

THE HIGH COURT OF SINDH AT KARACHI

Suit No. 2551 of 2014

Plaintiff: Muhammad Najeeb Usman through M/s. Abid S. Zuberi and Hidayatullah Mangrio advocates.

Defendant: Sharik Affandi through Mr. Basil Nabi Malik advocate

Intervener: M/s. Millennium Residency Company
Through Raja Qasit Nawaz, advocate.

Date of hearing: 23.11.2021s

Date of decision: 08.12.2021

JUDGMENT

SALAHUDDIN PANHWAR, J.-By the dint of this order I intend to decide maintainability of instant suit as questioned by this Court and application under Order VII Rule 10, C.P.C. filed by learned counsel for defendant.

2. Precisely, the facts are that plaintiff filed suit for Declaration, Injunction, Possession of Immovable Property & Recovery of an amount of Rs.12,61,44,530/-including damages. According to the pleadings, Official Assignee of this Court auctioned property in question at Karachi in Execution bearing No. 11 of 2004, Habib Bank Ltd vs. Muhammad Ilyas & others. The bid was submitted and the plaintiff vide Pay order No. 4731901 dated 21st May 2012 drawn in the name of Official Assignee Karachi paid an amount of Rs. 9,000,000/-, Rs.1,15,1521/- & Rs.35,00,000/-, Cash Rs.21,00,000/- and Rs.800,000/- paid to the Defendant by the plaintiff at different times for purchase of suit property i.e. Rs.16,551,521/- towards the total Sale Consideration of Rs.31,606,521/-, therefore the share of the plaintiff comes to 52.36% in the subject property; that the Sale Deed and/or Sale Certificate is required to be jointly executed/issued in favour of both the Plaintiff and Defendant. The defendant in respect of the same wrote a letter dated 21.05.2012 to the Official Assignee in this regard; that the Official Assignee in his Reference No.32 of 2012 submitted in Execution No.11 of 2004 has also mentioned regarding the request of the Defendant to issue Sale Deed/Sale Certificate jointly in Plaintiff's and Defendant's name; that recently it came into the knowledge of the Plaintiff that the Defendant is attempting to sale the suit

property without any information to the Plaintiff and not taking in confidence to the Plaintiff; that the Defendant has not intimated the Plaintiff about buyer of subject property. The Defendant is playing fraud with the Plaintiff as the Defendant intends to usurp the suit property and/or the money from selling the suit property as well as the investment of the Plaintiff; that the Plaintiff has asked the Defendant about 52.36% share and handing over possession of the suit property to him but the Defendant did not reply. Further, the Plaintiff made a request to the Defendant to deliver physical possession of the suit property to the Plaintiff immediately but no response thereof was given by the defendant; that the cause of action accrued in favour of the Plaintiff, when Plaintiff and the Defendant jointly purchased the subject property and in this behalf the Plaintiff paid a huge amount in the above manner, when on 21.05.2012 the Defendant wrote to the Official Assignee about execution of Sale Deed/Sale Certificate in the name of both parties, when Official Assignee submitted his reference No.32 of 2012, which was granted, when the Plaintiff asked for possession of suit property and the Defendant did not hand over the same and the cause of action continues till the 52.36% share of the suit property is handed over to the Plaintiff; that since both the parties i.e. Plaintiff and Defendant, reside in Karachi as well as work for gain at Karachi, therefore, this Court at Karachi has the exclusive jurisdiction to entertain and adjudicate upon the instant suit. Lastly the plaintiff has prayed as under:

- A) To restrain the Defendant to create any third party interest over **land measuring about 207 Kanal and 15 Marlas, situated at Mouza Sulkheetar, Chattar Park, adjacent Sanam Gardens, Tehsil Muree, District Rawalpindi.**
- B) To direct the Defendant to hand over the 52.36% possession of land measuring 207 kanal and 15 marlas to the Plaintiff as his share in subject property.
- C) To appoint the Nazir of the Honourable Court of Sindh at Karachi as receiver of property bearing "**land measuring about 207 Kanal and 15 Marlas, situated at Mouza Sulkheetar, Chattar Park, Adjacent Sanam Gardens, Tehsil Murree, District Rawalpindi**" and direct the Nazir to take possession of suit property.
- D) Direct the Defendant to pay a sum of Rs.76,144,530/- to the Plaintiff or the market value at the time of realization being 52.36% share value in suit property. As well as a sum of

Rs.50,000,000/- on account of mental torture to the plaintiff due to action of the defendant. In total in sum of Rs. 12,61,44,530/-.

E) Cost of the suit.

F) Any other relief that this Honorable Court may deem fit and proper in the circumstances of the case be granted.

