

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Suit No. 240 of 1971

Date	Order with signature of Judge
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1. For hearing of CMA No.16697/2017
2. For final arguments.

13.10.2021

Khawaja Shams ul Islam, Advocate for the plaintiffs alongwith Mr. Imran Taj, Advocate.
Mr. Shahab Sarki, Advocate for the applicants/interveners alongwith Mr. Abid Hussain and Mr. Agha Mustafa Durrani, Advocates.
Mr. Yawar Farroqui, Advocate for the defendant No.8 alongwith Mr. Asad Ali, Advocate and Mr. Samil Malik Khan, Advocate.
Mr. Ghulam Akbar Uqaili, AAG.
Mr. Kamaruddin Junejo, Nazir, High Court of Sindh.
Zahid Abbas Akhund, Director, Culture, Tourism, Antiquities Archives Department, Government of Sindh.

Zulfiqar Ahmad Khan, J:-This suit was filed in the year 1971 as suit for administration to administer the estate left by predecessors of the plaintiffs being Quaid-e-Azam Mohammad Ali Jinnah, Mohtarma Fatima Jinnah as well as Mohtarma Shireen Jinnah. Schedule of properties to be administered was attached as annexure "A" available at page 79 to 81. Those properties included:

DEBTS:

(1) The outstanding balance of the credit of current account No. 2355 of the deceased with Foreign Exchange Branch of Habib Bank Limited Karachi. Rs. 5,61,760.80/-

(2) The outstanding balance to the credit of current account of the deceased with National & Grindlays Bank Limited, Mcleoad Road, Karachi. Rs. 4,952.17 Total Rs. 5,66,712/-

SECURITIES:

(3) 3000 shares of the face value of Rs. 5.00 each of Habib Bank Limited valued at the market rate of Rs.17.25 per share Rs.51,750.00. Unpaid dividend warrant No.25C/5683. Rs. 550.00

(4) 4500 shares of Karnaphuli Paper Mills Limited of the face values of Rs.10.00 each valued at the market rate of Rs.13.25 per share. Rs. 59,625.00

(5) 3511 shares of Rs. 10.00 each of Pakistan International Airlines Corporation Limited valued at the market rate of Rs. 13.00 per share. Rs.45,643.00

(6) 250 Preference shares of Rs. 100.00 each of;
And
2500 Ordinary shares of Rs. 10.00 each of Hyderabad Tanning & Shoe Manufacturing Co. Limited in liquidation-Market value. Nil.

(7) 300 Ordinary shares of Rs. 10.00 each of Rawalpindi Electric Power Co. Limited valued at the market rate of Rs.13.20 per share. Rs. 3,960.00 Grand total Rs.7,28,240,97.

(8) 3050 shares of Sui Gas Transmission company of the face value of Rs. 100.00 Rs. 143.00 each, Rs. 4,36,150.00

(9) 31680 shares of Adamjee Industries Limited of the market value of Rs.15.80 each. Rs. 4,77,735.00

(10) Jewelry, Furniture, Fixtures, Fittings, Cutlery, Crockery, Silver ware, books, carpets etc all lying at "Qasr-e-Fatima". (Mohata Palace) Clifton, Karachi, estimated value Rs. 4,00,000.00/-

(11) Four cars, namely Cadillac, Mercedes, Chrysler and Packard, in the possession respondent No.5 estimated value Rs.1,00,000

(12) Land admeasuring approximately 8000 sq. yds. with building standing thereon, known as "Qasr-e-Fatima" (Mohatta Palace) situate at Clifton, Karachi, in the possession of respondent No.5 estimated value. Rs. 7,00,000.00.

Total Rs.28,42,125.97

On the pleadings of the parties, this court framed the following issues:-

1. Whether the late Mohtarma Fatima Jinnah practiced Sunni/Hanafi faith during her life time and remained a Sunni until the time of her death as claimed by the plaintiff in para 8 of the plaint?
2. Whether the plaintiff and defendants 1(a) to 1(c) and 2 to 5 have any interest or share in the properties left by the deceased, if so, to what extent and in what proportions?
3. Whether the suit as framed is misconceived and merits dismissal?
4. What should the decree be?

This is one of the leading case of nation's history in which M/s. Liaquat Merchant, Aziz A. Munshi, Ibadat Yar Khan and Fakhruddin G. Ebrahim, Advocates were engaged in which orders have been passed by various hon'ble Judges of this court. The suit was finally decided by a lengthy and elaborative judgment authored by my lord Mr. Justice Zafar Hussain Mirza (as he then was) on 23.12.1976 with the following conclusive paragraphs:-

“71. The cumulative effect of ail these circumstances is that the preponderance of evidence adduced at the trial leans in favour of the conclusion that the deceased chose to be governed by the Shia Law and not by the Sunni Law. The first issue is therefore, answered in the negative.

