

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 579 of 2006

Rais Jafri v. Mrs Talat Afroz and Another

Plaintiff : Rais Jafri through Mr Naeem Ahmed Rana, Advocate.

Defendants : Mrs Talat Afroz, Defendant No.1 through Ayaz Ahmed Ansari, Advocate K.D.A., Defendant No.2 through Naseer Ahmed Advocate

Dates of Hearings : 28.04.2023, 16.05.2023, 17.05.2023

Date of Decision : 15.08.2023

J U D G M E N T

Jawad Akbar Sarwana, J.: In summary, this is a suit wherein Plaintiff claims that based on official documents issued by Defendant No.2, Karachi Development Authority ("KDA") (formerly City District Government Karachi) ("CDGK"), Plaintiff is the true and lawful owner of a pre-lease residential Plot No.A-388 in Block No.2, Scheme No.36, Gulistan -e- Jauhar, Karachi measuring 240 sq. yds. (hereinafter referred to as "the suit property"). He seeks a declaration, cancellation of documents, possession and injunction and an alternative relief plus damages against Defendants. Defendant No.1, who has possession of the suit property, in her defence, contends that she is the lawful owner of the suit property, based on the official documents issued by Defendant No.2. Defendant No.2 supports Defendant No.1's defence.

2. Plaintiff has prayed for the following reliefs in his Plaint:

- A. Decree that the plaintiff is the sole, exclusive and lawful owner of Plot of land bearing No.388, Block 2, Scheme No.36, admeasuring 240 sq. yds. In Gulistan e Johar, Karachi and Defendant No.1 has no lawful right or title over the suit plot.
- B. Declare that any document creating any right or interest of Defendant No.1 in the suit plot is of no legal effect and the same may be ordered to be cancelled.
- C. For possession of the suit plot directing the defendant No.1 to demolish the illegal construction so far raised on plaintiff's plot.

"ALTERNATIVELY

If for any reason this Hon'ble Court comes to the conclusion that the suit Plot cannot be given to the Plaintiff, the defendant

No.2 be directed to allot another Plot of same size in the similar circumstances to the plaintiff.

Decree jointly and/or severally against defendant in a sum of Rs.5,000,000/= or of such amount equal to the market value of similar Plot in the similar circumstances on the day the decree is passed with markup @12% till realization of the decretal amount.

D. Permanently restrain the defendant No.1 from selling, alienating, creating any third party interest and/ or raising any construction on the plot in question.

E. To grant costs of the suit to the plaintiff.

F. To grant such or any other relief (s) which this Hon'ble Court may deem fit and proper under the circumstances of the case."

3. The facts of the case as set up in the pleadings are that Plaintiff purchased the suit property from one Najmul Ebad on 06.04.1989. Najmul Ebad got the suit property in lieu of another Plot, namely Plot No.A-181. One Qazi Ghulam Hussain owned this Plot No.A-181, and Najmul Ebad had purchased this plot from Qazi Ghulam Hussain. Subsequently, Najmul Ebad got the suit property in lieu of another Plot, namely Plot No.A-181. Plaintiff relied on copies of official documents of Defendant No.2 in support of his chain of title, which included Najmul Ebad's original Allotment Order dated 20.02.1989, acknowledgement of possession dated 20.02.1989 and site plan of the suit property. Plaintiff also relied on the original Transfer/Mutation Order dated 06.04.1989 in favour of Plaintiff as well as several payment vouchers/receipts pertaining to Qazi Ghulam Hussain in respect of Plot No.A-181 and one payment by Najmul Ebad in respect of the suit property. During the course of arguments, Plaintiff's Counsel contended that the evidence brought on record supported Plaintiff's contentions. He argued that Defendant No.1 had not produced any evidence with regard to payment and deposits made by her to Defendant No.2. On the other hand, Plaintiff had produced payments which pre-dated Defendant No.1's allotment order. Therefore, as Plaintiff's allotment order was earlier in time and payment receipts/challans evidenced payment in support of the earlier chain of title, Plaintiff was the real owner of the suit property. He further contended that Defendant No.2 had submitted in paragraph 2 of his affidavit in evidence that, as per the entry of the Allotment Register of KDA, the suit property was originally allotted to Qazi Ghulam Hussain. Plaintiff claimed ownership in the suit property through Qazi Ghulam Hussain; hence the chain of ownership supported Plaintiff's claim. He argued that Defendant No.1 did not produce the allotment order of Ghulam Qadir Baloch for Plot No.A-187 on the basis of which Defendant No.1 claimed she derived her title in the suit property (Defendant No.1 asserted that

Ghulam Qadir Baloch got the suit property in lieu of Plot No.A-187). Therefore, in the circumstances Defendant No.1 defence was/is liable to be rejected and Plaintiff's suit should be decreed in his favour.