3. Notice was issued to the Defendant, who filed written statement wherein defendant raised preliminary objections to the effect that the suit as framed is not maintainable in law; that Plaintiff has no right, title and interest in the suit land and the suit filed by the Plaintiff is false; that the Plaintiff has not paid a single penny to the Defendant towards purchase of suit land; that this Court has no jurisdiction to entertain the suit. It is further submitted by the defendant that the suit property is situated at Mouza Sulkheetar, Chattar Park, District Rawalpindi and in view of Section 16 Sub-clause (a) and (d) of the Civil Procedure Code, the suit relating to immovable property can only be instituted in the Court within the local limits of whose jurisdiction the property is situated; that some relief claimed in the suit are barred by limitation; that the suit is bad for non-joinder of necessary parties; that the plaint in the suit is liable to be rejected under Order 7 Rule 11 CPC. The defendant denied that the Plaintiff with the Defendant jointly owns the land and submitted that the Plaintiff has nothing to do with the land in question which is the exclusive property of the Defendant. It is further submitted that Defendant has not purchased the property from Official Assignee in auction proceedings as he has purchased the property from Habib Bank Limited through private negotiation. However, defendant denied any payment. It is further stated that entire payment has been arranged by the defendant from its own resources and deposited with the Official Assignee for purchase of the said land except one pay order of Rs.90,00,000/- which was given to the Defendant by one Muhammad Amin. It is further stated by the defendant that pursuant to the notice published by Official Assignee in various newspapers for sale of property in question the Official Assignee had received offers which were not accepted by the Decree Holder Bank. Thereafter the Official Assignee again advertised the sale of land but received no response and then on the basis of private negotiations the Defendant offered the Habib Bank Limited, i.e. Decree Holder in Execution No.11/2004, to purchase the suit land against consideration of Rs.41.550 Million. The Defendant along with his offer had deposited Rs.41,55,000/- through two pay orders made from his bank account, maintained at Standard Chartered Bank, 26th Street Branch, Karachi and

since the offer of the Defendant was consented by the Decree Holder as well as Judgment Debtor, the Official Assignee placed a Reference No.24/2011 before the Court which was came up for hearing on 02.05.2011 and the offer of Defendant was accepted by the Court and the Defendant was directed to deposit the balance consideration within 60 days. It is further submitted that during demarcation of land it had come on record that only 147 Kanal of land is available instead of 207 Kanal and 15 Marlas and the Defendant has offered a sum of Rs.2,95,06,512/- and had shown his willingness to deposit balance of Rs.2,53,51,521/-. The Official Assignee also recommended that instead of original offer of Rs.4,15,50,000/- reduced offer of Rs.3,16,06,521 may be accepted and in this regard Reference No.32/2012 came up before Court on 19.06.2012 and such offer was accepted and sale was confirmed in favour of the Defendant. Before confirmation of the sale by the Court, the Defendant obtained a sum of Rupees Two Crore Sixty-Two Lacs Fifty Thousand from Muhammad Amin and before that the defendant had never seen or met with the Plaintiff. However on the recommendation of Mr. Muhammad Amin the Defendant in his letter addressed to Official Assignee had nominated the Plaintiff as his nominee. At that time the Defendant and the said Muhammad Amin was also involved in another property bearing No.FT-2, Survey No.10, Old Survey No.8-1/10, Clifton Karachi and it was decided between the Defendant and said Muhammad Amin that the property No.FT-2 will be transferred in the name of the purchaser and the Defendant may transfer suit land in his name without inclusion of the name of the Plaintiff. It is further submitted that the Defendant and said Muhammad Amin has some dispute/differences with regard to FT-2/10 and this suit has been filed by the Plaintiff on the instigation of the said Muhammad Amin to usurp the share of Defendant in the property FT-2/10. The entire investment was made by Defendant and further though on the request of Muhammad Amin the Defendant has agreed to get the Sale Certificate/Sale Deed in joint name but since Muhammad Amin withdrawn the name of Plaintiff, hence Sale Certificate was exclusively issued in the name of the Defendant. It is further submitted that Plaintiff neither has any share, right or interest in the suit Property nor there was any occasion on the part of the Plaintiff to ask for the possession of the suit property, hence he prayed for dismissal of the suit.

4. The defendant also moved an application under Order VII Rule 10 CPC for return of plaint to the plaintiff to present the same before the court within the territorial limits of whose jurisdiction the property is situated.

