

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 1482 of 1998

Abdul Wahid

Versus

Deedar Ali Issran and others

Dates of hearing : 30.03.2017 and 28.08.2017

Date of Decision : 29.12.2017

Plaintiff
[Abdul Wahid] : Through Mr. Imran Ahmed,
Advocate.

Defendants No.1(c), (f),
9 and 10.
*[Kausar Perveen,
Aarfa, Abrar Ali and
Mst. Mumtaz Sultana].* : Through Safdar Ali, Advocate.

Defendants No.2 to 5
*[Syed Akhlaque Ali,
Syed Iqbal Ali,
Syed Altaf Ali and
Syed Jibran Ali]* : Through Mr. Neel Keshev,
Advocate.

Mr. Khalid Hussain Shaikh,
Advocate for SBCA.

Mr. Mushtaq Ahmed, Sub-
Registrar, Larkana.

Case law cited by the Plaintiff's counsel

- 1). **1989 CLC Page-894**
(*Kharati Versus Muhammad Ibrahim*).
- 2). **191 MLD Page-583 [Lahore] relevant Page-540.**
(*Water and Power Development Authority through Chairman
and another*)

Case law relied upon by Defendants' counsel

- 1). 2002 SCMR Page-326
(*Mst. Baswar Sultan Versus Mst. Adeeba Alvi*)

- 2). **SCMR 2000 Page-346**
(*Abdul Rahim and another Versus Mrs. Jannatary Bibi and 13 others*)
- 3). **SCMR 2000 Page -431**
(*Anwar Zaman Versus Bahadur Sher*)
- 4). **1983 PLD S.C. Page-344**
(*Ghulam Nabi Versus Muhammad Yaqub*).
- 5). **PLD 1969 S.C. Page-617**
(*Madan Gopal and 4 others Versus Maran Bepari and 3 others*)
- 6). **2015 SCMR Page-452**
(*Noor Hassan and others Versus Ali Sher and others*)

- Law under discussion:**
- (1). The Code of Civil Procedure, 1908
(*CPC*).
 - (2). The Qanoon-e-Shahadat Order, 1984.
 - (3). The Specific Relief Act, 1877.

JUDGMENT

Muhammad Faisal Kamal Alam, J: Through present action at law, the Plaintiff besides seeking Specific Performance of the Contract, averred to have been entered between him and Defendant No.1 through his attorney, a relief of cancellation of Sale Deeds is also sought, because as per the Plaintiff, the sale transaction between the Defendant No.1 and Defendants No.2, 3, 4 and 5 was *void ab initio*. The Plaintiff contains the following prayer clause:

“The Plaintiff, therefore, prays for Judgment and Decree as under:-

1). of Specific Performance of Contract, against Defendants No.1 (a) to (g) in terms of Sale receipt dated 26.07.1995 and addendum to receipt dated 26.08.1995 or in the alternative, Nazir of this Hon’ble Court be appointed as Commissioner with powers to take over the custody of the suit properties and get Sale Deed registered in favour of Plaintiff on behalf of legal heirs of

Defendant No.1 and hand over the possession of the same to the Plaintiff.

2). To adjudge the Sale Deeds dated 20.08.1998 under Registration Nos.4275, 4277 and 4279 registered by Sub-Registrar T-Division-IV, Karachi as void;

3). To declare that Power of Attorney dated 22.05.1996 is invalid / void after the death of Defendant No.1 on January, 1998;

4). To declare that building plan approved by K.B.C.A., Defendant No.7 in respect of suit properties on the basis of illegal / void Sale Deeds as null and void;

5). To grant permanent injunctions restraining Defendants No.3, 4 and 5 and their representative, assigns, contractors, etc., from selling, transferring or disposing of the suit properties in any manner to any person/persons;

6). To grant permanent injunction restraining Defendants No.3, 4 and 5 from raising any construction over the suit properties;

7). To grant permanent injunction restraining Defendant No.8 from registering any document in respect of the suit properties during pendency of the suit; and

8). Any other relief / reliefs as this Hon'ble Court may deem fit and proper under the circumstances of the case; and

9). Cost of the suit be awarded."

