

- g) *To order the Defendants for rendition of Account of the Complex from the date of their illegal possession.*
- h) *Cost of the Suit.*
- i) *To restrain them collecting rent/donation/contribution in any form and selling of coconut fruits within the premises.*
- j) *Any other relief which this Honourable Court may will deem fit and proper in the circumstances of the case.”*

3. Having been served, the appellants herein filed their written stance and challenged the existence of the suit, contending that it is barred by the prescriptions of the Limitation Act, 1908. The appellants averred in the written statement that the Society cannot claim ownership of the subject property, which is an amenity plot, and that the Society ought to refrain from involving itself in religious matters. The learned Single Judge, having examined the pleadings of the parties, formulated the following issues for determination, which are reproduced hereunder:

- 1. *Whether the suit is not maintainable in law and barred by time?*
- 2. *Whether there arose no cause of action to file this suit?*
- 3. *What should the decree be?”*

4. Since legal issues and no factual controversy are involved, the case was fixed for final arguments vide order dated 09.09.2002. Upon the culmination of the final arguments in the suit, the impugned Judgment and Decree were promulgated. The learned Single Bench of this Court, vide the impugned Judgment, was pleased to adjudicate the suit in the following modalities:

“18. In the light of the above discussion and the conclusions the Plaintiff’s suit is decreed as under:-

- a). *The land upon which the most and other components of the Complex have been constructed with the finance of Qatar Government belonged to the Plaintiff.*
- b). *The defendant No.1 was liable to handover the possession of the entire Complex to the Plaintiff on completion of the construction but he failed to do so.*
- c). *The possession of the defendants Nos. 2 to 5 over the Complex and creation of Trust one after the other and then affiliating the Trust with M/s. Darul Aloom Orangi K. Area, Karachi were the acts ab initio void and they (defts) are not entitled to continue their control over and the management of the Complex in any way.*
- d). *The defendants are directed to hand over the possession of entire Complex except the Mosque to the Plaintiff and also hand over the books of accounts including the cheque books and other relevant documents to it for dealing with the accounts by itself or by appointment some manager of the Complex. The Mosque to be managed by the committee of the regular Namazis with the assistance of the Plaintiff.*

e). The trust deeds executed by the defendants are cancelled being void ab initio.

f). Parties to bear their costs.”

5. In this context, detailed arguments were advanced by the respective learned counsel on the issue (formulated in pursuance of Order XLI Rule 31 of the Code of Civil Procedure) of whether the impugned Judgment and Decree were rendered in consonance with the law.

6. Mr. Muhammad Salim Mangrio, learned counsel for the appellants, ardently advocated their case. According to Mr. Mangrio, the suit filed by the Society was unequivocally time-barred. Yet, the learned Single Judge overlooked this critical aspect of the litigation and passed the impugned Judgment and Decree, which should not be upheld. Mr. Mangrio argued that the Trust was established in 1988, but the suit was initiated in 1998. He contended that the Society's claim for the cancellation of the Trust Deed should have been brought before the Court within three years, in accordance with the prescriptions of Article 91, and for a declaration, the suit should have been filed within six years, per Article 120 of the Limitation Act, 1908. Therefore, the suit was barred by limitation, and the impugned Judgment and Decree ought to be set aside. Furthermore, he submitted that the Trust, being a separate and registered entity, was not made a party to the suit. Concluding his submissions, Mr. Mangrio asserted that the subject property was designated for a Masjid, which has been managed by the Trust since 1979, and that it is a waqf property. He has also contended that the Trust was duly registered in the name of “Darul Uloom Jamia Masjid Bait-ul-Mukaram, Masjid-wa-Madarassa Trust”, which is a separate entity to sue or to be used and Trust as a legal person was not impleaded as a party, therefore, suit of the Respondent No.1 was barred by misjoinder and non-joinder of necessary party.