5. Since issue, raised by the defendant through application under Order VII Rule 10 C.P.C. is with regard to jurisdiction of this Court, as subject matter property is situated out of the territorial jurisdiction of this Court, the same requires to be addressed first so as to avoid further proceedings, orders etc. as redundant or *coram non-judice*. Here, I would not hesitate in adding that whenever the Court is confronted with application Under Order VII rule 10 CPC, then it shall always be safe to decide the application Under Order VII Rule 10 CPC because such application relates to competence of the Court in entertaining (taking cognizance) the suit. For deciding such like application the Court is not supposed to go deep into the merits of the Case, including that of '*Cause of Action*' but such question is always to be decided while examining the '*pecuniary & territorial jurisdiction*'. Needless to add that the jurisdiction of the Court(s) is neither dependent upon the wishes of party or parties nor consents of two or more can control such subject but the '*jurisdiction is always subject to Constitution or any other law relating to such question*' therefore, it is safe to add that no Court shall exercise any jurisdiction in any matter brought before it until and unless such jurisdiction has been conferred upon it by the Constitution itself or under any law, as held in the case of Malik Iqbal Hassan v. DHA & Ors PLD 2019 Lahore 145 as:-

"4. We are further of the view that in accordance with Article 175(2) of the Constitution of Islamic Republic of Pakistan, 1973 no Court shall exercise any jurisdiction in any matter brought before it until unless such jurisdiction has been conferred upon it by the Constitution itself or under any law. Article 175(2) is reproduced verbatim for ready reference:-

"No Court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law".

6. Confining myself to such *legal* position, the learned counsel for the plaintiff while addressing the issue of maintainability, raised by this Court as well as by learned counsel for defendant, has relied upon 2016 YLR 157, 2018 SCMR 1444, AIR 1948 Sindh 89, 2017 CLC 1671, and 2003 SCMR 990 and contended that since auction proceedings held at Karachi under the aegis of Official Assignee of this Court in Execution Application No.11 of 2004, therefore this Court is competent to entertain this suit. Per learned counsel it is settled proposition of law that if cause of action accrued at Karachi and property is out of territorial limits of original civil jurisdiction of this Court, even then suit is competent.

7. In contra, learned counsel for defendant rebutting the above contentions, contends that since the subject matter property is situated out of the limits of Karachi (territorial jurisdiction of this Court) hence the instant suit is not maintainable before this Court and according to him the instant suit should have been filed before the Court having territorial jurisdiction. Reliance is placed upon the cases reported as 2005 MLD 1506, 2003 SCMR 990, 2010 CLC 1226, 1190 CLC 991, 2019 CLC 267 and 2001 CLC 1176.

8. Learned counsel for the intervener adopted the same arguments advanced by learned counsel for the defendant.

9. Heard learned counsel for the parties and perused the record.

10. Before proceeding any further, it would be conducive to reproduce hereunder Sections 16 and 120 of the CPC:

“16. Subject to the pecuniary or other limitations prescribed by any law, suits;

(a) for the recovery of immovable property with or without rent or profits;

(b) for the partition of Immovable property;

(c) for foreclosure, sale or redemption In the case of a mortgage of or charge upon immovable property,

(d) for the determination of any other right to or Interest in immovable property;

(e) for compensation for wrong to immovable property,

(f) for the recovery of movable property actually under distraint or attachment;

shall be instituted in the Court within the local limits of whose jurisdiction the property is situated [or, in the case of suits referred to in clause (c), at, at the place where the cause of action is wholly or partly arisen:-

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate 1[or, in the case of suits referred to in clause (c), at the place where the cause of action has wholly or partly arisen) or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain."

11. *Prima facie*, the Section 16(d) *supra* makes it quite clear and obvious that if the determination of any right or interest in *immovable property* is involved then the suit shall be instituted in the Court within local limits of whose jurisdiction the property is situated. No doubt, the Section 120 of the *Code* reads as:-

"120. (1) *Provisions not applicable to High Court in original civil jurisdiction.* The following provisions shall not apply to the High Court in the exercise of its original civil jurisdiction, namely, sections 16, 17 and 20.

and, *prima facie*, gives an impression that Section 16, 17 and 20 are not applicable to the High Court in the exercise of its *original civil jurisdiction*, with that regard it would be to germane to add, if accepted as true then the plaintiff shall have liberty to institute the suit(s) even for a property, located at any part of the Country or Sindh Province. The same, I shall insist, might fail the jurisdiction, vested by Constitution and Law upon the *Civil Courts / high Courts* of other Provinces as well that of Sindh Province. Such conclusion *legally* can't be expected from the Legislature. In a case of Muhammad Waseem Ghori & another v. Altaf Hussain Tunio & 6 others 2016 YLR 157 (authored by me), the above proposition was answered as:-

"6. In case of West Pakistan Industrial Development Corporation (*supra*) it is held that:--

"(7) *As rightly pointed out by Mr. Brohi sections 16, 17 and 20 do not apply to the High Court in the exercise of its original civil jurisdiction by virtue of the provisions of section 120, C.P.C. This section reads:--*

"*The following provisions shall not apply to the High Court in the exercise of its original civil jurisdiction, namely, sections 16, 17 and 20.*"

It is thus obvious that sections 16, 17 and 20 which prescribe the necessary conditions for giving the Court its jurisdiction and also the limitations under which such jurisdiction is given may not be available for the parties in this case.