4. In the Written Statement, Defendant No.1 took the defence that the chain of title was in her favour and filed copies of official documents of Defendant No.2 in support of her contentions. Defendant No.1 claimed possession and title in the suit property. She also submitted and relied upon gas, electricity and water and sewage connections to the suit property, as well as an application for Lease Deed filed by her with Defendant No.2. Defendant No.1 contended that Plaintiff has failed to prove the trail of allottees and subsequent owners of the suit property. She contended that no allotment order was in favour of Najmul Ebad from whom Plaintiff claimed the title. Further, Plaintiff did not produce any agreement of sale executed between Plaintiff and Najmul Ebad. Defendant No.1 contended that the Plaintiff had no case and the suit should be dismissed with costs.

5. Defendant No.2 also filed Written Statement and supported the stance of Defendant No.1.

6. The chain of title allegedly acquired in the suit property by Plaintiff and Defendant No.1, based on pleadings of the parties and evidence, is summarised below in tabular format in juxtaposition to each party's stance in the suit.

<p>Suit Property (240 sq. yds.) A-388, Block-2, Scheme No.36, Gulistan -e- Jauhar, Karachi</p>
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	Rais Jafri (Plaintiff) (I)	Talat Afroz (Defendant No.1) (II)
(A)	<p><u>First Allottee</u> Mohammed Shahid</p> <p>There is no information except a Transfer Order dated 06.04.1989 mentioning Mohammed Shahid was the original allottee of Plot No.388. No other information is/was available (Ex. No. "PW1/12" dated 06.04.1989 for A-388)</p>	<p><u>First Allottee</u> Ghulam Qadir Baloch</p> <p>(Ghulam Qadir Baloch, was the owner of A-187, Block-11, Scheme 36, Karachi) when KDA allegedly transferred/allotted to him the suit property (A-388)).</p> <p>(i) KDA Allotment Order for A-388 dated 12.5.1990 (Ex. No. "DW 2/2")</p> <p>(ii) KDA Possession Order for A-388 dated 12.05.1990 (Ex. No. "DW 2/3")</p> <p>(iii) KDA Acknowledgement of Possession Order for A-388 dated 12.06.1998 (Ex. No. "DW 2/4")</p>

		(iv) KDA SITE Plan for Plot A-388 dated 19.08.2002 (Ex. No. "DW 2/5")
B.	<p style="text-align: center;"><u>Allottee</u> Najmul Ebad</p> <p>(i) KDA Allotment Order dated 20.02.1989 for Plot No.388 (Ex. No. "PW1/8")</p> <p>(ii) KDA Acknowledgment of Possession Order for Plot No.A-388 dated 20.07.1989 (Ex. No."PW1/9")</p> <p>(iii) KDA SITE Plan for Plot No.A-388 (undated) (Ex. No. "PW/10")</p> <p>(iv) KDA Challan deposited on 19.02.1989 - O/1</p> <p>(v) KDA Challan dated 30.03.1989 for Plot No.A-388 towards conveyance charges up to 30.05.1992.</p> <p>(Najmul Ebad, was allegedly the owner of A-181, Block-11, Scheme 36, Karachi when KDA allegedly transferred/allotted to him the suit property (A-388).</p> <p>Najmul Ebad acquired Plot No.A-181 from Qazi Ghulam Hussain.</p> <ul style="list-style-type: none"> • KDA Application Form dated 26.07.1980 (Plot no. not mentioned) (Ex. No. "PW1/3") • KDA Challan dated 24.11.1980 deposited with HBL (Plot no. not mentioned) (Ex. No. "PW1/4") • KDA Allotment Copy Receipt dated 22.10.1984 for Plot No.A-181 for cash funds deposited with HBL (Ex. "PW1/5") • KDA Allotment Copy Receipt dated 22.10.1984 for Plot No.A-181 for cash funds deposited with HBL (Ex. "PW1/6") • KDA Allotment Copy Receipt dated 08.11.1984 for Plot No.A-181 for cash funds deposited with HBL (Ex. "PW1/7") 	<p style="text-align: center;"><u>Second Allottee</u> Laeq Ahmed</p> <p>(i) KDA Transfer Order dated 14.05.1998 (transfer mutation has been effected through Attorney Muhammad Shafique f/h Muhammad Ishaq (Ex. No. "DW 2/6")</p>
	<p style="text-align: center;"><u>Subsequent Allottee</u> Raees Jafri (Plaintiff)</p> <p>(vi) KDA Allotment Order dated 06.04.1989 for Plot No.388 (Ex. No. "PW1/12")</p>	<p style="text-align: center;"><u>Third Allottee</u> Fouzia Athar Butt</p> <p>(i) KDA Transfer Order dated 15.12.1998 (Pre-lease Transfer) (Ex. No. "DW 2/7")</p>
		<p style="text-align: center;"><u>Fourth Allottee (Defendant No.1)</u> Mrs. Talat Afroz</p> <p>(i) Simpliciter Agreement of Sale dated 21.11.2002 between Fouzia Athar Butt</p>

