

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.1021/2014

Date of hearing : 22-10-2014

Plaintiff. : Muhammad Ali Zubair
through Mr. Naseer Ahmed,
Advocate (absent)

Defendant No.1 : Sabira Khatoon,
through Mr. Murtaza Hussain,
Advocate (absent)

Defendant No.2 : Zebinda Iqbal

J U D G M E N T

NAZAR AKBAR, J. This is a suit for specific performance of a contract, declaration and permanent injunction, arising out of an agreement of sale dated 11.12.2012 between the plaintiff and Defendant No.1.

2. Briefly stated that Defendant No.1 as sub-attorney of Mr. Zahid Saleem, the attorney of defendant No.2, the original owner of Bungalow No.43/1/A, 9th Street, Phase-V, situated at Defence Housing Authority, Karachi, admeasuring 450 sq.yards (herein after referred to as the “suit property”) agreed to sell the suit property to the plaintiff for a sale consideration of Rs.1,85,00,000/- with tenants and without possession.

After the execution of agreement the Plaintiff paid entire sale consideration to Defendant No.1 and she handed over copies of title documents of the suit property to the Plaintiff. Defendant No.1 claims that in the year 1993 Defendant No.2 had sold out the suit property to one Zahid Saleem on power of attorney dated **22.6.1993** against sale consideration of Rs.18,00,000/- through agreement of sale also dated **22.6.1993**. In the year 2004 the said attorney of Defendant No.2 sold the suit property on sub-power of attorney to defendant No.1, through an agreement of sale dated **6.4.2004** with her against sale consideration of Rs.1,40,00,000/- and on **15.8.2005** the sub-power of attorney was executed in favour of Defendant No.1 by the attorney Zahid Saleem.

3. The Plaintiff on the basis of clause 3 of the agreement of sale filed rent case against the two tenants before the Rent Controller, Clifton Cantonment Board, Karachi, bearing **Rent Case No.92/2013**. The plaintiff and the tenants on **02.01.2014** filed a compromise application which was allowed by the Rent Controller on **06.01.2014** whereby the tenants agreed to hand over physical possession of the suit property to the plaintiff as landlord and now Defendant No.1 is trying to sale out the suit property to some other person and wants to create third party interest in the suit property. Therefore the innocent Plaintiff who was suffering for no wrong done by him and who has already paid entire sale

consideration to Defendant No.1 had filed the instant suit urgently during summer vacations of Courts on **24.06.2014** for the following relief(s)-

- i. A declaration to the effect that the Plaintiff is bonafide purchaser of the suit property bearing House No.43/1/A, 9th Street, Phase-V, DHA, Karachi.
 - ii. A decree for the specific performance of contract thereby directing the Defendants to finalize the sale transaction of the suit property in favour of the Plaintiff and to execute sale deed or in alternatively the Nazir of this Hon'ble Court may be directed to do the needful.
 - iii. To grant permanent injunction restraining the Defendants not to transfer/mutation or to create third party interest in the suit property bearing House No.43/1/A, 9th Street, Phase-V, DHA, Karachi, till disposal of this suit.
 - iv. Any other relief
4. On **25.06.2014** the plaintiff got his case fixed in Court through an urgent application claiming the suit property is in physical possession of Defendant No.1 without disclosing that under what circumstances and who has put Defendant No.1 in possession since the tenants in terms of order in Rent Case

No.92/2013 had agreed to hand over possession to the plaintiff. However, the court ordered for notice and specifically directed that the case to come up after vacation, but plaintiff and defendant No.1 on **22.07.2014** i.e. during summer vacations filed a joint application under Order 23 Rule 3 CPC (CMA No.9200/2014) and the Court after granting urgent application directed to issue notice to Defendant No.2 again for a date after vacations. On **21.08.2014**, pending their earlier application under Order 23 Rule 3 CPC, they filed another application under Order 23 Rule 3 CPC (CMA No.10764/2014) and got the case fixed in Court for hearing on **25.08.2014** when the Court raised following questions:-

“Both the learned counsel are put on notice to satisfy the Court as to whether on the basis of sale agreement and Sub-Power of Attorney, one can sale the property of original owner, when admittedly he is not attorney of original owner.”