8. *So far as the jurisdiction under clause 12 of the Letters Patent is concerned it is not the case of the parties or any one of them that this Court has any such jurisdiction to enable it to entertain the present suit. It was agreed by the learned counsel for the parties that the original civil jurisdiction of this High Court is derived under Article 5 of the High Court of West Pakistan (Establishment) Order (No. XIX) of 1955. Article 5 reads:-*

"*Original Civil and Criminal jurisdiction of the Bench at Karachi-Notwithstanding anything in this Order or in any other law for the time being in force, the Bench of the High Court at Karachi shall have the same original civil jurisdiction for the civil district of Karachi and the same criminal jurisdiction and powers of the Court of Sessions for the Sessions*

Division of Karachi, as were exercisable, immediately before the commencement of this Order, by the Chief Court of Sind under section 8 of the Sind Courts Act, 1926 (Sind Act VII of 1926).

Provided that the Governor-General may by notification in the official Gazette direct that as from a specified date such jurisdiction and powers as are mentioned therein shall cease to be exercisable by that Bench and as from that date that Bench shall cease to exercise that jurisdiction and powers."

The original civil jurisdiction for the Civil District of Karachi was exercised immediately before the commencement of this Order (Order XIX of 1955), by the Chief Court of Sind under section 8 of the Sind Courts Act, 1926 (Sind Act VII of 1926), as later amended by clause 2 of President's Order II of 1956. As section 8 of Act VII of 1926 stands, at present, the High Court has original civil jurisdiction in respect of suits and proceedings wherein the subject-matter in amount or value exceeds 25,000 rupees.

*12. Sections 16, 17 and 20 and clause 12 of the Letters, Patent prescribe the forum and the place for suing. But these sections do not apply to High Court. Article 5 of the High Court of West Pakistan Establishment Order, 1955 and also section 8 of Sind Act VII of 1926 do not prescribe the place of suing. Section 5, only saves the jurisdiction of Karachi Bench as exercised by it under section 8 of Sind Act of 1926. It is my view that the jurisdiction of the High Court has been enlarged rather than restricted by removing altogether the restrictions contained in sections 16, 17 and 20. The Legislature could never have intended to take away the jurisdiction of the West Pakistan High Court (Chief Court of Sind) altogether, since the High Court got that jurisdiction as a place of suing through these sections. Two alternative conclusions can arise from the non-applicability of sections 16, 17 and 20, C.P.C. to the High Courts. **Firstly that the West Pakistan High Court could not entertain any suit, whatsoever, and secondly, it could entertain suits, from all places within its jurisdiction.** It is true that all the District Courts except Karachi District Court have no limit prescribed to their pecuniary jurisdiction. **The present suit could, therefore, be filed at Hyderabad.** The question for decision, however, before me is whether it could not be instituted in the High Court at Karachi. The restrictions prescribed by sections 16, 17 and 20, C.P.C. having been removed the original jurisdiction of the High Court is enlarged and it has jurisdiction to entertain the present suit.*

7. In the case of Abdul Kadir (supra) the suit for specific performance of contract and ratio of that judgment at placitum "C" at relevant page 121 is as under:--

"These payments are not disputed. Plaintiff was not able to disprove the payments of these cheques. It is also held that in view of section 16 of C.P.C. the Court at Hyderabad has jurisdiction to entertain the suit as respondent No. 3 Nusrat Ali resided at Hyderabad. Plaintiff in the suit from which the present appeal arises served Nusrat Ali at his address in Hyderabad and has shown his address at Hyderabad in the amended plaint. Moreover the appellant before us has not been able to prove that agreement Exh. 140 was a forged document and was not executed on 29-5-1966 as we have held above."

Whereas in this dictum the application of Section 16 of the C.P.C. was affirmed.

8. In the case of Mst. Fatima Bai (supra) it was observed that main contesting defendant residing out of jurisdiction of this court where suit was filed, hence plaint of plaintiff as such was declined.

9. In case of Mst. Rais Akhtar (supra) it is observed that:--

*"It is an admitted position that the contract was entered into at Karachi. The petitioner No.1 not only received the entire sale consideration at Karachi but issued receipt at Karachi. It is also an admitted position that the petitioner No.1 executed irrevocable General Power of Attorney as well as Special Power of Attorney at Karachi and notice for revocation of General Power of Attorney was issued at Karachi and received at Karachi by the respondent. **In view of the cases referred to hereinabove and the finding of the Court at Karachi has jurisdiction.** The revision petition is, therefore, dismissed. I, therefore, uphold the judgment before me."*

9. In said judgment, the application of Section 16 of the C.P.C. was affirmed.

10. On same issued there is case of Muhammad Naveed Aslam and others (2011 CLC 1176), being relevant para 32 is reproduced herewith:--

