

IN THE HIGH COURT OF SINDH AT KARACHI**Second Appeal No. 333 of 2023***[Muhammad Nadeem v. Faizullah and others]*

Appellant : In Person

Respondent No. 1 Exparte

Respondent No. 2 Through Mr. Iqbal Khurram, Advocate

Respondent No. 3 & 4 : Through Syed Hussain Shah,
Assistant Advocate General

Respondent No. 5 : Exparte

Date of Hearing : 10.09.2026

J U D G M E N T

SAMAN RAFAT IMTIAZ, J.- This second appeal under Section 100, CPC has been filed by the Appellant [Muhammad Nadeem] against (i) the judgment and decree dated 22.08.2023 passed by the learned VIIIth Additional District Judge, Malir, Karachi dismissing the Civil Appeal No.206 of 2021, filed by the Appellant; and (ii) the judgment and decree dated 29.11.2021 passed by the learned Senior Civil Judge-III, Malir, Karachi dismissing Civil Suit No.421 of 2015.

2. The facts leading to this second appeal, in brief, are that the Appellant filed Civil Suit No. 421 of 2015 for declaration, possession, cancellation of documents and permanent injunction, claiming that he is the legal and lawful owner of four plots, i.e. (1) Plot No. 1087, admeasuring 60 square yards, Sector 20/C, Category-N, situated at Shah Latif Town, District Malir, Karachi, (2) Plot No. 1088, admeasuring 60 square yards, Sector 20/C, Category-N, situated at Shah Latif Town, District Malir, Karachi, (3) Plot No. 1115, admeasuring 60 square yards, Sector 20-C, Category-N, situated at Shah Latif Town, District Malir, Karachi and (4) Plot No. 1116, admeasuring 60 square yards, Sector 20-C, Category-N, situated at Shah atif Town, District Malir, Karachi, ("**Subject Plots**") by virtue of transfer and mutation orders issued in his favour, and that possession of the Subject Plots was also handed over to him. It was pleaded in the plaint that the Appellant applied for the issuance of the lease deeds in his favour and also intimated the concerned office not to lease the Subject Plots in the name of any other person, but such intimation was not considered and he later came to know that certain persons, said to be professional land grabbers, had prepared fake and forged lease and other documents of the suit properties

and had occupied the same. It was further pleaded that such persons started raising construction over the suit properties and, when the Appellant went there, he was harassed and threatened with dire consequences. According to the plaint, the Appellant moved a number of applications and complaints before the Respondent No. 2 [Malir Development Authority], Respondent No. 3 [Sub Registrar], the police and other authorities against the tampering with the record and against his dispossession, and his counsel also sent a legal notice for placing a ban upon further transactions in respect of the suit properties, but to no avail. It was averred that the record of the suit properties was manipulated with the help of the officials of the Respondent No. 2 and documents were prepared in the names of other persons, and hence the suit was filed.

3. After admission of the suit, notices and summons were issued to the defendants. Respondent No.2, Respondents No. 4 [Station House Officer] and 5 [Muhamad Kareem] filed their written statement, comments and reply, whereas Respondent No.1 [Faizullah] and Respondent No. 3 failed to file their written statement despite grant of sufficient time and opportunity, therefore, they were debarred from filing written statement and the matter was ordered to proceed ex parte against them vide order dated 13.07.2017.

4. Respondent No.2, in its written statement stated that the documents relied upon by the plaintiff are not available in its record. It was stated that the Subject Plots were allotted to Wahid Bux Shaikh, Mushtaq Ali, Muhammad Nawab and Mst. Seema Begum, respectively in lieu of their earlier plots and possession was handed over to them. Thereafter, the Subject Plots were transferred in favour of Nawaz Khan and then in favour of Iftikhar Ahmed Qureshi through transfer and mutation orders and lease deeds were executed in favour of the latter in the year 2006. It has also been stated that duplicate copies of the Sale Deeds dated 23.06.2008 are available in the record in respect of the Subject Plots but mutation through the registered sale deeds has not been processed in the said authority. It was also stated that no reference of any allotment in favour of the Appellant or his alleged predecessors is available in the files, and that certain files and documents referred to by the him are either missing from the record or not verified.

