

IN THE HIGH COURT OF SINDH AT KARACHI

Judicial Miscellaneous No.66 of 1999

[Mst. Zulekha Bibi and others *versus* Mst. Hafeeza Ahmed and others]

along with

Suit Nos.07, 1210, 1211 of 1998,
283 of 2006 and Execution No.28 of 2000

Date of hearing : 18.08.2023, 27.09.2023.

Petitioner No.4 : Muhammad Ahmed Iqbal Baloch,
through Mr. Anwer Hussain,
Advocate

Petitioners No.1 to 3 : Nemo.

Respondents : Mst. Hafeeza and others, through M/s.
Saleem Raza and Irshad Ali Jatoi,
Advocates, along with Mr. Muhammad
Ashraf Qazi, Advocate / Attorney of the
Respondents.

JUDGMENT

Muhammad Faisal Kamal Alam, J: This Judicial Miscellaneous is filed to challenge the Judgment and Decree dated 08.09.1999 passed in Suit No.1210 of 1998, in respect of a built up property at Plot No.82 (old No.16), measuring 1250 Square Yards, in Jamshed Quarter No.1, Karachi, – the “*Suit Property*”. The Applicants request that since the Judgment and Decree has been obtained through fraud and misrepresentation, therefore, the same may be set aside and is not binding on the Applicants / Petitioners and the purported occupant of the Suit Property - Muhammad Ahmed Iqbal Baloch [later impleaded as Petitioner No.4, vide Order dated 14.12.2022].

2. In order to appreciate the controversy, it is necessary to give background facts and to clarify the description of Parties involved in this litigation, who have raised their adverse claims of Ownership in respect of the Suit Property (*ibid*).

3. The titled J.M. is filed by Mst. Zulekha Bibi widow of Jafar Abdul Raheem and her children Muhammad Ahmed and Najima Naz. Their addresses are of Karachi and they have preferred the J.M. through their attorney Qamaurddin son of Ghafoor Ali Saifi. The Respondents in this J.M. is Mst. Hafeeza Ahmed widow of Jafar Abdul Raheem and her children, namely, Abdul Raheem, Abdul Aziz Ahmed, Basim, Mahir, Hytham, Ali, Mst. Amma, Mst. Fatima, Mst. Taj, Mst. Hana, Mst. Farah, Mst. Aliya, Mst. Rabab; these Respondents reside in the Sultanat of Oman and are represented through their general attorney Abdul Aziz son of Muhammad Ali, who has a local address. The Respondent No.16 in this J.M. is Khalil Ahmed Khan son of Dilbar Khan, who instituted two separate Suits, being Suit Nos.07 and 1211 of 1998 [tagged with this J.M.]. In both these Suits, Jafar Abdul Raheem [for the sake of reference “**JAR-Omani**”] was impleaded as Defendant and the address given is of Oman and Karachi, viz. “*Muttam, Musqat 114, P.O. Box No.1031, Sultanat of Oman or C-21, Block-2, North Nazimabad, Karachi.*” Suit No.07 of 1998 was for Specific Performance and Permanent Injunction and it was claimed that Khalil Ahmed Khan was a resident of the Suit Property and it was purchased from JAR in the year 1984. It was contested by Defendant through his counsel and vide Order dated 18.06.1998, Suit was dismissed in *limine*, for the reason that on the date of filing of said *Lis*, JAR Omani was not alive.

4. In the Suit No.07 of 1998, the counsel for Defendant while informing the Court that JAR was not alive has mentioned the names of Legal Heirs, who are present Respondents in the titled J.M. After three months from dismissal of Suit No.07 of 1998, another *Lis* [*supra*] was instituted by Khalil Ahmed Khan and present Legal Heirs of JAR-Omani were impleaded as Defendants, which was again contested by the

Defendants [present Respondents / Legal Heirs of JAR-Omani]. On 27.09.1999, this subsequent Suit No.1211 of 1998 was also dismissed by this Court; *whereas*, Suit No.1210 of 1998 was instituted by the present Respondents against Khalil Ahmed Khan [the above Plaintiff claiming to have purchased the Suit Property], was **decreed**.

5. Perusal of the record of Suit No.1210 of 1998 shows that on 28.09.1998, Nazir was appointed as Commissioner to inspect the Suit Property and file a Report. Since it was not contested by the Defendant-Khalil Ahmed Khan, therefore, after hearing the argument of counsel for present Respondents on **08.09.1999**, a Judgment and Decree were passed in favour of Plaintiffs [present Respondents (of JAR)], *inter alia*, declaring that Khalil Ahmed Khan is a trespasser and is liable to vacate and handover peaceful possession of the Suit Property to Plaintiffs [present Respondents of JAR Omani] and pay Mesne Profits at the rate of Rs.20,000/- per month from December 1997 till its vacation by the Defendants. This Judgment and Decree have been challenged in present Judicial Miscellaneous.

6. Subsequently, present Respondents [of JAR] being Decree Holders filed Execution No.28 of 2000 for implementing the above Judgment and Decree. Record of the execution proceeding shows that on 19.09.2000, present Applicant/Petitioner No.4, stepped into the proceeding through his Counsel by filing an intervenor application. It was ordered on 19.09.2000 that the intervenor will not interfere in the possession of the present occupants of the Suit Property and Nazir shall post his guards at the expense of Intervenor, Muhammad Ahmed Baloch (present Applicant No.4/ Petitioner] and Qamaruddin Saifi.

7. Muhammad Ahmed Iqbal Baloch [the intervenor] and now Petitioner / Applicant No.4, has subsequently instituted his Suit No.283 of

2006, impleading the present Respondents as Defendants No.1 to 15, besides, Officials, the then City District Government Karachi as Defendant No.16, and the present Petitioners Mst. Zulekha Bibi, Muhammad Ahmed and Mst. Najima, also claiming to be Legal Heirs of JAR, as Defendants No.17, 18 and 19. Settlement Department, Province of Sindh, was impleaded as Defendant No.20.

