

IN THE HIGH COURT OF SINDH AT KARACHI

SUIT NO.1076/2006

PRESENT: MR. JUSTICE SALAHUDDIN PANHWAR

Plaintiff : Nasir Jamal S/o Hameed Khan Late,
through Mr. Qadir Khan Mandokhail , advocate.

Defendants : Ms. Haseena Akhtar widow of Hameed Khan through her
legal heirs through Raja Sikandar Khan Yasir, Advocate.

Date of hearing : 12.04.2016.

Date of announcement : 12.04.2016.

JUDGMENT

SALAHUDDIN PANHWAR, J. By the dint of this judgment, I intend to dispose of instant suit filed by the plaintiff for Administration, Partition, Declaration, Cancellation of Gift Deed, Rendition of Accounts and Permanent Injunction with the following prayers:-

(a). *To administer the suit property as the plaintiff is co-sharer in the property situated on Quarter No.87/9, 5/D, New Karachi left behind by the deceased Hameed Khan and the properties fully described in para 3 of the plaint.*

(b). *To declare that the alleged gift deed dated 30.08.1984 in favour of the defendant No.2, as disclosed in the legal notice dated 28.10.2003, is forged and fabricated having no legal value and the property is still in the name of deceased Hameed Khan.*

(c). *Partition for the purpose of payment of due share of the plaintiff from the estate and properties i.e. Public Paradise Academy (School) situated on Quarter No.87/9, 5/D, North Karachi and the properties as mentioned in para 4 above, made from the income derived from the Public Paradise Academy (School) left behind by the deceased Hameed Khan in respect of the plaintiff's said share.*

(d) *To direct the defendants to pay the plaintiff's share amount as may be determined and ascertained on the basis of the accounts.*

(e) *That the said property i.e. Public Paradise Academy (School) may be administered by this Hon'ble Court and plaintiff may be given his due share according to the actual income of the school under the Muslim Hanfi law with further prayer if the circumstances permits, the plaintiff may be allowed to participate in the school affairs being an administrator or co-owner or alternatively to appoint any fit and proper person as receiver of the properties including books of accounts with liberty to continue to run the school affairs with all powers under order 40 Rule 1 Code of Civil Procedure (C.P.C.)*

(f) *Cost of the suit.*

2. Succinctly, relevant facts as set out in the plaint are that the plaintiff is one of the legal heir and son of the deceased Muhammad Hameed Khan who died in the year 1986 and left behind the following surviving legal heirs: -

- | | | |
|------|---------------------|----------|
| i. | Ms. Haseena Akhter | widow |
| ii. | Nasir Jamal | Son |
| iii. | Mst. Nargis Khan | Daughter |
| iv. | Mst. Nasreen Akhter | Daughter |
| v. | Mst. Neelofar Khan | Daughter |

3. It is contended that the late Muhammad Hameed Khan established a school in the name and style of "Public Paradise Academy" situated on quarter No.87/9, 5/D, New Karachi, in the year 1984 and he himself was running the school. After the natural death of deceased Muhammad Hameed Khan, all the legal heirs purchased the following *beneami* properties from the income of the school in the name of different legal heirs and now it is came to know in the knowledge of plaintiff that some of the following properties have recently been either transferred or intending to be mutated or to be transferred: -

- a. Flat No.A-32, 3rd floor, Block-M, Farhana Square, North Nazimabad, Karachi.
- b. Flat No.A-20, 2nd floor, Block-M, Farhana Square, North Nazimabad, Karachi.
- c. Flat No.A-30, 3rd floor, Blcok-M, Farhana Square, North Nazimabad, Karachi.

d. House No.11, Block-87/11, New Karachi, adjacent to Public Paradise Academy, New Karachi.

e. Suzuki Car FX bearing registration No.J-1999.

