

IN THE HIGH COURT OF SINDH, KARACHI

R.A. No.89 of 2008

Late Mirza Masood Ali Warsi & Others

vs.

Mst. Bali Bai and others

Before: Mr. Justice Zulfiqar Ahmad Khan

Date of Hearing : 09.05.2016

Date of Order : 03.08.2016

Petitioners : Through Mr. S. Ansar Hussain, Advocate

Respondents : Through Mr. Mohammad Ali Jan, Advocate for Respondent No.5 a/w Mr. Muhammad Siddique Arif, Honorary Secretary, Society of Respondent No.5.

Mr. M. Zahid Marghoob, Advocate for Respondent No.6.

JUDGMENT

Zulfiqar Ahmad Khan, J.:- This judgment will dispose of the Revision Application filed against the Judgment passed in Civil Appeal No.184/2005 by the learned Vth Additional District Judge (East), Karachi filed by the Petitioners alleging that the impugned order is illegal and liable to be set aside on the ground that the learned Judge failed to appreciate the facts correctly as well as misapplied the law. Since the entire controversy revolves around legit ownership of House No.956, Pir Illahi Bux Cooperative Housing Society, Karachi (“the said property”), I as per my order dated 25.04.2016 sought original file available with the Respondent No.5 being the Honorary Secretary of Pir Illahi Bux Cooperative Housing Society, Karachi (“the Society”), which file was brought to the Court on 02.05.2016 and since been kept for appropriate examination of various documents and noting.

I therefore find it prudent to read the facts in respect of the said property from the original file, rather than getting into the cross fire of

false factual propositions placed before the Court by the rival sides. The said original file commences with a letter dated 27.09.1953 which is a request made by Mr. Munshi Muhammad Ibrahim for and on behalf of Mr. Abdul Hamid of Sarah Manzil, Room No.4, 4th floor, Hassasingh Advani Street, Karachi-3, for allotment of three feet wide land in front and 7 1/2 feet wide land in back of the Quarter No.956, situated in Block No.19 of Barrack No.4 in Pir Illahi Bux Cooperative Housing Society, Karachi-5, which was allotted to Mr. Abdul Hamid vide Allotment Receipt No.362 dated 04.07.1948. A perusal of the said letter shows that this request was made by Mr. Munshi Muhammad Ibrahim for and on behalf of Mr. Abdul Hamid. Hand-written comments on the said letter shows that payment of Rs.230/- was also made in respect of the said extra land allotted on 29.09.1953 and there are also comment thereon suggesting "he is shareholder of the society". Once this application was made by Munshi Muhammad Ibrahim for allotment of extra land behind Quarter No.956, the Secretary of the Society wrote a letter dated 13.01.1954, asking the Petitioners to furnish a true copy of the allotment order pertaining to the said quarter so that the extra land in back of the said quarter could be allotted to him. The said letter of the Secretary is addressed to Mr. Abdul Hamid of Sarah Manzil address as detailed in the forgoing. In response to that said demand of the Secretary, a letter was written by Mr. Munshi Muhammad Ibrahim designating himself as an attorney of Mr. Abdul Hamid on 06.04.1955, with which it appears that Mr. Munshi Muhammad Ibrahim enclosed a true copy of the allotment order as sought by the Society. It is pertinent to note that Mr. Munshi Muhammad Ibrahim has given address of c/o The Kohinoor Biscuit Factory, Rawichand Patanchand Road, Moosa Lane near Miranpir, Karachi. Alongwith the said letter Mr. Munshi Muhammad Ibrahim attached a typed written duplicate (as there was no photocopier machine present in those days) of Share Certificate No.24/15 issued to Mr. Abdul Hamid in respect of