5. Again these two applications for compromise on the same terms and conditions between the same parties were listed for hearing on **13.10.2014** when after hearing both the learned counsel, I passed the following order:-

“13.10.2014

Mr. Naseer Ahmed, Advocate for the plaintiff
Mr. Murtaza Hussain, Advocate for the Defendants
No.1 & 2.

This case is fixed for further orders on CMA No.10764/14 under Order XXIII rule 3 C.P.C. in terms of order of this court dated 25.8.2014 whereby the counsel for the plaintiff and defendant No.1 were directed to satisfy the court that whether on the basis

of sale agreement a sub-power of attorney can sell the property of original owner when he is admittedly not attorney of original owner. Since the dispute has been resolved outside the court and the plaintiff and defendant No.1 have come to the court they have to establish bona fide on every stage of the sale transaction. The power of attorney executed by the original owner in 1994 is on a stamp paper of Rs.200/-. This power of attorney is not registered power of attorney. Despite the fact that the power of attorney was not registered, the attorney did not get his title perfected by transfer of property by any registered instrument in terms of Transfer of Property Act, from 1994 till 2004 and he simply sold the original owner's property in 2004 apparently without express permission to sell it after 20 years and also without proof that in 2004 the original owner was alive. Then he executed an un-registered sub-power of attorney on stamp paper of Rs. 500/- in favour of defendant No.1. The said unregistered sub-attorney after eight years again without perfecting his title of the suit property has sold out the same on the basis of mere sale agreement to the present plaintiff. Since 1994 not a single document has been registered for showing the persons transferring the valuable immovable property were owner and have acquired the title from the original owner in accordance with law.

In view of above facts and circumstances not a single sale agreement appears to be executed lawfully, therefore, first the plaintiff has to satisfy this court that how the defendant No.1 has purchased the suit property from the original owner and whether her title was marketable title to sell the suit property to the plaintiff. The parties counsel are directed to satisfy the court that how the suit is maintainable. To come up on 21.10.2014”

6. On 21.10.2014 the learned counsel for the parties did not appear in Court and on 22.10.2014 when this case was reserved for orders with the observation that:-

“the parties are given last chance to file their written synopsis of arguments within one week so that the order may be passed with their assistance or otherwise judgment would be announced on the basis of available record.”

7. On **26.10.2014**, only learned counsel for defendant No.1 filed synopsis of his written arguments, but he has not answered the question raised by the Court in the order dated

13.10.2014 reproduced above. Both the learned counsel for the plaintiff and the defendants claim that compromise can be effected through Sub-Attorney without realizing that unregistered Power of Attorney is of no legal consequences for alienation of immoveable property.

8. The Plaintiff has not prayed for handing over possession of suit property to him. In the given facts of plaint and prayers it was a case of just execution of sale deed by an all willing Defendant No.1, therefore, the unusual urgency to file the suit in summer vacation and again coming to the Court during vacation to compromise the suit despite Court order to put up after summer vacation followed by yet another unusual conduct of filing a fresh application for compromise (CMA # 10764/2014) on same terms and conditions leaving the earlier compromise application (CMA # 9208/2014) filed during vacation unattended aroused a sense of some foul play in approaching the Court by the Plaintiff and Defendant No.1. The need to file second identical compromise application after summer vacation arose to defeat the consequences of order dated **22.7.2014** when the earlier application was taken up during the vacation and the Court had been pleased to order for notice to **Defendant No.2**. The second application for compromise was moved to avoid notice to Defendant No.2 and get the compromise decree even without proper service of summons on Defendant No.2 despite Court order to issue notice to Defendant No.2 on the earlier compromise

application. Not only this, the following Paragraph from the application under Order 23 Rule 3 CPC is astonishing, which reads as follows:-

