

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI**

**Suit No. 240 of 1971**

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Order with signature of Judge(s)

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1. For hearing of CMA No.16697/2017
2. For Final Arguments

**29.09.2021**

Khawaja Shamsul Islam, Advocate for the plaintiff  
Mr. Shahab Sarki, Advocate for the applicants/intervenors  
Mr. Ghulam Akbar, AAG  
Mr. Asad Ali, Advocate holds brief for Mr. Yawar Farooqui,  
Advocate for defendant No.8  
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Learned counsel for the intervenors in compliance of this Court's order dated 21.09.2021 has filed statement alongwith certain documents, which are taken on record, and copy supplied to the learned counsel for the plaintiff. Counsel needs to satisfy this court that whether at this stage of final arguments, such an application is permissible.

A brief is held for the counsel for defendant No.8 "Shireen Jinnah Charitable Trust", who is reportedly unwell. A perusal of previous date's order suggests that the said counsel was specifically directed to apprise this Court with regard to the mandate and role of the said Trust in the instant matter by adducing his client's evidence, which aspect of the case remained unattended on account of un-availability of the said counsel.

Learned counsel for the plaintiff is reading evidence in this partly heard matter and so far has completed evidence of Mr. M.A.H Ispahani (Exh.9) and has commenced reading evidence of Syed Anis-ur-Hassan (Exh.10). Learned counsel for the plaintiff as a part of his arguments has drawn attention of this Court's towards order dated 20.04.2018, where Mr. Yawar Farooqui, learned counsel for the said defendant (No.8) filed a Statement with a copy of Declaration of Trust executed on 21.03.1979,

which was taken on record on the same date. Learned counsel by going through details of the said Declaration, points out that patent anomalies are floating on the surface of the said document. First of all, per learned counsel, while six trustees have been named in the said Declaration, it has only been signed by three of them namely Mr. Ibadatyar Khan, Dr. Shareef and Dr. Arif-ur-Rehman Alvi, hence the very legitimacy of that Declaration of Trust is shrouded in mystery. Also per learned counsel, worth noting are the details of the property situated on plot No.77A, 8, and 8A on page 3 thereof which have been made in handwriting as post-script, however neither the Donor nor anyone of the donees has put their signatures thereon including the Registrar itself. Strangely except for the last page, no one has signed or initialed any of the intermediate pages. Per learned counsel, even if all such blatant irregularities are ignored for a moment and the document is considered for whatever its worth is, one does not fail to observe that the very purpose of creation of the Trust was *“to establish a most modern Medical College exclusively for girls with an attached hospital for free treatment of poor persons in sickness and distress”* and the Trustees agreed to act as members of the Committee of Management of the said College and Hospital. Per learned counsel, through the said Declaration the Trustees took over all cash, shares, jewelry, assets and other movable and immovable properties of the Donor including the Qasr-e-Fatima (formerly known as Mohatta Palace) and without giving any account of these assets, have (till date) failed to establish any such Hospital/College which the Declaration required to be made in the name of *“Shireen Jinnah Girls Medical College”*. Counsel further adds that the said Declaration did not empower the Trustees to sell Qasr-e-Fatima as it was to be utilized for housing of the Medical College, its laboratories, auditorium, theaters and Hospital, however these trustees after usurping all cash, jewelry, furniture, shares and other assets for their personal

gains even went upto the point of conceding to sale of the Qasr-e-Fatima building and lawn using the vehicle of this Hon'ble Court and are now eyeing proceeds thereof. Counsel further states that from the perusal of the last page of the Declaration, it appears that the said Declaration was presented to the sub-Registrar T Division-2, Karachi on 29.03.1979 having Registration No.2/555 on page 77-82 of volume 1895 and Book No.I ADL [not shown clearly]. Counsel contends that the said sub-Registrar be directed to appear before this Court alongwith the relevant Master file to adduce his evidence. Learned AAG states that he will communicate these directions to the said officer and ensure his presence alongwith the file on the next date of hearing for such purposes.

Learned counsel also draws Court's attention to Annexure-A page 79-81, describing properties left by the deceased Mohtarma Fatima Jinnah, for which this suit for administration was filed on 29.10.1970, which later on allegedly through the said Trust Declaration were shown to have been handed out by the donor Mohtarma Shireen Jinnah to the Trustees. Counsel once again states that the Trustees have failed to give any account of these properties. A perusal of the file also reflects that no such information has been provided to this Court. Let a report be filed by the Trustees in respect of these properties by the learned counsel representing the Trust in order to assist this Court to pass a just and conclusive judgment.

