

JUDGMENT SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Suit No.45 of 1998

PRESENT:
Mr. Justice Arshad Hussain Khan

Plaintiffs: Muhammad Akram Qureshi & another
Through Mr. Muhammad Azam Khan, Advocate

Defendant: Pakistan Defence Housing Authority
Through Mr. Raja Sikandar Khan Yasir, Advocate

Date of Hg: 15.08.2016

Date of judgment: 31.08.2016

JUDGMENT

ARSHAD HUSSAIN KHAN,J., The present suit was filed by the Plaintiffs against the Defendant for Declaration, Permanent Injunction and Compensation with the following prayers :-

- (i) *Declaration that the plaintiffs are the owner of the piece of land measuring of about 3630 square yards equivalent to 30 Ghuntas being part and parcel of Survey No.291 formerly Naclas No.24 of Deh Dih Tapo Ibrahim Hyderi District East Karachi by virtue of legal purchase and the claim of the defendant of any nature against the piece of land is illegal, malafide and based on dishonesty;*
- (ii) *Decree for a sum of Rs.10,00,000/= (Rupees Ten lacs) for demolition of boundary wall, damaging bricks and taking away other construction materials from the site of the land and forcibly stopping the construction on the piece of land illegally and without lawful authority whereby putting the plaintiffs into heavy loss, therefore, the plaintiffs are entitled for the damages/compensation for Rs.10,00,000/= (Rupees ten lacs);*
- (iii) *Grant the Permanent Injunction restraining the defendant, their employees, agents or anybody claiming on their behalf not to interfere in any manner for the construction over the piece of land measuring 3630 sq. yards equivalent to 30 Ghuntas being part and parcel of Survey No.291 formerly Naclas No.24 in Deh Dih Tapo Ibrahim Hyderi District East Karachi;*
- (iv) *Grant the cost of the Suit; or*
- (v) *Pass any other appropriate Order which this Hon'ble Court may deem fit and proper in the circumstances of the case.*

2. The case of the Plaintiffs as averred in the plaint is that the plaintiffs through a duly registered sale deed dated 4.10.1992 had purchased a piece of land measuring 30 Ghuntas equivalent to 3630 sq.yds., being part and parcel of Naclas No.24, (New Survey No.291) in Deh Dih, Tapo Ibrahim

Hydri, District East, Karachi, (“**suit land**”) from its original allottee and transferee namely; (1) Sarfaraz Khan son of Sher Ahmad (2) Muhammad Akbar son of Faqir Muhammad and (3) Malik Shahid Jawaid son of Malik Bostan Khan, in whose favour a 99 years lease was duly registered in Deh Form-II of Taluka and District Karachi (East). Subsequently, the suit land was transferred in the name of Plaintiffs and the Revenue Authorities after proper verification issued Deh Form-II and *Surat-e-Haal* in respect of suit land. Thereafter, the Plaintiffs were put into physical possession of the suit land and since then they are in physical possession thereof. The City Survey department upon application of the Plaintiffs conducted survey demarcation on 25.11.1996 and demarcation plan in respect of the suit land was also issued. Thereafter, the Plaintiffs applied to City Survey department for the permission to construct boundary wall around the suit land which permission was subsequently granted. However, when the Plaintiffs started raising construction of the boundary wall, the Defendant by taking law in their hands, invaded suit land, demolished the construction and took away all the construction material with them by claiming themselves as the owner of the suit land. The Plaintiffs having no other options, approached this Court and filed the present suit.

3. The defendant, upon notice of the present case, filed its written statement wherein while denying the allegations leveled in the plaint have stated that the suit land as described in the *Surat-e-Haal*/sketch (Annexure A/2 to the plaint) is the property of the defendant on the basis of the lease agreement executed by Commissioner Karachi on behalf of Governor of Sindh on 06.12.1979 in favour of dissolved Pakistan Defence Officers Co-operative Housing Society Ltd. Karachi. As per the averments in the written statement the suit land falls in the area known as Humayun Commercial Area in the record of the defendant. The defendant has also carried out the development of the area and also made allotments of plots. It is also averred that the Defendant in the year 1989 had instituted a civil suit bearing No.586/1989 in this court to restrain the residence of *Katchi Abadi*, Qayyumabad, from encroaching upon the said land. The said suit is pending adjudication and injunction order is operative against the defendants in the said suit. It is also averred that Humayun Commercial Area is comprising of 50.17 Acres which in fact is remaining area out of 640 Acres that constituted Phase-IX of the defendant Authority and since