7. Mr. Faisal Siddiqui, learned counsel for the Society, refuted the arguments presented and submitted that the entire Complex of the Masjid was unlawfully taken over by the appellants through an illegal Trust. He asserted that the same Masjid and Trust were created illegally on the land of the Society, a fact rightly observed by the learned Single Judge in the impugned Judgment and Decree. The learned counsel further contended that the appellants are interlopers to the Masjid and the subject property, a point also discussed by the learned Single Judge in the impugned Judgment and Decree. In support of the impugned Judgment and Decree, Mr Siddiqui submitted that it ought to be upheld and the instant appeal be dismissed.

8. Heard and perused. The principal argument advanced by the learned counsel for the appellants is that the suit filed by Respondent No.1 was time-barred. Consequently, it is incumbent upon this Court to ascertain whether the suit was indeed time-barred.

9. In the present case, as articulated in the plaint, one Saud Ahmed Khan, a resident and caretaker of the Society, reported on 06.02.1993 to the Plaintiff that the appellants/defendants had unauthorizedly secured the subject property with locks. Subsequently, the Plaintiff became aware that the appellants had unlawfully encroached upon the suit property and had a Trust Deed registered on 22.10.1989 (incorrectly cited in the plaint as 22.10.1988) without the Plaintiff's consent or authorization. This prompted the Plaintiff to initiate the suit on 29.10.1998, seeking a declaration of ownership, recovery of possession, cancellation of the Trust Deed, and rendition of accounts.

10. Article 120 of the Limitation Act stipulates six years for seeking a declaration of ownership. Article 142 of the Limitation Act provides twelve years for the recovery of possession of immovable property when the Plaintiff, while in possession of the property, has been dispossessed or has discontinued possession. Furthermore, Article 91 of the Limitation Act prescribes three years to cancel or set aside an instrument from the date when the facts entitling the Plaintiff to such relief become known. It is crucial to note that in the present suit, the primary or substantial reliefs sought by the Plaintiff are the declaration of ownership and recovery of possession, while the cancellation of the Trust Deed is merely incidental or ancillary to these substantial reliefs. Therefore, if we disregard Article 142 and compute the time according to Article 120, which provides a limitation period of six years, the date of unauthorized possession of the subject property and gaining knowledge of the alleged Trust Deed, as mentioned in the plaint, is 06.02.1993. The suit was instituted on 29.10.1998, approximately five years and eight months later, thus falling well within the prescribed time limit. In the case of *Mst. Hameeda Bibi and 3 others*¹, it has been held as follows:

“10. While considering the applicability of a particular Article of limitation, one has to keep in view as to how the transaction or document is challenged. In cases where the transaction is claimed to be void, the party aggrieved therefrom, need not to seek cancellation thereof and it can simply apply for declaration that a document or the transaction, purportedly made is inoperative as against his rights. The situation, in a case where the execution is admitted and cancellation is sought, is different, as in such-like cases, the document or the transaction is said to be voidable at the option of the aggrieved person who can challenge the same on the ground of fraud, misrepresentation, lack of consideration, coercion or other grounds as available in law. In the cases, where the document or the transaction is termed as void, one can file a suit for declaration under Article 120 of the Limitation Act which provides for six years' period, from the date when the right to sue accrues. However, in the cases where cancellation is sought by a party to the document or the person claiming therefrom, then of course, Article 91 of the Limitation Act would apply.

11. In a case where one denies to be a party to the transaction, he can simply ask for a declaration that the document shall not be deemed to be operative as against his rights and the Court need not give any relief

¹ Mst. Hameeda Bibi and 3 others vs. Ch. Atta Ullah, Advocate (PLD 1998 Lahore 183)

of cancellation thereof. Reference can be made to Daibakilal Basak v. Iqbal Ahmed Qureshi and another (PLD 1965 Dacca 439) and Abdul Hamid alias MD Abdul Hamid v. Dr. Sadeque Ali Ahmed and others (PLD 1969 Dacca 357).

12. In this case, the gift is being claimed as inoperative, fake and void, hence the respondent could file a suit under Art. 120 of the Limitation Act. The right to sue, would obviously accrue after the demise of Ibrahim, as the heirs cannot file a suit, during the lifetime of their propositus.”

