

**IN THE HIGH COURT OF SINDH AT KARACHI**

Present:  
Mr. Justice Muhammad Shafi Siddiqui  
Mr. Justice Omar Sial

**High Court Appeal No. 325 of 2016**

**Pakistan Defence Officer's Housing Authority ..... Appellant**

**Versus**

**Muhammad Akram Qureshi & another ..... Respondents**

Mr. Saeed Ahmed Kayani, Advocate for the appellant.  
Mr Rasheed Ashraf Mughal, Advocate for Respondent No.1.  
Mr. Abdul Ghaffar, Advocate for Respondent No.2.  
Mr. Abdul Jalil Zubedi, A.A.G.Sindh.

Date of hearing: 12.03.2024

Date of judgment: 20.05.2024

**JUDGMENT**

**OMAR SIAL, J.**:Pakistan Defence Officers Housing Authority ("**DHA**") has filed this appeal impugning the Judgement and Decree dated 31.08.2016 and 05.09.2016 whereby Muhammad Akram Siddiqui and Bashirullah Khan's ("**Akram and Bashirullah**") Suit for Declaration (No. 45 of 1998) to the title of land measuring 30 Ghuntas (3630 square yards), in Na class No. 24, New Survey No. 291 in Deh Dih Tapo, Ebrahim Hydry, District East, Karachi ("**Subject Land**") succeeded.

2. Akram and Bashirullah claimed their title to the Subject Land was interfered with by DHA when the former erected a boundary wall, which DHA desisted. They provide their chain of title as follows.

- a. On 24.06.1992, the Subject Land was allotted by the Government of Sindh's Land Utilisation Department to three individuals, namely (i) Sarfaraz Khan, (ii) Muhammad Akbar and (iii) Malik Shahid Jawad, on a 99-year lease to come into effect from 1991-1992. The said allotment stood recorded in Deh Form II issued by Taluka Karachi (District East). The Deh Form II reflects that a lease had been executed earlier in favour of the allottees. An unregistered lease deed, however, was exhibited at trial. We have not commented on the evidentiary value of this document as it is for a different reason that we have based our conclusion on.
- b. In July 1992, the Subject Land was purchased by Akram and Bashirullah from the three individuals mentioned earlier. A Sale Deed was executed and registered with the concerned Registrar on 4.10.1992.
- c. The demarcation of the subject plot was undertaken by the office of the Assistant City Survey Officer, Karachi, on 25.11.1996 and 26.11.1996, as evident from his letter dated 17.11.1996. The Demarcation Plan of the Subject Land has also been exhibited.
- d. On 29.12.1996, Akram and Bashirullah were entered as the owners of the Subject Land in the record of rights, i.e., Deh Form II.
- e. Subsequently, via letter dated 8.4.1997, the office of the Assistant City Survey Officer, Karachi, granted Akram and Bashirullah permission to construct a boundary wall.

3. However, during the pendency of the Suit, the Sindh Government passed the Sindh Urban State Land (Cancellation of Allotments, Conversions and Exchanges) Ordinance, 2001 ("**Ordinance of 2001**"), which came into effect retrospectively from 01.01.1985. According to section 3, all land acquired at a rate lower than the market value and in violation of law/ban mandatorily stood cancelled, including the Suit Land. This fact stands admitted by Akram and Bashirullah's witness in their cross wherein he stated, "*It is correct that Govt of Sindh cancelled all lands allotted after 1985 by Sindh Ordinance 2001, including the land in question.*" However, section 4 provided for the affected parties to prefer having their land regularised by paying off the deficit fee to the Government. The same is reproduced as follows:

*"(1) Government may appoint a committee to carry out the purposes of this Ordinance.*

*(2) Where the committee, after making such enquiry as deemed fit, is satisfied that the allotments, conversions or exchanges of urban state land are obtained or granted for residential, commercial or industrial purposes at rates lower than the market value in violation of law or ban, it shall determine the amount of loss caused to Government and call upon the person concerned to pay such amount within the specified time."*

4. The record reflects that Akram and Bashirullah had undertaken the regularisation process, as reflected by the Secretary of the Land Utilisation Department letter dated 15.06.2004. However, at trial, it could not be demonstrated that the Suit Land was finally regularised by the Committee as provided in section 4 of the Ordinance of 2001.