“Defendant’s sub-attorney transfer the suit property in favour of the plaintiff before the concerned department/sub-registrar within the **fifteen days** from the signing of this compromise application and if the defendant failed to transfer the property in question in favour of the plaintiff, **the Nazir of this Hon’ble Court shall transfer the property in question in favour of the plaintiff without any notice and execution to the defendants.**”

How is it that defendant No.1, even after the compromise will not execute the sale deed within 15 days despite her admission that she has already realized the entire sale consideration. How is it that the plaintiff and the defendant have compromised with each other to employ Nazir of this Court to replace defendant No.1 for the purposes of execution of the transfer documents of the suit property “without notice” and “execution” to the defendants. Precisely, they have agreed not to go before the Registrar of Properties and use the Officer of this Court for execution of the sale deed of suit property under the cover of compromise to provide legal protection to their illegally occupied suit property, if at all they are in possession, or to forcibly take over possession of suit property once the document is executed by the Nazir in their favour. Therefore, I felt it necessary to be extra careful

in accepting the compromise and thoroughly examined the file.

9. I have noticed that the attempt to play fraud with Court on the pretext of compromise by the plaintiff and defendant No.1 is not their first attempt. Earlier they have successfully played similar fraud in the name of compromise on the Court of Rent Controller, Clifton Cantonment Board, Karachi, which I noticed on reading Annexure "F" to the plaint. Annexure 'F' is an order of Rent Controller dated **06.01.2014** on a similar compromise application in Rent Case No.92/2013 in respect of suit property filed by the Plaintiff herein. The said order is reproduced below:-

ORDER

06.01.2014

By this order, I intend to dispose of an application for compromise under section 151 CPC filed by both the parties jointly praying therein to dispose of the case on the following terms:-

*The parties have settled their disputes outside the court that the **applicant is ready to forgo the rent of last six years**, which was accumulated against the opponent No.1 and **opponent No.1 is ready to vacate and hand over the physical and peaceful possession** of the premises in dispute bearing No.43/1/A, 9th Street, Phase-V, Defence Housing Authority, Karachi which was sublet to opponent No.2, **within seven days** from the signing of this compromise application. "The execution court should be approached to enforce the eviction of the opponent through bailiff and police aid in case the said order is not complied with in letter and spirit."*

I have heard the counsel of the respective parties of instant application. As both parties are present before the court, contents have been read

over to them and they have admitted all the contents as well as the terms and conditions incorporated therein.

Therefore, in view of the above circumstances, I hereby allow the application in hand as prayed.”

10. The other startling facts that come to the notice of the Court from the R&P of Rent Case and annexures to the plaint are that:

- (i) The tenancy agreement filed by the plaintiff in Rent Case dated **01.2.2004** was not executed by any attorney rather it has been allegedly signed by the landlady / Defendant No.2 namely Zebinda Iqbal herself.
- (ii) According to para 5 of the plaint the original owner had already sold suit property on power of attorney coupled with sale agreement to Mr. Zahid Saleem way back on **22.06.1993**.
- (iii) How is that original owner / landlady rented her property on **01.02.2004** personally and just after two months Mr. Zahid Saleem, her already attorney since **28.03.1994** sold the suit property to defendant No.1 on **06.04.2004**.
- (iv) The title of Rent Case No.92/2013 shows that both the opponents mentioned in the title are residents of two different premises and none has been shown in

occupation of suit premises bearing House No.43/1/A, 9th Street, Phase-V, DHA, Karachi.

(v) The opponent No.2 in rent case No.92/2013 who has been shown as sub-tenant never appeared in the Court of Rent Controller and the compromise application was signed by opponent No.1 for self and as attorney of opponent No.2. The power of attorney is dated **10.12.2013** while first date of hearing was **19.12.2013**.

(vi) The opponent No.2 sub-tenant even in power of attorney for Rent Case No.92/2013 has shown her address of Rubi Apartments and not that of the suit property meaning thereby that even on **10.12.2013** the opponent No.2 was not in occupation of the suit property as tenant.

