

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.379 of 2005

[Miss Uzma Amjad Ali and another *versus* Mrs. Saeeda Bano and another]

Plaintiffs

[Miss Uzma Amjad Ali and Mrs. Asma Mahmood] : Through M/s. Ikram Ahmed Ansari and Ayaz Ahmed Ansari, Advocates.

Defendant No.1 : Through Mr. Muhammad Hanif Khatana, Advocate.
[Mrs. Saeeda Bano]

Defendant No.2 : Through M/s. Hasan Khurshid Hashmi and Syed Khurram Nizam, Advocates.

Suit No.749 of 2005

[Dr. Nafees Zubair *versus* Mrs. Saeeda Bano and others]

Plaintiff

[Dr. Nafees Zubair] : Through M/s. Hasan Khurshid Hashmi and Syed Khurram Nizam, Advocates.

Defendants : Through M/s. Ikram Ahmed Ansari and Ayaz Ahmed Ansari, Advocates
[Mrs. Saeeda Bano, Miss Uzma Amjad Ali and Mrs. Asma Mahmood]

Dates of hearing : 13.04.2022, 21.04.2022 and 31.05.2022.

JUDGMENT

Muhammad Faisal Kamal Alam, J: The present *Lis* have been instituted in respect of sale of House No.26, Khayaban-e-Janbaz, Phase-V, Defence Housing Society, DHA, Karachi (“**Suit Property**”). Plaints contain the following prayer clause_

Suit No.379 of 2005

- a) *Judgment & Decree whereby declaring that the Sale Agreement dated 11-2-2005 executed by the Defendant No.1 with the Defendant No.2 for sale of House No.26, Khayaban-e-Janbaz Phase-V, Defence Housing Society Karachi is illegal, void, and without any lawful authority.*
- b) *Judgment and Decree whereby cancelling the said Sale Agreement dated 11-2-2005 in respect of selling of House No.26, Khayaban-e-Janbaz, Phase-V, DHA Karachi being illegal, void, and without any lawful authority.*

- c) *Judgment & Decree whereby granting permanent injunction in favour of Plaintiffs restraining the Defendants No.1 and 2 their agents assignees, well wishers / friends, legal heirs or anybody acting on their behalf from executing Sale Deed, transferring selling, leasing conveying, in any manner whatsoever, or creating third party interest in respect of House No.26, Khayaban-e-Janbaz, Phase-V, Defence Housing Society, Karachi or dispossessing the Plaintiffs from the said house/ property.*
- d) *To grant cost of this suit.*
- e) *Any other relief(s), which this Honourable Court may deem fit and proper keeping in view the circumstances of this case.”*

Suit No.749 of 2005

- “(A) *direct the Defendants specifically to perform the agreement to sell dated 11.2.2005 and to do all acts necessary to put the Plaintiff in full possession and in case of their failure direct the Nazir to do so; OR,*
- (B) *in the alternative, order the Defendants to pay the Plaintiff earnest money and damages amounting to Rs.313,00,000/-.*
- (C) *grant profit/ interest/ mark-up @ 20% per annum on the decretal amount from the date of institution of suit till payment.*
- (D) *Award costs of the proceeding; and*
- (E) *allow any other relief that may be deemed just, fit and proper in the circumstances of the case.”*

2. Claim of both Plaintiffs (Ms. Uzma Amjad Ali and Mrs. Asma Mehmood), both sisters of Suit No.379 of 2005, is that the Suit Property was illegally sold to Defendant No.2 – Dr. Nafees Zubair (“**Purchaser**”) by Defendant No.1, who is mother of both Plaintiffs, as the latter (mother) earlier gifted 2/3rd shares in the Suit Property to both the Plaintiffs. Thus the sale transaction in favour of the Defendant No.2, vide the Sale Agreement dated 11.02.2005 (**Exhibit-11, page 99**), is illegal and void *ab initio*. Subsequently, the above Purchaser also instituted her separate Suit No.749 of 2005 against both Plaintiffs and Defendant No.1, *inter alia*, to enforce the above Sale Agreement.