5. Respondent No.5 filed his written statement averring that the documents annexed by the Appellant are false, fabricated and forged, that he is the lawful owner of the Subject Plots, having purchased the same from the lessee Iftikhar Ahmed Qureshi son of Abdul Latif Qureshi through registered sale deeds, that the plaintiff never remained in possession of the

suit properties and has not annexed any sale agreement, and that the suit has been filed only to blackmail and pressurize the defendants.

6. The learned Trial Court framed six issues. In order to prove the issues, the plaintiff examined himself. He was cross-examined by the learned counsel for Respondent No.5. The attorney of Respondent No.5 was examined himself. He was cross examined by the learned counsel for the plaintiff.

7. To reach at a just and proper conclusion, the learned Trial Court called the Assistant Director of the Respondent No. 2 as a Court witness. He produced the main pages of the allotment register of the authority along with the allotment orders, possession orders, transfer and mutation orders, indentures of lease and sale deeds in respect of all the four plots. At the time of production of the original allotment register the learned Trial Court recorded the following note and objection:-

“Note/Objection: During the production of documents, the original allotment register is inspected and it is found that another piece of papers with the names of Wahid Bux, Mushtaque Ali, Muhammad Nawab and Mst. Seema Begum had been pasted upon the name under the heading of allottees in column No. 5 and another piece of paper had been pasted with the name of Nawaz Khan, in column No. 15 of plot No. 1087, 1088, 1115 & 1116”. [Emphasis added].

8. After recording of the evidence and hearing the parties, the learned Trial Court dismissed the suit of the plaintiff vide judgment and decree dated 29.11.2021. While deciding issues No.1, 2 and 5, the learned Trial Court held that the plaintiff failed to show in what manner he had purchased the suit properties from the alleged original allottees, that no joint application or sale agreement was produced, that the persons shown as his predecessors were not the ballot allottees, that no record of any alternate allotment in their favour or in the name of the Appellant was found in the custody of the Respondent No. 2, and that the Court witness had denied the suggestion that the said persons were the original allottees. While deciding issues No.3 and 4, the learned Trial Court held that the record of the Respondent No. 2 had been manipulated with the collusion of its officers in favour of the predecessor in interest of Respondent No.5, that the documents of Respondent No.5 are also forged and manipulated and are liable to be cancelled, and directed that a copy of the judgment be sent to Respondent No.2 for holding an inquiry against the persons involved in the manipulation of the record and for taking stern action against them.

9. Being aggrieved, the Appellant preferred Civil Appeal No. 206 of 2021, which came up for disposal before the learned VIIIth Additional District

Judge, Malir, Karachi by way of transfer. The learned Appellate Court dismissed the appeal vide judgment dated 22.08.2023. It was held that the Appellant based his claim upon allotment orders and alleged sale agreements without producing the previous allottees and vendors, without producing the alleged agreements and their attesting witnesses, and without producing the officers who had signed the disputed allotment and transfer orders, and that an adverse inference was liable to be drawn against him under illustration (g) of Article 129 of the Qanun e Shahadat Order, 1984. It was further held that there is no registered lease deed in favour of the Appellant, that mere production of the disputed documents does not absolve a party from proving their contents in terms of Articles 79 and 80 of the Qanun e Shahadat Order, 1984, that the manipulation found in the record of the Respondent No. 2 does not absolve the Appellant from proving his own title, and that the suit was also hopelessly time barred under Article 120 of the Schedule to the Limitation Act, 1908, as the cause of action had accrued in the year 2005 while the suit was filed in the year 2015.

10. The Appellant then preferred this second appeal, mainly on the grounds that both the Courts below have misread and failed to read the material evidence available on the record, that the transfer and mutation orders issued in his favour in the year 2000 and the challans paid by him in January 2000 were not considered, that the officials of the Respondent No. 2 committed forgery in the record of the land by pasting pieces of paper upon the names of the original allottees, which stands admitted by the said authority and was also noted by the learned Trial Court in its note and objection but no action was taken upon such admitted forgery, that the ballot register was never called although it was the best evidence, and that the judgments of both the Courts below are based upon surmises and conjectures.