quarter No. 956 also. When this letter (alongwith typed copy of the Share Certificate No.24/15) was received at the office of the Secretary, the Secretary wrote a letter on 20.07.1955, informing Mr. Abdul Hamid having address of c/o Kohinoor Biscuits Factory that the copy supplied to the Society is of the Share Certificate, whereas the Society in terms of its letter dated 13.01.1954 asked for a true copy of the allotment order, therefore, the Society demanded that copy of the allotment order be provided. A reminder of the said letter is also sent on 14.09.1955 to Mr. Munshi Muhammad Ibrahim at the Kohinoor Biscuit Factory address, requesting that the original allotment order or attested copy of the allotment order in respect of Quarter No.956 be immediately provided so that the case regarding the issuance of allotment of extra land may be considered. A similar letter was also written by the Society on 15.10.1955, asking for the original documents.

The next paper on the file is a letter written by Mr. Munshi Muhammad Ibrahim to the Secretary, dated 24.10.1955, with which he attached a copy of his letter dated 12.10.1955. In the interest of clarity I find it prudent to reproduce the text of Mr. Munshi Muhammad Ibrahim's letter dated 24.10.1955 as under:

REGISTERED ACK. DUE.

The Secretary,
Pir Illahi Bux Co-operative Housing Society, Ltd.
Karachi.

Dear Sir,

Ref: Your letter of 15th October, 55 No. P.I.B.-P(175)53
in respect of Qr No.956 P.I.B. Colony No.2.

I beg to draw your attention to my reply dt. 12.10.'55 received in your office on 13.10.'55 and have to say that in that reply I have clearly stated my case.

I don't find it now necessary to add anything to the above mentioned reply. Anyhow for your convenience I am enclosing herewith a copy of the same.

Please note that any action taken by the society prejudicial to my interest will be adequately defended at your risk as to the cost and consequences.

Thanking you,

Yours faithfully

For ABDUL HAMID
(Munshi Mohd. Ibrahim)
Karachi. 24th October, 1955
Rewechand Ratanchand Road,
Moosa Lane, near Miranpir,
Karachi.
Encl: one copy of the letter
dt:12.10.'55

c/o The Kohinoor Biscuit Factory,

A perusal of this letter suggests that apparently Mr. Munshi Muhammad Ibrahim, the acting attorney for Mr. Abdul Hamid stated his reasons for not been able to provide the allotment letter to the Society through a letter dated 12.10.1955. Since the original letter of 12.10.1955 is available on the said file at Serial No.11, I, therefore find it useful to reproduce the said letter of 12.10.1955 in the following:

REGISTERED ACK. DUE.

The Secretary,
Pir Illahi Bux Co-operative Housing Society Ltd.
Karachi.

Dear Sir,
Ref: Your letter No.PIB-P(175)/53, dt. 24.09.'55
in respect of Qr. No.956 PIB Colony-2.

I am in receipt of your above letter and in reply thereof have to state that I was allotted Qr. No.362 vide receipt No.362/349 N, dated 04th July, 1948, but this quarter was subsequently allotted to one Mst. Maliha Khatoon and in lieu of Qr. No.362 I was allowed to take possession of incomplete quarters No.956 and 957, vide agreement dt: 15.07.'50 confirmed by the society on the 27.04.1952 signed by 1. Munshi Mohd. Ibrahim for me. 2. Mr. Abdul Qudoos for Mst. Maliha Khatoon and 3. Mr. I.A. Ansari for the Society. This agreement is on the record of the Society.

The above facts were proved once before and it was after this that share certificates regarding the above quarters was issued in my name.

I, therefore, once more request you to please arrange and send me the necessary allotment order for the extra land otherwise I shall be compelled to take legal action against you.

Yours faithfully,

Abdul Hamid
Karachi 12.10.'55.

Sd/-

(Munshi Muhammad Ibrahim)

From the above letter it becomes clear that the allotment of Quarter No. 956 was made to Mr. Munshi Muhammad Ibrahim for and behalf of Mr. Abdul Hamid (which later would be seen is his real brother residing in

India) in exchange of Quarter No. 362 and an agreement was signed between these two allottees.