3. Defendant No.1 (mother) in her Written Statement has not denied the factum of gift in favour of Plaintiffs (**Donees**), while denying the allegations against her about collusion. She has acknowledged that she being lawful owner of only one third of the Suit Property can only sell to the extent of her share. Averred that information about gifting the Suit Property to above Plaintiffs (Donees) was also communicated to the Pakistan Defence Officers Housing Authority [**DHA**] which was confirmed by it vide Letter No.H/A/2985/408 dated 08.08.1978 (Exhibit 5, with the Affidavit-in-Evidence/examination-in-chief of the said Defendant No.1); this fact was also conveyed to Defendant No.2 – Purchaser, but she without scrutinizing the official record, exerted unjustified pressure on Defendant No.1 to sign the Sale Agreement.

4. The stance of Defendant No.2 is that the Suit No.379 of 2005 is a collusive proceeding between Plaintiffs and their mother, the Defendant No.1 and thus the Plaintiffs have invoked the jurisdiction of this Court with unclean hands. It is stated that before entering into the sale transaction with Defendant No.1, the due diligence was done on behalf of Defendant No.2, in particular, Lease Deed dated 28.05.1988, produced in the evidence as Exhibit P/6, as well as Search Certificates, which show the Defendant No.1 as the sole owner, so also represented by her at the time of entering into the above sale agreement. Total Sale Price was agreed to be Rupees Thirty Million, out of which Rupees Six Million were paid as earnest money to Defendant No.1, in presence of the witnesses; therefore, she cannot resile from her contractual obligation. Averred that any purported gift as alleged by Plaintiffs is an afterthought and a fabricated document.

5. From the pleadings of the parties, following consolidated Issues were framed by the Court vide order dated 11.12.2006_

- “1. *Whether there was valid and subsisting gift of the property in question by Defendant No.1 in favour of the Plaintiff?*
2. *Whether the Defendant No.1 was legally entitled to enter into the agreement for the sale of property to the Defendant No.2?*
3. *Whether the agreement of sale between the Defendant No.1 and Defendant No.2 is enforceable in law? If the answer is in negative, whether such agreement is liable to be cancelled?*
4. *To what relief, if any, the Plaintiffs in both the suits are entitled to?*
5. *What should the decree be?*

6. M/s. Ikram Ahmed Ansari and Ayaz Ahmed Ansari, Advocates, have argued the case in support of the stance mentioned in the foregoing paragraphs and cited the following case law_

- i. 2021 S C M R 743
[*Syed Ahmad versus Ali Akbar and others*];
- ii. 1987 S C M R 1403
[*Maulvi Abdullah and others versus Abdul Aziz and others*];
- iii. 2016 S C M R 662
[*Mst. Saadia versus Mst. Gul Bibi*];
- iv. 2005 Y L R 3198
[*Hassan Ali and another versus Mst. Khatija and others*];
- v. 2021 M L D 1697
[*Babar Ali versus Arshad Mehmood and 15 others*];

7. The above case law primarily relates to the basic ingredients for a valid Gift; that for a Gift (HIBA) under the Muslim Law, written instrument and registration is not mandatory. Specific performance cannot be granted when the property is co-owned by the other persons.

8. Mr. Muhammad Hanif Khatana, Advocate, has also made submissions on behalf of Defendant No.1.

9. M/s. Hassan Khursheed Hashmi and Syed Khurram Nizam, Advocates represented Defendant No.2.

10. On behalf of Plaintiffs, Uzma Amjad deposed. Defendant No.1 – Mrs. Saeeda Bano, also testified. Dr. Nafees Zubair herself appeared to give the evidence, *whereas*, Naveed-ul-Haq Siddiqui, deposed as Witness No.2 on behalf of Vendee – Dr. Nafees Zubair.