8. In this last Suit preferred by Applicant / Petitioner No.4 [Muhammad Ahmed Iqbal Baloch; for the sake of reference be referred to as “**Alleged Purchaser**”], has made number of prayers including declaring him as lawful owner of the Suit Property, Specific Performance of Sale Agreement dated 08.01.1999, so also the Mutation Order passed by Karachi Metropolitan Corporation [KMC], cancelling the mutation in favour of present Petitioners No.1, 2 and 3, is of no legal effect; it is also prayed that Lease Deed dated 12.04.1948 and Sale Deed dated 01.03.1948, produced by present Respondents No.1 to 15 [of JAR-Omani], are forged and fabricated documents.

9. The second set of facts is about the litigation of multiple High Court Appeals. High Court Appeal No.01 of 2002 and High Court Appeal No.32 of 2002 were also preferred by Mst. Zulekha Bibi, that is, present Petitioner Applicant of titled J.M. against present Respondents [Legal Heirs of JAR-Omani]. In first High Court Appeal, it was ordered that the Trial Court shall decide title Execution No.28 of 2000 and J.M.66 of 1999, *whereas*, in the second High Court Appeal, it was by consent ordered that the title J. M. and the Execution No.28 of 2000 be decided up to 30.04.2002, and till then, Possession (of the Suit Property) will remain with the Nazir, subject to any Order of the learned Single Bench of this Court. High Court Appeal No.37 of 2006 was filed by the above alleged Purchaser, which was allowed by the Order dated 22nd February 2006, *inter alia*, directing that the subject Judicial Miscellaneous No. 66 of 1999 [and others]

J.M. be decided expeditiously, while possession would be retained by the Nazir of this Court; this Order was challenged by the present Respondents [Legal Heirs of JAR-Omani] before the Honourable Supreme Court in Civil Petition No.112-K of 2006, which was disposed of as not pressed by the Petitioners [present Respondents of JM]. High Court Appeal No.139 of 2002 was preferred by present Applicants 1, 2, 3 against the present Respondents [of subject JM], challenging the Order dated 23.05.2002 passed in subject Judicial Miscellaneous, directing the Nazir of this Court to take possession, while restraining the Respondents from creating any third party interest. The above Appeal was disposed of by a consent order that if witnesses were not produced, then learned Single Bench would be at liberty to pass any appropriate Order, including for delivery of possession to the Respondents.

10. On 01.02.2006, the titled J.M. was dismissed, *inter alia*, for the reason that after perusal of record produced by the **NADRA** [National Database and Registration Authority], the identity of present Applicants / Petitioners No.1, 2 and 3 [claiming to be the Legal Heirs of JAR], was found fake and it was ordered that possession of the Suit Property be handed over to present Respondents No.1 to 15, Legal Heirs of JAR-Omani. This was challenged in H.C.A. No.37 of 2006, which was decided on 22.02.2006, as stated above.

11. On 28th March 2024, the matter was re-listed for hearing, to clarify certain facts, as Sub-Power of Attorney in favor of present Petitioner No.4 was revoked through a registered Deed of Revocation. On 1st April 2024 learned counsel for the Applicant sought time.

12. On 2nd May 2024, it was argued by the learned Counsel for the Applicants, that since Power of Attorney in favor of Petitioner No.4 is a

registered instrument and for consideration, therefore, in view of Section 202 of the Contract Act, the same cannot be revoked. Mr. Anwar Hussain [Advocate] cited the following case law to support his arguments, discussion on which is mentioned along with other case law, in the later part of this Decision.

- i- **2003 S C M R 1555**
[*Mst. Hajran Bibi and others versus Suleman and others*]; and
- ii- **1999 S C M R 2718**
[*Syed Humayun Zaidi and 4 others versus Mst. Hussain Afroza*].

13. On the last date of hearing, Mr. Ziauddin Junejo, learned Additional Advocate General Sindh, also appeared and sought time to file Interveners Application on behalf of the Provincial Government, as according to him the Suit Property has been declared as heritage. Time was allowed but till date no Intervener application is filed.

14. Mr. Anwar Hussain, Advocate for Petitioner No.4 has highlighted the fraud and collusive proceedings between the Respondents. He has referred to the record of Suit No.07 of 1998 and 1211 of 1998 preferred by above Khalil Ahmad Khan against the JAR-Omani and contends that stance in both the Suits was contradictory; by referring to AR Diary of 24th December 1998, he states when summons were not issued, then how beforehand Vakalatnama was filed on behalf of Defendant [JAR], which proves collusion between Khalil Ahmad Khan and the present Respondents; referred to the record of Suit No.1210 of 1998 and states that the foreigner cannot file such a case in Court, in violation of Rules 502 to 509 of the Sindh Chief Court Rules [**“SCCR”**] of Original Side of this Court, besides, it is violative of Section 83 of Civil Procedure Code, wherein a procedure is mentioned for filing cases by aliens, with prior permission of the Government, which was never obtained by JAR-Omani or his Legal Heirs [who are now Respondents]. Similarly, present Judicial Miscellaneous No. 66 of 1999
[and others]