72. Mr. Saeed uz Zaman learned counsel appearing for defendants 3 and 4 supported the case of the plaintiff. He further submitted that in case the Court comes to the conclusion that the deceased did adhere to the doctrines of any sect of Islam then the case has to be decided by the application of the principles of justice, equity and good conscience. He supported his submission with some decisions. But in view of my finding on issue No. 1, it is not necessary to consider this argument.

73. As a result of the finding on issue No. 1, I hold that the plaintiff has no right to the inheritance of the deceased as according to the Shia Law 'the entire estate left by the deceased will devolve upon her sister defendant No. 5. Similarly defendants Nos. 1 to 4 have no right to share the inheritance. Issue No. 2 is also, therefore, answered in the negative.

74. The only remaining issue relates to maintainability of the suit. Mr. Ibadat Yar Khan contended that the present suit is not competent inas much as the right claimed by the plaintiff was denied to his knowledge before the filing of the suit and therefore, no suit for administration was maintainable at the instance of the plaintiff until by a separate suit he established his right and status as lawful heir of the deceased. Alternatively counsel contended that the suit as framed is not one for administration in so far as the main relief sought is for partition of the properties. The relief sought ire the plaint are for (1) administration of the estate of the deceased under the order of the Court; (2) rendition of accounts by defendant No. 5 of the estate which has come to her hands (3) payment of debts and y liabilities ; and (4) for partition of the estate between the heirs. This is clearly therefore. a suit for administration of the property of the deceased. Order XX, rule 13 of the Code of Civil Procedure alongwith the relevant forms in the Schedule appended thereto clearly show Oat a next of kin can maintain a suit for administration of the property of a deceased person. I therefore, find no legal flaw as to the form or

maintainability of this suit. This issue is accordingly answered in the negative.”

As seen from the above, the said suit was dismissed with cost against which an appeal was preferred by the plaintiffs which was decided and is reported in PLD 1985 Karachi 365 (Amir Ali v. Gul Shaker & others) where my lord Chief Justice Abdul Hayee Kureshi (as he then was) authored the judgment displacing the findings of the learned Single Judge on the issue No.1 and setting aside the judgment and decree of this court and remanded the matter to the Original Side of this court as per following directions:

“For the above reasons, we are of the view that the finding of the learned Single Judge on the first issue is not correct. We are of the view that Mohtarma Fatima Jinnah was neither a Sunni nor a Shia, but she was a Muslim in accordance with the Qurani concepts. She was free from sectarian classification, and therefore her property has to be distributed in accordance with the pure Islamic Law, as is contained in Sura Nisa.

Since we have displaced the finding of the learned Single Judge on issue No.1, the remaining issues will need to be determined.

The judgment and decree passed by the learned Single Judge is set aside, and the case is now remanded to the Original Side of this Court for being placed before the learned Judge, hearing such cases, for determination on the remaining issues in this case. Looking to the nature of contest in this case, we shall leave the parties to bear their own costs.”

It is pertinent to note that the learned Division Bench of this court reached to the conclusion that Mohtarma Fatima Jinnah was neither a Sunni nor a Shia, but she was a Muslim in accordance with the Quranic concepts and as such she was free from any sectarian compartmentalization, and therefore her property be distributed in accordance with the pure Islamic Law, as is contained in Sura Nisa. It appears that immediately after the pronouncement of the said

Judgment, CMA No. 06 of 1983 was moved before this Court containing the following prayers:-

“(1) That the matter relating to faith of Quaid-e-Azam be de-linked so that the faith of Mohtarma Fatima Jinnah may be dealt with separately.

(2) The question of faith of Quaid-e-Azam may be decided,

(3) That in relation, to the faith of Mohtarma Fatima Jinnah, the case be remanded to the learned Single Judge so that further submissions and further evidence may be lead.

The case was remanded to the learned Single Judge so that further evidence could be led, however, the said CMA No.06 of 1983 was decided with the following order:-

“As far as the first prayer, in relation to de-linking the question of faith of Quaid-e-Azam, the judgment is specific, and distinct findings have been recorded on the evidence on record that Quaid-e-Azam was neither a Shia nor a Sunni but a simple Mussalman. To that extent the observations and findings in the judgment are severable and therefore no order is necessary.

In regard to the second prayer the question about the faith of Quaid-eAzam has been decided in this appeal, and therefore no orders are necessary.