While the communication in respect of the allotment of the extra land was going on between the Society and Mr. Munshi Muhammad Ibrahim, I note from the note-sheet of the said original file that probably on 03.08.1955, a note has been made in ink of the following contents:

“Surveyor to contact the allottee and get the survey form completed. He may also request for copy of the allotment order please. signed”

Probably the same surveyor (or someone else from the neighborhood), as it could be noted from the original file (at Serial No.12) wrote a letter dated 21.11.1956 of the following contents:

بخدمت جناب سیکریٹری، پیر الاهی بخش کو آپریٹو ہاؤ سنگ سوسائٹی کراچی

جناب !

گزارش ہے کہ کوارٹر نمبر 956 پر دیکھا گیا ہے کہ کوارٹر مذکورہ کے کرائے دار صاحب ایچ ای مرزا صاحب انجینئر نے کوارٹر مذکورہ کے پیچھے ڈھائی فوٹ بڑھاکر موٹر گیراج پختہ بغیر اجازت تعمیر کر رکھا ہے۔ لہذا تہریراً رپورٹ عرض ہے۔

مسٹر عبدلحمید

تاریخ : 21.11.1956“

The above communication suggests that the Society having received the above referred request for extra land mobilized itself and sought the above referred survey report in respect of Quarter No.956. Pursuant to the said demand of the Society, note-sheet of the original file shows that the surveyor did visit the said quarter on 09.08.1955 and following note has been entered on the note sheet with signature of the surveyor dated 08.08.1955.

گزارش ہے کہ کوارٹر نمبر 965 پر حسب حکم پہنچا۔ وہاں پہنچ کر معلوم ہوا کہ کوارٹر مذکورہ مین ایم۔ای۔مرزا صاحب انجینئر، -- رہائش فرماتے ہیں، چنانچہ انجینئر صاحب کی زبانی معلوم ہوا کہ اس کوارٹر

کے اصل الاٹی ملک مسامی حامد علی صاحب بمبئی میں رہائش رکھتے ہیں، پاکستان میں نہیں۔ یہاں ان کے مختار محمد ابراہیم صاحب کرایہ وصول کرتے ہیں جو غالبین قیصر سینیما بندر روڈ کے سامنے والی بلڈنگ کی چوتھی منزل میں رہائش رکھتے ہیں اور اس کوارٹر کے علاوہ ان صاحب کا ایک اور بھی کوارٹر ہے۔ لحاظاً سے رپورٹ ارسال خدمت سے باحضور ہے۔

Also, it is witnessed (at Serial No.13), there is a letter dated 23.05.1957 from some other person to the administrator of the Society, where a complaint has been made that in respect of Quarter No.956 suggesting that the tenant resident therein being Mr. M. Masood Warsi has built a motor garage extending 7 1/2 feet from his quarter. At Serial No.14 is a letter written by Munshi Muhammad Ibrahim, where he is making a request to the Society that no objection certificate be issued by the Society for making available water connection to the said quarter. This letter is dated 30.10.1957 and there are certain hand written comments made on the said letter allowing the said request of Mr. Munshi Muhammad Ibrahim. It seems that vide its letter dated 08.12.1957, a no objection certificate for water connection was issued by the Society in respect of the said Quarter No.956. Per item No.17, there is an application dated 08.05.1969 made by Munshi Muhammad Ibrahim for and on behalf of Abdul Hamid for approval of construction plan on the above referred Quarter No.956. As per the note-sheet, an entry has been made on 11.05.1969 suggesting that the plan has been checked and found to be in order. There is no further communication with regard to the building of the house on the subject plot except that apparently the house was built/completed as per the plan approved by the Society.