Respondents - Legal Heirs of JAR-Omani, obtained a collusive Decree in their Suit No.1210 of 1998 instituted against Khalil Ahmad Khan, because, as per the Assistant Registrar Diary dated 18th May 1999, Power / Vakalatnama was filed on behalf of above Defendant, but no Written Statement was filed, resulting in passing of the Order dated 12th August 1999 [by the AR] debarring the said Defendant from filing the Written Statement, followed by the collusive Decree [detail whereof is stated in the foregoing Paragraphs], now under challenge. Contended that the above Suit preferred by Respondents is a nullity in the eyes of law, because the Vakalatnama of Advocate, representing the Plaintiffs / present Respondents - Legal Heirs of JAR-Omani, was not signed by them, as required under Rule 114 and 115 of SCCR, which means that the Counsel was not duly authorized to represent the above Legal Heirs of JAR Omani. Contended that Petitioner No.4 [Muhammad Ahmed Iqbal Baloch] had purchased the Suit Property from Qamaruddin, who purchased the same from the Applicants – Petitioners No.1, 2 and 3, the real legal heirs of JAR-Omani vide an Agreement to Sell dated 08.01.1999, produced in the evidence by the Petitioners’ witness as Exhibit A-W-1/23 [page-77 of the Evidence File]. After completing the transaction with the Petitioners No.1, 2 and 3, the said Qamaruddin being a registered Sub-Attorney of Petitioners vide an Irrevocable General Power of Attorney-Exhibit A-W-1/1, executed Special Power of Attorney in favour of present Petitioner No.4 [Muhammad Ahmed Iqbal Baloch], which is produced in the evidence as Exhibit A-W-2/1. Has referred to the testimonies of the witnesses and states that the Petitioner No.4 [Muhammad Ahmed Iqbal Baloch] has proved his genuine sale transaction with Petitioners No.1, 2 and 3, *whereas*, Respondents, claiming to be the Legal Heirs of JAR-Omani, never led the evidence and thus did not discharge onus to prove their claim of ownership; relied upon under Articles 95 and 100 of the Qanun-e-Shahadat Order,

Judicial Miscellaneous No. 66 of 1999
[and others]

1984 [“**Evidence Law**”], to emphasize that the above General Power of Attorney and Special Attorney are presumed to be a valid Document and should be given full effect, coupled with the fact that it is more than thirty years old document. Compared the Sale Deeds, Exhibit A-W-1/4, which according to the learned Counsel was executed by the original owner Ramchand G. Advani in favour of Jafer A. Rahim, predecessor-in-interest of present Petitioners No.1, 2 and 3, *whereas*, Sale Deed produced by the Respondents before Commissioner-Exhibit A-W-1/29, is a bogus document; similarly, the Lease Deed dated 29.10.1937 issued by the then Karachi Municipality in favour of above owner Ramchand G. Advani produced by Witness of Petitioner No.4, Exhibit as A-W-1/2, is a genuine Lease, *whereas*, one produced by the Respondents [JAR-Omani] is a forged one, because at the relevant time Muhammad Ali Jinnah Road [MA Jinnah Road] never existed. Referred to Page 265 [of Evidence File], which is a Resolution No.617, passed by the then KMC, for the change of names of different roads in Karachi.

15. Mr. Muhammad Ashraf Qazi and Mr. Saleem Raza, Advocates represented Respondents No.1 to 15, the Legal Heirs of JAR-Omani. While refuting the above line of arguments of learned Counsel for Petitioner No.4, the Legal Team of Respondents argued that in the past, many attempts were made to usurp the Suit Property belonging to the predecessor-in-interest of these Respondents, namely, JAR-Omani. Has referred to the Court record and especially the Orders dated 13.12.2005, 13.01.2006 and 01.02.2006, to show that Petitioners No.1, 2 and 3 never appeared in the present proceeding and in fact after considering the Report submitted by the National Database and Registration Authority [NADRA], this Court was pleased to dismiss the present J.M. [*although subsequently challenged and*

set aside in High Court Appeal No.37 of 2006, as mentioned in the preceding paragraphs]. Contended that mutation in favour of Petitioners No.1, 2 and 3 was cancelled by the competent Authority, which was challenged in a C. P. No. D – 1400 of 1999 by the Intervenor, but said Petition was dismissed and the cancellation order attained finality.

The present Respondents filed a comprehensive Counter Affidavit to the present Application, under Section 12(2) of CPC / J.M., but no Affidavit-in-Rejoinder was filed by the Petitioners which shows that the averments / stance of Respondents has been accepted. Contended that Rejoinder was preferred by the Intervenor Muhammad Ahmed Iqbal Baloch [now Petitioner No.4] only. Contended that sale transaction was never proved by the Petitioners, *inter se*, and the onus in this regard was never discharged by them.

16. Arguments heard and record perused.

17. Following Issue was framed_

- ***Whether the decree passed in Suit No.1210/1998 has been obtained by respondents through fraud and misrepresentation? If so, its effect?***

18. To augment his above arguments, Applicants' Counsel has cited the following case law_

- i. **2002 C L C 449**
[*Qatar Airways versus Genyis International (Pvt.) Ltd.*];
- ii. **2017 C L C 1519**
[*Messrs China Machinery Engineering Corporation [CMEC] through Project Manager, Member of Association, Principal Officer and Chief Executive Neelum Jhelum Project and another versus Azad Jammu and Kashmir Council Board of Revenue and others*];
- iii. **P L D 1975 Karachi 352**
[*Muhammad Usman versus Lal Muhammad and 12 others*];
- iv. **2009 C L D 779**
[*Azra Saeed versus Raees Khan through General Attorney and 5 others*];

- v. **2003 S C M R 1555**
[*Mst. Hajran Bibi and others versus Suleman and others*]; and
- vi. **1999 S C M R 2718**
[*Syed Humayun Zaidi and 4 others versus Mst. Hussain Afroza*].

19. Précis of the Case Law cited by the learned Counsel for the Applicant / Petitioner No.4 is that if a Power of Attorney is coupled with interest, then in terms of Section 202 of the Contract Act, it is irrevocable, thus, since Sub-Power of Attorney given to Petitioner No.4 by Qamaruddin Saifi [*ibid*] is not an ordinary Power of Attorney, but it is coupled with interest as it is Petitioner No.4, who after paying the entire sale consideration had to complete the sale transaction and Petitioner No.4 has direct interest in the subject matter and of the Sub-Power of Attorney [Exhibit AW 2/1], which is coupled with interest.