		<p>and Defendant No.1 (Ex. No. "DW 1/3")</p> <p>(ii) CDGK Transfer Order dated 16.04.2003 (Pre-lease Transfer) (Ex. No. "DW 2/8")</p> <p>(iii) <u>Objection</u>: CDGK Approval of Building Plan dated 02.05.2003 – X/2</p> <p>(iv) <u>Objection</u>: CDGK Re-confirmation of Plot A-388 dated 09.05.2003 – X/1</p> <p>(v) Karachi Building Control Authority Building Plan dated 14.07.2003 (Ex. No. "DW 1/5")</p> <p>(vi) Defendant No.1 letter dated 28.07.2004 addressed to Directorate of Land Management, CDGK (Ex. No. "DW1/12")</p> <p>(vii) CDGK Demarcation of Plot A-388 dated 04.09.2004 (Ex. No. "DW1/13")</p> <p>(viii) CDGK Application for Execution of Lease Deed dated 03.12.2004 (Ex. No. "DW1/14")</p> <p>(ix) Karachi Water & Sewerage Board, Sanction Order (Despatch 19.11.2004) (Ex. No. "DW 1/6")</p> <p>(x) Karachi Electric Supply Corporation bill (May 2005 and March 2006), and Test Report Receipt (March 2006) (Ex. Nos. "DW1/7", "DW1/8" "DW1/9")</p>
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7. During suit proceedings, pursuant to an Order dated 01.06.2006, Nazir inspected the suit property (A-388) on 21.06.2006. According to Nazir's Report dated 30.06.2006, he found a fully constructed house on the suit property. There was no ongoing construction. The electricity, gas, water and sewerage connections were all in place and functional. At the time the Deputy District Officer / KDA Land Department also examined the title documents of Defendant No.1, and he did not find any defect in the said title documents. He neither examined nor passed any remarks on Plaintiff's title documents, even though Plaintiff accompanied Nazir along with Defendants and inspected Defendant No.1's entire house during Nazir's inspection.

8. Plaintiff filed suit on 08.05.2006 and Defendant No.1 filed her written statement on 22.08.2006. Defendant No.2, filed their written statement on 07.04.2007. The Court settled the following issues on 16.02.2009:

- (i) Whether the suit is barred for non-joinder of necessary party?
- (ii) Whether the Plaintiff or the Defendant No.1 is the real owner of the suit property being Plot No.A-

181, Block-11, Category 'A', measuring 240 Sq. Yards in Gulistan-e-Johar, KDA Scheme-36, Karachi?

(iii) To what relief, if any, Plaintiff is entitled to?

(iv) What should the decree be?

9. After evidence had been recorded, on 20.04.2022, the Court, by consent of the parties, amended plot no. and block no. mentioned in issue no.(ii) at line 2 relating to the description of the suit property to read as "Plot No.A-388 in Block No.2". Thus, the second issue stood revised as follows:

(ii) Whether the Plaintiff or the Defendant No.1 is the real owner of the suit property being Plot No.A-388, Block-2, Category 'A', measuring 240 Sq. Yards in Gulistan-e-Johar, KDA Scheme-36, Karachi?

10. On 28.05.2015, the Court appointed Commissioner for Recording of Evidence. On behalf of Plaintiff, the attorney of Plaintiff, Muhammad Anwar vide Power of Attorney dated 26.04.1989, led evidence. He testified as "PW-1". Whereas on behalf of Defendant No.1, the husband of Defendant No.1, Syed Ali Raza Zaidi led evidence as "DW-1". The Assistant Director, Gulistan e Jauhar, KDA, Aziz Ahmed Qureshi, led evidence on behalf of Defendant No.2 as "DW-2". According to the Report of the Commissioner for Recording of Evidence, Defendant No.2 witness, Aziz Ahmed Qureshi, disclosed that he had attained the age of superannuation and stood retired. Thereafter, he brought a letter/office order from KDA allowing him to look after the work as Additional Director. His evidence proceeded and concluded with the consent of both counsels.

11. Findings on the above issues are as follows:

(i.) Negative.

(ii.) Negative for Plaintiff. Affirmative for Defendant No.1.

(iii.) Negative.

(iv.) Suit is dismissed.

REASONS

Issue No.(i)

12. This Suit has been filed by Plaintiff's agent based on a registered irrevocable general power of attorney dated 26.04.1989 given by Plaintiff, Rais Jafri, to the donee, Muhammad Anwar. Mohammad Anwar deposed evidence in the case. During his evidence, Muhammad Anwar stated:

“ . . . I am authorized in Para 2 of PW1/2 to give evidence. I purchased the suit property from Mr. Rais Jafri. I purchased the property in the year 1989. It is correct to suggest after purchasing the said plot Rais Jafri has no right, title interest in the said property. I say that I am the owner of the suit property.”

“From 1989 I did not transfer the subject plot because I was to transfer in the name of my children and they were minors.”

“It is incorrect to suggest that I have concealed the true facts of ownership of the suit property.”

13. During arguments, Defendant No.1's Counsel submitted that Plaintiff was not the property owner as Plaintiff's Attorney, Muhammad Anwar, had deposed in the witness box that he (Attorney) had purchased the property from Plaintiff in 1989. Muhammad Anwar was thus the real owner of the suit property and not the plaintiff, Rais Jafri. Therefore, Defendant No.1 Counsel argued that the suit was liable to be dismissed for non-joinder of the necessary party.

