Order Sheet

IN THE HIGH COURT OF SINDH KARACHI

IInd Appeal No. 31 of 2025

Date	Order with Signature of Judge

Hearing/Priority
1.For hearing of CMA No.513/2025
2.For hearing of main case

13.10.2026

M/s. Abdul Rauf Malik and Muhammad Hassan Malik, advocate for appellant
Mr. Riaz Hussain, advocate a/w Contemnor 4, 5, 6 & 7
Ms. Humaira Memon, Assistant Advocate General (Sindh)

JAWAD AKBAR SARWANA J.:- Muhammad Ameen, son of Hassan Khan, appellant/plaintiff no.2, is aggrieved by the Order dated 18.11.2023 passed by the learned Vth Senior Civil Judge, Malir, Karachi ("trial Court") in Suit No. 1117/2021 for specific performance, declaration, mandatory & permanent injunction, and damages. While hearing an interlocutory application for ad-interim relief sought by the appellant/plaintiff no. 2, the trial Court rejected the plaint. Thereafter, the appellant/plaintiff no.2 challenged the said order before the learned VIIIth Additional District Judge, Malir, Karachi ("the appellate Court/forum") in Appeal No.116/2023, which challenge the appellate Court also dismissed vide Judgment dated 23.10.2024; hence this IInd Appeal.

Counsel for the appellant/plaintiff no.2 contends that the appellant/plaintiff no.2 had purchased, Plot No.5, Survey No.90 to 101, 325 and 326 in Deh Joreji, Gulistan-e-Faisal, KDA Scheme No.25, main National Highway, Bin Qasim Town, Malir, Karachi ("the Suit Property"), from one Ch. Nabeel Rauf/respondent no.5/defendant no.5 to whom he had also made certain payments, the receipt of which payments was admitted by the said Ch. Nabeel Rauf/respondent no.5/defendant no.5, in his Written Statement as per paragraphs 5, 6 and 7 of the written statement filed on 30.08.2023. Counsel argued that, as it was the appellant/plaintiff No.2's case to prove specific performance, and in case he failed, he had also, in the alternative, claimed refund of the amount paid to Ch. Nabeel Rauf/respondent no.5/defendant no.5, the learned

trial Court could not reject the plaint without giving the appellant/plaintiff no.2 an opportunity to contest the trial proceedings and prove his claim, against the respondents/defendants, in terms of all the reliefs prayed for in the said plaint.

Counsel for the appellant/plaintiff-no.2-Mohammad Ameen, has alleged that the trial Court rejected the plaint filed by the appellant/plaintiff no.2 based entirely on the Written Statement (Page-133) submitted by the Malir Development Authority ("MDA"), principally, relying on the following paragraphs in the Written Statement, namely:

> "1) . . .
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> 2) That as the contents of para-3 of the plaint are concern. It is submitted that the defunct KDA approved amended layout plan vide letter dated 09.01.1986 for survey No.90, 91 to 101, 325 & 326, in Deh Joreji, Karachi, it is further submitted that the defendant No.5 in the shadow of approved layout plan for above-mentioned survey started to create plots on the piece of land which was/is reserved for amenities as well as steel mills services and the same creation of plots were without approval of layout plan.
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> 3) That as the contents of para-4, 5, 6 of the plaint are concern. It is submitted that defendant No.5 by way of fraud allotted, referred plots to the plaintiffs which were created on amenity land and plot of the plaintiff are not approved by any competent authority nor any approval was granted by the MDA. Copy of approved letter and approved layout plan approved by the defunct KDA and specific area is highlighted with yellow colour and same is filed as annexure-R/1 & R/2, which clearly shows that defendant No.5 created plots on amenity/reserved land and sold to the plaintiff by way of concealment of true facts and fraud for which plaintiffs can avail remedy against the defendant No.5.
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> 4) That the sale agreement referred by the plaintiff in Para 6 and other documents filed by the plaintiff do not create any right of the plaintiff on land reserved for amenities and no layout plan is approved by any competent authority including the MDA for suit plot as the same are created on land reserved for amenities…
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> 5) . . .
>
> 6) . . .
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> 7) That the contents of para-9 of the plaint is admitted as matter of facts. It is submitted that suit plots are situated within controlled area of MDA and MDA is removing encroachment made by any person without approval of layout plan from MDA.
>
> 8) . . .
>
> 9) That the contents of para 13 of plaint are concerned. It is submitted that no illegal act is done by the MDA but infact MDA

> is taking legal action against the encroacher who are very active to encroach on amenity land and the plaintiffs plots are also created on amenities.
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> 10) . . .
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> 11) . . .
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> 12) . . .
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> 13) That the contents of prayer clause (a) to (h) are categorically denied as not correct. It is submitted that the suit plots are created on amenity land and same are liable to be removed and plaintiff is not entitled for any relief as the answering defendant and suit of the plaintiff is liable to be dismissed against the answering defendant. . . .”

He argued that the trial Court completely ignored the other reliefs prayed for by the appellant/plaintiff no.2 and submitted that the plaint could not be rejected in part when other alternative prayers could stand-alone and were also pleaded in the plaint. Hence, the order rejecting the plaint should be set aside.

None have entered appearance on behalf of the Ch. Nabeel Rauf/respondent no.5/defendant no.5, despite notices issued on 17.02.2025, 20.03.2025, 08.04.2025, 12.05.2025, 30.05.2025, and 04.09.2025, and despite publication of this IInd Appeal in daily Jang dated 07.03.2025, no one entered appearance. Further, no one has appeared on behalf of the respondent nos.7, 8 and 9, who are alleged to have attempted to try to dispossess the appellant/plaintiff no.2, from the Suit Property.