11. The above facts available on Court record show that compromise in rent case was fraud on the Court of the Rent Controller, which had allowed compromise without realizing that the Applicant namely Muhammad Ali Zubair (plaintiff herein) was neither the owner nor landlord to initiate ejectment proceedings against even the so-called tenants. It is pertinent to mention here that in the so-called sale agreement dated 11.12.2012, defendant No.1 has not disclosed particulars of tenants and therefore, even it is doubtful that the tenant was a genuine party or the suit property was lying

abandoned and all the activity before the Rent Controller was collusive and fraud to serve ulterior motives of taking it over under the cover of order of Rent Controller. Therefore, I called for R & Ps of the Rent Case No.92/2013 and I was informed that the R& Ps of the Rent Case No.92/2013 was sent to this Court in connection with **FRA No.02/2014**, then I also called for the file of FRA alongwith R&P of rent case. The contents of FRA reaffirmed my believe that if the Defendant No.1 is in possession of suit property it must have been taken over by the plaintiff by playing fraud and misrepresentation and abuse of the process of the Court of Rent Controller without any legal basis to claim or seek possession of suit property. The Plaintiff herein is respondent in FRA No.2/2014 and the appellants have disclosed the truth that the compromise in the **Rent Case No.92/2013** was on the ground that the tenant of defendant No.1 shall hand over possession of the suit property to the plaintiff on payment of **Rs.10,00,000/-** (Rupees Ten Lac only) and not on the ground that landlord has given up his claimed of rent for the last 6 years.

12. The above facts and conduct of the two sellers of immovable property of Mst. Zebinda Iqbal as attorney and sub-attorney compelled me to find out atleast search certificate of the suit property and therefore I directed the Nazir of this Court to obtain search certificate from the concerned Registrar of Properties. The search certificate

revealed that the suit property is already subject matter of two other civil suits pending before this Court bearing Suit No.1077/2007 and Suit No.1495/2007. And “stay order” is operating in respect of transfer of suit property in the said suits, **Suit No.1495/2007** has been filed by the legal heirs of Defendant No.2 as she has expired on **17.10.2005** alongwith her husband and only son under the debris of Margalla Tower, Islamabad in earthquake.

13. The contents of search certificate re-affirmed that the need of obtaining a compromise decree was imperative, as the Plaintiff and Defendant No.1 knew that Defense Housing Authority as well as the Registrar of Properties cannot officially transfer the suit property in favour of anyone of them on the basis of unregistered Power of Attorney and unregistered Sub-Power of Attorney in absence of not only original title documents but also in absence of real owner of the suit property unless the Court official himself execute the document and unless there is any other order subsequent to the Court order dated **3.4.2008** in the same suit No.1495/2007 or any other suit nullifying the effect of earlier stay order. Therefore, they have decided to get the sale deed executed through the Nazir of this Court by adding the pre-determined clause in the compromise deed (reproduced in para-8 above) that “**Defendant No.1 will deliberately fail to execute the sale-deed within 15 days, and therefore, the**

Nazir shall be bound by order of the suit on compromise application to execute sale deed in favour of the Plaintiff". The idea was that the Nazir of this Court would silent the sub-Registrar of Properties from raising any objection and asserting earlier "stay order" in field since 2008 in the two suits on the same suit property and register the sale deed in favour of the plaintiff on behalf of defendant No.1 as sub-attorney of the attorney of original owner, the Defendant No.2.

14. The very fact that Defendant No.2 had died on **17.10.2005** in earthquake as is discovered from **Suit No.1495/2007** filed by her legal heirs in respect of the suit property is fatal to all the concerted efforts of the Plaintiff and the Defendants to get the sale deed executed in respect of the suit property through Nazir of this Court. The legal position of the status of the Plaintiff and Defendant No.1 with respect to the suit property on the basis of an agreement dated **11.12.2012** is that Defendant No.1 in the first place was not competent enough to enter into an agreement of sale on 11.12.2012 with the Plaintiff since the purported sub-power of attorney was unregistered and therefore, her authority to alienate the property was hit by the provisions of **Section 17(b)** of the Registration, Act 1908 read with **Section 2(21)** of Stamp Act, 1899. Even the sub-power of attorney stand terminated on the demise of Defendant No.2 namely Zebinda