11. Evidence appraised.

12. Plaintiff Uzma Amjad Ali has deposed in favour of her stance that she is one of the Donees and co-owner of the Suit Property. After repayment of loan to the Bank (National Bank of Pakistan – **NBP**), Redemption Deed dated 18.11.1986 was also executed, naming all the three co-owners / shareholders, that is, Defendant No.1 – Mother, Uzma Amjad Ali and her sister Ms. Asma Amjad Ali – both Plaintiffs of above *Lis*. The Deed of Redemption dated 18.11.1986, which is a registered instrument, is produced by the said witness as **Exhibit P/3** and it contains names of all the three co-owners as deposed by the said witness. She has stated in the evidence that without consent of the Donees, mother / Defendant No.1 entered into the alleged Sale Agreement dated 11.02.2005 with Defendant No.2 (Purchaser), which transaction is illegal because Defendant No.1 (mother) is only co-sharer to the extent of 1/3rd share, *whereas*, the two sisters (Plaintiffs) have 2/3rd share in the Suit Property.

13. The relevant documents for the present controversy, which are produced in the evidence by Plaintiff Uzma Amjad Ali, are as follows_

Sr. No.	Description of document	Remarks
1.	Internal Correspondence of NBP dated 26.04.1978, giving approval to mother / Defendant No.1 to gift the Suit Property in name of her two daughters (Plaintiffs).	Exhibit P/2

2.	Deed of Redemption dated 18.11.1986 between NBP and the three co-owners viz. Mrs. Saeeda Bano, Ms. Asma Amjad Ali and Ms. Uzma Amjad Ali.	Exhibit P/3
3.	Correspondence by mother Mrs. Saeeda Bano (to Secretary DHA) dated 14.06.1978 about gifting the properties to the two daughters.	Exhibit P/4
4.	NOC by DHA dated 19.08.1978 about gift.	Exhibit P/5
5.	Public Notice given by Vendee in daily Dawn of 02.02.2005.	Exhibit P/8
6.	Search Certificate for the period 19.04.1975 to 31.12.1999, showing the names of all three co-owners – Plaintiffs and Defendant No.1 (mother).	Exhibit P/9
7.	Photocopy of the Wealth Statement of father Syed Amjad Ali dated 30.06.1989, showing the Suit property in the name of three ladies (<i>ibid</i>).	X-7
8.	Copy of the subject Agreement to Sell dated 11.02.2005.	Exhibit-11
9.	Copies of Affidavit of Defendant No.1 (mother) to DHA dated 14.02.1978, confirming the gift in favour of the two daughters.	Exhibit D/10
10.	Copies of Affidavit of Defendant No.1 (mother) to DHA dated 08.09.1985, confirming the gift in favour of the two daughters.	Exhibit D/11 (the above two documents are also produced by Defendant No.1 (mother) together with her examination-in-chief / Affidavit-in-Evidence)

14. Plaintiff Uzma Amjad Ali was cross-examined by the counsel of Defendant No.1 to disprove the allegations she has leveled against Defendant No.1 (her mother); *whereas*, she was extensively cross-examined by the counsel for the contesting Defendant No.2 (Purchaser; Plaintiff of Suit No.749 of 2005). Sale Agreement in respect of the Suit Property is not disputed; photocopy whereof is produced by the witness in evidence as **Exhibit-11**. She admitted in her cross-examination that further steps towards gift of the Suit Property, after the issuance of NOC by DHA vide Correspondence of 06.08.1978-Exhibit-P/5, could not be done due to financial reasons. She could not be contradicted, that by way of Redemption Deed, it is clear that the Suit Property was gifted to the two sisters (Plaintiffs in Suit No.379 of 2005) and they are the co-owners along

with Defendant No.1. The witness clarified in her cross-examination, that the factum of gift is mentioned in Paragraph-2, Page-2 of the Redemption Deed (Exhibit P/3). She has denied the suggestion that her Parents, viz. Defendant No.1 and her husband demanded balance sale consideration from Defendant No.2 (Purchaser), while denying that higher price from the latter was also demanded.