the suit land falls within the area of Humayun Commercial, therefore the claim of the ownership of the Plaintiff in respect of suit land is not valid and legal. Further the Provincial Government utilized portions of lands of Humayun Commercial for the construction of River Bund [embankment] to check the floods in the Malir River. It is also averred that the Revenue Authorities have made further allotment of an already allotted land and have thus committed a patent illegality. So also the City Survey office wrongly issued Annexure-A/5 (*Surat-e-Haal*) and A/6 (permission for construction of Boundary wall) to the Plaintiff as the said documents are collusively obtained documents. The defendant also disputed the claim of the plaintiffs regarding the possession of the suit land. Conversely, it is averred that the possession of the entire area inclusive of suit land are with the defendant authority since the year 1979. Further averred that the claim of Damages of the plaintiffs against the defendant authority is also false as the same has been based on collusively obtained document, hence the plaintiffs are also not entitled for the relief of damages etc. It is also stated that the Conveyance Deed in favour of the Plaintiff is not a valid document and the Defendant reserves the right to file a suit for cancellation of the same and damages.

4. Out of the pleadings of the parties, on 10.09.2001, this Court framed the following issues:-

- 1) *Whether the suit is bad for non-joinder of party?*
- 2) *Whether the plaintiff is entitled to any compensation for demolition of the boundary wall?*
- 3) *Whether the defendant had taken away the materials/bricks from the site?*
- 4) *Whether the plaintiffs are the lawful and legal purchaser of the land measuring 30 ghuntas (equivalent to 3630 sq. yards.) being part and parcel of Naclas No.24, New Survey No.291, situated in Deh Deeh, Tapo Ibrahim Hyderi, Nai Malir, if so its effect?*
- 5) *Whether the land purchased by the plaintiffs are duly marked and demarcated and specified by the Board of Revenue and Survey Department as per Annexures A/4, A/5 and A/5/1, if so its effect?*
- 6) *Whether the No Objection Certificate was granted by the Board of Revenue for raising construction as per Annexure A/6 filed by the plaintiff in the Court, if so its effect?*
- 7) *Whether the land duly purchased through Sale Deed (Annexure A/2) copy of the same produced in Court by the plaintiff and so also the Lease Agreement Annexure A/1, involved in the suit, had already been allotted/transferred and demarcated, notified and*

possession given to the plaintiffs against full payment, by the Board of Revenue, if so its effect?

- 8) *Whether the suit is maintainable?*
- 9) *What should the decree be?*

5. On 13.10.2006, the commissioner was appointed to record evidence in the matter. The said commission was completed and the learned commissioner through his report dated 02.11.2001 placed on record the evidence of the parties recorded by him in the matter.

6. The plaintiffs in support of their case have examined plaintiff No.1- Muhammad Akram as P.W-I and plaintiff No.2, Murtaza Bashir Abbasi as P.W-II, whereas the defendant in support of its case has examined one witness namely; Lt. Col. (Retd.) M. Shahbaz Ali as D.W-I.

7. The plaintiffs filed affidavit-in-evidence of Muhammad Akram Qureshi[**Exh.P-5**] and produced the following documents:

- 1 *Deh Form-II dated 24.06.1992 reflecting the names of original allottees as holder of 99-years residential cum commercial lease of suit land.* **Exh.P-5/1**
- 2 *Registered Sale Deed, executed by the original allottees in favour of the Plaintiffs registered on 04.10.1992.* **Exh.P-5/2**
- 3 *Deh Form-II dated 29.12.1996 reflecting the names of the Plaintiffs as owner of the suit land along with Map/Surat Haal.* **Exh.P-5/3**
- 4 *Demarcation Plan dated 25.11.1996 in respect of suit land.* **Exh.P-5/4**
- 5 *Letter dated 17.11.1996 sent by Assistant City Survey Officer Karachi East fixing the dated for demarcation of the suit land.* **Exh.P-5/5**
- 6 *Letter dated 08.04.1997 sent by Assistant City Survey Officer, Karachi East to SDM, Landhi Korangi, Karachi East and SHO Zaman Police Station Korangi Karachi whereby the permission was granted to construct boundary wall at the suit land.* **Exh.P-5/6**