If a Power of Attorney is not authenticated as per Article 95 of the Qanoon-e-Shahadat Order, 1984 [the Evidence Law], no benefit can be given to that document [*Article 95 stipulates that Court shall presume that every document purporting to be a power of attorney, and to have been executed before and authenticated by, a Notary Public, or any Court, Judge, Magistrate, Pakistani Consul or Vice Consul, or representative of the Federal Government, was so executed and authenticated*]- this case law is cited to support the stance that Abdul Aziz who acted as an Attorney of private Respondents [Legal Heirs of JAR-Omani] through General Power of Attorney (available in the Record) has no value because it lacks proper authentication and thus, Suit proceeding of Suit No. 1210 of 1998 filed by them [Respondent No. 1 to 15] is void *ab initio*, so is the Judgment and Decree Dated 08.09.1999. In Usman Case [*Supra*], a document was held to be inadmissible in evidence because being a foreign document from India,

it was produced as Exhibit-49 but did not bear seal of a Notary Public or of a Pakistan Mission.

That in terms of Section 83 of the Civil Procedure Code, 1908, an alien or entity can institute a Suit only after seeking permission from the Government of Pakistan [*this provision is relied upon to argue that private Respondents being Omani Nationals were not authorized to institute Suit No. 1210 of 1998 without prior approval of the Government of Pakistan, hence the entire Suit proceeding is void a initio*].

20. This Court by its Order dated 13th November 2001, appointed Mr. Atash Mirza [Advocate] to inspect both Sets of the Documents relied upon by the Parties hereto and submit a Report.

The Report has been exhibited as **Exhibit A-W1/ 31, Page 129 of the Evidence File**. It is stated that the Objectors, that is, the present Petitioners / Applicants number 1, 2 and 3 did not produce Purchase document, Power of Attorney, Sub-Power of Attorney, Letter of Administration or Mutation entry in record of rights about the death of their Ancestor.

21. It is relevant to observe that present Petitioners No. 1 to 3 did not come forward to produce the Documents before the learned Commissioner, but, they were produced by Qamaruddin Saifi [the Attorney] and Iqbal Baloch [the Sub-attorney] / present Petitioner No.4, *whereas*, the Documents submitted by the present Respondents was through Ahmed Jafar son of Jafar Abdul Rahim [Omani]. It means that the present Petitioners No.1 to 3 [claiming to be the Legal Heirs of JAR-Omani] never came forward in the present Proceeding, even before the Commissioner.

22. The learned Commissioner was cross-examined extensively by the learned counsel for the Applicant / Petitioner No.4. The first part of the

cross-examination relates to the Leases of the Suit Property, exhibited in the Evidence as A-W 1/2 [produced by the Applicant No.4], and a Lease Deed presented by the Respondents No. 1 to 15 before the Commissioner which is marked as Document 5, whereas, the second part revolves around the Sale Deeds produced by the Petitioners and Respondents as **Exhibit A-W-1/4 and A-W 1/29**, respectively, besides, other facts narrated in the Report of the learned Commissioner.

The Commissioner [Mr. Atash Mirza, Advocate] remained Sub-Registrar in Karachi from 1967 to 1974 when Mr. M.S. Jalil was the District Registrar of Karachi and was Sub-Registrar in 1949. Commissioner Report, Exhibit A-W-1/31, stated about the signatures of M.S. Jalil, appearing on the Sale Deeds produced by both the Parties, viz. present Petitioner No.4 [at the relevant time, the Objector] and the present private Respondents No.1 to 15. He has specifically stated that Mr. M.S. Jalil was appointed in 1948-49 when the then Registrar Mr. Balchandani left for India. He further stated [at page-2 of the Report] that Mr. M.S. Jalil was still alive [when the Report was submitted]. With regard to the Sale Deed [A-W 1/4] produced by the Applicant / Petitioner No.4, the Commissioner stated in his Report that the serial and fee rubber stamps of Registrar Office were not in use nor those were so worn out; the Signature of the Sub-Registrar dated 24.06.1949 is definitely not of Mr. M.S. Jalil, *whereas*, with regard to the Sale Deed produced by the present Respondents [Exhibit A-W-1/29], his opinion is that the same is a genuine document, for which he has given reason in the following words_

“H. The document produced at Serial No.4 on behalf of Decree Holder, Sale Deed dated 12th March, 1948 is genuine. It shows the practice in vogue. The document was typed in January, stamped with different period stamps in February and presented for registration in March. Before presentation, it was brought to the office for examination and fixation of appointment. It shows “Ok, initials and date 12/3” on the left margin of

the first page. It also shows the rough calculation of fee in pencil on left margin bottom. The filling of boundaries and endorsement are of two different persons. The endorsement and signature of Sub-Registrar are of the same person. The signature of Mr. M.S. Jalil is of Mr. M.S. Jalil and 100% genuine.”

It is necessary to clarify that present Respondents No.1 to 15 referred to as Decree Holder [*ibid*], because Suit No.1210 of 1998 was decreed [as stated in the above Paragraphs].

23. The Commissioner was put a specific question about his assertion in the Report that adhesive stamps affixed on the Sale Deed [Exhibit A-W-1/4 produced by the present Petitioner No.4] was not in practice. It is relevant to reproduce the exact questions put to the Commissioner and his replies thereto as under_

“Q: How do you say that the special adhesive stamps of the period March 1948 affixed on the sale deed dated 12.04.1948 produced by the applicant were not in practice during that period and old stamps were lying with the stamp office, when you were not in the office of the Registrar during that period?”

Ans: I gather all this information when I joined the office of Registrar and my report is on the basis of my experience.

Q: I put it to you that whatever observations you have made about adhesive stamps affixed on the sale deed, rubber stamps affixed on it and other entries on the sale deed cannot be made by you as at the relevant time you were not in the office of Registrar. What do you say about it?