All counsel have made this joint application and they seek a consent order to the effect that the case may be remanded to the learned Single Judge, with the direction that if any party wants to lead any evidence or make further submissions in relations to the faith of Mohtarma Fatima Jinnah, he shall be allowed such an opportunity and the question of faith of Mohtarma Fatima Jinnah may be decided independently of the faith of Quaid-e-Azam himself. Since all counsel are seeking a consent order, and they want to lead further evidence we request the learned Single Judge to record evidence and hear the parties if they so wish. Even by the final order passed on 23-12-1984 this case was remanded for recording findings on other issues. In these circumstances, the learned Single Judge, who will be seized of the case, shall allow further evidence to be produced and hear the submissions in relation to faith of Mohtarma Fatima Jinnah also. He shall not be persuaded by what has been states 3y us in our order dated 23-12-1984 in so far as it relates to faith of Quaid-e-Azam. We may explain that question of faith of Mohtarma Fatima Jinnah shall be determined without reference to the findings in relation to the faith of Quaid-e-Azam.

This application stands disposed of.

While the matter was remanded to the learned Single Judge of this court to record further evidence of the parties, perusal of the file reflects that no further evidence was adduced in this case and eventually matter came up for final arguments on the basis of the evidence already recorded and till date the matter is being heard for final arguments, however, a number of miscellaneous applications were also disposed of during this period. Most alarming aspect of this case which pertains to the assets left by Mohtarma Fatima Jinnah as she had drawn those from Quaid-e-Azam Mohammad Ali Jinnah and as per the list attached as annexure "A" for which this suit for administration was filed is that these assets could not be accounted for despite having numerous Inventory Reports ordered to be produced, none of which is available on file except the one discussed in the later part of this order.

With regard to the assets available in Mohatta Palace, written statement of defendant No.5 i.e. Mohtarma Shireen Jinnah is relevant where while answering para-5 she has stated that *"it was Commissioner of Karachi who, under orders of the Central Government broke the seals of Qasr-e-Fatima which was lying vacant and sealed soon after the death of Mohtarma Fatima Jinnah after preparing the full and complete inventory of all furniture, fixture and household that were spared after the loot"*. In para-6 the said defendant has admitted that *"full and comprehensive inventory was prepared by Inventory Committee which, however, did not include the jewellery, pearl necklace and other precious stones and valuable articles which at the time of death of Mohtarma Fatima Jinnah were allegedly removed by other relations*

from the safe in Qasr-e-Fatima which have not been accounted for". The said defendant complained to the Commissioner about this pilferage and misappropriation and admitted that some of the articles were recovered from the possession of the relations.

In this regard one could also look CMA No. 9615/2010 in terms of which a request was made that locker No. 0642 belonging to Quaid-e-Azam Muhammad Ali Jinnah be broke open in the presence of Sharif Ahmed, registered High Court Clerk of M/s. Liaquat Merchant , Mr. Ahmed Khan, Manager Habib Bank and inventory be prepared in the presence of Official Assignee. Incidentally the said locker was broken in the presence of the above named individuals by the Official Assignee and after making the inventory attached with the said application, he placed the items found therein back in the locker as the Official Assignee did not have any other suitable arrangement for keeping the valuable and personal belongings of Quaid-e-Azam Mohammad Ali Jinnah. Official Assignee in compliance of the order dated 18.12.1996 made an inventory which is reproduced as under:-

Box No.1 contains:-

1. Pocket watch without chain (cooke & Kelaly) contain 1.
2. Pocket watch without chain (Masoks & Co Ltd) 1.
3. Ladies wrist watch with belt No.619017 1.
4. Pocket watch with cover 1
5. Pocket knife folding small 1
6. Two chains for pocket watches
7. One Medal with Qalma in Gold colour.
8. One Rupee Coin 1901
9. One Small Magnifying Glass with cover.
10. Small Dori in chffnetsyes & colours.

Box No.2 contains:-

11. Box containing 7 button with six hooks (Black colour)

Butter Paper 3 contains:-

12. One cigarette case in Golden & Silver case in Butter paper.
13. One Sword cover appearing to be of Gold small in duster No.4.

Box No.5 contains:-

14. Four batten with black stone
15. 10 pair of Cufflinks in different colour.
16. 3 pieces of Cufflinks with black stone.
17. Two buttons with white stone.
18. Four small broken pieces of cufflinks etc.
19. Fifteen buttons of different in Golden Colours.
20. Chain with two small both brokereries Golden Colour
21. One tie pair in Golden Colour
22. One safety pin
23. Twelve button of different sizes & colours.