Iqbal by virtue of provision of **Section 201** of the Contract Act, 1899. Therefore, even if the sub-power of attorney was coupled with interest it stand terminated on the death of the principal. In coming to this conclusion I am fortified with the judgment reported in **PLD 1991 Karachi 377 (ZAFARUL ISLAM versus Mrs. AZRA MALIK)** and relevant portion of the judgment is reproduced below:-

If a power of attorney purports to create right, title, or interest, whether vested or contingent, of the value of one hundred rupees or upward, to or in immovable property, it requires compulsory registration under section 17(b) of the registration Act, besides payment of duty under Stamp Act.

The perusal of power of attorney and sub-power of attorney reveals that even required stamp duty on power of attorney to sale immoveable property was not paid / affixed on the said power of attorneys in accordance with **Section 2(21)** read with **Article 48(e)** of **Schedule I** of the Stamp Act, 1899, which reads:-

Section 2(21) "**Power of Attorney**".—Power of attorney" includes any instrument (not chargeable with a fee under the law relating to Court-fees for the time being in force) empowering a specified person to act for an in the name of the person executing it.

Article.48. **Power of Attorney** as defined by section 2(21), not being a proxy (No.52)--

- a.....
- b.....
- c.....
- d.....

(e) When given for The same duty as is consideration and leviabale on a authorizing the attorney Conveyance (No.23) for to sell any immoveable the amount of the property. consideration.

The general power of sub-attorney purported to be used by Defendant No.1 (annexure E/1 to plaint) is written on stamp paper of just **Rs.1000/-** giving power / authority to transfer / sale of immovable property worth **Rs.1,40,00,000/-** by all means was not duly stamped as required under the Stamp Act, 1899. It should have been sufficient stamped in terms of **Article 48(e) of Schedule-I** of the Stamp Act, 1899. Similarly power of attorney of Zaheed Saleem written on stamp paper of just **Rs.200/-** and therefore, even that was not sufficiently stamp to authorize him to alienate the immovable property of his principal. Therefore, none of the power of attorney has conveyed any legal authority to the said attorneys to transfer the suit property in favour of Plaintiff. It was mandatory for the beneficiaries of power of attorneys that while acquiring power to transfer / alienation immovable property that their power of attorney, besides being compulsory registered should have been sufficiently stamped with the stamp duty chargeable on a conveyance deed in accordance with the Stamp Act, 1899.

15. In the same judgment (PLD 1991 Karachi 379) while relying on a judgment of Supreme Court it has also been held by this Court that even power of attorney coupled with interest terminates on death of principal. The relevant portion of judgment is as under:-

Under section 201 of Contract Act, an agency inter alia is terminated by the death of the Principal. In *Watson v. King* (1515) 4 Camp. 272 at page 274 the Court held:

"This rule of the common law does not apply to prevent revocation by the death of the principal. `A power coupled with an interest cannot be revoked by the person granting it but it is necessarily revoked by his death. How can a valid act be done in the name of a dead man?"

The Supreme Court of Pakistan in *Mehar Mohammad v. Deputy Settlement Commissioner and another* 1979 S C M R. P 182 observed in a writ petition as to the effect of death.

"....It is well-established that any order passed against a dead person would be a nullity in law especially when long before the institution of the proceedings against him he had already died. In this view of the matter, the conclusions recorded by the learned Judge in the High Court, in so far as the merits of the case are concerned would have no significance as they were recorded against a dead person."

In the case in hand, Defendant No.2, namely Zebinda Iqbal had died on **17.10.2005** in earthquake of 2005, and with her death both the attorney and sub-attorney stand terminated therefore, the agreement to sell dated **11.12.2012** was not validly entered into by and between the parties after the death of the principal and as such it is not enforceable at law even if the contesting parties are ready and willing to abide by its terms.

