

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

SUIT NO.813/2009

Date

Order with signature of Judge

1. For hearing of CMA No.2050/10
2. For hearing of CMA No.5807/09
3. For hearing of CMA No.4412/14
4. For hearing of CMA No.8009/13
5. For hearing of CMA No.2129/15
6. For hearing as to jurisdiction of this Court.

27.05.2015

Ms. Shazia Hanjrah advocate for plaintiffs.
Mr. Naveed Ahmed Khan advocate for defendant No.6.
Mr. Muhammad Iddrees Alvi advocate for KMC.
Mr. Jam Habibullah, State Counsel.

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SALAHUDDIN PANHWAR, J: By the dint of this order I intend to decide maintainability of instant suit as questioned by this Court through various orders and application under order 7 Rule 11 CPC filed by learned counsel for defendant No.1.

2. Precisely, the facts are that plaintiff filed suit for declaration, cancellation of documents, possession and permanent injunction. According to the pleadings subject matter agricultural land bearing Survey No.362 (34-10) acres and Survey No.363 (28-17) acres, survey No.261 (24-22) acres and survey No.358 (32-11), total measuring 119-20 acres situated at Deh Athal But, Tappo Athal But, Taluka Thana Bula Khan, District Jamshoro; plaintiffs purchased this property through three conveyance deeds; mutation was effected in the record of rights thereafter plaintiffs and defendant No.1 entered into an agreement to sell dated 03.03.2007 which was executed at Karachi, and thus plaintiff filed suit for cancellation of

that sale agreement dated 03.03.2007 as well for claiming vacant possession; and prayed as under :-

- A. Declare that the plaintiffs have cancelled the agreement to sell dated 03.03.2007 by virtue of cancellation notice dated 13.05.2009 to the defendant No.1 for cancellation of agreement to sell dated 03.03.2007 regarding agricultural barani land bearing Survey No.362 (34-10) acres, survey No.636 (28-17) acres, survey No.261 (24-22) acres and survey No.358 (32-11) acres, total measuring 119-20 acres of the plaintiffs, situated at Deh Athal But, Tappo Athal But, Taluka Thana Bula Khan, District Jamshoro (Old District Dadu).
- B. Declare that the defendant No.1 has illegally trespassed/grabbed the agricultural barani land bearing Survey No.362 (34-10) acres, survey No.636 (28-17) acres, survey No.261 (24-22) acres and survey No.358 (32-11) acres, total measuring 119-20 acres of the plaintiffs, situated at Deh Athal But, Tappo Athal But, Taluka Thana Bula Khan, District Jamshoro (Old District Dadu).
- C. Cancel the agreement to sell dated 03.03.2007 which was executed by and between plaintiffs and defendant No.1 pertaining to the agricultural barani land bearing Survey No.362 (34-10) acres, survey No.636 (28-17) acres, survey No.261 (24-22) acres and survey No.358 (32-11) acres, total measuring 119-20 acres of the plaintiffs, situated at Deh Athal But, Tappo Athal But, Taluka Thana Bula Khan, District Jamshoro (Old District Dadu).
- D. Direct the defendant No.1 to restore the peaceful and vacant possession of agricultural barani land bearing Survey No.362 (34-10) acres, survey No.636 (28-17) acres, survey No.261 (24-22) acres and survey No.358 (32-11) acres, total measuring 119-20 acres of the plaintiffs, situated at Deh Athal But, Tappo Athal But, Taluka Thana Bula Khan, District Jamshoro (Old District Dadu) to the plaintiffs.
- E. Restraining the defendant No.1 his agents, attorneys, and/or any one else claiming or acting through or under him from disposing off, selling, and /or effecting transfer of agricultural barani land bearing Survey No.362 (34-10) acres, survey No.636 (28-17) acres, survey No.261 (24-22) acres and survey No.358 (32-11) acres, total measuring 119-20 acres of the plaintiffs, situated at Deh Athal But, Tappo Athal But, Taluka Thana Bula Khan, District Jamshoro (Old District Dadu).