14. Plaintiff Rais Jafri has filed the suit, but the attorney of Plaintiff is claiming ownership. The attorney/donee states under oath in his cross-examination that he is the owner of the suit property. This is not how Plaintiff's case is set up in the Plaint. The Plaintiff has sought title in the suit property and not the attorney. In paragraph 13 of the plaint, the Plaintiff states that the cause of action arose “when the plaintiff found illegal work on the construction on his plot for the first time. (underlining added).” If Plaintiff's testimony is to be believed, then no cause of action accrued in favour of Plaintiff against the Defendants as Plaintiff had already parted with the suit property in the year 1989. When Plaintiff saw the suit property in the year 2006, he (Rais Jafri) was not its owner. Rais Jafri was a stranger if Muhammad Anwar is to be believed. No cause of action could have accrued to Rais Jafri, as the suit property, as per Plaintiff's witness, was owned by Muhammad Anwar. In fact, elsewhere (other than the paragraph relating to the cause of action), the plaint and affidavit in evidence mention that Plaintiff's attorney visited the suit property on 30.04.2006 and not the Plaintiff.

15. Plaintiff's prayer clause in the suit is for declaration, cancellation of documents, possession and injunction, etc., against Defendants. Plaintiff has not prayed for a declaration in his prayer clause that the Plaintiff's attorney is the purchaser of the suit property. The plaint does not state that the Plaintiff's attorney owns the suit property. Plaintiff has sought a declaration in his favour. Thus, the evidence deposed by Plaintiff's witness is inconsistent with the prayer clause. If the Plaintiff's attorney is believed, then the prayer clause should have been worded differently, which is not.

16. Muhammad Anwar has stated under oath that he is the real owner of the suit property, but he has not produced any document supporting his statement. He neither produced any Agreement of Sale nor referenced/relied upon any other document in support of such a sale transaction, for example, Plaintiff's witness could have attempted to establish his ownership based on the irrevocable general power of attorney, but he did not depose so. Instead, he proceeded to state under oath that he owns the suit property which does not support Plaintiff's pleadings. The Plaintiff's attorney may well have deposed contrary to the pleadings (given the evidence brought on record by Muhammad Anwar), yet this does not appear to be an omission leading to "the suit [being]...barred for non-joinder of necessary party".

17. The Court must examine the case and decide the issue as pleaded in the plaint. Plaintiff has to prove his case as per the plaint. In Province of Punjab v. Ibrahmi & Sons, 2000 SCMR 1172, the Supreme Court of Pakistan held that:

"It is well settled that the parties are not entitled to set up a case or to lead evidence on issues which does not arise from their pleadings. Indeed the parties are legally bound by their pleadings and their evidence must be restricted to the points in controversy in the strict sense."

18. In the present case, Muhammad Anwar's statement potentially sets up a new case, but it does not make the suit liable to be dismissed for non-joinder of necessary party. This is because Muhammad Anwar's evidence is not what has been pleaded. Plaintiff cannot set up a new case. The evidence brought on record by Muhammad Anwar that he is the real owner of the suit property does not arise from the pleadings. Thus, the evidence must be restricted to the points of controversy, which is the dispute of ownership of suit property between Plaintiff and Defendant No.1. Therefore, Muhammad Anwar's presence on account of his evidence does not make him a necessary party. It does not put the suit at risk on grounds of maintainability for non-joinder of necessary party. The Court must decide the case on the evidence brought on record and not set up a new case requiring Muhammad Anwar to be implead as a necessary party as a result of the evidence deposed by him. Therefore, issue No.(i) is decided is the negative.

Issue No.(ii)

19. Plaintiff claimed that he is the true and lawful owner of Plot No.A-388, Block 2, Scheme 36, Gulistan e Jauhar, Karachi, the suit property, whereas Defendant No.1 claimed that she was, in fact, the owner of the said suit property. Plaintiff and Defendant produced documents supporting their chain of title of Plot No.A-388. Plaintiff did not produce any Agreement of Sale to evidence the sale

and purchase of the suit property between Najmul Ebad and Plaintiff from whom he allegedly purchased the suit property. Plaintiff also did not produce the Allotment Order of Najmul Ebad for Plot No.A-181 as Najmul Ebad apparently got the suit property in lieu of Plot No.A-181. The Plots were pre-lease and both Plaintiff and Defendant No.1 asserted ownership essentially based on Allotment Orders, Possession Orders, Site plans, etc., issued by Defendant No.2. As a matter of fact, all official documents were issued by Defendant No.2.