After preparing the inventory of locker No. 0462 & again locked the locker in presence of abovementioned para. New lock fixed in locker No. 0462 & key No. 413 passed by me. All inventories item again kept in locker No. 0462 & key No.413 again locked.

To refresh the said list, a request was made in the year 2016 that the Official Assignee to check the locker again to find out that whether the inventory found after break opening of the locker in the year 1996 was still present in the locker or not as at that time locker's key was handed out to the Official Assignee. Mr. Zafar Ahmed Khan Sherwani was appointed as Commissioner to ascertain the existence of various items who submitted his report dated 02.02.2016 and issued the following certificate:-

“Certificate

The locker No. 0462 were broke open today i.e. 2.2.2016 at 3.30 P.M in presence of Mr. Wajid court clerk of Kh. Shamsul Islam, Adv, Mr. Nazish s/o Amir Ali (plaintiff) Mr. Nadeem Ahmed Khan Manager Habib Safe Deposit Vault (Pvt) Ltd & Abideen Hussain s/o Ashiq Ali Hussain & the contents thereof were verified physically is per this Inventory dt. 18.12.1996 prepared by Mr. Abdullah Mohsin Baloch Assistant Official Assignee's office. These contents were in accordance with the Inventory reproduced in the same condition & than handed over Mr. Mohammad Umar Qureshi Assistant Director Quaid-e-Aam House Museum (Old Flat Staff House) The contents have been received by Mr. Mohammad Umar Qureshi after verifying physically”

Per learned counsel, Qasr-e-Fatima is the property where Mohtarma Fatima Jinnah took her last breath, however, as seen from the above Report of Mr. Sherwani no valuable assets were recovered to the extent that in this case of properties of father and mother of the nation, only Qasr-e-Fatima surfaced. Properties as detailed in the schedule (Item-10) worth more than half of the value of this property (Qasr-e-Fatima) were never discovered, where did other properties disappear including cars, shares, jewellery, Bank balances, no one knows, per learned counsel. It is interesting that while this matter was coming up for hearing, a proposal came to this court through CMA No. 2030/1991 on 14.01.1992 from Government of Sindh seeking that the said property be given to the latter at price determined by the Court as it was Provincial Government's wish to maintain the said property as a "*monument of national importance*". However, in response, an application was moved through CMA No.562/1991 praying that Qaid-e-Azam Mohammad Ali Jinnah has dealt the issue of the fate of Qasr-e-Fatima through his WILL and the Court to decide the same in the light thereof. In the meanwhile, an application bearing CMA No.1906/1990 was moved through which appointment of Nazir was sought to take over the control of the property and to take stock of all movables to be found therein as it turned out that Deputy Commissioner Karachi South had removed the guards placed there on his own motion. This application was decided by order dated 25.11.1992 directing the Deputy Commissioner to place guards again as well as giving directions to the Official Assignee to oversee the Deputy Commissioner with the objective of preserving and protecting Qasr-

e-Fatima and the assets therein. Through the same order, application CMA No.562/1991 was dismissed giving reasons that Qasr-e-Fatima had become a private property of Mohtarma Fatima Jinnah who herself never pursued the matter of Qaid-e-Azam Mohammad Ali Jinnah's WILL. Assets left by Mohtarma Fatima Jinnah were transmitted to Mohtarma Shireen Jinnah, who in her last days was represented by Shireen Jinnah Charitable Trust, that came into being upon the Trust Deed having been signed by Mohtarma Shireen Jinnah as produced before this court through Statement filed by the counsel representing the Trust on 20.04.2018. The Deed is dated 21.03.1979. A perusal of the Deed reflects that the Trust was created for "*receiving all cash, jewelry, furniture, shares, assets and other properties movable and immovable including Qasr-e-Fatima built on Plot No. 7, 7A, 8, 8A, street No. C-F.1/5, Clifton, Karachi (formerly known as Mohatta Palace)*". The Deed very specifically mentions that it was the wish and will of the Donor (as well as Mohtarma Fatima Jinnah) that the said property be used for establishing "*a most modern medical college exclusively for girl with an attached hospital for free treatment of poor persons in sickness and distress*" and the Management Committee was mandated to achieve this objective. As mentioned earlier, Government of Sindh wanted to purchase the said property for which valuation was sought, perusal of the order dated 17.03.1993 shows that while tentatively the property housing the most enviable palace in the city of Karachi spread over thousands of yards was quoted to worth only Rs. 6,11,88,000/-, the parties logically did not concede to such a price and through said order a board of experts

consisting of M/s. Naqvi & Siddiqui, Architect, M/s. Engineering Consultants and Mrs. Yasmin Lari was constituted to find true value of the said property. Seemingly this order never saw the light of day.