4. It is further contended that after the death of plaintiff's father, the defendants No.2 to 4 have stopped the payment to the extent of the due legal share of the plaintiff, who is being a legal co-sharer in the properties of deceased after opening inheritance. The defendants No.2 to 4 always avoided to provide all details of income and accounts of said academy with intention to usurp the right of plaintiff; that after the demise of the father of the Plaintiff, the plaintiff had maintained his mother (Defendant No.1) so also met the maintenance of the Defendant No.2 to 4 from his income till solemnizing of his marriage in the year 1993 and Defendants No.2 to 4 were running the school affairs but did not pay any due share so far from the school income after the death of father of the plaintiff and even after the marriage of the Plaintiff; that the defendants No.1 to 4 sent a legal notice dated 28.10.2003 wherein some alleged new facts were disclosed upon the Plaintiff that in the lifetime of deceased Hameed Khan, a Katcha constructed House No.87/9, 5/D, New Karachi was gifted to Mrs. Nasreen Akhtar, through a written Gift Deed on 30.08.1984. The said legal notice was properly replied and denied such fact that the said Katcha constructed House No.87/9, 5/D, New Karachi was gifted to defendant No.2, Mrs. Nasreen Akhtar through a written gift deed dated 30.8.1984. It was also denied by the plaintiff that the school was established from the sources of the defendants whereas the real fact is that the school was established in the year 1984 by the deceased Hameed Khan himself and no gift deed was written in favour of defendant No.2 by her late father. That in replying the legal notice the other adverse allegations were also denied and replied. It is contended that the plaintiff has made several demands personally and also in writing from defendants, particularly defendant No.2 to 4 who have so started misusing the said joint properties, for physical partition of the said immovable properties with specific possession of their defined share therein and also division of their due share and payment of mesne profit for their illegal and unauthorized use of the said properties. The said

defendants duly received the said notice but they failed and neglected to perform their legal obligations. It is also contended that the plaintiff is entitled, in law, to partition of his legal share in the said immovable properties with specific possession of his described share by metes and bounds or in alternative equitable partition as under the provision of the Partition Act, 1893. Furthermore, the defendants No.2 to 4 are liable to pay the share of the plaintiff since 1986 when deceased Hameed Khan was expired, for their progressive unauthorized and misuse of the said joint properties and plaintiff claims his due shares in the said mesne profit against the said defendants whereas the un-account for commission income from contractors in respect of school uniforms, stationeries, transports etc is not included. It is contended that the cause of action arose to the plaintiff in 1986 when the father of plaintiff and defendants expired and again on 12th November, 2003 when the plaintiff served the said legal notice upon the defendants for rendering true and full accounts of the income derived from the properties of the deceased after his death, the properties purchased from the income of the school and pay the legal share from all the assets of the deceased Hameed Khan after his death which is still continuing within the jurisdiction of this Court.

5. The Defendants filed Written Statement stated therein that a quarter No.87/9,5/D, New Karachi was purchased from the funds of defendant No.1 in the name of deceased Hameed Khan, because at that time the deceased Hameed Khan was jobless and was sick, the defendant No.1 was doing work of sewing the cloths and from committees. The quarter in question was consisting on two rooms and total area of quarter was 120 sq. yds. After the death of the deceased, the defendant No.2 had started to teach the students and she opened center of teaching. In beginning in 1984, the students at about 15/20 were getting education. The defendant No.2 passed examination of B.Ed in 1976 and since 1972 she is in Government job. The defendant No.2 has become in Grade-17 in 1995 and she was giving education in the Secondary School from 1979. She has started construction of a School. It was vehemently denied that the deceased Hamid Khan established a School in the name and style of Public Paradise Academy in the year 1984. The plaintiff claims himself

as son of the deceased Hamid Khan but he did not know date of death of his father, actual date of death of his deceased father was 01.10.1985. The plaintiff never came forward to share in the liabilities of the defendant No.1 (mother) and in the liabilities of the School which has been established by the defendant No.2 with the co-operation of defendants No.3 & 4. He is the plaintiff, who did not discharge his part liability by way of paying the utility bills and other charges of the School and now when the tree has been prepared by the mercy of Almighty Allah at the joint attempts and co-operation of the defendants, so plaintiff came for eating fruits under the provocation of his wife, who kept him away from the defendants as the plaintiff was residing in the house of his in-laws and at the time of filing the present suit he came in the house of defendant No.1 (the Annexures "B" which is legal notice and is self-explanatory about the residence of the plaintiff but with cunning in the reply annexure B/1, the plaintiff started to use address of the defendant No.1 only to show that he resides with his mother (defendant No.1). The reply of contents of para No.4 is in respect of following properties:-