District Dadu) in favour of any person in any manner whatsoever nature.

F. Cost of the suit

G. Any other relief deemed fit and proper in the circumstances of the case by this Honourable Court.

3. At the outset learned counsel for plaintiffs while addressing the issue of maintainability raised by this Court, has relied upon PLD 1964 (WP) Karachi 11 (West Pakistan Industrial Development Corporation vs. M/s. Fateh Textile Mills Ltd) and contended that since sale agreement was executed at Karachi, plaintiff and defendant No.1 and 16 are residing at Karachi 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 District Court Karachi, suit is competent at original jurisdiction of this Court in view of section 120 Civil Procedure Code.

4. In contra, learned counsel for defendant No.6 while rebutting the above contentions, contends that subject matter property is situated out of the limits of Karachi (territorial jurisdiction of District Court) hence change of jurisdiction relates to the value of the property. He further contends that reliance of case reported in PLD 1964 (WP) Karachi 11 (West Pakistan Industrial Development Corporation vs. M/s. Fateh Textile Mills Ltd) is based on Civil Courts Act 1926 that has been repealed by Civil Court Ordinance 1962 hence such citation is not applicable, further he emphasizes upon case of Muhammad Naved Aslam and others vs. Mst. Aisha Siddiqui and others (2011 CLC 1176) wherein Division

Bench of this Court has resolved such controversy; per learned counsel the instant property is situated out of the territorial jurisdiction of Karachi, therefore suit is not maintainable before this Court, he further relied upon case of Muhammad Naved Aslam and others vs. Mst. Aisha Siddiqui and others (PLD 2010 Karachi 261), Abdul Kadir vs. Mir Ashraf Ali Khan and others (1982 CLC 110), Mst. Fatima Bai vs. Muhammad Anisuddin Khan Ghaznavi (1987 CLC 1771) and Mst. Rais Akhtar and another vs. Muhammad Azizuddin (1993 MLD 2555).

5. Since issue, raised by Court as well agitated by defendant through application under order 7 Rule 11 CPC is with regard to jurisdiction of this Court, as subject matter property is situated out of the territorial jurisdiction of this Court, requires to be addressed first so as to avoid further proceedings, orders e.t.c as redundant or coram non-judice. Learned counsel for plaintiff, by making reliance on judgments of this Court, has insisted that in case partly cause of action arises at Karachi this court is competent to adjudicate the issue involved in the properties even if same are situated out of Karachi. On the other hand, learned counsel for defendant while placing reliance on above citations, is negating such proposition. In order to see the *ratio decidendi* it would be conducive to refer the judgment relied upon by both learned counsel.

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 section 5 of the High Court of West Pakistan (Establishment) Order (No. XIX) of 1955. Section 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.

9. 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. Section 5 of the High Court of West Pakistan Establishment Order, 1955 and also E 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. RaisAkhtar (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.*”

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

10. On same issued there is case of Muhammad Naved 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-à-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 Section 16 to 20 of the Code was affirmed while referring to other reported judgments.

11. There is a case reported as Mst. Aisha Siddiqui (PLD 2010 KARACHI 261) and others being relevant para 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 CPC inapplicable to a High Court arose because the jurisdiction of Civil Courts under sections 16, 17 and 20 CPC 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 & 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 & 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.

15. Now, I would like to discuss the merits of the case in view of above ratio. Instant suit has been filed for Declaration, Cancellation of documents, Possession and Permanent injunction which all are relating to an immovable property situated at District Jamshoro i.e beyond territorial jurisdiction of **'Karachi'**. Since there

can be no denial to the legal position that Section 16 of the Code is controlling Section while the later Sections 17 to 20 are explanatory to the same. Let's have a view to Section 16 of the Code which reads as:-

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 has 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 situated **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.”