Ans: Whatever I have stated I have stated on the basis of my experience which I acquired after I joined the Registrar Office.”

24. In his cross-examination, he has admitted that he did not verify from Mr. M.S. Jalil, about his signature on the Sale Deed, but he remained consistent in his response, that the Exhibit A-W-1/4 [the Sale Deed produced by the Applicant / Petitioner] is not a genuine document. The

Commissioner gave the firsthand account when he was working in the Office of the Registrar; conversely, the present Applicants did not summon M.S. Jaleel, to dislodge the evidence of the Commissioner about the genuineness of the documents and his Signatures [of M.S. Jalil], in particular, the Sale Deed produced by them, as onus was / is on the Applicants to prove the sale transaction, claimed through Sale Deed [A-W-1/4] and the subsequent transaction between the Petitioners *inter se*.

25. The Petitioner's counsel attempted to impeach the credibility of the Commissioner by putting him questions that although he did not have any case in the Court on the day he was appointed as Commissioner, but he was deliberately present so that he may be given this assignment, to which the Commissioner responded in negative. The reply of Commissioner that for many years, he worked in the Registrar Office of Karachi and he has personal knowledge of the relevant facts, could not be disproved by the Petitioners in the evidence.

26. Notwithstanding to the above, the documents produced during the evidence and in particular the Sale Deed around which the entire controversy revolves, is re-considered.

27. In cross-examination, the Commissioner has accepted the facts that at the relevant time adhesive stamps of Government of India used to be affixed on such instruments and on those stamps the word 'Pakistan' was affixed, which is not there in the Sale Deed produced by the Respondents [Exhibit A-W-1/29], but are on the Sale Deed produced by the Petitioners through Petitioner No.4, viz. Exhibit A-W-1/4. The second main dissimilarity pointed out during cross-examination and not denied by the learned Commissioner is, that under the heading 'Schedule of the Property', word 'J.M.1' is mentioned after the word Survey Sheet, in Exhibit A-W-

1/29, *whereas*, no such word is mentioned in Exhibit A-W-1/4 [produced by the Petitioners], which is similar to Exhibit 5/1, the certified true copy available with Karachi Metropolitan Corporation [“KMC”].

28. In order to resolve the controversy, the latest record of the Sale Deeds and the Lease Deeds were called from the concerned Departments, viz. Karachi Metropolitan Corporation and the Sub-Registrar Office, vide Order dated 13.02.2023 and subsequent Orders. Two Reports are submitted, one by the KMC and the other by the Sub-Registrar Office, which are marked as Flag ‘A’ and ‘B’ in the main file of J.M. No.66 of 1999.

29. The Copy of the Sale Deed, produced by the Sub-Registrar Office vide Report dated 02.03.2023, is similar to Exhibit A-W-1/4 [produced by the Petitioners] and on the fourth page under the heading ‘Schedule of Properties’, the word ‘J.M.1’ is not mentioned; however, date, registration number and pages of both the Sale Deeds – A-W-1/4 and A-W-1/29, so also produced by the Sub-Registrar vide Report dated 02.03.2023, are identical, that is, dated 12.03.1948, Registration number 711, pages-115 to 118, Volume-62 of Book No.1; the document was registered on 24.06.1949 bearing the seal of the Sub-Registrar Office Karachi.

30. The word ‘J.M.1’ in the Sale Deed [produced by the private Respondents] does not invalidate the Sale Deed [produced by the private Respondents], as vehemently argued by the Counsel of Applicant/Petitioner No.4, because, it is a matter of record that the **Subject Property** is situated within Sheet No.J.M.1, which is mentioned in the Document of the then Municipal Corporation Karachi, dated 08.05.1937, produced by the Petitioners themselves in the evidence as Exhibit A-W-1/5, addressed to R.G. Advani, the undisputed Vendor, informing him about the grant of

adjacent land [to the Suit Property] measuring 111 Square Yards, which means that word 'J.M.1' tallies with the original record of the Suit Property.

31. Learned Counsel for the Applicant No.4 has laid much emphasis on the authenticity of the two LEASE DEEDS produced by the Petitioner No.4 which is Exhibited as A-W/ 1/2 and the one produced by the private Respondents before the learned Commissioner [at Page-203 of the Evidence File]. The learned Commissioner in his Report has stated that the Lease Deed dated 29th October 1937 produced by the Applicants is a genuine document. Counsel has drawn a comparison between the two LEASE DEEDS and states that the Lease Deed produced by the private Respondents is *ex facie* bogus document because at the relevant time M. A. Jinnah Road did not exist, as mentioned in the Dimension of the Lease Deed produced by the private Respondents, but, it was BUNDER Road as correctly stated in the Dimension of the Lease Deed produced by his above Client [the Applicant No.4]; gist of his argument is that the Applicants hold the genuine documents being the actual Legal Heirs of Jafar Abdul Rahim and are the actual Owners of the Suit Property, which was validly sold to the Applicant No.4 through the Agreement of Sale dated 08.01.1999, Exhibit A-W-1/23, followed by the registered Irrevocable General Power of Attorney, produced as Exhibit A-W-1/1; whereas private respondents are fake and impersonators.

32. To evaluate the above crucial fact, discussion is in the following Paragraphs.

33. Non-appearance

In order to ascertain the fact that whether Petitioners / Applicants No. 1 to 3 were real persons and legal heirs of Jafar Abdul Rahim or not,

number of Orders were passed by this Court requiring their attendance, but, these Petitioners failed to appear; Order dated 23.05.2002, 22.01.2003, 01.04.2003, 18.03.2003 [**the Court directed the Attorney / present Petitioner No.4, to procure the attendance of the Applicants No. 1 to 3, which was not complied with**] 28.04.2003, 13.08.2003.

34. The Order dated 13.01.2006 (passed in titled J.M.) is very relevant, wherein, it is mentioned that Bailiff submitted the Report and stated that address of Applicants No.1, 2 and 3, does not exist in the area of Nanak Warra and Bailiff was unable to serve them in person.