With regard to the Official Respondents/Defendants, the AAG submits that, given the contents of the MDA's Written Statement, the appellant/plaintiff no. 2 has no case for specific performance, the plots involved are amenity land, and no allocation can be made in respect thereof.

Apart from the above, during hearing of this IInd Appeal the Counsel for the appellant/plaintiff no.2 filed a Contempt Application, which was taken up by this bench on 30.12.2025 and culminated in the issuance of contempt notices, whereafter, Counsel for Contemnor No.4 (Ismail), Contemnor No.5 (Fazal Rabi), Contemnor No.6 (Ali) and

Contemnor No.7 (Lal Khan), filed Vakalatnama on 01.04.2026 and subsequently filed Objections dated 30.04.2026, wherein they claim that they ("the contemnors") were/are allegedly the true and lawful owners of the Suit Property.

Heard the Counsel and perused the record. The appellant/plaintiff had filed Suit No.1117/2021, seeking the following prayers, which are reproduced as under:-

> "a. To declare that the plaintiff No.1 is bonafide purchaser in respect of the property viz: Plot No.14, Surveys No.90 to 101, 325 & 326 admeasuring Faisal, situated at Deh Joreji Scheme No.25, Malir, Karachi and Plaintiff No.2 is bonaifde purchaser in respect of the suit property Plot No.05, Surveys No.90 to 101, 325 & 326 admeasuring 450 Square yards in the area Gulistan e Faisal, situated at Deh Joreji Scheme No.25, Malir, Karachi.
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> b. To declare that the Plaintiffs are lawful owner of the suit property via Sale Agreement dated 15-02-2016 and Agreement dated 12-03-2016, Allotment Order, Acknowledgement of Possession, No Objection Certificate.
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> c. To direct the defendant No.5 to perform his part of contract and execute Sale/ Conveyance Deed/ or Transfer/ Mutate in favor of the plaintiff before the Sub-Registrar concerned in respect of suit property
>
> **OR**
>
> In case of failure the Nazir of this Hon'ble Court may kindly be directed to execute Sale/ Conveyance Deed or Transfer/Mutate the suit property.
>
> **OR**
>
> To direct the defendant No.5 in case of any default or ill act return, the amount of the Plaintiffs with the mark up 50% per year from the date of purchase i.e. 2016 as well as the expense over the suit property with mark up of 50% per year.
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> d. To declare that the action of the Defendants on 17-08-2019 regarding demolishing the construction of the Plaintiffs at the subject property are illegal, unlawful, ultravire, void ab-initio
>
> e. To restrain the defendants not to dispossess the Plaintiffs from the suit property as well as not to make any forceful construction or any other physical activity over the suit property.
>
> f. To direct the defendants to pay Rs.30,00,000/-(Rupees Thirty Lacs Only) each to the plaintiffs as damages for causing material damages to the vehicles, articles and also causing mental agony, worries, stress and torture continuously for the counts fully mentioned in the body of the plaint, so that the ends of justice may get advanced

g. Cost of the Suit.

h. Any other relief(s) which this Hon'ble Court may deem fit and proper under the circumstances of the case."

In the Order dated 18.11.2023 passed by the trial Court (available on Page-41 of the IInd appeal) and the impugned Judgment dated 23.10.2024, the trial Court, while upholding the order rejecting the plaint, has no explanation/reasoning concerning dismissing the appellant/plaintiff no.2 suit inspite of the alternative prayers. The two forums below have ignored the pleadings to this end, viz. the appellant/plaintiff no. 2's alternative prayers. Even if the plaint was not maintainable, and based on the Written Statement filed by the MDA, incompetent lawsuits should be buried at their inception ("nip the evil in the bud"), yet the plaint, as set up by the appellant/plaintiff no.2 in the suit, also claimed that the alleged payment made by the appellant/plaintiff no.2-Muhammad Ameen to the respondent No.5/defendant No.5-Ch. Nabeel Rauf should be recovered from and/or reimbursed to the payer, i.e., the appellant/plaintiff No. 2. For whatever it is/was worth, Muhammad Ameen also admitted in his written statement receipt of such part-payment as alleged by the appellant/plaintiff No. 2 in the plaint. In the circumstances, while it may have emerged from MDA's Written Statement that the respondent No.5/defendant No.5-Ch. Nabeel Rauf, did not have title, yet the entire plaint could not fall/fail given the alternative prayers. It is a trite principle of law that a plaint cannot be rejected in parts (see PLD 2024 SC 1108). Furthermore, even if the agreement was/is void, per the MDA's Written Statement, a well-recognised principle of law is that a party benefiting from an agreement must restore the benefit (PLD 2022 SC 73). All such matters will be subject to trial.

Given the above, the Order dated 18.11.2023 passed by the learned trial Court and the impugned Judgment dated 23.10.2024 passed by the learned Appellate Court are set aside. The matter is remanded to the trial Court to proceed with filing Written Statements by the parties, examination of parties, framing and settlement of issues, recording of

evidence, etc. It is clarified that the parties and/or the trial Court may not rely on the observations made by this Bench in this Order, as they were made for deciding this IInd Appeal.

The Office is directed to forward a copy of this Order to Respondent No.2/Defendant No.2-MDA for information and/or action, if any, in view of the Written Statement dated 14.03.2023 filed by MDA in Civil Suit No.1117/2021, and the alleged contemners who are claiming title in the same Subject Property.

The IInd appeal is allowed in the above terms.

J U D G E
19.10.2026