Counsel further points out by referring to order dated 17.03.1993 in terms of which it was ordered that the Provincial Government will deposit sum of Rs.61,188,000/- with the Official Assignee as tentative sale price of Qasr-e-Fatima (Mohatta Palace) and asserts that upon the request of the Provincial Government, the said property was handed out to the Provincial Government by this court for repair and maintenance only, as evident from the said order. Learned counsel by referring to the said order points out that the final sale price of the said property was

also to be determined subsequently. Learned counsel by referring to various orders, points out that initial sum of Rs.61 million through a cheque was deposited to the Nazir in the year 1994 and through order dated 30.08.1994 Provincial Government undertook to deposit the balance amount of Rs.188,000/- within a week. Counsel contends that the Provincial Government time and again sought extension of this period and it was not until 1996 when this sum was deposited with the Nazir and for these two sums, Defence Savings Certificates and Special Savings Certificates were purchased by the Nazir, which are still lying with the Nazir. Learned counsel by referring to these orders, points out that in fact the sale of the property was not confirmed as well as also the final sale price was not determined in the process, while maintaining the notion that the said property could not have been sold even with the consent of the Trustees as they only were mandated to use the said property to house a medical college/hospital. To reach to a just conclusion, let Nazir file his report with regards to the sums received by him on various dates and the investment thereof in the Government securities and the profit accrued thereon till date.

Counsel next draws Court's attention that an exercise which was completed through this Court's order dated 08.12.1996 to dig out other assets left by the deceased Mohtarma Fatima Jinnah, which were allegedly handed out to the Trustees through the Declaration instrument on which a report was filed by the Official Assignee dated 18.12.1996 listing certain personal properties of Quaid-e-Azam and Mohtarma Fatima Jinnah. Counsel requests that an updated report be sought from the Official Assignee. It is also pointed out that in compliance with the order passed by this Court on 11.01.2016, Mr. Zafar Ahmed Khan Sherwany was appointed as Commissioner to re-ascertain existence of various items found by the Official Assignee on 18.12.1996, on which, an exercise was completed by Mr. Sherwany, who submitted a report on

02.02.2016. Official Assignee is also directed to provide update in this matter in order to reach to a just conclusion.

Learned counsel for the plaintiff in particular states that this suit was filed naming property having approximately 8000 square yards situated in Clifton, Karachi named as Qasr-e-Fatima (Mohatta Palace), which name continued to appear in this Court's various orders, however, with the passage of time learned counsel states, that to cause confusion and disentitle the plaintiff, defendants started naming the said property as Mohatta Palace alone. Counsel contends that whilst the matter was subjudice before this Court through the instant suit, property could not have been described by any name other than with which the plaintiff sought administration. He stated that as evident from the various orders of this Court, possession of the said property was only handed out to the Provincial Government for repair and maintenance and no title thereof was ever transferred in favour of the Provincial Government as well as no final determination of the sale price has been made, but in order to take monetary benefit, the Provincial Government per learned counsel has created a trust called "Mohatta Palace Gallery Trust" without any intimation to this Court or without seeking any permission thereof and the said Gallery Trust is using the said property for gainful and promotional purposes to the extent that it has been used for wedding ceremonies and musical functions which clearly brings the said building to disrepute and tarnishes its sentimental value as it the historical place where Mohtarma Fatima Jinnah, mother of the nation took her last breath. Counsel contends that it would be fit, proper and in the interest of justice that the role of the Provincial Government in respect of the said property be only restricted for the purposes it was temporarily handed out to the latter on its own request and the Provincial Government as well as other defendants should be restrained calling the said property with any other name except Qasr-e-Fatima.

In the given circumstances while the learned counsel be let to continue his arguments, there does not appear to be any cogent reason in my mind to let the Gallery Trust of the Government of Sindh to call or describe the said property with a name other than Qasr-e-Fatima and the defendants as well as Provincial Government is to ensure that the said property to preserve evidentiary value continues to be named, tagged, labeled and described as Qasr-e-Fatima only and all the documents wherein any other name intended to describe the said property should be corrected to reflect to description of the said property being Qasr-e-Fatima (Mohatta Palace) only.

To come up on **06.10.2021** at **9:30 a.m.**, when it is anticipated that the counsel for defendant No.8 would also be available to proceed with the matter.

JUDGE