20. Plaintiff claimed that he derived title from Najmul Ebad from whom Plaintiff purchased the plot. Najmul Ebad derived his title in Plot A-388 by way of an Allotment Order dated 20.02.1989 (Ex. "PW-1/8"), which indicated that the above plot was allocated to him in lieu of Plot No.A-181, Block 11, Scheme No.36, Gulistan e Jauhar, Karachi. But Plaintiff did not produce the Allotment Order of Najmul Ebad for Plot No.A-181 which could have helped establish the identity of the original allottee of the suit property (see below). It would have been particularly helpful as Defendants produced the chain of title of the Original Allottee of the suit property mentioned in all the title documents relied upon by Defendants. To this end, Plaintiff did not produce any pre-lease transfer documentation in support of Najmul Ebad acquiring the suit property in lieu of Plot No.A-181. Najmul Ebad alleged that he got Plot No.A-181 from another Allottee, namely Qazi Ghulam Hussain. Plaintiff produced no Allotment Order, Possession Order, or any other title document of Qazi Ghulam Hussain for Plot No.A-181. This would have helped establish the chain of title of Plaintiff. Instead, Plaintiff relied on the Transfer/Mutation Order dated 06.04.1989 (Ex. "PW-1/12") to prove ownership in the suit property. However, Plaintiff's Transfer/Mutation Order dated 06.04.1989, while mentioning Plaintiff's name in the said Transfer/Mutation Order, also referred to the original allottee being one "Muhammad Shahid". Plaintiff did not produce any official document of Defendant No.2 which cross-referenced "Muhammad Shahid" as Original Allottee of Plot No.A-388 except for Ex. "PW-1/12". The name of "Muhammad Shahid" as the original allottee did not find mention in any of the documents relating to Najmul Ebad for the suit property as produced by Plaintiff. None of the documents produced by Defendant Nos.1 and 2 cross-referencing the original allottee of the suit property mentioned "Muhammad Shahid". This random coming up of the name of "Muhammad Shahid" in Plaintiff's most crucial and pivotal title document, Ex. "PW-1/12" comes in the way of Plaintiff. "Muhammad Shahid" disrupts Plaintiff's chain of title in the suit property.

21. There is another break in the chain of title, which pertained to Najmul Ebad. Plaintiff claimed that Najmul Ebad acquired Plot A-388 in lieu of Plot No.A-

181 (Ex. "PW-1/8") and that Najmul Ebad acquired Plot No.A-181 from one Qazi Ghulam Hussain. While Defendant No.2, in his cross-examination, accepted that Plot No.A-181, Block 11, Scheme 36 was allotted to Qazi Ghulam Hussain; yet Allotment Order of Qazi Ghulam Hussain was neither produced by Plaintiff nor Defendant No.2. Defendant No.2 took the position that there was no record file of Plot No.A-181. A selection of Defendant No.2 cross-examination relating to Plot No.A-181 is reproduced herein below.

"QUESTION: Is Plot No.181, Block-11, Scheme-36, Karachi has been encroached? ANSWER: There is no record file of Plot No.A-181, Block-11, Scheme 36, Karachi."

"It is correct to suggest that it is duty & responsibility of KDA to safe its records. It is correct to suggest that since the Plot No.A-181, Block 11, Scheme-36, KDA is allotted to Qazi Ghulam Hussain as per Allotment Register, therefore there should be a file. As per KDA record there is no file. It is incorrect to suggest that Plot No.A-181, Block-11, Scheme-36, Karachi malafiedly misplaced from the record. It is incorrect to suggest that I despose falsely."

22. In view of the above, it is not easy to establish the chain of title of Plot A-181 from Qazi Ghulam Hussain to Najmul Ebad, who ultimately acquired the suit property (A-388) in lieu of A-181. In the absence of Qazi Ghulam Hussain's Allotment Order, Plaintiff produced alternate documents of Defendant No.2 ranging from (i) KDA Application Form dated 26.07.1980 (Plot no. not mentioned) (Ex. No. "PW1/3"); (ii) KDA Challan dated 24.11.1980 deposited with HBL (Plot no. not mentioned) (Ex. No. "PW1/4"); (iii) KDA Allotment Copy Receipt dated 22.10.1984 for Plot No.A-181 for cash funds deposited with HBL (Ex. "PW1/5"); (iv) KDA Allotment Copy Receipt dated 22.10.1984 for Plot No.A-181 for cash funds deposited with HBL (Ex. "PW1/6"); and, (v) KDA Allotment Copy Receipt dated 08.11.1984 for Plot No.A-181 for cash funds deposited with HBL (Ex. "PW1/7"). All of these exhibits dated between 1980 and 1984 had a manuscript note running diagonally across the sheet stating "Exchange for A-388. . .". But the manuscript note also begs another question, i.e. why did the payment vouchers/challans of Qazi Ghulam Hussain contain a manuscript note referring to the suit property when Plaintiff's case was that Najmul Ebad apparently acquired the suit property in 1989? Plaintiff did not plead that Qazi Ghulam Hussain acquired the suit property in lieu of Plot No.A-181 prior to 1989. Plaintiff's case was that Najmul Ebad purchased Plot No.A-181, and thereafter Najmul Ebad got the suit property in lieu of Plot No.A-181. Plaintiff did not mention the date when Qazi Ghulam Hussain sold Plot No.A-181 to Najmul Ebad. No date was provided for the alleged sale either in the pleading or in evidence. Thus, Ex. "PW-1/3" to "PW-1/7" relied by Plaintiff, pertaining prior to 1984, bearing a manuscript note referring to the suit property (which transfer did not

take place until 1989) in the absence of the date of sale and purchase of Plot No.A-181 between Qazi Ghulam Hussain and Najmul Ebad, do not inspire confidence.