The record of the evidence file reveals that the Plaintiffs' counsel though on 18.08.2007 through a Statement [mentioned as 'B' at page 257 of Evidence file] placed on record true translations (in English) of the documents namely, Deh Form-II dated 24.06.1992, Deh Form-II dated 29.12.1996, Surat-e-Haal/Site Plan and demarcation **And** Original 99-years lease [mentioned as 'A' at page 267 of Evidence file] executed by Mukhtiarkar Karachi East on 24.6.1992 in favour of (1) Mr. Sarfaraz Khan, (2) Malik Shahid Javed and (3) Mr. Muhammad Akbar yet neither the said documents were exhibited nor any cross examination was done in respect thereof. The signature of the commissioner is also visible on the said documents, which show that said documents were produced on 18.08.2007 at the time of evidence of Plaintiffs' witness (PW-I).

8. The said plaintiff No.1 was subsequently cross-examined by the counsel of the defendant. The plaintiff No.2 (PW-II) though had also filed his affidavit-in-evidence [Exh.P-5/7 at page 107 of evidence file] and along with it filed same set of documents as that of filed by PW-I in his evidence, however, the said documents were neither produced and exhibited nor witness was examined as the counsel appearing on behalf of the plaintiffs filed a statement praying therein that the Deposition of plaintiff No.1 may be accepted as the Deposition of PW-II (Murtaza Bashir Abbasi). For the sake of ready reference, the contents of the said statement is reproduced as under:-

"It is submitted that the Deposition and Cross examination of PW-1 Muhammad Akram Qureshi may be accepted as Deposition of PW-2 Murtaza Bashir Abbasi and the same may be admitted as the Deposition of PW-2.

Prayed accordingly

Sd/-

Plaintiff No.1

Sd/-

Plaintiff No.2

Sd/-

Advocate for the plaintiff.

Dt:18.08.2007"

The statement was taken on record and pursuant to the 'no objection' given by learned counsel for the defendant, the cross examination of P.W-I

was treated as cross-examination of P.W-II. Thereafter, the side of the plaintiffs were closed.

9. The defendant filed affidavit-in-evidence of Lt.Col.(Retd) Muhammad Shahbaz Ali [Exh. D] and produced the following documents:

(1) *Authority letter dated 12.10.2009 in favour of witness Lt.Col.(Retd) Muhammad Shahbaz Ali* (Exh.D/1)

(2) *Letter bearing No.L.U.II/2/45/75-G(k)I dated 14.09.1997 addressed to Commissioner Karachi by deputy Secretary land utilization whereby 99-years lease for an additional area of 640.55 acres was granted in favour Pakistan Defence Officers Cooperative Housing Society.* (Exh. D/2),

(3) *Lease Agreement dated 06.12.1979 executed between Governor of Sindh through Commissioner Karachi and Pakistan Defence Officers Co-operative Housing Society Limited Karachi* (Exh.D/3)

(4) *Plan of P.O.D.O.C. Housing Society* (Exh.D/4).

The said witness of the Defendant was subsequently cross examined by the counsel of the Plaintiffs.

10. I have heard Mr. Azam Khan, learned Advocate for the Plaintiffs and Mr. Raja Sikandar Khan Yasir learned Advocate for Defendant and with their assistance also perused the material/evidence available on record.

11. Mr. Azam Khan, learned counsel for the plaintiffs, at the outset of his arguments has very candidly conceded the fact that the Plaintiffs have not adduced any evidence in respect of their claim of damages, hence he does not press prayer clause relating to damages. Consequently, the counsel for the Plaintiffs has given up Issues No.2 and 3. The learned counsel during the course of arguments besides reiterating the contents of the plaint and the affidavit-in-evidence of the plaintiffs has urged that since the sufficient documentary evidence are available on record, which according to him the defendant neither denied nor raised objection in the cross examination, therefore, no deed of joinder of any other party. He further urged that the Plaintiffs have filed original registered title documents and other relevant record in the present case, which amply demonstrates the ownership of the Plaintiffs vis-à-vis the suit land. He further urged that the presumption of

truth is attached with the registered and original documents, unless the same are cancelled through competent legal proceedings, which in the present case is admittedly not done by Defendants hence, the registered title documents and other relevant documents issued by the authorities concerned, filed by the Plaintiffs in support of their plea in the case, have legal sanctity attached to said documents. In support of his stance in the case, the learned counsel also, relied upon following case law:

1990 SCMR 725 (*The Evacuee Trust Property Board and Others v. Haji Ghulam Rasul Khokhar and Others*).

In this case the Hon'ble Supreme Court has held that Entries mentioned in the revenue record regarding ownership are presumptive evidence of title which shift the burden on a person challenges their correctness to establish otherwise.