*"32. The non-applicability of sections 16, 17 and 20 read with Order XLIX, Rule 3 is only applicable and limited to the original side jurisdiction for the district of Karachi and when it is found that the property is situated outside the territorial jurisdiction of Karachi then sections 16 and 17 will automatically come into operation. The initial guiding principles for institution of various suits is provided under sections 16 to 19, C.P.C. whereafter section 20 has been provided for other suits to be instituted where the defendant resides or cause of action arises. In the present matter section 16 is applicable therefore, the suit should have instituted in Thana Bola Khan where the property is situated and since the claim of damages is not an independent relief but arising from the alleged wrong done committed by the defendants in the suit, therefore, this relief can also be easily claimed in the same suit at Thana Bola Khan along with other reliefs including the declaration as to the ownership, permanent and mandatory injunction. The honourable Full Bench of this court in case "**Rimpa Sunbeam Co-operative Housing Society Ltd. v. Karachi Metropolitan Corporation**" reported PLD 2006 Karachi 444 already held that Jurisdiction of Sindh Court to entertain suits is basically neither the ordinary nor the extraordinary original civil jurisdiction, of the High Court but simply a District Court jurisdiction, the jurisdiction of Sindh High Court to try Civil suits is confined to matters where the pecuniary value of the subject-matter exceeds Rs.30,00,000. All other suits are liable to be tried by the District Courts. In another judgment reported in 2005 MLD 1506 in the case of (Murlidhar P. Gangwani v. Engineer Aftab Islam Agh), the learned Division Bench held that territorial jurisdiction of the Court could not be extended or curtailed on compassionate grounds or looking to the financial position of a party and the expenses which he might have to incur in pursuing the litigation before the proper Court having jurisdiction in the matter. Further, the question of maintainability of a suit with reference to the territorial*

jurisdiction, vis-a-vis cause of action accrued to a party for institution of such suit, is to be judged on the basis of averments made in the plaint."

In this judgment, the application of Sections 16 to 20 of the Code was affirmed while referring to other reported judgments.

11. There is a case reported as **Mst. Aisha Siddiqui's case** (PLD 2010 Karachi 261) and others being relevant paras 13, 14, 15, 16 and 17 are reproduced herewith:--

13. A bare reading of Section 120 of Civil Procedure Code show that firstly it makes sections 16, 17 and 20 of Civil Procedure Code inapplicable for the High Court in exercise of its original civil jurisdiction. The need to make sections 16, 17 and 20 of C.P.C. inapplicable to a High Court arose because the jurisdiction of Civil Courts under sections 16, 17 and 20, C.P.C. and the original civil jurisdiction of the High Courts under the then Letters Patent determine separate places where a civil suit and proceedings could be filed. Section 120 of C.P.C. was enacted to settle the conflict of sections 16, 17 and 20 of C.P.C. with the laws that conferred original civil jurisdiction on the High Courts and to obviate any confusion as regards place of suing. This can be understood through an example. Ordinarily a suit relating to a dispute of immovable property situated in Saddar, Karachi is to be brought in the Civil Court, which under the provisions of sections 16 and 17 of Civil Procedure Code has jurisdiction to try such suit. As the area of Saddar in Karachi falls within the limits of Police Station, Saddar which is in District East, Karachi, therefore the Civil Court which can try suits of area falling in Police Station Saddar becomes the place where such a suit is to be filed when sections 16 and 17 of the Civil Procedure Code are applied. However, if the same suit is of a value, which is more than three million rupees then by virtue of section 7 of Sindh Civil Courts Ordinance, 1962 the place of suing shifts to the Original Side of this High Court. In order to overcome this overlapping of jurisdictions, provisions of sections 16 and 17 of C.P.C. were made inapplicable under section 120 of C.P.C. so that these provisions may not come in the way of filing a civil suit or proceedings on the Original Side of this Court. Therefore, while entertaining a suit relating to immovable property emanating from the area of Saddar in Karachi having a value of more than three million rupees, the place of suing as determined under sections 16 and 17 of the C.P.C. becomes immaterial and is not to be considered as under section 7 of the Sindh Civil Court Ordinance 1962, the Original Side of this High Court becomes the place of suing. **Section 120 of C.P.C. can be interpreted only in this manner and not in a manner that any suit of more than three million rupees in value, coming from any part of the territorial jurisdiction of this Court viz. the entire Province of Sindh can be entertained on the Original Side of this Court. If the interpretation as given to section 120 of C.P.C. by the learned counsel for the plaintiff is accepted then every suit of a value above three million rupees relating to any part of Sindh has to be entertained on the Original Side of this Court. Such an interpretation would defeat the very purpose that created original civil jurisdiction in this High Court for the Districts of Karachi.** While interpreting section 120 of C.P.C., the meaning of the words "in the exercise of its original civil jurisdiction appearing in that section should not be lost sight of which clearly mean that place of suing is not to be determined by sections 16, 17 and 20 but by the provision which confer original civil jurisdiction on this High Court. Now original civil jurisdiction is conferred on this Court under section 7 of the Civil Courts