- a) Flat No.A-23, IIIrd floor, Block "M", Farhana Square, North Nazimabad, Karachi, owns and possess by virtue of declaration of Gift of immovable property vide Registered No.4803 dated 27.12.1988. As this flat was purchased by the Predecessor owner Choudhry Bashir Ahmed but at the time of purchasing of the said flat, the defendant No.1 could not manage accounts for registration of Sale Deed and for the time being the plaintiff was allowed to get a power of attorney from the Predecessor owner of the flat and when the defendant No.1 became in position to get register a proper title document in her favour, then on 27.12.1988, the defendant No.1 had registered declaration of Gift.
- b) Flat No.F-20, IInd floor, Block "M", Farhana Square, North Nazimabad, Karachi, belongs from the husband of defendant No.4 Mr. Rizwan.
- c) Flat No.F-30, IIIrd Floor, Block "M", Farhana Square, North Nazimabad, Karachi, belongs from defendant No.2.
- d) House No.9, Block 87/9, belongs from defendant No.2 by virtue of declaration of Gift dated 30.8.1984, executed in presence of witnesses as the deceased father had gifted in his life time and possession was handed over to her. The house No.11, Block 87/11, New Karachi was purchased by the defendant No.2 through Sale Deed, registered No.1979 dated

5.8.2002, from the funds of her and her husband, who is serving in T & T Department.

- e) Suzuki Car FX bearing Registration No.J-1999, is not in existing position, and not in possession of the defendants.

6. The contents of para Nos.5 and 6 are not admitted and it is replied that the defendant Nos.2 to 4 did not take over the control of Public Paradise Academy but it is a matter of fact that since the lifetime of the deceased Hamid Khan, father of the defendant No.2 to 4, the defendant No.2 had started to give tuitions and thereafter that quarter became a tuition center and time to time when the construction works were started, the same has become a Public Paradise Academy which had been registered by the defendant No.1. It is further replied that the attitude of the plaintiff was very careless regarding the performance of his duties and he never gave attention in the house and when the defendant No.1 was felt sick, the plaintiff did not care for her in any manner and these are the defendant Nos.2 to 4, who did care for their mother in all manners, not this is but the plaintiff did not come forward to deposit the utility bills and other charges of the flat of defendant No.1. On the other hand the defendant Nos.1 to 4 are ready to accept the plaintiff but the wife of the plaintiff is creating hurdles and she does not want to see in the re-union of the plaintiff with the defendants. It is further replied that the defendants No.2 & 4 always helped the plaintiff in different manners like to arrange marriage and borne all expenditure of marriage. Because the plaintiff was a salesman in the Jeweller shop and he did not earn sufficient amount for bearing marriage expenses. It is further stated by the defendants that a Plot valued of Rs.2,00,000/- was given to the plaintiff in the year 1992, which was inherited to the defendant No.1 from her mother. One Suzuki was given to the plaintiff and he got benefits from Suzuki by way of getting rent. Arrangement of the plaintiff's marriage was borne by the defendants. Engagement expenses were also borne by the defendants of the plaintiff, one Golden set was given to the plaintiff and these expensive were obtained from the School. The defendant Nos.2 to 4 got loans from G.P.Funds. Cash amount of Rs.2,00,000/- was also given to the plaintiff from getting committees as the plaintiff got this amount

without payment of installments of committees which were paid by the defendants. One car Toyota Corolla was given to the plaintiff after his marriage. The defendant NO.2 gave Rs.50,000/- to the plaintiff and she also paid Rs.15,00/- per month to him from 1993 and thereafter Rs.2,000/- per month has been given to the plaintiff till filing the present suit. As the plaintiff is Sale man in jeweler shop, the defendant No.4 sold her golden ornaments through the plaintiff and she purchased house. It is further stated that the plaintiff has failed to give the sale consideration amount of 4 Golden Bangles to her and inspite of several demands, the plaintiff did not pay the amount to the defendant No.4, not this is but when the defendant No.4 was temporarily residing with the defendant No.1 from 1998 for the period of 2 years, the plaintiff got rent of Rs.1500/- to Rs.2,000/- per month. This is the whole attitude, conduct of the plaintiff towards the defendants. It is further stated that inspite of getting a huge amount the conduct of the plaintiff has not changed and consequently on 11.8.2002, the defendants had reached on a settlement, wherein witness Arif, Hashim, Muhammad Aslam and the brothers of the Plaintiff's wife were also present, wherein, it was settled that the plaintiff can reside in the flat of the defendant No.1 and the monthly rent of the quarter from 40 sq. yds of Rs.1,000/-per month will be given to the plaintiff by the defendant Nos.2 to 4. When the flat of defendant No.1 will be sold out by the plaintiff and the defendants, the sale consideration amount of the flat of defendant No.1 will be distributed amongst them and when the quarter of New Karachi where School is situated will be sold out the defendants will give the share to the plaintiff. But the plaintiff did not stand on his legs and after this settlement again has started to create nuisance for snatching more money from the defendants on one pretext to the other.