35. **NADRA** [National Database and Registration Authority] Office at Karachi was called upon to submit the record of the Applicants.

36. **On 01.02.2006**, NADRA submitted the Report about the present Applicants No.1, 2 and 3, gist of which is that the identity of **these persons [the Applicants / Petitioners No. 1 to 3] is fake**. Although, this Order was set aside in H.C.A No.37 of 2006 vide Order dated 22.02.2006, but the Report of NADRA was neither discussed in the High Court Appeal, nor, disputed in the Evidence. The Order passed in the High Court Appeal has merely observed that since proprietary rights are involved in the matter, therefore, evidence should be led, while remanding the *Lis* to the learned Single Bench of this Court and directing that till such time possession of the Suit Property would be retained by the Nazir of this Court.

37. The relevant portion of the Order dated 01.02.2006 and the Order dated 22.02.2006 [passed in H.C.A. No.37 of 2006] are reproduced hereunder_

“ In pursuance of order passed by this court, Noor Muhammad Jatoi, Assistant Director, PHQ, N.A.D.R.A has appeared in person alongwith original record relating to the National Identity Cards of the applicants, it appears from the report submitted by him that the CNIC No.4230110920921 of
Judicial Miscellaneous No. 66 of 1999
[and others]

Muhammad Ahmed, CNIC No.4210184495106 of Najma Naz could not be traced out on the given address. The record of their MNIC bearing No.505-84-163406 and MNIC No.502-92-384875, so also not available at their CDR. The PCR-5 of their MNIC are supposed to be issued to two different persons by DRO Lahore; in the year 1976, in the name of Mian Hussain. The report further reveals, that Muhammad Ahmed and Najma Naz, who claimed to be husband and wife with the same fathers name, Jaffar Abdul Rahim, thus both the CNIC are fake, therefore, MNIC and CNIC were ordered to be blocked. In this confronted situation, Mr. Nasir Hussain Jafry, learned counsel appearing for the applicant has stated that he was engaged by Muhammad Ahmed to pursue the case, the above report reveals that he was a fake person, therefore, he wants to withdraw his Vakalatnama. The request is hereby acceded. The learned counsel appearing for the intervenor Muhammad Iqbal Ahmed Baloch has moved an application bearing CMA No.540/2006, praying therein that he be discharged from appearing in this case on behalf of intervenor. The intervenor is present in court did not contest the application. The request of the learned counsel appearing for the intervenor is acceded.

Since the identity of the applicants on account of record produced by the N.A.D.R.A appears to be factitious and fake, therefore, the question of misrepresentation and fraud cannot be determined, so far as the claim of intervenor, namely, Muhammad Iqbal Ahmed Baloch, is concerned he can agitate his right by way of a separate suit, if so advised, the object of section 12(2) of CPC, is to authorize a person to challenge the validity of judgment and decree on the plea of fraud and misrepresentation or want of jurisdiction by way of making any application to the court, passed the final judgment. It is emphatically clear that the applicants had alleged fraud and misrepresentation, since they had failed to appear and contest the case on merits despite of the fact that on several dates of hearing, the applicants were ordered to appear before this court, they had avoided to appear on one or the other pretext, while notice was _____

Since the applicants are not in existence nor represented, it will be just and fair, that the application be dismissed in the given circumstances, on account of applicants' fake identity.

22.02.2006

Heard the learned counsel for the parties. We are of the view that the appellant in J.Misc, Application has claimed an interest in the property which needs to be determined on the basis of factual data and such other material as the parties want to produce and is considered to be relevant within the shortest period of time.

Accordingly we would allow the appeal, set aside the impugned order and remand the matter to the learned Single Judge on the original side to decide the same at the earliest.”

38. Qamaruddin Saifi, one of the Witnesses of Applicant No.4 and the purported Attorney of Applicants No.1 to 3, has led the evidence. In his
- Judicial Miscellaneous No. 66 of 1999
[and others]*

examination-in-chief, he stated that Applicants were not in possession of the Suit Property, but different tenants and he obtained the possession from them for the Applicants No.1 to 3. In his cross-examination, the witness has stated that he did not possess copy of identity card or passport of Jafer Abdul Rahim, nor his photograph or signature. It is stated that after the death of Jafer Abdul Rahim, his son Ahmed [the Applicant No.2] approached the said Witness [Qamaruddin Saifi] for sale of property. **Admitted** that the Mutation in favour of the Applicants No.1 to 3 done in the year 1999 was subsequently cancelled and an Inquiry is ordered. To a question, he stated that Applicant No.1 to 3, are abroad and he cannot disclose their whereabouts, because they are nominated in FIR as accused. **Admitted** that Applicants No.1 to 3, were directed to appear personally in Court but have not appeared. Acknowledged that before FIA in Inquiry, he disclosed that the above Applicants reside in Dubai and they would be produced in proceeding, but it was not done.

39. Present Applicant / Petitioner No.4 [Muhammad Ahmed Iqbal Baloch] has testified as **A-W-2**. He has deposed as Sub-Attorney of Applicants / Petitioners No.1 to 3. In his examination-in-chief, he has stated that he has been appointed as Sub-Attorney by Attorney Qamaruddin Saifi [A-W-1], who holds an Irrevocable General Power of Attorney on behalf of the Applicants [*ibid*]. He has produced the Sub-Attorney dated 08.01.1999 as Exhibit A-W-2/1. Stated that this Power of Attorney is executed to facilitate the transfer of the Suit Property, which is now purchased by him [Petitioner No.4] from the Applicants No. 1 to 3 **through their above Attorney-Qamaruddin Saifi**, under the Agreement of Sale dated 08.01.1999, produced in the evidence as Exhibit A-W-1/23 [page-77 of the Evidence File], and it is witnessed by one Muhammad Taj and Anwar ul Haq; it is necessary to observe here that these Two Persons never came

forward to corroborate the version of the Applicant No.4 about the sale transaction.