To summarize the above facts, I note that while there is no allotment order pertaining to the said quarter No.956 (as it was given to Mr. Munshi Muhammad Ibrahim in exchange of Quarter No.362 by the Society's own motion), however two facts are apparent; (1) that the said property was allotted in the name of Mr. Abdul Hamid, however all the communication with the Society in respect of the same has been made by

Munshi Muhammad Ibrahim in the capacity of attorney of Mr. Abdul Hamid, and (2) that Munshi Muhammad Ibrahim paid all costs in respect of the said quarter and for the extra land allotment, as well as for the provision of water connection and approached the Society for the new building plan in 1969 and having the building completed as per the said plan. It is also evident that during this period, as confirmed by the surveyor report, this quarter was occupied by Mr. Mirza Masood Ali Warsi (father of the Petitioners), as a tenant as of 1955. It is also pertinent to mention that as per the settlement documents, it could be gathered that Munshi Muhammad Ibrahim was the brother of Mr. Abdul Hamid and seemingly Abdul Hamid had his place of residence in Bombay, where he died sometime in 1961. However all the communications even after his death was made for and on behalf of Mr. Abdul Hamid by his brother Munshi Muhammad Ibrahim, who was also collecting rent from Mr. Warsi.

While residing in the said property as a tenant, when Mr. Warsi acquired knowledge of the death of Mr. Abdul Hamid in India (with whom he had no earlier contact or relationship at all) despite the fact that he and his legal heirs were enjoying the tenancy of the said quarter and paying rent in respect of thereof to Munshi Muhammad Ibrahim, Mr. Warsi started communicating with the Society. One of such communication, from the original file, appears to be of 10.10.1983, where he requests the Society to provide him a copy of the extract from the record of rights in respect of the above referred quarter No.956. He once again wrote to the Society on 19.10.1983, raising the question that whether an Indian national can purchase a house or plot in PIB Colony or not? Having found this question arising from an unconcerned quarter, the Society vide its letter dated 20.10.1983 wrote to Mr. Warsi (the tenant of house No.956, PIB Colony, Karachi) the following reply:

Dear Sir,

Wither reference to your applications dated 10.10.1983 and 19.10.1983 it is to inform you that according to the bye-laws of the society no information can be provided to unconcerned person, however, if the matter is called for by any Court for evidence, the society shall produce the record of the society in the Court.

As it could be seen, the Society treating Mr. Warsi as a tenant refused to provide any information to him because as per the bye-laws of the Society, such request was considered to be coming from an unconcerned person. This reply does not seem to have satisfied the tenant's whims, who having come to know of the death of Mr. Abdul Hamid, stopped paying rent to Mr. Munshi Muhammad Ibrahim. From page 23 of the original file it seems that on 22.02.1970 Munshi Muhammad Ibrahim also died, where after Mr. Warsi seemingly had becoming hostile and totally refused to pay the rent to the legal heirs of the late Munshi Muhammad Ibrahim, which led to those heirs filing a Rent Case bearing No.904/1985 in the Court of Vth Senior Civil Judge, Karachi (East). A perusal of the judgment passed in the above case shows that while it was admitted that Mr. Warsi is the tenant in respect of Quarter No.956 and ought to pay rent at the rate of Rs.75/- per month, he refused to pay it to the heirs of Mr. Munshi Muhammad Ibrahim. From the judgment it could also be perused that the learned Vth Senior Civil Judge has taken the cognizance of the fact that the land in respect of the said quarter was purchased by late Munshi Muhammad Ibrahim for and on behalf of Mr. Abdul Hamid, who never came to Pakistan and died in India. It could also be noted from the said judgment that other payments in respect of purchase of land, water connection and building thereon were also made by Mr. Muhammad Ibrahim, who himself designated him as an attorney of his real brother Mr. Abdul Hamid and communicated to the Society under the name of his brother Abdul Hamid, who was residing in India all these times.

Also to be noted is that calculation/receipt of rent from Mr. Warsi was done by Munshi Muhammad Ibrahim. While original rent in respect of the property was fixed at the rate of Rs.50/- per month, but when Mr.