PLD 1961 (W.P) Karachi 511 (*Muhammad Sidik and Others v. Ghulam Hyder and Others*)

In this case the learned Division Bench of this court while deciding the First Appeal has held, that in law, the entries in the Record of Rights though not conclusive, are evidence of facts stated therein. Such entries shall be presumed to be true until the contrary is proved.

PLD 1962 (W.P) Karachi 147 (*Abdul Khaliq v. Board of Revenue, West Pakistan and Others*)

In this case the learned Division Bench of this court while deciding the constitutional petition has held that the entries in the Record of Rights are not conclusive evidence of facts recorded therein and such entries shall be presumed to be true only until the contrary is proved in civil court. Thus in case where any party is aggrieved by the order of the Revenue authorities it is open to them to challenge the mutation proceedings in civil court.

PLD 1998 Lahore 233 (*Ch. Ilam Din v. Lahore Development Authority*)

In this case the learned single judge while deciding the Civil Revisions, has held that since the plaintiffs having established their title over the land in question on the basis of registered sale deed in his favour therefore, being owner fully entitled to claim exemption and compensation from the respondent who had acquired the same and has invited applications for exemption of plots.

12. In rebuttal, the learned Advocate for the Defendant besides reiterating contents of the written statement and affidavit-in-evidence filed on behalf of the Defendant has argued that the plaintiffs have failed to prove their case in the evidence. Further urged that by virtue of promulgation of The Sindh Government Land (Cancellation of Allotments

Conversion and Exchanges) Ordinance 2000 [**Ordinance No. III of 2000**], whereby all allotments, conversions or exchanges of state land obtained or granted for residential, commercial or industrial purpose at rates lower than the market value in violation of law or ban from January 1, 1985, including subsequent transactions in respect thereof, stand cancelled. Since, the suit land allotted to the Plaintiffs in the year 1992, therefore this land also stand cancelled and the plaintiffs have failed to get the same restored. Hence, Plaintiffs cannot claim ownership right over the suit land.

13. I have given due consideration to the arguments advanced by the learned counsel for the parties, minutely perused the material/evidence available on record, the applicable laws and the case law on the subject. My findings on the issues are as under:

14. Issues Nos.1 and 8 :Since these issues are connected with each other therefore, same are taken up together. The preliminary objection taken up by the defendant in the written statement is that the Suit is bad for non-joinder of a proper party, that is, Government of Sindh (Board of Revenue), from whom the Plaintiffs claim to have derived their title and further the Plaintiffs have no right over the suit land as the claim of the Plaintiffs are based on collusively obtained documents hence the suit is not maintainable and is liable to be dismissed.

The Code of Civil Procedure, the procedural law relating to the civil suits, lays down the procedure under Order 1, Rule 9 to be followed in cases of non-joinder of parties. For convenience's sake the same is reproduced as under:

“ORDER 1: PARTIES TO SUIT

Rule 9. Misjoinder and non-joinder.--- No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it”

15. The presence of opposing parties is one of the essential requirements of any civil suit. But all parties are not necessary for the suit to be adjudicated upon, therefore, necessary and non-necessary parties have to be distinguished between. ‘Necessary Parties’ are those parties from whom relief is claimed. ‘Non-necessary parties’ are those parties who may be party to the suit, but from whom no relief has been claimed. This aspect has

been defined in various judgments of this court as well as the Hon'ble Supreme Court that a necessary party is person who ought to have been joined as party and in whose absence no effective decree could be passed at all by the Court. If a 'Necessary party' is not impleaded, the suit itself is liable to be dismissed. However, a 'non-necessary' but a 'proper party' is the party who though not a necessary party, yet is a person whose presence is matter of convenience to enable the court to adjudicate effectively and completely. The absence of such party is *per se* not fatal to the suit and the Court will decide the suit in so far as the rights of the parties on record are concerned. Furthermore, it is by now settled principle of law that Plaintiff cannot be denied relief on the ground of mis-joinder or non-joinder of party. Even otherwise, it is duty of the Court to do justice and not to knock out the parties on the technical grounds. Relevant decisions in this regard are Mst. Jannat Bibi v. Saras Khan (2011 SCMR 1460) and Shanmukam v. Nachu Ammal (AIR 1937 Madrass 140).