15. The said witness was not cross-examined on some significant assertions made by her in her Affidavit-in-Evidence / examination-in-chief; for instance, that possession of the Suit Property was handed over to the two sisters, whereafter they rented the same to different Banks by way of different Rent Agreements, which are produced in the evidence as Exhibit P.W-1/11, P.W-1/13 and P.W-1/14. It means that the assertion of witness that Gift of the Suit Property was complete and valid, as the possession was also handed over to them, has been accepted by the Defendant No.2; not cross-examined about Declaration / Affidavit dated 14.02.1978 and 08.09.1985, respectively produced in the evidence as Exhibit D/10 and D/11, pages-125 and 129 of the evidence file, mentioning the fact about gifting the Suit Property to Plaintiffs (Donees).

16. In her testimony the Plaintiff [Donee] has specifically stated that Defendant No.2 (*Vendee/Purchaser*) had obtained Search Certificate for the period commencing from 04.06.1988 to 10.02.2005, *whereas*, the Search Certificate dated 04.05.2005, produced by her [Mst. Uzma Amjad] as Exhibit P/9, for the period 19.04.1975 to 31.12.1999, the Suit Property is shown to have been **owned by both Plaintiffs, besides, Defendant No. 1.** This document – Search Certificate (Exhibit P/9) has recorded transactions in respect of the Suit Property at various dates, including execution of Deed of Redemption (Exhibit P/3) by NBP, mentioning the names of all the three ladies, that is, the two Plaintiffs and Defendant No.1. On this specific

statement, the Plaintiff was not cross-examined, which means that her stance has been accepted by Defendants.

17. The Defendant No.1 (*Saeeda Bano*) while supporting the stance of Plaintiffs with regard to joint ownership, has deposed that she explained the Defendant No.2 – Vendor (*Plaintiff in Suit No.749 of 2005*) about the true ownership of the Suit Property and showed the documents to said Defendant No.2, her husband and Estate Agent, including Redemption Deed (Exhibit P/3) and Affidavits of Oral Gift (*ibid*), but Defendant No.2 and her husband and Estate Agent compelled the Defendant No.1 to sign Agreement to Sell (*ibid*), without consent of her daughters / Plaintiffs (*Donees*). In her cross-examination, she has reiterated the stance that the Suit Property was in fact gifted to her daughters / Plaintiffs. Execution of above Sale Agreement has been admitted by Defendant No.1 and her assertion that it was done under compulsion and coercion, has been disproved in the evidence. She admitted in cross-examination that she was paid through the Pay Orders, which she deposited in her Bank Account and a cash amount of Rs.5,00,000/- (Rupees Five Lacs only). To a specific question, she stated that in Reply (Exhibit D/3) to the Legal Notice dated 19-4-2005 of Defendant No.2 (Exhibit D/2), it was mentioned that the Defendant No.1 had no intention to sell the Suit Property. She has admitted that no documents were supplied by her to Defendant No.2 (*Vendee*) for verification on 11.02.2005 (when the Sale Agreement under challenge was signed). However, to a specific question, the said witness has answered in affirmative that the two Affidavits relating to the Gift (*ibid*) were shown to Defendant No.2.