23. As already mentioned above, Defendant No.2 denied Ex. Nos. "PW-1/3" to "PW-1/7" on the grounds that no record was available with KDA. However, Defendant No.2 additionally, deposed on the said five (5) exhibits as follows:

"It is incorrect to suggest that Qazi Ghulam Hussain paid the dues of KDA for Plot A-181, Block-11 Scheme-36, Karachi."

"I see Exhibits No. PW1/3, PW1/4, PW1/5, PW1/6 & PW1/7 the same verified by Mr. Nadeem Qadri Dy. Additional Director and found fake & bogus. Voluntarily say that challans were verified by I V Cell (Intelligent Verification Cell). I did not file/produce any verification report from I V Cell or letter for verification. QUESTION: Whether you verified the above exhibits from bank. At this stage counsel for Defendant No.1 vehemently opposed the question as the counsel for plaintiff is trying to spoon feed the witness to answer the question in favour of plaintiff. Let the question be decided by the Court. It is incorrect to suggest that I falsely stated the Exhibits No.PW1/3, PW1/4, PW1/5, PW1/6 & PW1/7 are false and fabricated."

24. Once Defendant No.2's witness denied Plaintiff's documents as above in his cross-examination, the burden of proof was even more so on the Plaintiff to negate Defendant No.2's evidence against Plaintiff. Plaintiff should have produced witnesses to corroborate the same. If the Plaintiff desired to establish the bona fide of the cash payments/challans paid into Habib Bank Ltd., he ought to have produced the bank's witness to establish that the challans were genuine, deposited with the bank and not fake and fabricated as alleged by Defendant No.2 witness. Plaintiff did not produce bank's witnesses. As such, the Ex. Nos. "PW-1/3" to "PW-1/7" do not help Plaintiff's cause on this score too.

25. Defendant No.2 also denied the sale of Plot No.A-181 from Qazi Ghulam Hussain to Najmul Ebad. He further denied the transfer to Plot No.A-388 and the subsequent sale of Plot No.A-388 from Najmul Ebad to Plaintiff. Defendant No.2 deposed:

"I have no record that Plot No.A-181, Block-11, Scheme-36, Karachi sold out by Qazi Ghulam Hussain to Najmul Ebad. It is incorrect to suggest that Plot No.A-388, Block-2, Scheme-36, Karachi (suit plot) was given in alternate of Plot No.A-181, Block-11, Scheme, Scheme-36, Karachi to Najmul Ebad on 20.02.1989. It is incorrect to suggest that KDA handed over the possession of Plot No.A-388, Block-2, Scheme-36, Karachi to Najmul Ebad. It is incorrect to suggest that the suit plot sold out by Najmul Ebad. It is incorrect to suggest that the suit plot sold

out by Najmul Ebad to Plaintiff and the KDA transferred the same in his name (Plaintiff).”

26. There is another matter which does not inspire confidence: Plaintiff’s witness could not give any satisfactory explanation as to why the National Identity Cards Numbers of Rais Jafri mentioned in the Irrevocable General Power of Attorney (Ex. “PW-1/1”) did not match with the crucial Transfer/Mutation Order in favour of Plaintiff (Ex. “PW-1/12”). The Irrevocable Power of Attorney (“PW-1/1”) indicated that Rais Jafri’s NIC was “518-46-092918”;; whereas the Transfer/Mutation Order dated 06.04.1989 mentioned that the NIC was “502-57-473465”. Plaintiff’s witness Muhammad Anwar deposed as follows in the matter:

“The executant of General Power of attorney Mr. Rais Jafri having CNIC No.518-46-092918.”

“I say that the copy of NIC submit in Court. I see all the exhibits and say there is no such NIC”

“The NIC No. of Rais Jafri mentioned in PW-1/12 is 502-57-473465. I also see Exhibit PW-1/2 and say that NIC of Mr. Rais Jafri is mentioned as 518-46-092918. I say that it is not possible for one person can have two NIC with different numbers. Voluntarily says that in the year 1989 the NIC was changed.”

“I cannot produce the original NIC of Mr. Rais Jafri. I do not know the present whereabouts of Mr. Rais Jafri.

The Plaintiff Witness’s omission to address this matter raises doubt regarding the credibility of the document relied upon by Plaintiff, which is a crucial title document on which Plaintiff relies in support of his case, i.e. KDA Allotment Order dated 06.04.1989 (Ex. “PW-1/12”). The inconsistency in the NIC numbers mentioned in the two documents, i.e. the Power of Attorney and Ex. “PW-1/12” creates doubt, raises suspicion, and suggests that Plaintiff may not have come to Court with clean hands. Plaintiff’s witness statements through his attorney and witness do not inspire confidence. Perhaps if Rais Jafri had stepped into the witness box, he could have clarified the discrepancies as to why the two official documents being relied upon by Plaintiff to sustain his case mention two different NIC numbers attached to his name.