Munshi Muhammad Ibrahim enhanced it to Rs.75/- per month, the tenant Mr. Warsi showed reservations and declared his inability to pay this enhanced rent. Mr. Munshi Muhammad Ibrahim thereafter even refused to accept the actual (Rs.50 per month) rent tendered to him by Mr. Warsi whereupon as it could be seen from the said judgment of the learned Vth Senior Civil Judge, Mr. Warsi deposited the rent in the Court alongwith Rent Application No.07/1968 for some time. However it is evident that, when Mr. Munshi Muhammad Ibrahim died in 1970, Mr. Warsi stopped even depositing the rent in the Court and when the legal heirs of Mr. Munshi Muhammad Ibrahim approached Mr. Warsi for payment of the rent, he again refused to pay the rent and demanded the legal heirs of Munshi Muhammad Ibrahim to prove their title to the property in question. Through the judgment, the learned trial Court raised three following issues:

1. Whether the Rent Application is maintainable?
2. Whether there exists any relationship of landlord and tenant between the Petitioners and opponents; and
3. What the order should be?

With regard to issues No.1 & 2, the learned trial Court has given its findings by admitting the position that the quarter in question though belonged to Mr. Abdul Hamid, however he was only a benami owner as all the payments were made in respect of that quarter by Mr. Munshi Muhammad Ibrahim. However, merely on the point that Munshi Muhammad Ibrahim was posing himself as an attorney of Mr. Abdul Hamid, the learned trial Court hold that for this single reason Munshi Muhammad Ibrahim was not the legal owner of the property in question. The learned judge also made reference to Suit No.15/71, which was filed for the administration of the accounts and estates of Mr. Munshi Muhammad Ibrahim, wherein while in paragraph 10 details of movable

and immovable properties left by Mr. Munshi Muhammad Ibrahim are given, however, the learned judge took a notice that in the said suit, no mention of this quarter No.956 is made. The Court also took a notice of the fact that even uptill 1983 all the KESC bills were being issued in the name of Mr. Abdul Hamid and not in the name of Mr. Munshi Muhammad Ibrahim. The findings of issues No.1 & 2 were that there exists no relationship of landlord and tenant in between the Petitioners (the legal heirs of Mr. Munshi Muhammad Ibrahim) and the tenant (Mr. Warsi), as the legal heirs of an attorney cannot be entitled to be the owners of any property after the death of attorney, therefore, the Court dismissed the rent application.

One can very easily appraise from the said order that while Court was of the view that being legal heirs of an attorney, the Petitioners could not claim to be the landlord. It is absolutely clear from the said order that there is no suggestion made in the entire judgment contrary to the fact that Mr. Warsi is the sitting tenant. Taking avaricious benefit of such finding of the Court, Mr. Warsi wrote a letter to the Society on 01.10.1986 contents of which are very important, therefore, I take liberty of reproducing them in toto:

House No.956, P.I.B. Colony,
Karachi-5.
Pakistan.
Phone No: 415746, 412220

To,

The Secretary,
P.I.B. Co-operative Housing Society, Ltd.,
Karachi.

Subject: ALLOTMENT OF QUARTER NO: 956, P.I.B. COLONY, TO THE UNDER
SIGNED

Dear Sir,

I am the tenant and resident of House No.956, P.I.B. Colony, Karachi. I am living in the said house since January, 1958 (29 years).

Since January, 1968 Munshi Mohammad Ibrahim the Attorney of Late Abdul Hameed had completely cut off all connection with the property and all relations with me. He had stopped to visit the house which casually he used to do previously. He did no repair work of the building even of very serious condition. He had stopped payment of property tax and K.M.C taxes which were paid by me being the tenant of the house. Several notices and warrant of attachment were

served on me from the Excise and Taxation Department. Likewise a three days' notice of water disconnection was served on me from K.M.C. for Rs.584/- (Dues for 3 years period.)