18. The Vendee / Defendant No.2 in her examination-in-chief / Affidavit-in-Evidence has stated that after Defendant No.1 received an amount of Rs.500,000/- as advance, she handed over copy of 'B' Lease

(Exhibit D/15) to her and the latter also obtained Search Certificates for the period from 04.06.1988 to 31.12.1999 and 01.01.2000 till 10.02.2005. For making further payments as per Agreement, she took loan from her cousin and thus payment through five Pay Orders of total Rs.5.5 Million, was made. She deposed that she had to sell her property for arranging funds to pay off the Defendant No.1. The relevant documents produced by the said Defendant No.2 in her testimonies is as follows_

Sr. No.	Description of document	Remarks
1.	Form 'B' Lease of the Suit Property	Exhibit D/15
2.	Search Certificate covering period from 04.06.1988 to 31.12.1999	Exhibit D/17
3.	Search Certificate covering period from 01.01.2000 to 01.01.2000	Exhibit D/18
4.	Legal Notice dated 19.04.2005 by Defendant No.1 to Defendant No.2 (Vendee)	Exhibit D/21
5.	Account maintaining certificate by Askari Commercial Bank Ltd. dated 02.05.2005	Exhibit D/24
6.	Account maintaining certificate by Bank Al-Habib dated 30.04.2005	Exhibit D/26
7.	Agreement of Sale between Defendant No.2 and Tajammul Husain containing signature of Defendant No.1	Exhibit D/29
8.	Transfer Order issued by DHA dated 23.04.2005 of Plot No.63 of Defendant No.2, in favour of Syed Tajammul Husain	Exhibit D/30
9.	Receipt by Defendant No.1 in favour of Defendant No.2, acknowledging payment of Rs.5.5 Million, through Pay Order No.1695260-65 dated 09.02.2005	Exhibit D/33
10.	Reply dated 02.05.2005 by Defendant No.1 to Legal Notice of Defendant No.2	Exhibit D/34

19. In her cross-examination, she has stated that at the time of negotiation for the sale of the Suit Property, Defendant No.1 and the Plaintiff were present and even the correction is made by Plaintiff herself, but admitted that she (Plaintiff/Donee) did not sign the Sale Agreement neither as Vendor nor witness. She has admitted that all the title documents were checked and she was in possession of the title documents of Suit Property. She did not deny the suggestion that Bank draft was not prepared

on 30.04.2015 (time mentioned in the Sale Agreement for payment), because present *Lis* was filed on 17.03.2005. She has accepted the suggestion that in her Legal Notice (Exhibit D/2), an option was given to settle the matter outside the Court and in reply to the said Legal Notice (Exhibit D/3), said Defendant No.2 was offered to receive back the amount of Rs.6 Million. To a question, she has answered in affirmative that according to Redemption Deed (Exhibit P/3), the property was mortgaged by Mrs. Saeeda Bano (Defendant No.1), *whereas*, to a specific question that according to Redemption Deed, there are three owners, both Plaintiffs and Defendant No.1, the Defendant No.2 merely replied that Defendant No.1 informed her that she is the sole owner, which is reflected in the Search Certificate obtained by her (Defendant No.2); she did not dispute the above Redemption Deed.

During cross-examination, she was confronted with the Search Certificate dated 04.05.2005 (**Exhibit P/9, produced by the Plaintiff in her evidence**) and Defendant No.2 did not deny that names of all the three owners are mentioned therein, that is, Plaintiff Uzma Amjad Ali, Mrs. Asma and Defendant No.1; however, counsel for Defendant No.2 has objected to this question that above document has no relevancy. She has admitted that both the Sale Agreements of 31.01.2005 [Exhibit D/19, containing alleged corrections of Plaintiff No.1 (donee)], and of 11.02.2005 (Exhibit P/15) were drafted through her estate agent. To a question about increase in the value of Suit Property, for the purpose of determining of monetary claim of Defendant No.2, she has stated that no valuation certificate is filed but the price increase as pleaded by her **is her assessment.**

She was also cross-examined by counsel of Defendant No.1. Defendant No.2 has admitted that there is no Sale Agreement between her

and Defendant No.2 and 3 (in Suit No.749 of 2005), that is, Plaintiffs (Donees) of leading Suit No.379 of 2005.