The background of the sale of Qasr-e-Fatima could be traced out from an application made under Section 151 CPC being CMA No. 2030/1991 moved by K.M. Nadeem, Assistant Advocate General on 05.11.1991. The relevant paragraphs No. 8, 9 and 10 of the said application are reproduced hereunder:-

“8. That while the legal proceedings and disputes between the parties have remained pending in this Hon’ble Court, the prestigious ‘Mohatta Palace’ which is both highly valuable and of architectural importance has been steadily deteriorating from 1967 when Mohtarma Fatima Jinnah passed away. Mohatta Palace has since then neither been repaired nor properly maintained. In fact, according to recent press reports and some applications filed in this Hon’ble Court, certain persons are alleged to have trespassed on the property and the Commissioner of Karachi/Deputy Commissioner of Karachi (South) have posted police guards to protect the property from encroachers and trespassers.

9. That with a view to preserving this prestigious property (i.e.) ‘Mohatta Palace’ for reasons of its high value, architectural importance and in view of the sanctity attached to the property which belonged to Mohtarma Fatima Jinnah ‘Madar-e-Millat’, who lived and died in Mohatta Palace, the Government of Sindh is desirous of taking immediate suitable steps to repair, preserve and maintain Mohatta Palace by restoring it back to its original condition. For such purpose the Government of Sindh has keenly decided to purchase the aforementioned property at a suitable, reasonable price to be fixed by this Hon’ble Court with the concurrence of litigating parties, so that the property in question may be retained and maintained as a National Monument.

10. That the price so fixed by this Hon’ble Court, shall be paid/deposited by the Government of Sindh with the Nazir of this Hon’ble Court to be invested in profitable Government securities like Defence Savings Certificates, etc. till such time the litigation in respect thereof between contesting parties, is finally decided whereafter the said amount be paid to the successful party by this Hon’ble Court according to law.

In the circumstances it is submitted and prayed:

That this Hon’ble Court be pleased to order for sale to the Government of Sindh all that property known as Mohatta Palace, situated at Clifton, Karachi alongwith all contents and appurtenants, furniture, fixture, relics, etc. to be retained and

maintained as a National Monument at a reasonable price to be fixed by this Hon'ble Court with concurrence of the litigating parties, in the larger interest of justice and be further pleased to direct the Nazir of this Hon'ble Court to keep the aforesaid sale consideration deposited by the Government of Sindh with him, duly invested in profitable Government Securities like Defence Saving Certificates, etc. to be paid ultimately to the party found entitled at the time of and by virtue of final decision of this Hon'ble Court in pending litigation/ litigations."

This court through its order dated 25.11.1992 mandated Official Assignee Mr. Bashir A. Memon in consultation with parties and competent valuers to obtain market price of the property on which official Assignee through his reference dated 31.01.1993 made the following submissions:-

"3. In respect of direction No.(ii), it is submitted that the Court file, shows the area of the Mohatta Palace to be 8000 sq. yards. It was found necessary to obtain correct information from the Assistant Commissioner South Karachi, about the total area of the plot comprising Mohatta Palace. The Assistant Commissioner South intimated that the Mohatta Palace is situated on four plots with following area:-

<u>Plot No.</u>	<u>Area</u>
(i). CF-1-5/7.	2172 S. Yards.
(ii). CF-1-5/7a.	1295
(iii). CF-1-5/8.	3308
(iv). CF-1-5/8a.	<u>3629¼</u>
Total	10404¼

In view of the aforesaid discrepancy in the area of Mohatta Palace M/s Bilgrami and Farooque Architects were specially requested to make physical verification of the area under Mohatta Palace. According to them the area is 10850 Sq. Yards.

4. In order to arrive at correct assessment of market value of Mohatta Palace, I have two aspects in my mind, one being about the Building and second about the plot.

(i). Building :- As for building is concerned, I had no biographical sketch of it. The Palace not only in the field of architecture has sufficient heritage, besides, over and above we have strong sentiments for Madar-e-Millat Mohtarma Fatima Jinnah in the background. It is pity that the building is in ruinous condition. So far market value of the building is concerned it will have poor response in the open market. Public will not be excited on account of prestigious structure or heritage or sentiments of Madar-e-Millat in the background. The public will be only interest in the

plot of Mohatta Palace. This is the right attitude which has to be accepted, and is based on the public trend.