16. It is pertinent to mention here that neither Mr. Zahid Saleem, who is allegedly original attorney and also claimed to have interest in suit property by virtue of an agreement of sale dated **22.06.1994** with the owner, nor Sabira Khatoon,

the sub-attorney who claimed to have entered into an agreement of sale dated **06.04.2004** with the attorney has ever invited public objections on entering into agreement of sale of suit property. Even the present plaintiff after entering into agreement of sale on 11.12.2012 with the sub-attorney, too, till date has not issued any public notice in the newspaper for inviting any objection from public at large for transfer of title of suit property in his name. Had this basic effort been honestly made by the Plaintiff in December 2012, the legal heirs of deceased Defendant No.2 could have warned the Plaintiff before making any further payment, or the Plaintiff of suit No.1077/2007 could have raised objections. At least a search certificate of suit property should have been obtained by them from the office of the sub-Registrar of properties concerned. All this was not done as it did not suit the needs of the Plaintiff and Defendant No.1. The unscrupulous conduct in acquiring the suit property by the parties one by one through sale agreements alongwith so-called power of attorney and sub-power of attorney coupled with what they have done in the Court of Rent Controller and even before this Court as reflected in earlier part of this judgment is more than enough to understand that Defendant No.1 shall not execute the transfer documents even after the Court order in favour of the Plaintiff as she was required to do it **within 15 days from the signing of this compromise application**. In fact Defendant No.1 has already breached the

promise (contract) with the Plaintiff as she executed first compromise application (CMA # 9208/2014) on **21.7.2014** and second compromise (CMA # 10764/2014) on **21.8.2014** and till date she has not executed the transfer documents despite lapse of several months to her commitment of 15 days. Therefore, the compromise application is liable to be dismissed on this score alone. The already broken promise by the compromising parties cannot be endorsed by the Court.

17. On merit, in view of the above facts and circumstances it appears to be a case of no cause of action for filing of the present suit against the Defendants. The prompt compromise agreed by Defendant No.1 suggests that she was not trying to sell the suit property to anyone else and therefore, there was “no cause of action” on **24.06.2014** when the plaintiff filed this suit for specific performance of contract dated **11.12.2012** against her. The cause of action shown in **para 9** of the plaint was a false and collusive statement of the plaintiff and defendant No.1. The veracity and truth of the “cause of action” was exposed within 28 days on **22.7.2014** when even before proper service of notice defendant No. 1 came to the court alongwith the plaintiff with an urgent application for disposal of the suit and attempted to obtain a compromise decree from this Court. The prompt willingness of Defendant No.1 to execute the relevant transfer document before sub-registrar of properties within fifteen days leads to

inescapable conclusion that she has never refused to perform her part of the contract or if at all she had, once she has unconditionally and readily agreed to perform her part of the contract, the cause of action, if any, ceased to exist against defendant No.1. The jurisdiction of a civil Court to exercise its authority to adjudicate between the parties co-exist with the “cause of action” to settle the grievance of the Plaintiff against the Defendant on his/her denial to accept / acknowledge certain rights of Plaintiff. It is settled principle of law that no suit can be filed without a “cause of action” and if at all such suit is filed, the plaint is to be rejected under **Order VII Rule 11 CPC** for want of cause of action. Similarly, after filing of suit if the cause of action ceases to continue, nothing is left for the Court to exercise its authority. The suit becomes infructuous and the plaint is liable to be rejected. In **para-10** of the plaint it is stated by the Plaintiff that the “cause of action is still subsists till the filing of the suit” however, the cause of action ceases to exist the moment Defendant No.1 in the application for compromises stated that:-

“Now the Defendants ready to transfer the suit property in favour of the Plaintiff as the Plaintiff himself vacate the tenant from the property in question therefore, the Plaintiff filed ejectment application No.92/2013 before the rent controller of Clifton Cantonment Board and ejectment order passed thereon dated 06.01.2014 and Defendant’s sub-attorney transfer the suit property in favour of the Plaintiff before the concerned department / sub registrar within the fifteen days from the signing of this compromise application.