20. The second witness from the side of Vendor is Naveed ul Haq Siddiqui, who acted as estate agent. The above witness is also a marginal witness for the said Sale Agreement. He corroborated the stance and evidence of Defendant No.1 about sale of the Suit Property in her favour. He has admitted that public notice for sale of the Suit Property was published on 02.02.2005, that is, before the date of Agreement for Sale on 11.02.2005. Acknowledged that title documents of the Suit Property were shown to purchaser / Defendant No.2, but not the Redemption Deed. He did not deny the suggestion that Search Certificates were not obtained for all the periods, while not disputing the authenticity when the Search Certificate (Exhibit P/9) produced by Plaintiff, was shown to him. In his cross-examination to Plaintiff's counsel, he has reiterated that he sold the above mentioned property to Defendant No.2. He has admitted that he inspected the property documents in the Office of Cantonment Board as it is a leased property.

CONCLUSION:

21. The Defendant No.1 entered into the above Sale Agreement with Defendant No.2 in respect of the Suit Property, without any compulsion or coercion; regretfully, to this extent the evidence of Defendant No.1 [the mother] is incorrect, which is unexpected, considering her family background. The said Defendant No.1 admittedly received a sum of rupees six million towards part payment.

22. The title documents of the Suit Property were handed over to Defendant No.2 (Purchaser) and it was her obligation to make the due diligence in respect of the official record. Had the same was properly done;

she [the Purchaser] would have come to know that the Suit Property is also co-owned by the two daughters (Plaintiffs in Suit No.379 of 2005); this is further fortified by the Redemption Deed, which is admittedly a registered instrument, mentions the fact about the Gift of the Suit Property to the two Plaintiffs (Donees) so also reflected in the Search Certificate (Exhibit-P/9) produced by the Plaintiff in her testimony and that part of her evidence has been proved. *Secondly*, it is also an admitted fact that both Plaintiffs / Sisters, who are Donees, neither executed the Sale Agreement in question nor witnesses the same; hence, relief of specific performance cannot be granted to Defendant No.2 (Purchaser), as this defect in the Subject Sale Agreement is incurable. The Suit Property cannot be sold, unless the other two co-owners [Donees] also agreed to sell the same.

Notwithstanding the above illegality, there is another aspect of the case; the claim of damages of Purchaser as an alternative relief. Applying the rule of preponderance, the testimony of Defendant No.2, that she sold her Plot No.63, measuring 600 square yards, to one Tajammul Husain and produced the official document / Transfer Order [issued by DHA] in the evidence (Exhibit D/30), which is of 23.04.2005, that is, around the same time when the subject sale transaction was entered into between the Parties hereto, shows that Defendant No.2 made financial arrangement for making payment to Defendant No.1. The Subject Sale Agreement is of 11.02.2005 and first Legal Notice sent by Defendant No.2 (Purchaser) to Defendant No.1 is of 19.04.2005 (Exhibit D/2), that is, after around two months, which was replied to after two weeks vide a Correspondence dated 02.05.2005 (Exhibit D/3, at pages-341 and 343 of the Evidence File), in which it was offered that Defendant No.1 is ready to pay back / return the entire amount to Defendant No.2. It means that the Purchaser [Defendant No.2] was in fact given a chance to close the deal and get back her entire

amount; but, it did not happen. Eventually, the dispute resulted in present litigation.

23. The Claim of damages is mentioned in Paragraph-9 of the plaint of Suit No.748 of 2005 [filed by the Purchaser]. It is a settled rule that one who is claiming damages and compensation for the wrong done, has to show that what mitigating steps, the Claimant (in the present case, the present Defendant No.2 as Plaintiff-Purchaser) has taken to prevent losses, or, at least to minimize it.

The above discussion, on the contrary, concludes that the said Purchaser [Defendant No.2] failed to take reasonable action; as due diligence was not done by Plaintiff/Defendant No.2 (Purchaser) while entering into the subject Sale Transaction, *inter alia*, even complete public record in respect of the Suit Property was not obtained, which could have been obtained by the Purchaser [Defendant No.2/Plaintiff] through search in normal course of business.