In the circumstances, since the Plaintiffs do not seek any relief against the Government of Sindh (Board of Revenue), therefore, Government of Sindh (Board of Revenue) is not a necessary party in the present case and the suit could be decided on the basis of documents available on record, hence, the plea of non joinder of necessary is not available to the Defendant.

16. Furthermore, since the present suit is a declaratory one as the Plaintiffs in the instant case, on the basis of registered conveyance deed and other documentary evidence, seek declaration (in two folds); (i) that Plaintiffs are owner of the suit land and (ii) the claim of the Defendant of any nature against the suit land is illegal, malafide and based on dishonesty, therefore, the Plaintiffs' present suit as framed is maintainable under the provisions of Section 42 of Specific Relief Act, which requires any person entitled to any legal character or to any right as to any property, may institute suit against any person denying or interested to deny, his title to such character or right and the Court may in its discretion make therein a declaration that he is so entitled. It would thus be safely stated that the law authorizes a person to seek enforcement of his right to any property by instituting a suit against a person denying his right or title. Relevant judicial

precedents are Parveen Begum and another v. Shah Jehanand another (PLD 1996 Karachi 210) and Abdul Razzak Khamosh v. Abbas Ali and others(PLD 2004 Karachi 269). For reference's sake Section 42 of Specific Relief Act is reproduced as under:

“42. Discretion of Court as to declaration of status or right. Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief”

The upshot of the above discussion is that the suit is maintainable and cannot be dismissed on technical grounds of non-joinder of party.

17. Issues Nos.2 and 3: Since the counsel of the Plaintiffs has given up these issues therefore, no finding is required to be made.

18. Issues Nos. 4, 5, 6 and 7: These connected issues may conveniently be taken up together. The claim of the Plaintiffs in the present suit is that they are the owners in possession of the suit land. In this regard the Plaintiffs have led their evidence through affidavit-in-evidence [**Exh-P-5 at Pg. 5 of Evidence file**]and along with the said affidavit produced various documents. From the evidence it transpires that the suit land was initially allotted to (1) Sarfaraz Khan s/o Sher Ahmad (2) Muhammad Akbar s/o Faqir Muhammad and (3)Malik Shahid Jawaid s/o Malik Bostan Khan, vide allotment order No.PS/MBR(LU)/1200/1992 dated 07.04.1992 and subsequently, on 24.06.1992 a 99-years Residential cum Commercial lease was executed by the then Mukhtiarkar, Karachi East in favour of the said allottees[**the original 99-years is available at Pg.267 of evidence file**]. Subsequent thereto, the suit land was mutated in the record of rights in the name of said allottees, vide Entry No.27 dated 24.06.1992 which fact is reflected from the VF-II [**Exh. P-5/1 at Pg.71 of Evidence file**].The said allottees subsequently sold the suit land to the present Plaintiffs vide registered sale deed dated 4.10.1992 [**Exh. P-5/2 at Pg. 75 of Evidence file**].Subsequently, after survey and demarcation[**Exh. P-5/3, P-5/4 and P-5/5 at Pgs. from 93, to 99 of Evidence file**], as per *Ghat Whad* form new **Survey No.291** was assigned to the suit land and thereafter, the suit land

was mutated in record rights vide entry No.37 in the name and favour of the present Plaintiffs. Such fact is reflected from the VF-II [**True certified copy issued by assistant city survey office Karachi on 01.01.1997 available at Pg.93 of evidence file**]. Thereafter, as per the claim of the Plaintiffs, the Plaintiffs were put in possession of the suit land, although nothing on record is available which could reflect that when the possession of the suit land was handed over to the Plaintiffs, yet a letter bearing No.ACSO/Deh.Dih/119/Karachi dated 8.04.1997 issued by Assistant City Survey Officer, Karachi East[**Exh. P-5/6 at Pg.101 of Evidence file**]whereby the Plaintiffs were granted permission to raise construction of boundary wall at suit land, reflects the possession of the suit land is with the Plaintiffs.

19. Apart from above documents, the Plaintiffs along with their affidavit-in-evidence [**Exh.P-5**] also filed photocopies of various documents relating to suit land. For reference's sake the relevant paragraphs of[**Exh.P-5**] are reproduced as under:

“10. I say that I sent a letter to the Secretary Land Utilization Department on 26.06.2003 for regularization of our above said land thereafter, on 15.09.2004 the Secretary Land Utilization Department sent us a letter of acceptance and the same was accepted by us. Copy of the letter dated 15.9.2004 and acceptance letter are submitted herewith as Exhibit “P/9” and P/10 respectively.