Ordinance, 1962 which is limited only for the territorial limits of Karachi. No other territory of this High Court comes within the ambit of the original civil jurisdiction prescribed under section 7 of the 1962 Ordinance. Therefore, if a suit does not fall within the ambit of original civil jurisdiction of this High Court then certainly the place of suing for such a suit is to be determined under sections 16 to 20 of Civil Procedure Code. What is actually meant by inapplicability of sections 16, 17 and 20 of C.P.C. to High Court under section 120 of C.P.C. is that High Court shall not apply these provisions to a suit if it comes under the ambit of section 7 of 1962 Ordinance i.e. sections 16, 17 and 20 of Civil Procedure Code shall not apply if a suit pertains to any part of the four Districts of Karachi and is valued at more than three million rupees. On the other hand, if a suit is filed in this Court which does not fall within the original civil jurisdiction of this Court i.e. **it does not pertain to a dispute relating to any of the four Districts of Karachi or in not of a prescribed value then certainly the provisions of sections 16, 17 and 20 shall be attracted and the plaint shall be returned for its presentation to a Court of appropriate jurisdiction.** Section 120 of Civil Procedure Code therefore only renders ineffective provisions of sections 16, 17 and 20 of C.P.C. to suits that can be entertained by this High Court in exercise of its original civil jurisdiction which is confined to civil suits and proceedings pertaining to the Districts of Karachi only and not for any other area falling within the jurisdiction of this High Court.

14. While discussing the real meaning and intent of section 120 of the Civil Procedure Code, it could occur in one's mind as to why only sections 16, 17 and 20 of Civil Procedure Code have been made inapplicable when the place of suing is also determined by sections 18 and 19 of the Civil Procedure Code. The reasons are these. Taking up section 18 of C.P.C. first, it provides that where there is uncertainty as to the local limits of two or more Courts and a suit is filed in anyone of them then upon its disposal, the decree would be regarded as if it was passed by a Court of competent jurisdiction. The object of enacting section 18 of Civil Procedure Code is to treat a decree passed by a Court to be legally valid even though there was confusion as to Courts' local limits and subsequently the uncertainty of limits is resolved and the area is found not be within the jurisdiction of the Court which passed the decree. In order not to disturb this legal position as envisaged by section 18 of Civil Procedure Code and not to render such decree a nullity, **the provisions of section 18 of Civil Procedure Code were not made inapplicable under section 120 of Civil Procedure Code.** Thus a suit valued at more than three million rupees even if it is filed on the Original Side of this Court on account of uncertainty of local limits and this Court decrees the suit then the decree would still be treated as valid and passed by a Court of competent jurisdiction though subsequently the uncertainty is resolved and the area to which the suit related is found to be part of Thatta. Thus, to keep such decree valid, Section 18 of Civil Procedure Code has not been made inapplicable to the original civil jurisdiction of the High Court under section 120 of Civil Procedure Code.

15. Section 19 of C.P.C. on the other hand gives an option to the plaintiff to sue for his claim for compensation for wrong done to him or to his movable property at the place where the wrong was done as well as at the place where defendant resides as provided in the illustrations to section 19 of Civil Procedure Code. Now section 19 of Civil Procedure Code has not been made inapplicable to the original civil jurisdiction of the High Courts under section 120 of Civil Procedure Code for the reason that legislature

*intended that options for the place of suing provided therein should not be taken away and remain available with the plaintiff. However, if one of the two options provided in section 19, C.P.C. is exercised in a manner that suit of a category falling under section 19, C.P.C., i.e. claim for compensation for wrong done to him or to his movable property is to be filed in Karachi then such a suit can be competently filed on the original side of the Court provided only if the amount or value of subject-matter of dispute is of prescribed value. **Therefore, for these reasons i.e. to keep the options as to place of suing open for the plaintiff in suits relating to his claim for compensation for wrong done to person or to movable property, the provisions of section 19, C.P.C. have not been made inapplicable to the Original Civil jurisdiction of this Court under section 120 of Civil Procedure Code.**"*

(Underlining is supplied for emphasis).