5. On the other hand, the defence of DHA is that the Subject Land falls within an area of 640 acres of land, which stood allotted to them by the Government of Sindh via an Allotment Letter dated 14.07.1977 and Lease Agreement dated 06.02.1979. It also produced

the plan of the P.O.D.O.C Housing Society. It is pertinent to mention that the Lease Agreement dated 06.02.1979 produced by DHA is an unregistered document; hence, not only is it debatable whether an unregistered document would suffice to establish title, no presumption of correctness can also be attached to it. Clause 14 of the same provides that *“It is further agreed and declared that, till such lease for a term of 99 years shall have been granted by the Lessor to the Lessee or sub-lessees, they shall have no right or interest in the said plots except that of bare licences...”* It is settled law that a mere agreement of sale/lease is an intention to agree and is not a title document. Reliance is placed on **Haji Muhammad Nawaz v. Aminullah (2019 SCMR 974)**. Further, the witnesses of the said Lease Agreement have also not been brought forward to prove the authenticity of the Lease Agreement, as is the requirement under Article 79 of the Qanun-e-Shahadat Order, 1981. (“QSO”) More importantly, the specific location of the said 640 acres has not been identified in the said Agreement, which is vague and could potentially be deemed void for lack of certainty. This view has been upheld in the case law reported at **Inayatullah Khan v. Shabbir Ahmed Khan (2021 SCMR 686)**, which, among other things, held that *“The said document does not describe the land, its area, the total sale consideration and when the balance of the sale consideration was payable and the transaction to be completed. Such a document does not constitute a contract to sell land. Therefore, it would be void for uncertainty in terms of section 29 of the Contract Act, which provides that “Agreements, the meaning of which is not certain, or capable of being made certain, are void.”*. Hence, an unregistered document to which no presumption of truth applies and that could potentially be declared void for lack of certainty hardly meets the threshold of a defence, let alone a robust one.

6. It is also an admitted position that the DHA did not and has not challenged the Sale Deed and the Deh Form II before a Court of Law. In his cross-examination, their witness admitted, "*It is correct to suggest that D.H.A has not initiated any proceedings against the plaintiff for cancellation, conveyance deed, mutation and possession letter.*" He admitted, "It is correct to suggest that D.H.A. has mentioned in a *written statement that the Board of Revenue has double allotted suit land.*" Thereby going against its suggestion that the documents were forged.

7. Apart from the above, DHA has impugned the Judgement on the basis that the Suit was bad for the non-joinder of a proper party, i.e. the Sindh Board of Revenue and that additional issues were required to be framed. However, the learned Single Judge correctly found support in Order 1, Rule IX and **Mst Jannat Bibi v. Saras Khan (2019 SCMR 1460)** to hold that the misjoinder of a proper party shall in no way stand to defeat the suit. Hence, the effect of a non-joinder of the party cannot be fatal to the lis. Be that as it may, the impleadment of the Government of Sindh/Board of Revenue through Mukhtiarkar would have been proper for the Suit, as the said department would have thrown the necessary light on the standing of the initial Lease Deed executed by the Government of Sindh and the predecessors in interest of Akram and Bashirullah.

8. Another ground raised by the counsel for DHA is that the Court needed to frame the issues correctly. However, we are not impressed by this argument, as the DHA had ample opportunity to move an application under Order XIV, Rule 5, to amend issues. However, no such application was moved during the pendency of the Suit. Hence, any assertion in this regard does not appear to be plausible. Even otherwise, the effect of such omission does not demerit the case. In this regard, reliance is placed on **Laloo v. Ghulam (2000 SCMR 1058)**, in which the Court held that "*If throughout the proceedings, no request is made for the framing of an additional issue, then given the*

*judgement reported as Mehr Din v. Dr. Bashir Ahmed Khan and 2 others (1995 SCMR 1) the judgement cannot be challenged on the said score.”*

9. Even though Akram and Bashirullah have a registered instrument which conveys the title in their name, as mentioned above, we are not entirely satisfied that an unregistered leased deed in favour of their predecessors would suffice to show the pedigree of their title. Be that as it may, they still need to demonstrate whether they could have the Suit Land regularised by the Government of Sindh as provided for in the Ordinance of 2001. Hence, even though valid, their title stood annulled by the operation of the Ordinance of 2001 in the absence of their demonstrating that the same stood regularised under the Ordinance of 2001. They cannot purport themselves to be the lawful owners.

10. We set aside the Impugned Judgement and Decree for the reasons above. It is clarified, however, that merely because the appellants could not prove their title to the land and thus were not entitled to a declaration would not automatically mean that DHA has title to the Subject Land. That DHA will need to establish and prove independently. Indeed, we have been informed that DHA has already filed a Suit seeking such a declaration.

JUDGE

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