[Emphasis is supplied]

11. Even otherwise, in the instant case, there is no repudiation of the ownership of the plaintiff/Respondent No.1 by the appellants. The Plaintiff in the suit also seeks the cancellation of a Trust Deed, which was executed without his consent and knowledge. As the acknowledged owner of the subject property, the Plaintiff contends that the defendants registered the Trust Deed without his authorization, thereby rendering the deed illegal and void. Under Section 3 of the Trusts Act, 1882, it is imperative to comprehend the roles and obligations entailed in such transactions. Section 3 delineates a trust as an obligation annexed to property ownership, originating from a confidence reposed in and accepted by the owner for the benefit of another party. In this context, as the owner, Plaintiff never consented to create the Trust, which directly contradicts the fundamental premise of trust law, namely, the requisite consent and confidence between parties. Plaintiff, in his capacity as the original owner (or author of the Trust), had no intention of establishing such an obligation, and the absence of his consent nullifies the legitimacy of the Trust Deed.

12. Furthermore, the appellants, who styled themselves as trustees, acted without the proper authority or acceptance of the confidence reposed in them by the rightful owner. This misrepresentation and unauthorized action subvert the essence of a trust to serve the beneficiary through an accepted and legally recognized confidence. The Trust Deed, therefore, cannot stand as a valid instrument under the Trusts Act, 1882, as it fails to fulfil the essential criteria for a lawful and consensual establishment of a trust.

13. Given these circumstances, the Plaintiff's plea for the Trust Deed to be declared illegal and void was firmly rooted in the fundamental principles of trust law. The lack of consent and unauthorized registration of the deed underscore a blatant breach of the legal requisites stipulated by Section 3, thereby justifying the suit's objective to annul the fraudulent instrument.

14. The contentions of the learned counsel for the appellants that the “Trust Darul Uloom Jamia Masjid Bait-ul-Mukaram, Masjid-wa-Madarassa” as a legal person was not impleaded as a party in the suit, and therefore, the suit of Respondent No.1 was barred by misjoinder and non-joinder of a necessary party, lack substantial merit. A meticulous examination of the title of the suit reveals that Defendant No.2 has been sued in his capacity as the Secretary General of Jamia

Masjid Baitul Madressah Trust. This signifies that the Trust has been effectively sued through its Secretary General, an official representative of the Trust. Additionally, the presence of Defendants Mufti Muhammad Rafi Usmani, Justice (R) Muhammad Taqi Usmani, and Moulana Subhan Mehmood, who are Defendants No.4, 5, and 6, respectively, bolsters the position that the Trust is adequately represented in the suit. These persons, who are not only instrumental in the creation of the so-called Trust but also hold significant positions within it as President, Vice President, and Chief Administrator, respectively, ensure that the Trust's interests and administrative concerns are comprehensively addressed. The contention of non-joinder is further weakened when considering the legal principles that permit entities to be represented by their officials in legal matters. Given that the Secretary-General and key office bearers of the Trust are parties to the suit, it implies that the Trust is indeed a participant in the proceedings. This fulfils the judicial objective of ensuring that all necessary parties are before the Court to effectively and properly adjudicate the controversy.

16. In light of this, the Court can proceed to determine the controversy with the assurance that the Trust is appropriately represented through its key officials. This ensures that the suit is not barred by misjoinder or non-joinder of necessary parties, allowing the legal dispute to be resolved effectively and justly.

17. The assertion by the learned counsel that the subject property constitutes wakf based on the alleged Trust Deed is devoid of merit. The Plaintiff is the rightful owner and has not endowed the property as wakf. Moreover, the purported Trust Deed was effectuated without the plaintiffs' acquiescence or cognizance. Per the principles of trust law as codified in Section 3 of the Trusts Act, 1882, the establishment of a trust mandates the express consent and confidence of the property owner. In this instance, the absence of such consent renders the Wakf classification null and void. Notwithstanding this, the learned Single Judge, in the impugned Judgment, has adjudicated that the Masjid, being wakf, is no longer the property of any individual or Society. The learned Single Judge mandated that the appellants relinquish possession of the entire Complex, save for the Masjid, to the Plaintiff. Furthermore, the learned Single Judge decreed that the Masjid shall be administered by a committee of regular Namazis, with the Plaintiff's assistance. Wakf property refers to an Islamic endowment wherein a property is dedicated by a person (waqif) for religious, charitable, or pious purposes. This concept, deeply ingrained in Islamic jurisprudence, supports community welfare and religious activities. Once designated as wakf, ownership transfers to the Trust for charitable purposes, rendering the property irrevocable and inalienable. Its administration is overseen by a mutawalli (trustee) who ensures compliance with the waqif's intent. Any individual with legal capacity can establish a wakf, fostering community support and spiritual merit. The creation of wakf is a voluntary act, intended to

serve beneficial purposes perpetually, thereby contributing significantly to the socioeconomic fabric of Muslim-majority communities.