11. I say that the Challan deposited by the previous owners on 2nd June 1992 was verified by the Section Officer for Secretary Government of Sindh on 27.8.2005 and the same challan was verified and replied back on 23.01.2006 as genuine. Photocopy of the same letter and verification are submitted as Exhibit P/11 and P/12 respectively.

12. I say that the Deputy Secretary Land Utilization Board of Revenue verified the sale deed executed by me and Plaintiff No.2 on 15.06.2004 and the same was verified and replied to be genuine through a confirmation on 25.06.2004. Photocopies of the same letter and confirmation are submitted herewith as Exhibit P/13 and P/14.

13. I say that Section Officer for Secretary Government of Sindh sent a Notice to the previous owners for appearance before confirming the title of the property in our name and the same notice was also published in daily Dawn and Jung on 07.3.2006. Copies of the same notice and publications are filed herewith as Exhibit P/16, P/17 and P/18 respectively.”

[underlining is to add emphasis]

It would be advantageous to reproduce the Public Notice published in Daily DAWN dated 07.03.2006 as under:

“GOVERNMENT OF SINDH
LAND UTILIZATION DEPARTMENT
NOTICE

M/s. Sarfaraz Khan	No.01-72-02/SO-1/304
Malik Shahid Javed& Muhammad Akbar	Karachi, dated: 21-02-2006
Lessees of 00-30 ghuntas of land From Nai Malir, Deh Dih, Karachi.	

Please take notice that an area of 00-30 ghuntas from Nai Malir Deh Dih, Karachi was leased out on 99 years for residential / commercial purposes in your favour under letter No.PS/MBR/L.U/1200/1992, dated: 07.04.1992. You have sold-out the same land to M/s. Muhammad Akram Qureshi S/o. Muhammad Zaman Qureshi & Bashirullah Khan S/o. Sardar Hamidullah Khan through Sale-Deed registered No.4233 dated: 09.10.92. The land is cancelled under Ordinance No.III of 2000. Now purchasers have applied for regularization of their purchased land. Your signatures do not tally on different documents available on this office record.

You are required to appear before the Secretary to Government of Sindh L.U. Department at Block-79, Pak. Secretariat near Masjid-e-Khizira, Karachi, within 15 days from the date of publication of notice, and explain whether you have any objection to the regularization of said land in favour of purchasers. Please take further notice that in case of failure to comply with directions the matter will be processed ex-parte and lease will be regularized under the Ordinance.

SECTION OFFICER-I
for Secretary to Government of Sindh”

[underlining is to add emphasis]

20. In the cross examination, the main thrust of the Defendant’s counsel was that the documents produced in the evidence by the Plaintiffs are forged documents, however, the said burden was shifted to the Defendant when the witness denied the said suggestions of the counsel, which burden was never discharged by the Defendant. Furthermore, the defendant neither in its written statement nor in the affidavit-in-evidence filed by them in the present case has alleged that the documents relied upon in the plaint and produced in the evidence by plaintiffs are forged and/or fabricated documents. On the contrary, their plea in the case is that said documents are collusively obtained documents for which the Defendant had reserved the right to file appropriate proceedings for cancellation of the same. However, the record did not show any case with regard to the cancellation of the

documents, has been filed by the Defendant. It may be noted that mere assertion of the Defendant that the documents produced by the Plaintiffs in the case are either forged or collusively obtained by the Plaintiffs, without a positive attempt on their part to substantiate the same, is of no consequence. Needless, to add that it is very easy to assert fraud but it is difficult to prove the same. Reliance in this respect is placed upon the judgment of the Hon'ble Supreme Court of Pakistan reported in **2009 SCMR 70** titled as *Ghulam Ghous v. Muhammad Yasin and another*.