2. On issuance of summons, the Defendants opted to contest the claim of Plaintiff by filing their side of pleadings. On 02.09.2002, following Issues were framed:-

"1. Whether the suit is not maintainable in law?

2. Whether the Plaintiff has no cause of action?

3. Whether suit against KDA is not maintainable for want of statutory notice under Article 131 of KDA Order 5/1957?

4. *Whether the Defendant No.1 during his life time agreed to sell the suit Plots to the Plaintiff?*
5. *Whether the contract between Plaintiff and Defendant No.1 was in the nature of “Contingent Contract” executable after dismissal of earlier Suit No.209 of 1989?*
6. *Whether the contract between Plaintiff and Defendant No.1 is enforceable against the legal heirs of Defendant No.1?*
7. *Whether Sale Deed dated 20.08.1998 registered in favour of Defendants Nos.2, 3 and 4 is binding on the Plaintiff or liable to be cancelled being subsequent to the agreement executed between Plaintiff and Defendant No.1?*
8. *Whether the agreement between Defendants No.3, 4 and 5 and Syed Akhlaque Ali entered into after dismissal of Suit No.409 of 1989?*
9. *Whether Syed Akhlaque Ali was competent to sell suit Plots after the death of Defendant No.1?*
10. *Whether in the event of failure to get the reliefs of Specific Performance of Contract, the Plaintiff is entitled to the amount, received by the Defendant No.1 with interest / compensation from the legal heirs of Defendant No.1?*
11. *What reliefs the Plaintiff is entitled to?*
12. *What should the decree be?”*

3. Plaintiff only examined himself as a witness, whereas, on behalf of contesting Defendants No.2 to 5, the Defendant No.3 (*Syed Iqbal Ali*) and one other witness *Syed Akhtar Hussain (DW-2)* were examined. Other private Defendants though filed their respective pleadings/written statement but did not lead evidence. It is necessary to mention a brief background of the present controversy. Plaintiff's claim is that he has purchased three different properties, viz. plot numbers ZC-1, ZC-2 and ZC-3, measuring

300 Square Yards each, situated in Block No.5, Gulshan-e-Iqbal, KDA Scheme No.24, Karachi, which may be referred to as the '*subject properties*', from one Muhammad Rafiq, who was the attorney of Defendant No.1 (*Deedar Ali Issran*), since deceased, is now represented by his legal heirs, who have been arrayed as Defendants No.1-(a) to 1-(g) and Defendants No. 9 and 10; the son from the second wife and second wife herself. The said attorney Muhammad Rafiq is not impleaded as Defendant.

The two documents on which the Plaintiff is basing his claim are basically the sale receipt dated 26.07.1995 produced in the evidence by Plaintiff's witness as Exhibit "P/1" and another addendum receipt dated 26.08.1995 exhibited as "P/2". The second receipt as per the Plaintiff's claim was issued by the Defendant No.1 himself. The total sale consideration as mentioned in Exhibit P/1 is rupees seventy-five lacs (Rs. 75,000,00/-), out of which the said attorney purportedly received rupees five lacs in cash. Similarly, the Addendum Receipt shows that the said Defendant No.1 received Rs. 4,50,000/- (as alleged). Since certain terms are mentioned in these two receipts, therefore, the claim of the Plaintiff is that for all practical purposes these receipts are the sale agreements for which the Plaintiff is seeking a relief of Specific Performance. The second part of the claim of present suit is against Defendants No.2, 3, 4 and 5, who purchased the same subject properties by way of the impugned registered Sale Deeds all of 20th August 1998, claimed to have been entered after the death of said Defendant No.1, who admittedly was the owner of these subject properties. The ad interim injunction granted in favour of Plaintiff was subsequently recalled and finally the injunction application was dismissed by the order dated 31.05.1999 which was maintained upto the Hon'ble Supreme Court. The Judgment of the Hon'ble Supreme Court is at Page-69. Plaintiff never deposited the balance sale consideration. It is further pleaded that Plaintiff came to know about the transaction in favour of Defendants No.2 to 5, who

for the sake of reference be termed *as contesting Defendants*, when a public notice was published about sale of the subject properties in “Daily Jasarat” in its issue of 02.09.1998. Copy of original Newspaper has been exhibited in the Evidence File as Exhibit “P/4”. Thereafter the Plaintiff addressed his Objections to Defendant No.6-KDA and the said contesting Defendants, which finally cumulated into present proceeding.