11. This Court vide order dated 14.05.2026 directed the Nazir of this Court to take the Master Allotment Register in his custody and to send the same to a specialized department of the Sindh Police, viz. Questioned Documents Units Forensic Division, Karachi, for examination and submission of their report. Thereafter the report was submitted by the Forensic Department of the Sindh Police through the Examiner Mr. Ayaz Ali, Sub-Inspector, in a sealed envelope which was opened in this Court on 25.05.2026. The Examination Report dated 22-05-2026 concludes that the record is tampered with. The learned counsel for the Respondent No.2 requested for time to ascertain the entitlement of the Appellant by the department and to see whether the same or alternate plots can be given to the Appellant. The Court directed that if the Appellant is given the same or

alternate plots the Respondent NO. 2 shall ensure that they are undisputed and free from all encumbrances and charges.

12. On 15.07.2026, the Respondent No.2 submitted a statement dated 10.06.2026 according to which four alternate plots free from disputes and encumbrances were offered to the Appellant, however, the Appellant stated that he is not interested in such alternate plots cause of lower value. The learned counsel for the Respondent No.2 explained the reason for the offer of alternate plots because the Respondent No.5 is in possession of the Subject Plots and no suit has been filed for cancellation of their documents. However, perusal of the plaint filed by the Appellant in is suit shows that prayer clause (b) is for direction to the Respondents No. and 3 to cancel the documents if any issued by their office in the name of anyone.

13. The Appellant explained that initially the suit was filed by him against the Respondent No.1 who was found to be the contractor raising construction on the Subject Plots as the identity of the person encroaching upon the Subject Plots was not known to the Appellant. Subsequently, the Respondent No.5 [Muhammad Kareem) was impleaded as Defendant No.5 and amended title of the plaint was filed but since the name of the Respondent No. 1 was not deleted from the array of defendants before the Trial Court he has been impleaded in the instant appeal as well. Although Advocate for the Respondent No.1 was present on the last few dates, but none was present for the said Respondent on 19.08.2026 as such case proceeded against him ex-parte.

14. Insofar as the Respondent No.5 is concerned, notices were issued upon him thrice but each time the bailiff reported that service could not be made due to incomplete address whereas the same address was given before the trial court before whom the Respondent No. 5 entered appearance. In such circumstances, it was considered necessary, in the interest of justice, to effect service upon the said respondent by way of publication, therefore, service was made upon him by way of publication despite which none entered appearance on his behalf. With regard to the statement of the learned counsel for the Respondent No. 2 that the Subject Plots are in possession of the Respondent No. 5, the Appellant submitted that only a boundary wall has been built.

15. Heard the Appellant in person, the learned counsel for Respondent No.2 and the learned AAG and perused the entire record with their assistance.

16. The Report dated 22.05.2026 submitted by the Forensic Department of the Sindh Police through the Examiner Mr. Ayaz Ali, Sub-Inspector to this

Court states that examination of the original Register (REG=26, 20-C, 1001 to 1725 N) Pages 01-200 of KDA) revealed that another paper was pasted on two columns i.e., column No. 5 "NAME AND ADDRESS OF THE ALLOTTEE" and column No. 15 i.e., "NAME AND ADDRESS OF THE TRANSFEREE" on the Subject Plots in the provided register with different details and concludes that columns No. 5 and 15 are tampered with . The claim of the Appellant in respect of the Subject Properties stands established.

17. Insofar as allotment in favour of the Respondent No. 5 is concerned, the Trial Court has already found that the documents of the Respondent No.5 are fake, bogus, and liable to be cancelled, which finding has not been challenged by Respondents No. 2 or 5. In view of the foregoing, the Respondent No. 5 is not a bona fide purchaser for value. Thus there is no question of granting alternate plots to the Appellant.

18. In view of the foregoing, the instant appeal is allowed. The impugned judgments are set aside to the extent of dismissal of the suit of the Appellant, which are hereby decreed as prayed for. The Respondent No. 2 is directed to submit its report of the action taken against its officers as ordered by the Trial Court vide its Judgment dated 29.11.2021 for perusal in chambers.

**[SAMAN RAFAT IMTIAZ]
JUDGE**

Imran