With the above statement of Defendant No.1, the claim of Plaintiff in para-10 that "cause of action" to file the suit subsists vanishes and cease to exist and the moment cause of action ceases to exist the plaint attracts the provisions of **Order VII Rule 11 CPC** and liable to be rejected. In this context I find strength from the judgment of my lord Mr. Justice Wajihuddin Ahmed (as he then was) reported in **1989 C L C 1989** (Diamond Rubber Mills..Vs..PAKISTAN TELEVISION COPRPORTION LTD. and 2 others). The relevant observation from page 1992 of the judgment is reproduced below:-

In addition, the Defendant No.3, having been deleted, no cause of action, even if there was one at the time of filing of this Suit, subsists. For the purposes of rule 11 of order VII C.P.C. it is not necessary that the plaint, coming up for consideration, be identical to the one that was filed. Provisions in such rule apply in the context of the plaint, as it stands, at any given time. This is clearly so in context of cause of action and the bar under "any law". If, at any given time, cause of action ceases to subsist or bar under any law comes into operation and that position is discernible from the plaint, recourse to Order VII, rule 11 C.P.C can be taken.

In view of the above legal position, the plaint in suit for specific performance is liable to be rejected once the Defendant has conceded that he is ready and willing to perform his part of the contract and the Nazir of this Court cannot be allowed to perform his part of the contract under any circumstances.

18. The critical analysis of the facts stated above and perusal of the documents shows that the Plaintiff and the so-called Attorney Mr. Zahid Saleem and his Sub-Attorney,

Defendant No.1 in collusion with each other have made concerted attempt to perfect their title by abusing the process of the Court to overcome legal hurdle in their way. The Plaintiff and Defendant No.1 committed a clear cut fraud before the Rent Controller as discussed in detail in **para-9 & 10** of this judgment and being encouraged by their success in obtaining a favourable order in the name of compromise from the Rent Controller, the same foul play has been attempted even before this Court by filing a collusive suit on **24.6.2014**. The order sheet of this case reproduced in **para No.3, 4 and 5** above read with claim of plaintiff for “cause of action” for filing the present suit in the back drop of proceeding of rent case No.92/2013 is sufficient to appreciate the collusive, mala-fide intention to achieve their ulterior motive in abusing the process of Court through this suit. The counsel for the Plaintiff and Defendant No.1 have failed to advance any arguments on the questions raised by this Court about maintainability of the suit in its order dated **13.10.2014**.

19. Since it has come on record that the possession and title of suit property is regulated by the orders dated **3.4.2008** in suit **No.1495/2010** pending in this Court, therefore, while dismissing the suit, I am refraining from making any observation regarding the possession of Plaintiff or Defendant on the suit property as the impression given by them in their pleadings.

20. In view of the above facts and legal position of the Plaintiff and Defendant No.1 both the compromise application and the suit are dismissed with cost of Rs.100,000/- to be jointly and severally borne by the Plaintiff and Defendant No.1. The cost is to be paid within 15 days in the office of the Nazir of this Court and in case of their failure to deposit cost of the suit as stipulated, the Nazir of this Court should take any step for recovery of the cost including attachment of movable and immovable properties of the Plaintiff and Defendant No.1. Once the cost is recovered, Rs.25000/- shall be appropriated toward Nazir's fee for the exercise of recovery of cost and Rs.25000/- each may be given to the High Court Clinic, High Court Employees' Benevolent Funds and to the Library of Sindh High Court.

21. Copy of this order may be send to the MIT-II alongwith R&P of rent case No.92/2013 and FRA No.02/2014 and he is directed to examine the same in terms of **section 195 Cr.P.C** or any other relevant provisions of Cr.P.C and, if any, case is prima facie made out he should initiate or cause to initiate criminal proceeding against the Plaintiff and Defendant No.1 in accordance with law.

J U D G E

Karachi
Dated:12.01.2015