4. Findings on the above issues are as follows:-

ISSUES NO.1, 2 AND 3 (<i>Category “A”</i>)	AFFIRMATIVE.
ISSUES NO.4, 5 AND 6 (<i>Category “B”</i>)	NEGATIVE.
ISSUES NO.7, 8 AND 9 (<i>Category “C”</i>)	AS UNDER.
ISSUES NO.10, 11 AND 12 (<i>Category “D”</i>)	SUIT IS DISMISSED.

5. The afore-mentioned Issues can be categorized into four broad categories; in Category “A” falls the Issues relating to the maintainability of the present suit. Category “B” covers the Issues No.4, 5, and 6, pertaining to the validity of sale transaction of the subject properties between the Plaintiff and Defendant No.1, who died even before filing of the present suit and subsequently his legal heirs were impleaded, as apparent from the current title of the Plaint. Category “C” covers the Issues 7, 8 and 9 about the sale transaction of the subject properties in favour of present Defendants No.2, 3, 4 and 5. Finally, Category-**D** is for the Issues 10, 11 and 12, about the entitlement of Plaintiff to receive the compensation from the Defendant No.1(a) to (g)-legal heirs of Defendant No.1 (*Deedar Ali Issran*) and general relief that can be awarded to Plaintiff.

CATEGORY "A" (ISSUES NO.1, 2 AND 3)

6. Mr. Imran Ahmed, the learned counsel for Plaintiff has argued that primarily grievance of Plaintiff is against the Private Defendants and that is why no relief has been sought against Defendants No.6-Karachi Development Authority (KDA). It is further submitted that even otherwise the statutory bar is to be construed liberally by the Courts, in view of the Rule laid down in numbers of judicial pronouncements. Per Plaintiff's counsel, the next objection about cause of action is also misconceived, as Paragraph-10 of the Plaint discloses the cause of action. The arguments of Plaintiff's counsel has substance with regard to maintainability of present suit as earlier also the application under order VII Rule 11 of CPC was dismissed by this Court vide order dated 26.11.2001. In addition to this, it is now well settled that if the statutory notice is not served upon the Government functionary, then, usually, depending upon the nature of controversy, it would not be fatal to the proceeding. Therefore, the Issues under Category "A", that is, **Issues No.1, 2 and 3 are answered in Affirmative**, that the present suit is maintainable.

CATEGORY "B" (ISSUES NO. 4, 5 and 6)

7. The Issue No.4 is pivotal and onus to prove the same lies upon the Plaintiff. The main arguments advanced by learned counsel for Plaintiff, Mr. Imran Ahmed, Advocate, in response to the submissions of Defendants, that no marginal witness was examined by the Plaintiff's side, the learned counsel states that marginal witnesses are examined only when there is a challenge to the document, but in the present case, the sale agreements, which are in the form of receipt; Exhibits "P/1" and "P/2", have not been questioned by the Defendants No.1(a) to 1(g), 9 and 10 / the said legal heirs, because they failed to prove their pleadings by not entering the

witness box, thus non-examination of marginal witnesses of these documents is not fatal to the Plaintiff's claim.

8. *Inter alia*, following documents are relevant for the controversy at hand and produced by Plaintiff's witnesses:-

- i. receipt dated 26.07.1995 Exhibit **P/1** at Page-15 of the Evidence File; this document forms the basis of the claim of the Plaintiff for specific performance of the contract.
- ii. Addendum Receipt dated 26.7.1995, at Page-17 of the Evidence File; Exhibit "**P/2**".
- iii. Sale Deeds dated 20.08.1998, which are three in numbers relating to Plot Nos. Z-C-2, Z-C-3 and ZC-1 (**subject properties**) available from Pages-29 to 63 of the Evidence File and exhibited as Exhibits P/7, P/8 and P/9; these Lease Deeds are in favour of Defendants No.3, 4 and 5 and the Plaintiff is seeking a relief of its cancellation.