12. The above view with regard to the extent of the powers of this High Court to exercise original civil jurisdiction in suits and proceedings is further fortified from the view taken in the case of **Firdous Trading Corporation v. Japan Cotton and General Trading Company** reported in PLD 1961 Karachi 565 referred to by Mr. Kamal Azfar, which is authored by an eminent Judge of this Court Justice Wahiduddin Ahmed. Justice Wahiduddin at pages 575 and 576 held as follows:--

Pages 575 and 576

"The history of the establishment of the High Courts in the sub-continent shows that there were only three Courts which were conferred ordinary original civil jurisdiction within certain limits under their Letters Patent. No other High Court established under the High Court Act of 1861 or under the Government of India Act, 1915 or under the Government of India Act, 1935 was invested with powers of ordinary civil jurisdiction. The Chief Court of Sindh was no doubt a High Court within the meaning of section 219 of the Government India Act, but the jurisdiction which it exercised in the civil district of Karachi was not that of an ordinary original civil jurisdiction of the High Court but it was only performing the duties of the principal Civil Court of original jurisdiction within the district of Karachi under a special statute viz. section 8 of Sindh Court Act, 1926."

Then at page 577 Justice Wahiduddin Ahmed held as follows:--

"I have not the slightest doubt on the language of section 8 of Sindh Act, 1926 and the definition of 'District in section 2(4) of the Civil Procedure Code, that it was exercising District Court jurisdiction in contradistinction to the ordinary original civil jurisdiction of the High Court. In my opinion the mere fact that the Sindh Chief Court later on was included with the definition of High Court under Section 219 of the Government of India Act, did not change the nature of this jurisdiction. I am fortified in this view by another circumstances. Formerly in Sindh there used to be a Court of the Judicial Commissioner. It was exercising jurisdiction in civil matters within the district of Karachi under section 2 of Bombay Act No.1 of 1906. It reads as under:--

"There shall be for the Province a Court of the Judicial Commissioner of Sindh (hereinafter called the Court of the Judicial Commissioner) which shall be the highest Court of Appeal in civil and criminal matters in the

said Province and which shall be the District Court and Court of Session of Karachi."

This position continued till 1937 although in the Government of India Act, Judicial Commissioner's Court in Sindh was deemed as a High Court. But in spite of this in civil matters it continued as District Court. In 1926 the Sindh Courts Act was passed by the Bombay Legislature; which came into force in 1940. But in this enactment, instead of treating the Chief Court of Sindh as District Court, it was designated as the principal Court of original civil jurisdiction. Thus the same position was maintained and it was not enacted that it will have ordinary original civil jurisdiction within the limits of Karachi and also did not change the nature of the jurisdiction in civil matters"

Then in the last sentence of first paragraph at page 580 he goes on to hold as follows:--

"It seems to me that the jurisdiction exercised in such matters is a District Court jurisdiction and since it is exercised by the High Court it may be called as special original civil jurisdiction or extraordinary original civil jurisdiction, but certainly cannot be described as ordinary civil jurisdiction of the High Court." (Underlining is mine)

13. Thus, in the case of Firdous Trading Corporation v. Japan Cotton and General Trading Company reported in PLD 1961 Karachi 565 **it was held that this Court while exercising the powers of original civil jurisdiction is exercising jurisdiction that is exercised by Civil Courts in the civil district of Karachi i.e. it is functioning as the principal Civil Court of original jurisdiction for the District of Karachi only under a special statute.** This decision of Justice Wahiduddin Ahmed reported in PLD 1961 Karachi 565 was though overruled by the Division Bench of this Court which is reported in PLD 1975 Karachi 944 but this Division Bench decision was reversed by the Hon'ble Supreme Court in the case of Province of Sindh v. Haji Razzaq reported in 1991 SCMR 920 and the decision reported in PLD 1961 Karachi 565 was upheld by the Supreme Court.

14. From such background and the dictum, laid down in the judgment (supra), it should not be disputed any more that application of Section 120 and its effect of making sections 17 to 20 of the Code, should always be taken to matters, confined within territorial jurisdiction of 'Karachi' hence whenever the matter is relating to a property falling beyond the territorial jurisdiction of 'Karachi', the Court shall always consider the question of 'jurisdiction' with reference to Sections 16 to 20 of the Code, whichever is applicable."

12. The above legal position, even, stood affirmed through the case law, relied by both the sides, i.e Haji Abdul Malik & 10 others v. Muhammad Anwar Khan & 26 others 2003 SCMR 990 wherein it has categorically been clarified as:-