The AW-2 deposed that he personally met the Applicants at the Subject Property in presence of Qamaruddin Saifi [above witness, A-W-1]; possession of the Subject Property was with the Applicants, *whereas*, Qamaruddin Saifi has deposed that possession was with different tenants.

In his cross-examination, he did not deny that present Respondents No.1 to 15, are legal heirs of JAR-Omani. Did not deny the suggestion that any of the private Respondents No.1 to 15 attended the Court on 13.11.2001 [when the above Commissioner was appointed to furnish a Report after going through the documents submitted by both Parties, viz. Applicants and private Respondents No.1 to 15]. Admitted, that Abdul Aziz and Mr. Khalil ur Rehman Advocate [now deceased] were present in Court on the above date and they are present during evidence also.

40. Aftab Ahmed, Clerk in the Sub-Registrar Office, has deposed only to the extent that General Power of Attorney – A-W-1/1, given by Petitioners No.1 to 3 in favour of above Qamaruddin Saifi, was registered in the Office of Sub-Registrar, T. Division, Karachi. However, in cross-examination, he has stated that he did not bring the record of the relevant book / volume No.1, in which the entry of this document A-W-1, was made.

41. Syed Ghulam Hyder Kazmi, Sub-Registrar, T. Division No.11, Karachi, deposed and his testimony is Exhibit No.3, at page-269 of the evidence File. In his examination-in-chief, he verified the above General Power of Attorney and stated that it is signed by above named Petitioners No.1 to 3. In his cross-examination, he admitted that he was not the Registrar at the relevant time when the above General Power of Attorney was registered. Acknowledged that page annexed with the documents

showing photocopies of the three National Identity Cards of the above executants / Petitioners, there is no seal of the Registrar. Admitted after seeing the original record that name and parentage of the above executants in the Registrar record is written in blue ink and the address of the Petitioners mentioned in the document is written in black ink with a different pen. Admitted that at the relevant time, when above document was registered, Microfilming as well as pasting of such registered instrument was carried out but the said witness did not know whether any application seeking exemption from Microfilming of the above document was made or not. However, in re-examination, he has deposed that address of the executants mentioned in the black ink, the same pen and ink was used for mentioning details of registration of above General Power of Attorney. Denied the suggestion that at the relevant time, property extract was necessary for registering such document.

42. The above evidence in relation to the existence of Applicants 1, 2 and 3, is not convincing, because the said Official testified on the basis of record and he did not himself was there, when the above Applicants allegedly appeared in the Registrar's office for executing the Power of Attorney, A-W 1/1.

43. Imran Qadeer, Assistant District Officer, Land Record, City District Government Karachi, testified and his testimony is Exhibit 4 [at page-277 of the Evidence File]. He brought the original Register maintained by the then Karachi Metropolitan Corporation and produced the relevant extract of Mutation as Exhibit 4/1, in the name of Jafar Abdul Rahim.

Admitted that as per the record, plot was originally allotted to Late R.G. Advani, which was subsequently mutated in the name of Jafar Abdul Rahim vide TICTS NO.332, dated 30.07.1949 [ibid, Exhibit 4/1]. Admitted that the mutation effected in the name of Mst. Zulekha and others

[Petitioners No.1 to 3] was subsequently cancelled. He has deposed that in spite of search, he could not locate the grand file of the Subject Property. The above Exhibit bears the Remarks that the **Mutation Entry dated 07.01.1999 in favour of the above Applicants has been withdrawn/ cancelled vide Letter No. DL/POS/8694/ dated 20-9-1999.**

44. A Missive dated 17.05.1999, from the Office of Assistant Commissioner and SDM was produced by Qamaruddin Saifi [Applicants' Witness] as Exhibit A-W-1/25, in which it was recommended that Mutation Order passed in favour of Applicants No.1 to 3 be cancelled, which was **undisputedly subsequently cancelled.** This document is important because the proceeding to cancel the mutation was initiated on the complaint from the Consulate General of Oman to the Officials in Pakistan, about dispossession from the Suit Property owned by [Late] Jafar Abdul Rahim, who was mentioned as Omani National. It is also mentioned that Sharia Court at Muscat [Oman] gave a Decision for the Legal Heirs of Jafar Abdul Rahim in respect of the estate left by the latter. The said document mentions the fact that the Death Certificate presented to KMC by the present Applicants for the mutation of Suit Property was a forged document, besides, other facts highlighting the fraud committed by the Applicants. Contents of the above Document were not dislodged by the Applicants and in particular, Applicants No.1 to 3, claiming to be the actual Legal Heirs of Jafar Abdul Rahim.

45. It is also relevant to mention that Applicant No.4 challenged the Order of cancellation of mutation in C. P. No. D – 1400 of 1999, which was dismissed by this Court by the Order dated 26.09.2000 [Page-205 of the Execution Application No. 28 of 2000]. The Counter Affidavit filed by KMC is also produced in the evidence as Exhibit A-W-2/6 [Page-259 of the Evidence File], wherein, it is stated that after following the proper **Judicial Miscellaneous No. 66 of 1999** **[and others]**

procedure mutation was cancelled vide Letter 17.09.1999, against which the Applicants filed a Departmental Appeal which was pending. Fact of the matter is that **till date the Cancellation of mutation has not been restored in favour of the Applicants / Petitioners.**

46. The Respondent No.4 [Ahmed son of Jafar Abdul Rahim-Omani] submitted documents before the learned Commissioner, which are mentioned in his above Report, including the Death Certificate issued by the Government of Oman and Sharia Verdict dated 07.04.1985, which are numbered as Documents 7 and 8. Death Certificate bears the name of Jafar Abdul Rahim, and the date of death is mentioned as 31.12.1984. Original of this document was produced before the learned Commissioner, which was returned and copy is available in record. This document bears official seal of Government of Oman. The Document No.8- the Sharia Verdict, which is given by the Sharia Court at Muscat, *inter alia* , recognized and declared the Respondents No.1 to 15 as the Legal Heirs of Jafar Abdul Rahim; original of this was also produced before the learned Commissioner and a copy whereof is part of the present Record. This document bears the seal of Pakistan Embassy at Muscat, so also Government of Oman, proving its authenticity, in terms of Article 89 of the Evidence Law.