27. In contrast to Plaintiff’s documents which were overwhelmingly denied by Defendant No.2, Defendant No.2 confirmed the authenticity and genuineness of the chain of title of documents in support of Defendant No.2’s claim that Plot No.A-388 was acquired by Defendant No.1 in accordance with the law. Defendant No.2 produced from its records the originals of the entire chain of title in respect of the suit property, which matched all the documents relied upon by Defendant No.1 in her defence and entitlement in the suit property. Thus even

though Defendant No.1 neither produced any agreement of sale, nor payment challans, Defendant No.2's evidence established Defendant No.1's ownership in the suit property (Plot No.A-388), which as this was a pre-lease property could only have been admitted or denied by Defendant No.2 being the record-keeper of the Properties in question.

28. Apart from confirming the chain of title of the suit property, Defendant No.2 also confirmed the ownership of Ghulam Qadir Baloch in Plot No.A-187, Block 11, Scheme-36, Karachi. Ghulam Qadir Baloch was allotted the suit property in lieu of Plot No.A-187. According to Defendant No.2's record he was the original allottee of the suit property. Accordingly, his name appears as the original allottee in the chain of title documents of the suit property. Defendant No.2 deposed on this matter as follows in his cross examination:

“It is correct to suggest that the KDA issued the possession order the Plot No.A-187, Block-11, Scheme-36 to the Ghulam Qadir [Baloch]. It is correct to suggest that I have not filed any document pertaining to Plot No.A-187, Block-11, Scheme-36, Karachi. It is correct to suggest that I have not filed the supporting documents of transferred i.e. Sale Agreement, Gift Deed, etc., etc. for transfer of suit plot.”

29. Notwithstanding the above, one discrepancy in Defendant No.2 evidence needs to be addressed, i.e., in paragraph 2 of his Affidavit in Evidence. Defendant No.2 states that Plot No.A-388 was originally allotted to one Mr. Qazi Ghulam Hussain. He further confirmed this statement in his cross-examination. Defendant No.2's affidavit in evidence and cross-examination on this matter was contrary to Defendant No.2 paragraph 1 of the Written Statement. In paragraph 1 of their Written Statement, Defendant No.2 stated that “Plot No.A-181, Block-11, measuring 240 sq. yards, Gulistan-e-Jauhar was allotted to Mr. Qazi Ghulam Hussain S/o Saleh Muhamad Kazi as per allotment register.” Defendant No.2's witness could have clarified this point in his cross-examination but he did not. Instead, he acknowledged the contents of his Affidavit in Evidence, not realising that it was contrary to his Written Statement. In the ultimate analysis, it appears paragraph 2 of Defendant No. 2's Affidavit in Evidence is neither in sync with Defendant No.2 overall stance in the Written Statement nor consistent with the rest of Defendant No.2 Affidavit in Evidence and cross-examination wherein he has confirmed that Ghulam Qadir Baloch was the original allottee of the suit property (also see paragraph 28 above). As such this discrepancy is not fatal to the Defendants case.

30. Issue No.(ii) is to be decided based on evidence recorded by the parties. Under Article 117 of the Qanun-e-Shahdat Order, 1984, whosever

desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove those facts exist. In the present case the burden of proof was on Plaintiff to prove his title in the suit property. However, when the Court framed issues, it acknowledged Defendant No.1 assertion as to her title in the said property and framed the issue accordingly. In *Khalid Hussain v. Nazir Ahmed*, 2021 SCMR 1986, the Supreme Court of Pakistan observed as follows regarding the “onus of proof” in paragraph 6 of the said Judgment:

“Paragraph 6. There is no cavil to the proposition that the onus to prove the claim is ordinarily on the person moving the court to seek his relief, as he will fail if no evidence at all is given on either side.⁵ However, when the contesting party takes up a defence and desires the court to pronounce judgment as to his legal right dependent on the existence of facts which he asserts, then the onus to prove those facts lies on him.⁶ It is after the parties have produced their respective evidence that, the court is to consider and evaluate the evidence, in civil cases, on the touchstone of preponderance of evidence. It is on whose side the scale of evidence tilts would emerge as the victor, and be awarded the positive verdict.”

31. On the basis of the evidence produced by Plaintiff, Defendant No.1 and Defendant No.2, and given the evidence discussed above, as well as on the preponderance of the evidence, issue No.(ii) is decided in the negative for Plaintiff and in the affirmative for Defendant No.1.

Issue No.(iii)

32. Issue no. (iii) whether Plaintiff is entitled to any relief appears to be a consequential issue arising out of Issue No.(ii). In the event that the Court comes to the conclusion that Plaintiff does not have title in the suit property, Plaintiff has set up an alternative prayer. The Issue no.(ii) addresses whether Plaintiff is entitled to relief under either the main prayer clauses or the alternative prayer clauses.