7. Defendants prayed to dismiss the present suit with special compensatory costs.

8. Vide order dated 01.09.2008 Mr. Abdul Wahid Kanjo was appointed as Commissioner, which order is reproduced herein below:

“Mr. Khizar Askar Zaidi has pointed that since Mr. Abdul Hamid Yousuf has been engaged on behalf of defendants, he would not appear in the case hence forth Mr. Abdul Hamid Yousuf will file his valakatnama (Vakalatnama) on behalf of defendants. Defendants Mst. Nasreen Akhtar, Mst Neelolfar Khan and Mst. Nargis Khan are also present in Court, since this is a administration Suit therefore the preliminary decree may be passed under the law. Let Commissioner may be appointed for further necessary steps in terms of the preliminary decree.

Mr. Abdul Wahid Kanjo, Advocate present in Court is appointed as Commissioner will be Rs.25,000/- which will be shared equally to the Commissioner by both the parties. The fee is to be deposited immediately after Ramzan i.e. by 6th October 2008. Both the counsel for the parties will appear before the Commissioner, in his office on 15.09.2008, on which date copy of the preliminary decree will be supplied to the Commissioner.”

9. Thereafter matter proceeded before the Commissioner where Plaintiff filed his affidavit in evidence with same contentions as raised in the plaint. During evidence the plaintiff submitted two original N.I.Cs (i) N.I.C No.503-59-142676 and (ii) N.I.C No.42101-1939486-5, copy of the allotment order dated 4.9.1985, copy of the legal notice issued by Mahfooz Yar Khans Company dated 28.10.203, notices issued by Mr. Ghulam Mustafa Khawaja dated November 5th, 2003 and 12.11.2003 respectively, reply, copies of Nazir's report dated 11.10.2006 alongwith Inventory dated 9.10.2006 as Exh. P/1 to P/7. he was also cross examined. Thereafter, side of the plaintiff's was closed.

10. Defendant No.1 filed her affidavit in evidence and she was cross examined. Defendant No.2,3 and 4 also filed their joint affidavit in evidence as Exh.D/2 and during examination defendant No.2, who is also attorney of Defendants No.3 and 4, produced the original Special Power of Attorney as Exh.D/2/1, copy of Sub lease of the flat No.23-F, copy of gift deed, copy of Irrevocable General Power of Attorney Mst. Shahana Kamal has given to Muhammad Rizwan Arshad, copy of General Power of Attorney between

Seedullah and Defendant No.2, copy of Gift Deed written in Urdu dated 30.08.1984, as Exh.D/2/2 to D/2/7 (the original of the documents, which were produced as Photocopy, were seen and returned by the Commissioner). She was also cross-examined. Thereafter, side of the defendants was closed.

11. On 10.02.2016 with the consent of the parties following issues were framed:-

1. *Whether the Public Paradise Academy was established by the deceased Muhammad Hamid Khan at his Quarter No.87/9, 5/d, New Karachi, Karachi during his life time in the year, 1984?*
2. *Whether the Public Paradise Academy is affiliated with the board of Secondary Education Karachi?*
3. *Whether after the death of the deceased, the management of the Public Paradise Academy was taken over by the Defendant No.2 to 4?*
4. *Whether the income of the Public Paradise Academy has not been distributed among the legal heirs of the deceased after his death?*
5. *Whether the properties fully described in Para 4 of the plaint have been purchased by the Defendant No.2 to 4 from the income of the School?*
6. *Whether the Defendant No.2 to 4 have denied to pay the share of the Plaintiff after the death of the deceased who was his real Father?*
7. *Whether Quarter No.87/9 5/D Karachi was orally gifted to the defendant No.2 by deceased by virtue of oral Hiba dated 04.01.1984 reduced in writing on 30.08,1984? If so what is its effects?*

12. Learned counsel for the plaintiff, inter alia, contends that suit property as mentioned in paras-3 & 4 of the plaint is the *Benami* and alleged gift deed made by late Muhammad Hameed Khan in favour of Defendants No.2, 3 and 4 is *ab intio void* and such transaction is a result of fraud committed by the said defendants; one Quarter No. 87/9, 5/D, was allotted to father of the plaintiff and defendants No.2 to 4 wherein in 1986 a school was established and after death of Muhammad Hameed Khan (father), defendant Nos. 2 to 4 occupied that school and from that income they

purchased remaining properties, hence, all properties are *Benami*. He admits that plaintiff has not produced original documents as well possession of other properties, except Flat No.A-23, is not with the plaintiff and during pendency of instant suit flat No.A-30 was sold out. He also admits that witnesses of gift were not examined by the plaintiff.