21. The Plaintiffs in support of their claim of ownership over the suit land are relied upon registered instrument (sale deed)[**Exh. P-5/2 at Pg. 75 of Evidence file**], and other attested certified copies issued by the concerned authorities[**Exh. P-5/3, P-5/4 and P-5/5 at Pages from 93, to 99 of Evidence file**]and original 99 years lease executed by Mukhtiarkar Karachi East, in favour of the predecessor in interest of the Plaintiffs,[**available at page 267 of evidence file**]. Since, the documents relied upon by the Plaintiffs are registered or certified copies issued by the concerned authorities, hence presumption of truth is attached to them, until and unless they are rebutted through strong and cogent evidence and the Defendants have failed to bring any such evidence on the record. Therefore, no reason, cause or justification to hold the said documents otherwise. In this regard, besides the case law relied upon by the Plaintiffs' counsel which is fully applicable to the present case, a further reliance can be made to the cases of *Mirza Muhammad Sharif and 2 others v. Mst. Nawab Bibi and 4 others*(**1993 SCMR 462**) and *'Abbas Ali Shah and 5 others v. Ghulam Ali and another*(**2004 SCMR 1342**).

22. It may also be noted that the Plaintiffs in order to substantiate their stance in the case, besides above documents, have also placed on record various other documents through their affidavit-in-evidence, specially under para 10, 11, 12 and 13 of the said affidavit, as reproduced in para-19, above, which includes a public notice appeared in Daily Dawn & Jang dated 7.03.2006, also reproduced in the said para-19above. The said documents reflect that the names of the plaintiffs as purchasers/owners of the suit land exist in the record of the Board of Revenue, Government of Sindh. Though the said documents were placed on record yet not produced

and exhibited in the evidence. Nevertheless, there is nothing in law to prevent the court from looking into the documents even if they are not exhibited, provided they have been placed on record by the parties concerned. Reliance can be placed on *Imam Bux and others v. Daim and others* (PLD 2007 Karachi 358). Furthermore, non-production, of documents according to provisions of C.P.C. is merely an irregularity. In the reported case of *Nathe Khan v. Mst. Rehmat Bibi and others* (PLD 1961 (W.P.) BJ 96), it was held that documents are not exhibited but having been placed on record by the plaintiff, are admissible in evidence and can be considered.

23. The record also reveals that the Plaintiffs' statement under para 10, 11, 12 and 13 of the affidavit-in-evidence[**Exh. P-5**], **which is a material part of latter's [Plaintiff] testimony** have not been subjected to cross examination, hence, the same shall be deemed to have been admitted. It is by now a settled principle of law that any deposition made in the examination-in-chief, if not subjected to cross-examination, shall be deemed to have been admitted. Reliance can be placed on *M/s. Akbar Brothers v. M Khalil Dar*(PLD 2007 Lahore 385)

24. The record further reveals that the Plaintiffs through their affidavit-in-evidence [**Exh. P-5**] produced letter dated 08.04.1997 [**Exh. P-5/6**]sent by Assistant City Survey Officer, Karachi East to SDM, Landhi Korangi, Karachi East and SHO Zaman Police Station Korangi Karachi whereby the permission was granted to construct boundary wall at the suit land. The said statement of the Plaintiffs as well as the document[**Ex.P-5/6**] has gone unchallenged and no question was asked in this regard, hence, the said statement of the Plaintiff shall be deemed to have been admitted.

25. Adverting to the claim of the Defendant as averred in the written statement as well as in the Affidavit-in-evidence, that the Defendant is the owner of 640 Acres of land from Naiclass No.24 of Deh Dih, in Taluka Karachi. Out of which 580 acres has been utilized by the government of Sindh for construction of Malir River protection Bund leaving behind 60.55 Acres. And out of 60.55 Acres an area measuring 28 Acres earmarked for Humayun Commercial Area. Furthermore, 640.44 Acres constituted Phase IX of the defendant authority. The plea of the Defendant in the case is that

the suit land falls in the Humayun Commercial Area, hence the Plaintiffs cannot claim any right of whatsoever over the suit land being part and parcel of Defendant's property. In support of its claim the Defendant filed three documents viz. Letter bearing No.L.U.II/2/45/75-G(k)I dated 14.09.1997 addressed to Commissioner Karachi by deputy Secretary land utilization whereby 99-years lease for an additional area of 640.55 acres was granted in favour Pakistan Defence Officers Cooperative Housing Society[**Exh.D/2 at Pg. 191 of the evidence file**], Lease Agreement dated 06.12.1979 executed between Governor of Sindh through Commissioner Karachi and Pakistan Defence Officers Co-operative Housing Society Limited Karachi [**Exh.D/3 at Pg. 197 of the Evidence file**]and Plan of P.O.D.O.C. Housing Society[**Exh.D/4 at Pg. 223 of the Evidence file**).