9. At present, the subject properties are in the ownership and possession of the contesting Defendants No.3 to 5 (by virtue of the above mentioned impugned registered sale deeds) and that is the reason the Plaintiff has also sought a relief of cancellation of the sale deeds (*as referred above*), thus the present claim of Plaintiff has been seriously contested by these contesting Defendants No.2, 3, 4 and 5. These Defendants have disputed the execution of the afore-mentioned receipts exhibit P/1 and P/2 and the entire subject sale transaction between the Plaintiff and Defendant No.1. Even the pleadings of afore-referred legal heirs of Defendant No.1 have also questioned both the sale transactions; the earlier one between the Plaintiff with Defendant No.1 in respect of the suit properties and the subsequent one with the contesting Defendants No. 2, 3, 4 and 5, but since these Defendants/legal heirs never entered the witness box, therefore, in view of the settled legal position, their pleadings cannot be given due weightage. The arguments of learned counsel for Plaintiff,

that Plaintiff was not required to examine the marginal witnesses of these two vital documents, Exhibits P/1 and P/2, are misconceived in nature, as these documents have been challenged by the interested parties, that is, the Defendants No.2, 3, 4 and 5, and in view of such a specific objection, the marginal witnesses should have been examined, as required by Articles 17 and 79 of the Evidence Law. Ingredients for the applicability of both these provisions of law (*Articles 17 and 79*) of the Evidence Law exist in the present case, that is, the transaction in question pertains to present and future obligations and the documents themselves are disputed, as both these documents since are not registered, hence require proof of their execution.

10. Adverting to the defence that Plaintiff has taken for not making the entire payment as mentioned in the main document; the subject receipt (exhibit P/1). It is argued that due to the pendency of another *lis*-Suit No.409 of 1989 (the *earlier lis*) at that relevant time, which was filed by another person Muhammad Abbas claiming to be a purchaser of the subject properties, the Plaintiff did not pay the amount either to Defendant No.1 or deposited the same in this Court. Per Plaintiff counsel, the sale transaction in question between the present Plaintiff and Defendant No.1 was to be concluded after the withdrawal of above earlier *lis*. Photocopy of the Plaint of the said earlier *lis* has been produced in the evidence and marked as "X" (*Page-73 of the Evidence File*). In this suit, the present Defendant No.1 (*Deedar Ali Issran*) is arrayed as Defendant No.1, Muhammad Rafiq (attorney) is mentioned as Defendant No.2 and KDA was impleaded as Defendant No.3. As per the Exhibit P/1, the total sale consideration mentioned in the receipt was settled at Rs.7.5 Million (rupees seventy-five lacs only), but no instrument either a cheque or pay order has been produced by the Plaintiff to prove the initial payment of Rs. 500,000/-, as it is mentioned on the top right side of the exhibit P/1 (the first sale receipt

dated 26-7-1995) that a part payment amount of rupees five lacs purportedly was paid through Pay Orders. It has been further deposed by the Plaintiff (**PW-1**) that he prepared two Pay Orders of Rs.1.5 Million (Rupees Fifteen Lacs Only) and Rs.1,00,000/- (Rupees One Hundred Thousand Only), for payment to the abovenamed Muhammad Abbas, **but as per Plaintiff's own version as mentioned in his Affidavit-in-Evidence, that these pay orders were never handed over to Defendant No.1.** Only photocopy of these pay orders were produced and marked as "X" and "X-I", as objection was raised during evidence by the Defendants' side.