I have been paying the property tax and K.M.C. taxes since, 1968. Also I have been spending money on its maintenance for the last 19 years. A considerable amount was spent for setting the connection of Sui Gas, and Drainage connection.

A rent case was filed against me by the heirs of Munshi Muhammad Ibarahim s/o Rahimullah in the court of Rent Controller in the year, 1982.

On 24th of August, 1986 the said case was dismissed by the V Senior Civil Judge/ASJ/R.C. (East) and the allotment in the name of Abdul Hameed who was an Indian National.

It is now requested that in view of my long tenancy and in view of the considerable amount that I have spent on the house, it may please be allotted to me on reasonable terms.

Thanking you,

Truly Yours

Dated: 1-10-1986

Encl: (M.A. WARSI)
 1. Photostat of certified copy of Judgment of Case No.904/1985,
 2. Photostat of receipts of property & K.M.C. Taxes.
 3. Photostat of the house rent receipt submitted to prove the start of my tenancy in the year 1958.

As it could be noted from the above letter written by the tenant, he while admitting that he had been a tenant since January 1958, complains that Mr. Munshi Muhammad Ibrahim has since January 1968 completely cut off all connections with the property and all relations with him. Needless to mention that factually Munshi Muhammad Ibrahim died in 1970. The said letter while making a mention to the rent case filed by the legal heirs of Mr. Munshi Muhammad Ibrahim ends up with the prayer made to the Society that since he (the tenant) has been living in the said quarter since 1968 and has been maintaining the said house since then and after the death of Mr. Munshi Muhammad Ibrahim, no one is paying any attention to the said property therefore, the Society may please allot the said property to him on reasonable terms.

It is very surprising to note the highhandedness and mala fide of the tenant from the above letter, who had stopped paying any rent since 1968 and at the same time is asking the Society to transfer the said property in his name after the death of Mr. Munshi Muhammad Ibrahim

for which he has no right to the land, nor to the building constructed thereon.

The legal heirs of Munshi Muhammad Ibrahim being aggrieved by the order passed in the Rent Case No.904/1985 filed an appeal under section 21 of the Sindh Rented Premises Ordinance, 1979 (SRPO) against the impugned judgment passed on 24.08.1986, the said case was referred as FRA No.935/1986 and was heard by learned Division Bench of this Court, which passed a judgment in the said matter on 26.02.1989. A perusal of the said judgment depicts that the learned Division Bench was of the view that since pursuant to section 2-F of SRPO, the definition of the term "landlord" deems to *include a person, who is for the time being authorized or entitled to receive rent in respect of such premises*, therefore, since the rent was admittedly received by late Mr. Munshi Muhammad Ibrahim, therefore the legal heirs of Mr. Munshi Muhammad Ibrahim were held to be duly entitled to receive rent in respect of the said property.

Notwithstanding the above background as laid down in the two-paged judgment passed in FRA No.935/1986, the last two lines where my learned brothers have so rightly laid down the principle that under section 2-F of the SRPO the legal heirs of Mr. Munshi Muhammad Ibrahim are entitled to receive the rent, with their entire intention to set aside the order of the Rent Controller, however, either by inadvertent error or by misconstrued intention of the personal typing in the said order, the last line of the said order has been typed as "in these circumstances the order of the rent controller is not aside and appeal is allowed", which is contradictory to the intention of the Judgment, and ought to have been construed to read as that "in these circumstances the order of the rent controller is set aside and appeal is allowed."