(ii). Plot :- Coming to the value of the plot, Official Assignee has made through inquiry from various property dealers of Clifton and Defence sides, to find out the market value of the plot. Keeping all the conditions of the plot in view, the total value of the plot will be about Rs. Six Crores.

5. In this regard Official Assignee had sent letter to Messrs Nasim Farooqui and Liaqut Merchant advocates and to convey valuation of Mohatta Palace. Despite number of reminders no reply has been received from both advocates. M/s. Bilgrami and Faruque Architects have been consulted. They have conveyed valuation of Mohatta Palace to be Rs. 6,11,88,000/- under their letter annexed as Annexure-'A'.

The Official Assignee respectfully submits the compliance report of the order dated 25.11.1992.”

With regards value of the property which is apparent from the foregoing paragraphs was spread over 10,404.25 sq. yds (while it was measured to be 10,850 sq. yds) in the most prestigious part of the city i.e. Old Clifton, the document available on the file reflects that Quaid-e-Mohammad Ali Jinnah, as a part of the balance sale consideration for the purchase of Mohatta House (as it was known at that time) on 11.08.1948 made the payment of Rs.9,43,300/- through cheque No. MWK-2365 in favour of M.N. Kotwal. The counter foil of the said cheque, in the personal handwriting of Quaid-e-Azam Mohammad Ali Jinnah is available in the records at page No. 399 of the file of the instant suit part-II.

Coming back to the reference of the Official Assignee, it seems the valuation of Rs.6,11,88,000/- was based on such valuation provided by the Architect firm of Bilgrami & Farooq dated 24.01.1993 with the following contents:-

“January 24, 1993

Mr. Bashir Ahmed Memon
Official Assignee of Karachi,
High Court of Sindh Annexe,
KARACHI.

VALUATION OF MOHATTA PALACE

Dear Sir, Under your instructions, we have carried out detailed inspection of Mohatta Palace and its grounds in order to assess its current fair market value as desired by the Honourable High Court of Sindh.

Our assessment is based on the following, observations and assumptions:

- 1) The plot is categorized as ‘residential’ and as such, our valuation is based on current selling price of the larger residential plots in the Clifton area. The size of the plot has also been taken into consideration, in determining its rate per sq. yd.
- 2) Although in a state of utter disrepair, the main building is of very high quality, both in terms of building material and workmanship.
- 3) The ‘Foreign Office Block’ has outlived its utility and therefore valued very low. The temporary structures are of no value.
- 4) The areas are based on measurements taken during a previous study carried out by the undersigned in 1989.

The details of the valuation are given below:

I.	Area of Plot: 10850 syds.		
	Value of land @3750/- per syd		=Rs.4,06,87,500
	Say		=Rs.4,06,88,000
II.	a). Area of Main Building:		
	Basement:	700 sft.	
	Ground Floor:	8800 sft.	
	First Floor:	7800 sft.	
	Second Floor:	<u>1200 sft.</u>	
	Total:-	18500 sft.	
		@ Rs.1000/- per sft.	=Rs.1,85,00,000
	b) Area of Service Blocks:		
	North wing:	1800 sft.	
	South wing:	<u>1560 sft.</u>	
	Total:-	3360 sft.	
		@ Rs.180/- per sft.	=Rs.6,04,800

c) Foreign Office Blocks:

Ground Floor:	7000 sft.	
First Floor:	<u>7000 sft.</u>	
Total:-	14000 sft.	
	@Rs.100/- per sft.	= <u>Rs. 14,00,000</u>
Total Value of structures		=Rs. 2,05,04,800
Say		= <u>Rs. 2,05,00,000</u>
Total Current fair market value of Mohatta Palace		= <u>Rs. 6,11,88,000</u>

(Rupees six crore eleven lacs and eighty eight thousand only) or Rupees sixty one million one hundred and eighty eight thousand only.”

On such highly questionable and meager valuation, the Secretary of Shireen Bai Jinnah Trust filed statement dated 17.03.1993 of which following paragraphs are worth reproducing:

“9. That considering the fact that it is a historic piece of architecture, made for Jaipur stone, that is almost impossible to duplicate, and also that the building has the distinction of association with the Jinnah family the price of Rs. 6,11,88,000/- seems to be too inadequate and arbitrary.

10. That if the property is disposed of on the basis of the formula adopted by the Official Assignee, it would create a commotion in the mind of the general public, and also create misgivings for obvious reasons.

11. That for a fair assessment of value the following considerations should be kept in mind:

A. The actual cost of the Palace in Jaipur red stone, if the project would be undertaken today.

B. The actual cost of land measuring 10,850 sq. yds. in the coveted post area of Karachi.

C. The cost of association structures, including two R.C.C build double story annexes, which were built and used to house the Foreign Office of Pakistan, the beautiful boundary wall, the fountain and the swimming pool in the basement.