18. The contention raised by the learned counsel for the appellants concerning the non-framing of factual issues and the absence of recorded evidence requires thorough consideration. After due deliberation and careful examination of the record, it is imperative to reference the relevant provisions of Order XV Rule 3 C.P.C to address the controversy at hand: -

*“3. **parties at issue**.---(1) Where the parties are at issue on some question of law or of fact, and issues have been framed by the Court as hereinbefore provided, if the Court is satisfied that no further argument or evidence than the parties can at once adduce is required upon such of the issues as may be sufficient for the decision of the suit, and that no injustice will result from proceeding with the suit forthwith, the Court may proceed to determine such issues, and, if the finding thereon is sufficient for the decision, may pronounce Judgment accordingly, whether the summons has been issued for the settlement of issues only or for the final disposal of the suit:*

Provided that, where the summons has been issued for the settlement of issues only, the parties or their pleaders are present and none of them objects.”

19. A careful reading of the above provision illustrates that it is designed to expedite adjudication when parties are at issue on certain questions of law or fact. This rule empowers the Court to determine issues without necessitating further argument or evidence if the Court is satisfied that such issues are sufficient for the decision of the suit and that no injustice will result from the proceeding immediately. This provision allows the Court to focus on issues that can be resolved based on existing arguments and evidence, thus promoting judicial efficiency. However, it includes a safeguard to ensure fairness; when the summons has been issued solely for the settlement of issues, the Court can proceed if the parties or their pleaders are present and none objects. Consequently, the rule balances the need for an expedient resolution with protecting parties' rights, ensuring that the judicial process remains effective and equitable.

20. In the case at hand, the appellants filed their reply/written statements, raising only legal objections without denying the factual aspects as required under the law. On 06.05.2002, the learned counsel for the Plaintiff submitted a list of proposed legal issues, which was subsequently adopted. Thereafter, on 09.09.2002, the learned Single Judge passed the following order: -

“Mr.Izhar Alam Farooqui did not press this application and the same is dismissed accordingly. Issues filed by the advocate for Plaintiff adopted. Documents and commission within one month. Since only legal issues are raised by the parties and there is no disputed question of fact matter be fixed for final arguments on these issues.”

21. It is evident from the record that the case was adjourned for approximately 14 consecutive dates for final arguments, but the appellants did not raise any objections nor expressed any desire to adduce evidence. Instead, they argued the matter on legal issues. While it is true that adducing evidence is a right of a party, the Court cannot compel or drag a party to produce evidence. The wisdom behind enacting the provision of Order XV Rule 3 C.P.C. is to ensure early disposal of cases based on documentary evidence, thereby saving the Court's precious time and avoiding unwarranted litigation. Moreover, all the issues framed by the trial Court were legal, which delved into the root of the subject matter and did not involve questions of fact. In light of the above analysis and considerations, the appellants' argument regarding the non-framing of factual issues and the absence of recorded evidence is found to be without merit. The Court acted within the purview of Order XV Rule 3 C.P.C., ensuring judicial efficiency and fairness. Reliance is placed on the case of *Muhammad Younus and 2 others*² .

22. For the foregoing reasons, we discern no infirmity in the impugned Judgment and Decree necessitating intervention in the exercise of the appellate jurisdiction of this Court. Consequently, we hereby **dismiss** the appeal along with all pending applications, with no order as to costs.

JUDGE

JUDGE

² Muhammad Younus and 2 others vs. Government of Pakistan through Chief Secretary N.As Gilgit and 4 others (2010 GBLR 107)