It seems that Mr. Warsi did not challenge the said judgment which reached to its conclusivity by denying the case of the tenant and holding that the legal heirs of Mr. Munshi Muhammad Ibrahim are entitled to the said property's benefits. However, it seems that it still did not satisfy desires of Mr. Warsi (tenant) to usurp the property in question and he thereon came with another plan in terms of which he falsely produced an agreement that he has purchased the said property from Mst. Bali Bai, wife of late Abdul Hamid and his children, who were resident of India. He then filed a suit for specific performance of the said agreement. The suit was filed before this Court and numbered as Suit No.1016/1989, which from the record appears was transferred to the Court of VIIIth Senior Civil Judge, Karachi (East) and was renumbered as Civil Suit No.1581/1996. In its judgment dated 30.10.2001, the learned Senior Civil Judge has very eloquently addressed 13 issues, which included as under:

- “1. Whether late Abdul Hameed ever came to Pakistan and purchased the disputed property from his own funds, if not so its effect?
2. Whether the defendant No.1 to 4 have acquired any right to sell the disputed property to the plaintiff?
3. Whether the Late father of defendant No.6, let out the disputed premises to the plaintiff as his tenant?
4. Whether the ejectment proceeding was taken against the plaintiff by L.Rs of Munshi Muhammad Ibrahim and appeal was allowed and execution proceedings are pending against the plaintiff. If so what its effect?
5. Whether late Munshi Mohammad Ibrahim father of defendant No.6 got the allotment of six quarters from P.I.B. Colony Society, two in his name, two in the name of his son and two in the name of his brother Abdul Hameed and paid the price but as the said quarters were in occupation of some other persons so he illegally occupied other six unconstructed quarters and completed the construction at his own cost and the matter was settled in Arbitration through Registrar Cooperative Society?
6. Whether the disputed property was Benami property purchased by father of defendant No.6 and late Abdul Hameed was only a Benami owner?
7. Whether the value of the property is more than Rs.8,00,000/- and the alleged Agreement was made by the plaintiff for Rs.1,50,000/- as the defendant Nos. 1 to 4 were

introduced to make easy money for which they are not entitled?

8. Whether the addition, alteration and new constructions made by the plaintiff was with the permission of landlord and according to the approved plan?
9. Whether the plaintiff filed suit against defendants Nos.1 to 4 to obtain ex-parte decree against them which was actually in collusion with them and that to save the ejection of plaintiff/tenant from the disputed premises and make him its owner?
10. Whether the suit is liable to be dismissed with special cost to the defendant No.6?
11. Does the suit property belongs to the deceased father of the Defendant No.6 on the late Abdul Hameed?
12. Is the plaintiff entitled to a decree as prayed?
13. What should the order be?"

The learned judge came to the final conclusion that the said suit was not maintainable and it was accordingly decreed and the Plaintiffs were decreed to pay sum of Rs.5193/- on account of costs borne by the defendants. The zeal of Mr. Warsi led him to file an appeal against the said judgment and decree passed by learned Senior Civil Judge in Civil Suit No.1581/1996, on which a judgment had been passed on 19.05.2008 and the relevant part of the same is reproduced hereunder:

“For the afore going discussion, it is held that Appellants was only the tenant of Munshi Muhammad Ibrahim and alleged sale agreement dated 22-03-1989 is forged, fabricated and managed one. The entire drama organized by the Appellants only in order to save himself from ejection from the demised premises. The entire conduct of the Appellants proved his malafide which cause to drag the Respondent No.6 as well as the legal heirs of Late Munshi Muhammad Ibrahim in unwarranted lengthy litigations. In my humble view the appellant is liable to be penalized by imposing compensatory cost. The learned Trial Court has already imposed cost of the litigation through out from the date of the filing of the suit against the Respondent No.6. Beside the cost this court is hereby imposed Special cost of Rs.10,00,000/- (One Million) for dragging the

legal heirs of Late Munshi Muhammad Ibrahim for unwarranted litigation. The findings of the Learned Trial Court in the impugned Judgment is based on proper appreciation and well reasoned and has covered four corners of the case. Resultantly the appeal is failed and dismissed with cost.” [Emphasis supplied]

A review of the above quoted conclusive paragraph of the learned Appellate Court’s judge very well shows the pain and anger, with which the learned Judge wrote the above Judgment, which I can very well understand as I have to write this judgment against the review filed by the Petitioners (legal heirs of Mr. Warsi), who have been dragging the legal heirs of Mr. Munshi Muhammad Ibrahim into this lengthy and unwarranted litigation for over 48 years, while at the same time enjoying the property without paying a single penny since 1968, whereas time and again the Courts below have rejected their pleas and imposed costs on the mala fide acts of these ignorant, deceitful and dishonest persons.