D. The distinction of association, that the building remained the residence of Mohtarma Fatima Jinnah, and Mohtarma Shirin Jinnah. Both breathed their last under it's roof. It also served as the Foreign Office of the Government of Pakistan in the formative early period.

12. That it is in the fitness of things that instead of relying on one man's opinion, a team of experts and

architects is appointed by this Honorable Court to evaluate and determine a fair value on appreciation of the material and sentimental value of the property to avoid any misgivings or criticism from the general public.

13. That the Trustees respectfully submit the following names of reputed architects and engineering consultants for consideration of the Honorable Court, to be appointed to assess the fair value of the property and submit their report within a fortnight.

- A. Messrs Naqvi & Siddiqui, Architects, Karachi.
- B. Messers Engineering Consultants, Karachi.
- C. Mrs. Yasmin Lari, of Lari Associates, Karachi.

14. That the trustees feel it is a matter of very great urgency that repairs should be undertaken forthwith to save this prized monument from further deterioration and ruin.

15. That meanwhile repairs may be started immediately and the trustees are willing to allow full access and uninterrupted entry to any agency or authority to undertake forthwith the work of repair and restoration pending the final determination of the fair value. The trustees though would like to suggest that this work be entrusted to be Department of Archaeology, as they are the most competent authority in the country for restoration and preservation of such monuments.

16. That as the bargain for sale has been finally settled in principle and the quantum of price remains to be finalized and paid, the Trustees pray that for the time being the purchaser Government should deposit in court a sum of Rs. 6,11,88,000/-, the value determined by the Official Assignee without prejudice to the rights and obligations of the parties.”

In this background, file also reflects that on 06.04.1993, Secretary, Culture & Tourism Mr. Abdul Hameed Akhund wrote a letter to the Advocate General, Sindh with the following contents:-

“ Subject: SUIT No. 240/1971 - HUSSAIN VAILJEE V. GUL SHAKEER AND OTHERS - SALE OF MOHATTA PALACE.

Reference Chief Minister’s telephonic directives conveyed to the Advocate General Sindh on phone, on the subject noted above.

2. Advocate General may kindly place before the High Court in Sindh Government’s position wherein the Provincial Government undertakes to make payment for the Mohatta Palace in the next financial year. In the meantime the possession of the Mohatta Palace may be handed over to the Sindh Government so as to check the damage and take immediate steps for the restoration of the building as each day adds to its dilapidated condition.”

Such request to hand out the property to the Provincial Government even for the repair and maintenance was opposed by the Trustees who filed respective objections on 11.04.1993 stating as under:-

“1. That the application in reply has been moved by the government of Sindh for the taking over of the possession of the Mohatta Palace the property under administration in suit. That the instant suit is between private parties being the legal heirs of the late Mohammad Ali Jinnah. That Shirin Bair had constituted a Trust for the management and control of the affairs of the property.

2. That the Sindh Government after becoming party moved an application for the purchase of the property. That upon contradictory valuation the government again filed an application for the purchase of the same. That this Honble Court after assessing the valuation passed orders whereby the government be required to deposit the said amount in Court within two weeks of the order. That now the government has moved the application in reply, seeking possession without complying with the Honble Courts order. Their prayer for deferment of payment until the next fiscal year is wholly unlawful and unacceptable.

3. That the trustees vehemently oppose the application. This would amount to the virtual hijacking of the suit property without depositing the consideration in court. No waiver or relief is contemplated in law as sought by the applicant. The rights and interest of the contesting legal heirs and the trust will be irreparably affected if the application is allowed. that the copy of the opinion of the trustees is annexed hereto, contents whereof may be treated as part hereof.”

Which objections were, however, repudiated by the office of the Advocate General, Sindh through its statement dated 18.04.1993 stating that *“the price assessed by the Official Assignee were based on objective consideration and the same be maintained”*, however, since the money was not paid in full as directed by the Court, various requests were made by the office of the Advocate General to have it paid in partial payments, however, requesting that since immediate maintenance and repair was needed, the property be handed out to the Provincial Government.

It however appears that out of the throwaway amount of Rs. 6,11,88,000/- only Rs. 61 million was deposited with the Nazir by the Provincial Government, whereafter a request was made that the balance consideration of Rs. 8,88,000/- be permitted to be deposited within a week. Which order seemingly was not even complied with and further time was sought by Government of Sindh to deposit the remainder amount. It appears that Government of Sindh again and again sought time and eventually it was not before 08.12.1996 when the said amount was deposited with the Nazir of this court, which through this court's order was to be invested in interest bearing security.

