which will decide the matter within four [04] months from today. While framing the issues, the Trial Court may, if it deems necessary, frame an issue of a time barred claim [being a mixed question of law and fact], as observed in the preceding paragraphs. Once the evidence has commenced, no adjournment will be allowed except under an exceptional circumstance. If on the day of evidence, the witness is not present, the side will be closed and if witness is present and the opponent side is reluctant to cross-examine him / her, then the same will be marked as 'NIL'.

26. In the above terms, this Appeal stands ***allowed*** while all pending application(s), if any, are disposed of but with no order as to costs. It is clarified that observations in this Judgment would not influence the Suit proceeding.

**JUDGE**

**JUDGE**

**Karachi.**

**Dated: 27.02.2026.**

*Riaz / P.S.*