26. I have examined the documents produced by the Defendant in the evidence in support of their stance in the case; None of documents could reflect that any demarcation was done/carried-out whereby boundaries and proper position/location of the land so allotted to the Defendant could be ascertained as to at which part of the Naiclass 24, Deh Dih, Taluka Karachi the property of the Defendant is situated. The said documents do not show that out of allotted land, what area of land of the Plaintiffs were utilized by the Sindh Government and what is remaining/left for the Defendant and what is its location. The documents so produced by the Plaintiffs also do not reflect coordinates of Humayun Commercial Area. Furthermore, there is nothing available on record, which could reflect that the land so allotted to the Defendant was mutated in its name. More so, the defendant's witness in his cross-examination nullifies the stance of the Defendant taken in the written statement as well as in the affidavit-in-evidence. In the circumstances, in absence of any material documentary evidence, which could reflect that the suit land falls in the area of Humayun Commercial, owned by the defendant, the plea of the Defendant in the present case is nothing but mere assertion, hence, is not sustainable in law.

27. As regards the contention of the learned counsel for the defendant that the suit land has already been cancelled by virtue of promulgation of the Sindh Government land (Cancellation of Allotments Conversion and

Exchanges) Ordinance 2000[**Ordinance No.III of 2000**], hence, Plaintiffs cannot claim ownership right over the suit land. In reply to this objection the reliance can be placed upon *The Commanding Officer National Logistic Cell v. Raza Enterprises*(**2003 CLC 719**) Relevant portions of the judgment, for convenience's sake, is reproduced as under:

“9. Indeed the above provisions, in accordance with well settled principle of interpretation of statutes need to be read together. Section 3 no doubt provides that allotments of State land at rates lower than the market value shall stand cancelled, but section 4(2) requires a Committee to make an enquiry for determining whether the allotment was made at a rate less than the market value which has been defined to mean under section 2(6) as the value of the land at the time of allotment. In other words the cancellation under section 3, could, prima facie, take effect after market value at the relevant time has been determined by the Committee. It is equally important to keep in view that under section 4(2) even if the allotment is found to be in violation of the law or a ban on allotments the Committee is still empowered to determine the amount of loss caused to the Government and call upon the person concerned to pay such amount within a specified time. It, therefore, appears that even in such cases the allotment is not to be treated as void ab initio but the allottee can acquire ownership rights after payment of the amount of loss caused to the Government within the time specified by the Committee.

10. In view of the above, it is difficult to subscribe to the proposition that the respondent No. 1 stood divested of all interests in the property upon mere promulgation of the Ordinance. The law appears to confer upon him the right to acquire ownership rights and valid title to the property after having made up the losses sustained by the Government. We are, therefore, unable to be persuaded by the contention that the respondent No. 1 lost all interests in the property.”

28. From the upshot of the above discussion, it is manifest that, since the BOR [Board of Revenue], Government of Sindh from whom the Plaintiffs have derived title of suit land had accepted the right of the Plaintiffs by virtue of registered sale deed [**Exh. P-5/2**] in respect of the suit land and has shown the Plaintiffs as purchasers/owners in its record [**Ex. P-5/3 at Pages 93 and 95 of the Evidence file**], **which** fact is further substantiated from the notice appeared in newspaper daily DAWN and JANG both dated 07.03.2006 from Section Officer-I, for Secretary to Government of Sindh, reproduced in para-19 above, wherein the Plaintiffs were referred to as the purchasers of suit land, therefore, I am of view that the plaintiffs have established their right over the suit land and as such all these issues are decided in favour of the Plaintiffs.

29. Issue No.9: In view of the findings on the above issues, the suit is decreed in the manner, by holding that the Plaintiffs have established their case being lawful purchasers of suit land viz. land measuring 30 Ghuntas equivalent to 3630 sq.yds., being part and parcel of Naclas No.24, (New Survey No.291) in Deh Dih, Tapo Ibrahim Hydri, District East, Karachi, and therefore, directing that Defendant is restrained from interfering with their possession in the aforesaid Survey No.291.

30. Nevertheless, the Plaintiffs rights or interests in the suit land would be subject to the provision of Ordinance III of 2000 and in case they fail to pay the market value in terms of the said Ordinance or any other law, Government of Sindh may take such appropriate action as may be warranted by the law.

Karachi;
Dated:31-08-2016

Judge