For the last two dates, various proposals have come before this court which primarily indicated that the private parties in the greater public interest and greater values and sense of responsibility inculcated in them as shown by their predecessors, have agreed to endow the Qasr-e-Fatima to the people of Pakistan as long as it is used for the purpose conceived by Mohtarma Fatima Jinnah and shared by Mohtarma Shireen Jinnah i.e. for the construction of Shireen Jinnah Girls Medical College/Hospital. The proposal that the property Qasr-e-Fatima be used for Medical College and Hospital is supported by all the parties including the Government of Sindh represented by Mr. Ghulam Akbar Ukaili, AAG. The parties present in court suggest that the property of Qasr-e-Fatima having been unanimously decided to be used for the purpose it was left by Mohtarma Fatima Jinnah, an independent body be constituted, which to include eminent philanthropist of the city including Dr. Abdul Bari (Indus Hospital), Dr. Adeb Rizvi (SIUT) and also the

present plaintiff Nazish Amir Ali. Request may also be made to Mrs. Yasmin Lari to join the said body to ensure that the architectural beauty and heritage of the Qasr-e-Fatima building not to be compromised in any way by its use as desired by the founding ladies and that the new construction in the open areas around the old building only adds to the beauty and architectural distinctiveness of the standing structure. Learned counsel have also shown keenness that a retired Judge of Hon'ble Supreme Court and one from this Court also be invited to head and join this body. At this juncture, learned counsel have requested that consent be sought from Justice Retired Sarmad Jalal Osmani of the Hon'ble Supreme Court and Justice Retired Faheem Ahmed Siddiqui of this Court if they would be kindly willing to accept to become part of the said body and lead this noble task. Admittedly, this skelton body (consisting of the forementioned names) may be enlarged by inviting likeminded people. Court has also been requested that upon passing of this order, possession of the Qasr-e-Fatima be handed out to the new body headed by the Hon'ble retired Judge of the Supreme Court of Pakistan and let a Trust be formed for the said purposes, however, in the meanwhile, Official Assignee to take over possession of the said property and to make a list of all the inventory present in the said building and take photographs of various parts of the building and submit a report. With regard to the formulation of the Trust, learned counsel requests that this order be communicated to the Hon'ble retired Judges and other individuals named herein above. Order accordingly. Registrar of this Court to do the needful forthwith.

Learned counsel for the plaintiff has pointed out that the Qasr-e-Fatima having being handed out to the Provincial Government for repair and maintenance in the year 1993 has been used by Mohatta Palace Gallery Trust for exhibitions, musical functions, weddings etcetera under the umbrella of Culture Department, Government of Sindh without any consent or permission of this Court as the matter was subjudice and property was only handed out to the Government of Sindh for the purpose of repair and maintenance and neither the sale was confirmed and nor the property was accurately valued. A request is made that for the incomes generated from holding private functions at the said premises, a report be called from the concerned department. The representative of the Culture Department Zahid Abbas Akhund, Director is present who undertakes to file such a statement in due course.

As mentioned earlier, the Government of Sindh deposited a sum of Rs. 6,11,88,000/- with the Nazir of this Court in installments which was invested in an interest bearing security. Report has been furnished by the Nazir today which shows that a total sum of Rs. 73,32,51,903/- is available with the Nazir. A proposal is made that these sums be used as seed funds by the new Trust for building Girls Medical College/Hospital at the said premises. Learned AAG states that the Government of Sindh would like to participate in such a noble initiative and he has no objection if the property be used solely for the purpose of construction of building and operation of Medical College/Hospital exclusively for girls with residential facilities therein, with regard to the sums deposited by the

Provincial Government, learned AAG seeks time to get a nod from the concerned authority as if this fund could be used as token of good gesture or whether Sindh Government wishes these sums to be returned. Let a statement be filed in this regard.

With regard to any interim cost be paid to the plaintiffs for following this litigation over half a century, the matter is left on counsel to decide amongst themselves, however, this court to pursue recovery of all assets listed in this schedule "A" (page 79) and use all force available to it to bring these assets to surface. This matter to be dealt with on the next dates of hearing.

Let tasks contemplated through the instant order commence at once, Official Assignee to visit Qasr-e-Fatima and in this regard all facilities will be provided to him by whosoever it concerns including office of the learned AG to facilitate the exercise contemplated through this order.

Office is directed to fix this partly heard matter on 01.11.2021 at 11:00 a.m.

JUDGE