13. In contra, learned counsel for the defendants, while relying upon PLD 1998 Karachi 291, contends that plaintiff has failed to shift the onus *probandi*, the burden of proof with regard to *Benami* transaction was not shifted by the plaintiff; no sufficient evidence was led; admittedly remaining properties were purchased by the defendants after death of their father; in cross-examination it is surfaced that defendants were government employees.

14. Heard and perused the record.

FINDINGS.

Issue No.1	negative.
Issue No.2	negative
Issue No.3	negative.
Issue No.4	as discussed.
Issue No.5	not proved.
Issue No.6	as discussed.
Issue No.7	negative.

ISSUE NO.1

'Whether the Public Paradise Academy was established by the deceased Muhammad Hamid Khan at his Quarter No.87/9, 5/d, New Karachi, Karachi during his life time in the year, 1984?'

15. Since, framing of the *issue no.1* seems to have been an outcome of the assertions of the plaintiff hence *normally the onus probandi* lies upon the one who claims existence of something within meaning of the Article 119 of the Qanun-e-

Shahadat Order 1984. The plaintiff *however* produced nothing on record to substantiate this issue when the defendants had denied establishing of *academy* in year 1984 by deceased father. Not only this but the plaintiff while cross examining to the defendant no.2 put specific question as:

It is correct that I have not mentioned the year of the purchasing of the property. It is replied that Public Paradise Academy was opened in 1986. Voluntarily says that first of all it was a tuition center and subsequently it was converted to a Public Paradise Academy. It is incorrect to suggest that the Paradise Academy was not opened in the life time of my father. It is incorrect that the opening ceremony of the Public Paradise Academy was inaugurated by the (Late) Deputy Mayor Mr. Abdul Khaliq Allahwala.

yet the plaintiff produced nothing in such *line*. Thus, it is a case of the words against the words and in such *eventuality* it is well settled principle of law that mere *assertions* alone shall not be sufficient to believe '*discharge of burden*' which shall bring the consequence within meaning and objective of article 118 of Qanun-e-Shahadat Order. Accordingly, I answer this issue as '**negative**'

ISSUE NO.2.

'Whether the Public Paradise Academy is affiliated with the board of Secondary Education Karachi?'

16. This issue would require no much debate after an admission of the defendant no.2 which is:

'It is correct that our Academy is not affiliated with the Board of Secondary Education.'

Accordingly, this issue is answered as '**negative**'.

ISSUE NO.3.

'Whether after the death of the deceased, the management of the Public Paradise Academy was taken over by the Defendant No.2 to 4?'

17. The *onus probandi* was again on the plaintiff to prove this issue. A reference to an admission (s) of the plaintiff *himself*, made in his cross-examination, shall leave nothing to make further discussion on this issue, which are:

'It is incorrect that defendant No.2 was not tutoring during the life time of her father.'

'It is correct that I have not been any Administrator/ teacher / or clerk in this Academy of whatsoever. It is correct that I have not made any representation or any complaint to any authority or any forum. '

'I do my job as salesman in Jewellery shop since 1971 to so far.'

These *admissions* are sufficient to draw a permissible inference that the management continued with the defendants particularly and the term '*taken over*' cannot be said to have been established particularly when it *in this issue* refers to a '*negative meaning*' i.e '**taking control by removing some one**' which *prima facie* is not case as is evident from the *admissions* of the plaintiff himself. Accordingly, this issue is answered in '**negative**'.

ISSUE NO.4 and 6.

Whether the income of the Public Paradise Academy has not been distributed among the legal heirs of the deceased after his death?

Whether the Defendant No.2 to 4 have denied to pay the share of the Plaintiff after the death of the deceased who was his real Father?