Secondly, the said Purchaser has claimed Rs.300,000/-, as one of the components of damages being advance given to the Estate Agent; conversely, the latter [Naveed-ul-Haq], in his cross-examination, has admitted that he had not received any commission, as the deal was not finalized. This admission has contradicted and disproved this component of damages claimed by Plaintiff (Purchaser); further damaging her [Purchaser's] claim of damages.

Thirdly, the Defendant No.1 through her above Reply/correspondence did offer to return the entire payments to the Purchaser [Defendant No.2], within next couple of months, which was not accepted. But, at the same time, in view of the above discussion, the Purchaser is entitled for damages, quantum whereof is determined in the following Paragraphs.

24. Issue wise determination is as under_

ISSUE NO.1:

25. The rule laid down in the case law cited by Plaintiffs' counsel is applicable to the facts of the present case, that all the ingredients of a valid Gift / HIBA exist, that is, mentioning of the fact of Gift in the registered instrument, viz. the above Redemption Deed, besides, other documents [*ibid*], acceptance of gift and possession, as Donees have also rented out the properties through Lease Agreements, which documents produced in the evidence are not disputed.

ISSUES NO.2 AND 3:

26. In view of the above finding, Defendant No.1 was not legally entitled to enter into the Agreement for Sale of the Suit Property with Defendant No.2 and the said Agreement – Exhibit-11, is not enforceable in the present circumstances. Consequently, the said document is liable to be adjudged as cancelled, being void *ab initio*. Consequently, the original whereof [the Sale Agreement] be delivered up to the learned Nazir of this Court for its cancellation.

ISSUES NO.4 AND 5:

27. Vide the Order dated 17.11.2012, an amount of Rupees Six Million towards sale consideration was deposited by Defendant No.1 in Court, without prejudice to the rights and interest of other parties; same has been invested in profit bearing scheme.

28. Since the Defendant No.1 has accepted a substantial amount of rupees six million as part payment towards sale price, and never returned the same till the above Order was passed, which means for almost seven years the same was beneficially utilized by her, therefore, Defendant No.2 (Purchaser) despite the afore discussed lacuna in her claim for damages, is entitled for monetary relief, in view of the judicial consensus, that by

invoking Section 19 of the Specific Relief Act, 1877, where the circumstances so permit, monetary compensation can be given, while refusing the specific performance to plaintiff. Thus, Purchaser [Defendant No.2]-Plaintiff in Suit No.749 of 2005 is entitled to be compensated. The reported judgment of the Honourable Supreme Court handed down in the case of *Liaqat Ali Khan and others versus Falak Sher and others* [P L D 2014 Supreme Court 506] and of this Court in the case of *Muhammad Habib and 2 others versus Messrs Humayun Ltd. and 3 others* [2015 Y L R 2008 (Sindh)] are relevant.

29. Consequently, the above amount of Rupees Six Million along with accruals / profits shall be released by the learned Nazir to Plaintiff (Purchaser) of Suit No.749 of 2005. Since Plaintiffs [donees] of Suit No.379 of 2005 and Defendant No.1 are real daughters and mother and all the three are jointly beneficiaries of the Suit Property, therefore, they will pay an amount of Rupees Four Million towards damages and compensation to Plaintiff (in Suit No.749 of 2005). Therefore, Suit No.379 of 2005 filed by Plaintiffs (Donees), is decreed in terms of Prayer Clause-a, b and c, *whereas*, Suit No.749 of 2005, filed by Plaintiff (Purchaser) is also decreed to the extent of Rupees Six Million with profits and Four Million towards damages and compensation.

30. Parties to bear their costs.

Judge

Karachi.

Dated: 22.12.2022

Riaz / P.S.