

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI

**IInd Appeal No.97 of 2018**

Date	Order with signature of Judge
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*Zulfiqar Ali Shera*

Vs.

*Shaukat Ali through LRs.*

Priority.

1. For orders on CMA No.6277/2019.
2. For orders on CMA No.7817/2018.
3. For hearing of main case.

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**10.03.2020**

Mr. Munirur Rehman, Advocate for the appellant.

Mr. Muhammad Adil, Advocate for Respondent.

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**NAZAR AKBAR, J.-** Today this case is fixed for orders on compromise application bearing CMA No.6277/2019 as well as hearing of stay application and main case. Only two clauses are mentioned in the compromise application, which are reproduced below:-

*1. That the Respondents above named admits the claim of the Appellant as the property in question was acquired by the appellant in the name of his mother namely Late Mst. Talia Begum w/o Late Meha Khan @ Megha Khan and the appellant allowed the respondent to live in the property in question i.e house No.A-414 Block-H North Nazimabad Karachi measuring 233 sq yards with construction there on as licensee.*

*2. That the respondents have agreed to handover vacant possession above stated property to the appellant through his attorney with in two months from date of this order on compromise Application and the licensee hereby stand revoked.*

2. On the face of it I do not find anything to qualify the term “**compromise**” in this application. If the Respondents are so simple and innocent as it appears from the language of two small paragraphs, then why is it mentioned in para-2 that they will vacate

the suit property after two months' time from the date of order on this application.

3. Briefly, the appellant/plaintiff has filed suit for declaration, injunction and possession of the suit property only on one ground that he is an owner of the suit property because he has purchased it in the name of his mother namely Mst. Talia Bibi in 1981 who has died on **24.09.1987**. Said Talia Bibi along with the appellant has been survived by eight other children who were not even party in the **suit No.1160/2011** filed by the appellant only against one brother namely Shoukat Ali. Unfortunately, two years prior to filing the suit, the appellant himself has executed a registered relinquishment deed dated **08.10.2009** between other legal heirs of deceased Mst. Talia Bibi and the appellant which means none of the legal heirs of Mst. Talia Bibi has accepted the claim of appellant that he is benami owner of the suit property. In para-1 of the compromise application the appellant has again claimed that he has purchased the suit property in the name of his mother. If it is a fact then why the other legal heirs have chosen to surrender their share in the suit property when they were not entitled to any share in suit property.

4. The suit has been dismissed by the trial Court on the admitted position that the appellant has failed to produce a single document to show that he has purchased the suit property with his own funds in the name of deceased Talia Bibi, who was benami owner. Moreover, the deed of relinquishment in his favour by the other legal heirs of Mst. Talia Bibi was fatal to his own case of Benami Owner.

5. The appellant has preferred Civil Appeal No.186/2016 which was dismissed on **19.04.2018** by IInd Additional Sessions Judge, Central Karachi.

6. This second appeal is pending since 2018 and the Respondents through attorney have come for the first time along with the compromise application. The power of attorney said to have been executed on **09.10.2018** by all the legal heirs does not bear signature of each one of them on each page of the power of attorney and the compromise application has been filed in Court on **29.11.2019**. The sole term of compromise is in the nature of request to decree the suit against the Respondents on their admission of claim of the appellant, though it has been concurrently dismissed by the two Courts. The compromise application with clause of two months' time for the Respondents to vacate the suit property from the date of order on compromise application was filed on **29.11.2019** and two months' time has already expired on **29.01.2020**. The terms and conditions of compromise should have already been complied with by the parties during these two months. Therefore, the question is why an order on compromise application in which only Respondents have to vacate the suit property unconditionally. The condition of order of the Court on such compromise is absurd. In my humble view on such compromise, the appeal has become infructuous. Even otherwise a decree for disposal of suit/appeal on compromise will not serve the purpose in view of the judgment of Hon'ble Supreme Court in the case of Peer Dil and others vs. Dad Muhammad reported in **2009 SCMR 1268**. Relevant observations of the Hon'ble Supreme Court on page No.1271 and 1272 side note "A" and "C" are reproduced below:-

4. -----the earlier judgment/decree being a consent decree was obviously passed pursuant to the provisions as enumerated in Order XXIII, rule 3 C.P.C and being a consent decree based on compromise between the parties can safely be equated to that of a contract, breach whereof would give rise to the fresh cause of action and a fresh suit can be filed by an aggrieved person for the redressal of his grievances. In such like eventualities the

*judicial consensus seems to be that “a compromise decree is a contract between the parties and its breach would give cause of action to the other party to approach the Court to seek remedy. Compromise decree is but a contract with superadded command of a Judge.*

7. -----The learned Majils-e-Shoora, ignored that the earlier judgment/decree decided on 1.10.1985 was based on compromise executed between the parties on the basis of award given by the arbitrator which was made rule of the Court subsequently. **Admittedly it was a consent decree based on compromise and non-compliance whereof provided a fresh cause of action on the basis whereof a fresh suit could have been instituted to get the compromise implemented in letter and spirit.** In case of any deviation, violation and departure from the judgment/decree based on consent and compromise, the provisions enumerated in Order XXIII, rule 3 C.P.C. can safely be pressed into service. There is no cavil to the proposition that a consent decree or order is nothing but a contract between the parties within command of the Court superadded to it and its force and effect is derived from contact between the parties on the basis where of consent decree was passed and hence it is binding upon the parties until a fraud is alleged in procuring such decree which is not the case of petitioners. In this regard we are fortified by the dictum laid down in case titled *Nazir Ahmad v. Ghulama* 1987 SCMR 1704, *Shah Wali v. Ghulam Din* PLD 1966 SC 983, *Khurshid Akbar v. Manzur Ahmad* 1982 SCMR 824, *Bhai Khan v. Allah Bakhsh* 1986 SCMR 849, *Halsbury’s Law of England, Fourth Edn., Vol.37, para.390.* (Emphasize supplied).

7. In view of the above discussion, apparently compromise is one sided and contrary to the record and the conduct of the appellant himself, therefore, the compromise application (**CMA No.6277/2019**) is dismissed and the learned counsel for the appellant is directed to address the Court on merit of this case on the next date of hearing. To come up after two weeks.

JUDGE