18. Both these *issues* are strongly inter-linked with each other therefore, it would be in all *fairness* to discuss the same *jointly*. I must say before start of the discussion that *one* cannot legally claim a thing unless he / she, as the case may be, *first* establishes entitlement because a right is always subject to *legal* entitlement and not to a *mere* claim. There can be no denial to the fact that one can claim *entitlement* for a fruit from a business unless he / she, *as the case may be*, establishes his / her status in the *business*. Let me make it clear that it is not the *building* (structure alone) which is claimed to be earning money but it is *teaching therein* which is brining *fruit* (money) with which the plaintiff, per his own admissions i.e:

‘It is correct that I have not been any Administrator/ teacher / or clerk in this Academy of whatsoever.’

‘I do my job as salesman in Jewellery shop since 1971 to so far.’

does not claim to have participated in *any* manner in fruit, coming from such academy. In absence of any active participation in a *business* either by way of *investment* or *physical* working one cannot legally claim a share from income of a *business* regardless of his / her relation with doer of such business because such entitlement is not subject to any *relationship*. The above position leaves nothing ambiguous in responding these issues as ‘**not proved**’.

ISSUE NO.5

‘Whether the properties fully described in Para 4 of the plaint have been purchased by the Defendant No.2 to 4 from the income of the School?’

19. Although, in view of discussion made in respect of the issue nos.4 and 6, the above issue requires no more discussion because even if it is not taken as disputed that said properties were purchased from the income of the *School* it shall not cause any prejudice towards the ownership thereof. This is for simple reason, *already* observed while discussing the issue nos.4 and 6 i.e ' *one* cannot legally claim a thing unless he / she, as the case may be, *first* establishes entitlement because a right is always subject to *legal* entitlement and not to a *mere* claim.

However, since it was also claimed by the plaintiff that these properties are *in fact* ‘**benami**’ hence it would be just and proper to address this aspect too. It is settled principle of law that in cases of *Benami* transactions three essential ingredients are required to be proved by the plaintiff which are **possession, original documents should come from hand of plaintiff**, and proof of **payment of sale consideration**. Admittedly plaintiff has not led any piece of evidence to substantiate all these three ingredients rather he (*plaintiff*) in his cross examination admitted that:

'It is correct that I have not produced any proof with regard of purchasing these assets from the income of Academy.

Therefore, this issue *without any hesitation* as **not proved**.

ISSUE NO.7

'Whether Quarter No.87/9 5/D Karachi was orally gifted to the defendant No.2 by deceased by virtue of oral Hiba dated 04.01.1984 reduced in writing on 30.08,1984? If so what is its effects?'

20. With regard to this issue, since the plaintiff has alleged the gift to be result of *fraud* hence heavy burden was upon him to prove the same but he (*plaintiff*) produced no witness or document in this regard; merely referring the office note of any authority is not sufficient because a gift can be latent or patent. I am *however* equally conscious of the fact that a beneficiary of a *claim* is always under heavy burden to establish the status of claim (*oral gift or even unregistered document of gift*) who cannot seek an exception to his / her, *as the case may be*, liabilities. Reference, if any, needed can well be made to the case of *Aurangzeb through L.Rs and others v. Muhammad Jaffar and another* (2007 SCMR 236) wherein it is held.

“9..... It is a settled law qua the transaction or sale or gift, that it is the duty of the beneficiary and a heavy onus lay on the beneficiary to prove by convincing evidence satisfying the judicial conscience of the Court that the transaction shown to be a gift was executed by the donor in favour of the donee.”

The defendants *failed* in leading any evidence to establish the transaction of the gift nor they brought any thing on record for keeping silence for *decades* together in bringing such claimed *gift* into light which *admittedly* was claimed through legal notice dated 28.10.2003 though it was claimed to be executed on 30.8.1984. However, it is also worth to refer here the defendants, *present in Court*, contended with regard to these properties i.e Quarters that the same was allotted to their father and that was purchased in the name of widow; they are ready to surrender that gift. Therefore, an answer to this issue could be nothing but as **'negative'**.

21. In view of the above discussion, I am inclined to decree the suit of the plaintiff *partly*. The property i.e Public Paradise Academy and Quarter No.87/9, 5/D, New Karachi) shall be distributed among all the legal heirs as per sharia. The parties first shall get *foti Khata badal* in their favour in respect of these properties by approaching to the quarter concern and then may come with a proposal regarding value thereof. The sharers shall have *first* right to purchase and in case of failure, the same shall be put to auction and value to be distributed amongst all as per entitlement.

Let such decree be drawn.

Announced in open court this day of April, 2016.

SAJID

JUDGE