47. The Applicants' Counsel argued that the Lease Deed produced by the private Respondents is a forged document, which shows that they do not have any standing, cannot be accepted in view of the above. This Lease Deed has been mentioned in the above Counter Affidavit of KMC filed in the Constitutional Petition [*supra*], in which it is stated that since this Lease Deed was doubtful, therefore, Mutation was not done. If the entire controversy is considered, then this possibility cannot be ruled out, that the Lease Deed produced by the Respondents, was obtained by them from the Official Record of KMC, in order to defend their proprietary interest, which

means that the Respondents No.1 to 15 has no role in this ‘doubtful’ Lease Deed, or for that matter in forging the Lease Deed. More significant aspect of the entire controversy is, since undisputedly the Suit Property belongs to Jafar Abdul Rahim [as admitted by all the Parties to the present proceeding], the only question is that who are the actual Legal Heirs of JAR and whether they further sold out the Suit Property to Applicant / Petitioner No.4.

48. Most important is Ahmad Jafar son of JAR-Omani appeared in the present Proceeding, and before the learned Commissioner. Official Record [undisputed] confirms the fact about the existence of Respondents No.1 to 15, including their Attorney Abdul Aziz. They participated in the proceedings; *whereas*, Applicants 1, 2 and 3 never came forward and their identity has been declared fake by NADRA. The rule of best evidence as envisaged in Article 129 (g) {*had the evidence produced it would unfavourable to the person who withholds it*} is also applicable to the facts of the present case, which goes against the Applicants, that since they are not genuine Legal Heirs of JAR-Omani, hence, had they appeared, their identity would have been exposed to their detriment; therefore they opted to remain absent. Similarly the cancellation of mutation Entries in favor of Applicants 1-3, which still holds the field, also goes against their stance, *inter alia*, in view of Article 129 [e] that judicial and official acts are regularly performed.

49. Adverting to the other argument [*ibid*] of Counsel for the Applicant No.4, about the Power of Attorney given by private Respondents to their **Attorney** Abdul Aziz, son of, Muhammad Ali, resident of House No. 87/2, Khyaban-e-Bahria, DHA, Karachi, who filed the above Suit No. 1210 of 1998 on behalf of the private Respondents 1 to 15. The General Power of Attorney is available in the record of Suit No. 1210 of 1998, bearing the Judicial Miscellaneous No. 66 of 1999 [*and others*]

endorsement that original seen and returned; bearing the Stamp of Pakistan Embassy at Muscat [Oman] so also Stamp of the Ministry of Foreign Affairs of the Kingdom of Oman. Therefore, the above argument of Applicant's Advocate cannot be accepted.

50. Evaluation of the evidence, in particular, of Applicant No.4, wherein, he has not denied that present private Respondents No.1 to 15 are the Legal Heirs of JAR-Omani, together with the record produced in the proceeding discussed hereinabove, leads to the conclusion that all the Applicants / Petitioners have failed to prove their claim. Applicants No.1 to 3 are impersonators and not the real Legal Heirs of Late Jafar Abdul Rahim, *whereas*, Respondents No.1 to 15 are the actual Legal heirs of Jafar Abdul Rahim-Omani, who is the actual owner of the Suit Property. The result of this finding is, that no sale transaction had happened in favour of either Applicant No.4 or his predecessor Qamaruddin Saifi, who is deriving his interest in the Suit Property from the Applicants number 1, 2 and 3, who are fake persons.

In addition to this, both the alleged witnesses of the Sale Agreement [*supra*] were never examined by the Applicants, in particular, Applicant No.4, thus the purported Sale Transaction is also nullified in terms of Articles 17 and 79 of the Evidence Law.

In view of the above discussion, the arguments of learned counsel for the Applicant No.4, in respect of filing of pleadings by aliens and obtaining a collusive decree, are not acceptable, *firstly*, because the private Respondents filed the above Suit and defended their proprietary interest in the Suit Property in different proceedings, through their duly constituted attorney above named Abdul Aziz; *secondly*, since Applicants No.1 to 3 are fake persons, therefore, the above argument is misconceived in nature. Moreso, the case law cited by the Applicant's counsel is distinguishable and do not apply to the peculiar facts of the present *Lis* and connected Judicial Miscellaneous No. 66 of 1999 [*and others*]

cases. No relief can be granted to non-existent persons and the entire structure built for the Application under Section 12(2) of CPC, has collapsed.

51. No fraud or misrepresentation has been done or committed by the private Respondents No.1 to 15 and the present Application under section 12 (2) of CPC is misconceived in nature. The above Issue is decided against the Applicants, because no genuine sale transaction took place amongst Applicants / Petitioners No.1 to 4. The Judgment and Decree handed down in Suit No.1210 of 1998 does not suffer from any illegality. Judicial Miscellaneous No.66 of 1999 is dismissed, together with Suit No.283 of 2006 filed by Applicant No.4, because he lacks legal character in terms of Section 42 of the Specific Relief Act, in view of the above discussion. The summation is that Execution No.28 of 2000 is hereby allowed and the vacant physical possession of the Suit Property be handed over by learned Nazir to the Respondents No.1 to 15 or to their duly authorized representative, or the above Attorney.

52. All pending applications, if any, also stand disposed of.

53. No order as to costs.

Judge

Karachi.

Dated: 12.09.2024.

Riaz / P.S.