..... Under section 16 of C.P.C. a suit for declaration relating to the rights and interest in an immovable property is instituted in a Court within local

limits of which the property is situated. **The suit for the purpose of determining the rights or interest in the property** being different to that of the suit in which the relief claimed does not relate to the rights in the immovable property, can be filed at the place at which the cause of action fully or partly arose. **The suit relating to the rights in the immovable property would lie before the Court within the local limits of which the property is situated and if the property is situated outside the territorial jurisdiction of the Court, and the relief being sought in the suit relates to the property, the suit would not be maintainable before any other Court except the one within territorial jurisdiction of which property is situated.** In the present case, the parties in the suit in question residing the local limits of District Mansehra and the agreement was also registered at Mansehra therefore cause of action in favour of respondents-plaintiffs relating to the cancellation of agreement would arise at Mansehra. The essential factor for determination of jurisdiction for the purpose of entertaining the suit would be judged from the contents of the plaint and the dispute subject-matter of suit and not from the consequence flown from the suit. The declaration in the suit filed by the respondents sought was that cancellation of registration of agreement by the Registrar was illegal which would not relate to the rights and interest in the immovable property and would be confined only to the limited extent of exercise of jurisdiction by the Registrar. The place of breach of law would furnish the forum for a suit and such place is where some act was to be performed and thus the suit to set aside the document on the ground that it was obtained through misrepresentation.....

In the nutshell, if a suit involves dispute relating to the rights in the immovable property , such suit will be maintainable at the place where property is situated and if the relief does not relate to the rights and interest in the property and is confined only to the extent of an ancillary matter, can be filed at the place where the cause of action wholly or partly arose. The learned Judge in Chambers in the High Court having examined the proposition in detail in the light of relevant statute has held that the suit was maintainable at Mansehra and we are of the view that no exception can be taken to the legal position explained in the impugned judgment in the facts of the present case..

13. The above case law, *prima facie*, leaves nothing ambiguous that if the case falls squarely within meaning of Section 16(d) of the *Code* the Court is not left with any discretion but to return the plaint for its presentation before the court within whose jurisdiction the property is situated. Such conclusion also affirms the answer, so was drawn by me in referred case.

14. In another case of *Khan Muhammad Tareen v. Nasir and Brother Coal Company* 2018 SCMR 2121 said *legal* position stood affirmed as:-

“9. In order to regulate place of suing and institution of civil proceedings, same is to be instituted in the Civil Court of lowest grade competent to try (section 15 C.P.C.) and in the Court where the defendant or one of the defendants resides or work for gain, or where the cause of action occurs, or where it relates to right to or interest in immovable property, is required to be instituted within the local limits of whose jurisdiction the immovable property is situated. ..

15. In view of above legal position, I am of the clear view that learned counsel for the plaintiff is not *legally* justified while taking plea that since the document was executed at Karachi hence this Court has jurisdiction particularly when the plaintiff is *directly* claiming rights and interests in the **immovable property** situated at Rawalpindi. The plaintiff, *prima facie*, not challenging the document or its legality, so executed at Karachi, but *prima facie* seeking determination of his rights and interest in the *immovable property* as is evident from the prayer clauses which, for sake of convenience, are reproduced hereunder again:-

- A) To restrain the Defendant to create any third party interest over **land measuring about 207 Kanal and 15 Marlas, situated at Mouza Sulkheetar, Chattar Park, adjacent Sanam Gardens, Tehsil Muree, District Rawalpindi.**
- B) To direct the Defendant to **hand over the 52.36% possession of land measuring 207 kanal and 15 marlas** to the Plaintiff as his share in subject property.
- C) To appoint the Nazir of the Honourable Court of Sindh at Karachi as receiver of property bearing “**land measuring about 207 Kanal and 15 Marlas, situated at Mouza Sulkheetar, Chattar Park, Adjacent Sanam Gardens, Tehsil Murree, District Rawalpindi**” and direct the Nazir to take possession of suit property.
- D) Direct the Defendant to pay a sum of Rs.76,144,530/- to the Plaintiff or the market value at the time of realization being 52.36% share value in suit property. As well as a sum of Rs.50,000,000/- on account of mental torture to the plaintiff due to action of the defendant. In total in sum of Rs. 12,61,44,530/-.
- E) Cost of the suit.
- F) Any other relief that this Honorable Court may deem fit and proper in the circumstances of the case be granted.

Thus, it is quite safe to say that such determination of the *rights and interests* could only be determined by the competent court within whose local jurisdiction the property is situated. As regard the case laws, relied by the learned counsel for the plaintiff, I am of the clear view that the same are distinguish and not fitting into proposition involved in the instant matter. Further, the case law, relied by the plaintiff i.e Searle IV Solution (Pvt) Ltd. V. Federation of Pakistan 2018 SCMR 1444 is also not applicable because in that case the issue involved was relating to *bar to jurisdiction of civil courts in light of the ouster clause in section 217(2) f the Customs Act* therefore, the same, respectfully added, can't be referred in the instant matter.

16. In view of what has been discussed above, leave me with no option but to conclude that instant suit is not maintainable before this Court and is liable to be returned for its presentation before the Court within whose local territorial jurisdiction the property is situated. Accordingly, the plaint of the plaintiff be returned; plaintiff is at liberty to file plaint in the Court having jurisdiction. CMA No.8009/2013 is allowed.

SAJID

JUDGE