16. The Section 16 of the Code leaves nothing ambiguous that matters, falling within meaning of subsections (a),(b),(d) to (f) cannot be filed at any other place except the ***within the local limits***

of whose jurisdiction the property is situated because the word **'shall'** has been used to make it **'mandatory'** . However, discretion / choice has been given to the plaintiff in respect of the matter, falling within the meaning of the Section 16(c) of the Code. The Section 16 (c) of the Code is confined to matters of **'foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property'**. The term **'foreclosure'**, per Black's law dictionary means:

“A legal proceeding to terminate a mortgagor's interest in property, instituted by the lender (the mortgagor) either to gain title or to force a sale in order to satisfy the unpaid debt secured by the property.”

17. The said section, *thus*, does not speak for recovery of **'possession of immovable property'** or anything arising out of such **'immovable property'** such as compensation e.t.c. hence this *prima facie* is limited to those rights, arising from a **'document'** or even verbally, if permissible under the law. The deliberate confinement of the Section 16 (c) of the Code to **'foreclosure', 'sale'** e.t.c. *prima facie* appears to be that a lis may be filed at the option of the plaintiff either at place where cause of action partly or as a whole arise or where the property is situated as was held in the case of Mst. Rais Akhtar (supra), if it (lis) relates to Specific performance or for **'foreclosure'** but it would not include a declaratory suit (even with regard to status of sale agreement) particularly when through such lis the plaintiff intends to take back the possession of immovable property (located outside the local jurisdiction of High Court) and

wrong / compensation else it would frustrate the purpose of other clauses (a),(d) and (e) of Section 16 of the Code, which cannot be object and intent of the law maker (s). Every clause or subsection is always explanatory but should not be taken to overlap or frustrate the other clause(s) of same proviso. However, if for a moment it is taken as is being claimed by plaintiffs, it shall result in giving an undue advantage to a party (residing at Karachi) to file every suit before High Court in its original jurisdiction because the word **'property'** , per explanation, provided in Section 16 of the Code means **'situated in Pakistan'**. Thus, such meaning of the word **'property'** shall give an advantage to parties, residing at Karachi, to file every lis at Karachi regardless of the fact of property, being in any part of the **'Pakistan'**. If so, it shall make the other provisions, controlling the issue of jurisdiction, redundant, which, in my view, cannot be the intent of the law makers. Let me add here that term **'cause of action'** is not controlled by execution of a document but denial or breach thereof which is evident from object of a substantial law i.e **'The Limitation Act, 1908'**. To make my view clear a reference to Section 113 of the Limitation Act, 1908 would be sufficient which is:

113. For specific performance of a contract.	Three years	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.
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18. Thus, mere execution of a document at one place would not mean accrual of cause of action because if parties, entering into such agreement, complete their obligations there is no **'cause of**

action'. The cause of action means a right to sue for certain legal rights or character. Thus, I am quite clear in my view that the instant suit, so filed by the present plaintiffs is to be filed before the proper and competent Court, having jurisdiction. Same view was upheld by Division Bench of this Court. It is worth to add here that Civil Courts Act 1926 was repealed by Civil Courts Ordinance 1962' Divisional Bench of this Court in the case of Muhammad Naved Aslam, proposes that if the property is situated out of Karachi then this Court has got no jurisdiction. Besides, in case such view is not followed, then it would open a new window for the litigants to file on the basis of a document (un-registered one), to claim relief (s) at their choice and convenience at Karachi, which is not the object and intent of law, as was held in referred case. Not only this, but it shall fail the objects of sections 16, 17 and 18 which are substantive in nature. The section 120 CPC is not enlarging the scope of this Court with regard to property situated in whole Sindh therefore I am of the considered view that instant plaint is liable to be returned. Accordingly, plaintiff is at liberty to file plaint in the Court having jurisdiction. CMA No.8009/2013 is allowed.

IMK/PA

J U D G E