33. Based on the discussion of the evidence above, this Court has already decided Issue No.(ii) in the negative, which means that the Court has concluded that Plaintiff has failed to establish title in the suit property and as a corollary, he cannot be given possession of the suit property. Hence Plaintiff is not entitled to any relief under the main prayer clauses. Therefore, the Court will now proceed to consider the alternative prayer made by Plaintiff and examine whether Plaintiff

is entitled to any other relief under the alternative prayers made against Defendant Nos.1 and 2. Plaintiff's alternative prayer reads as follows:

“ALTERNATIVELY

If for any reason this Hon'ble Court comes to the conclusion that the suit Plot cannot be given to the Plaintiff, the defendant No.2 be directed to allot another Plot of same size in the similar circumstances to the plaintiff.

Decree jointly and/or severally against defendant in a sum of Rs.5,000,000/= or of such amount equal to the market value of similar Plot in the similar circumstances on the day the decree is passed with markup @12% till realization of the decretal amount.”

34. The alternative prayer by Plaintiff is divided into two parts. The First Part of the alternative prayer (Part-A) seeks direction to Defendant No.2 to issue another plot of the same size in similar circumstances to the plaintiff. The Second Part of the alternative prayer (Part-B) seeks damages against defendants jointly and severally in the sum of Rs.5 million. The Court will now examine to what relief, if any, Plaintiff is entitled to under either the First Part or the Second Part of Plaintiff's alternative prayer.

A. First Part of Alternative Prayer

35. The First Part of the alternative prayer (Part-A) seeks direction to Defendant No.2 to issue another plot of the same size in similar circumstances to the plaintiff. The onus of proof was on the Plaintiff to show why it is entitled to this relief. There is nothing in the Plaint as to why Plaintiff should be granted this relief. It is pertinent to mention here that the pleadings are silent on this point except that in paragraph 16 of Plaintiff's affidavit in evidence filed on 10.10.2015, Plaintiff alleges for the first time that one “Transfer Order dated 16.04.2003 [Ex. No “DW-1/4” = Ex. No. “DW-2/8”] is [a] forged and fabricated document.” It is surprising that Plaintiff did not raise any such allegation about any of the remaining chain of title documents of the suit property being forged and fabricated as relied upon by Defendant No.1, and produced by Defendant No.2. It is even more surprising that Plaintiff confronted neither Defendant No.1's witness nor Defendant No.2's witness with Ex. Nos. “DW-1/4”/“DW-2/8” and suggested it to both of them that the said exhibit was forged and fabricated. As a matter of fact, none of the documents which were produced in evidence by Defendant's witnesses, which established the chain of title documents in favour of Defendant No.1, were confronted to Defendant's witnesses as being forged and fabricated. Perhaps if Plaintiff succeeded in proving that Defendants were involved in forged

and fabricated title documents, some ground could have been made out to consider Plaintiff's alternative prayer. However, in the circumstances, no evidence has been brought on record to prove that the title documents were forged and fabricated. Even otherwise, Plaintiff has not pleaded any other ground for entitlement of any other relief.

36. As a matter of fact, Plaintiff did not even bother to confront Defendant's witnesses as to the genuineness of his own title documents, such as, the Allotment Order of Najmul Ebad dated 20.02.1989 (Ex. No. "PW-1/8") and Plaintiff's Transfer/Mutation Order dated 06.04.1989 (Ex. No. "PW-1/12"). Plaintiff remained silent on this matter with Defendant No.2's witness when he ought to have confronted him on these points. Consequently, Plaintiff has hopelessly failed to establish malafide on the part of Defendant No.2 for this Court to exercise its discretion and grant relief as prayed in the First Part of Plaintiff's alternative prayer.

37. As Plaintiff has not raised any grounds for entitlement to this relief and left the matter at the Court's discretion, I do not find any grounds to exercise discretion in favour of Plaintiff. Consequently, in view of the reasons set out herein above, Plaintiff is not entitled to any relief on the First Part of the alternative prayer.

B. Second Part of Alternative Prayer

38. The Second Part of the alternative prayer is Plaintiff's claim for damages jointly and severally against Defendants. Plaintiff admitted in his cross-examination that he has not filed any breakup of the claims for damages in the alternative prayer. Neither any nexus was shown between Plaintiff and Defendant No.1 interaction with Defendant No.2 due to which Plaintiff suffered damages nor Plaintiff proved any such damage or damages otherwise. With regards to Defendant No.2, Plaintiff has failed to prove any loss suffered on account of Defendant No.2. Defendant No.2 denied the payment vouchers/challans allegedly paid by or on behalf of Plaintiff in relation to Ex. Nos. "PW-1/3" to "PW-1/7". However, as discussed in depth in paragraphs 22, 23 and 24 above, and for reasons stated therein, Plaintiff was unable to prove the payments. No damages were proved by Plaintiff against Defendant No.2. Hence Plaintiff is not entitled to damages against Defendants.

39. In the circumstances, issue No. (iii) is decided in the negative. The Plaintiff is not entitled to any relief.

Issue No. (iv)

40. In view of the hereinabove facts, circumstances and discussion, I am of the opinion that Plaintiff has failed to prove his case. Therefore, the suit of Plaintiff is dismissed.

41. Both parties will bear their own costs.

Karachi;
Dated: 15.08.2023

J U D G E