Having gone through the hundreds of pages of documents in the present and past cases (of the courts below), against the present Petitioners and the very reasoned and concurrent findings of these courts again and again, and heard the counsel for the Petitioners who has nothing new to offer except the old story of his client’s contract with Bali Bibi (which courts have already declared as a false and fabricate document), there is no iota of doubt in my mind that the Petitioners purposefully and methodologically and with near surgical precision abused the process of law time and again for the sole purpose of enjoying the property in question without paying a single penny for one reason or the other and inter alia in their last effort, by relying on one forged and fabricated document aimed to keep away Mr. Munshi Muhammad Ibrahim and now

his legal heirs from their legit and constitutional rights over the said property. Enquiry, justice and good conscience demands that this act of the Petitioners is to be dealt with iron hands once for all. I, therefore, have no hesitation that further exemplary special cost be imposed on the Petitioners in the sum of Rs.2,000,000 (Rupees Two Millions only), as well as, I order the recovery of all the rent that ought to have been paid by the Petitioners from 1968 till date at the value of the applicable price of gold at the rate of Rs.75/- per month in 1968 at which instant 10g of gold could have been bought by Rs.75/-. Therefore, in the last 48 years (i.e. 576 months) the tenant should have paid equivalent of the value of 5,760 grams of gold to Mr. Munshi Muhammad Ibrahim (and his legal heirs), which as per current-market rate (of Rs.4,500 per gram) amounts to Rs.25,920,000 (Rupees Twenty Five Million Nine Hundred and Twenty Thousand only).

M.I.T-II is directed to immediately take over the possession of the property in question for the benefit of the legal heirs of Mr. Munshi Muhammad Ibrahim and to ensure both of the above referred sums (totaling Rs.27,920,000 - Rupees Twenty Seven Million, Nine Hundred and Twenty Thousand only) along with the sum of special cost of Rs.1 Million imposed by the Senior Civil Judge in Civil Suit No.1581/1996 and the sum of Rs.5,193 imposed as costs by the Court of VIIIth Senior Civil Judge, Karachi (East) in Civil Suit No.1581/1996 are acquired from the sale of any/all asset and liquidation of bank accounts held by the Petitioners and his legal heirs. For these purposes, MIT-II to commence appropriate actions by making searches in the register of properties and reaching State Bank of Pakistan to obtain details of bank accounts held by Petitioners and his legal heirs with the intention of attaching the same for the purposes of the recovery of the above sums within 30 days from the issuance of the order for the benefit of the legal heirs of Mr. Munshi Muhammad Ibrahim.

Last, but not least, one wonders when throughout these proceedings, where the Society was arrayed as a party, it never submitted any comment or never came forward with true facts which were so visible from the file of the instant property in possession of the Society all these times. There is no reason for such failure except to extend possession of the said property by Mr. Warsi and of his legal heirs. While the M.I.T-II to hand over the physical file in original of the said property to the Society, he is directed to take appropriate action against those who acted negligently by concealing facts and abated the illegitimate occupation of the said property and commence appropriate proceedings against them personally in the Court of law.

For the facts and reasons detailed in the foregoing, I am of the considered view that no case of intervention has been made out by the Petitioners by way of this revision as the concurrent findings of the courts below are fully based on proper appreciation of law, as well as, the same are well reasoned and fully cover all aspects of the controversy and issues involved, which should best be left un-interfered, except with the above enhancement of costs and rent payable.

Accordingly the instant review application is dismissed with costs, detailed hereinabove.

Judge

JZAK/03.08.2016/balibegum