11. It would be beneficial to reproduce herein under the relevant portion of the Affidavit in Evidence of DW1_

4. *That I say that we have purchased the suit plots for valuable consideration without any notice of the alleged previous contract of sale in favour of Abdul Wahid.*
5. *That I say that my late brother Syed Akhlaq Ali had not entered into any contract of sale of the suit plots with Abdul Wahid on 26.07.1995 on behalf of Deedar Ali Isran.*
6. *That I say that Muhammad Rafiq was not attorney of Deedar Ali Isran on 26.07.1995 as his attorney had already been cancelled by him in the year 1983 but the cancellation deed was got executed and registered on 13.05.1987.*
7. *That I say that Deedar Ali Isran had not executed any receipt dated 26.07.1995 annexure "C" to the plaint.*
8. *That I say that Abdul Wahid had not alleged any agreement of sale in his favour either through Muhammad Rafiq or directly with Deedar Ali Isran in the objections dated 04.09.1998 filed by him against sale of suit plots in our favour.*

9. *That I say that Deedar Ali Isran had expired on 14.01.1998 while Civil Suit No.409 of 1989 was withdrawn after his death on 30.07.1998.*
10. *That I say that my brother Syed Akhlaq Ali was lawful registered general attorney of Deedar Ali Isran and after the death of Deedar Ali Isran his legal heirs had accepted the same as binding on them.*
11. *That I say that there was no any transaction or agreement in between Deedar Ali Isran and Muhammad Rafiq and or Muhammad Rafiq was having any authority or power to execute any agreement of sale in respect of the suit plots.*
12. *That I say that agreement of sale was executed allegedly during the pendency of Civil Suit No.409 of 1989 but even then Abdul Wahid did not bother to make proper enquiry and atleast to pursue file of the said suit whom where he would have easily come to know that the power of attorney executed by Deedar Ali Isran in favour of Muhammad Rafiq had already been cancelled.”*

12. The contesting Defendants through their DW-1 testified that the said Muhammad Rafiq with whom the Plaintiff has initially entered into a sale transaction and issued the first receipt as Exh P/1, on that relevant date, that is, 26.07.1995, was neither the attorney nor authorized to sell the suit properties. The DW-1 has produced the Written Statement of Defendant No.1 filed in the above mentioned earlier *lis*, which has been exhibited as D/6, to prove that the Power of Attorney in favour of Defendant No.2 (said Muhammad Rafiq) was cancelled way back in the year 1987, as this fact is pleaded in paragraph 4 of the above written statement-**exhibit D/6**. In addition to this, the photocopy of Deed of Cancellation of General Power of Attorney was also produced by said DW-1 but was marked as X-3, due to objection of Plaintiff's side. When the PW-1 particularly confronted during his cross-examination about this aspect of the case that the said Muhammad

Rafiq did not have the authority to sell the suit properties to Plaintiff, the said PW-1 (Plaintiff's witness) did not dispute this fact. The relevant portion of cross-examination of PW-1 is reproduced herein under: -

“.....It is correct that the number of pay order are not mentioned in the plaint and affidavit in evidence. I have verified from the Power of Attorney that Mr. Rafique had the authority from the defendant No.1 to deal with the sale transaction. It is correct that the defendant No.1 had given the Power of Attorney in favour of Muhammad Rafique, perhaps on 17.06.1978. It is not within my knowledge that the above Power of Attorney was cancelled by the defendant No.1 on 13.5.1987. I cannot say that there was any order of status quo in that suit. I do not recollect the suit number. I cannot say that the case number was 409 of 1989. According to my knowledge the case was decided after the death of defendant No.1. It is correct that the suit was compromised on 7.8.1998. The amount of Rs.4,50,000/- mentioned in Ex P/2 was paid by me in cash. It is correct that the legal heirs of defendant No.1 was made party to suit No.409 of 1989. It is correct that neither Muhammad Rafiq nor his legal heirs are made party to the present suit. I have no knowledge as to whether Deedar Ai (Defendant No.1) had filed his Written Statement in Suit No.409 of 1989. I have acted according to Power of Attorney and I had no knowledge as to whether he had stated in the Written Statement that he had already cancelled the Power of Attorney....”

{Underlining to add emphasis}.

13. From the above it is quite clear that the said Muhammad Rafiq, who purportedly executed the first basic document (Exhibit P/1) of the sale in question, was neither made a party in the present proceeding nor examined as a witness and if the present deposition of Plaintiff is analyzed in comparison to that of contesting Defendants main witness (*Syed Iqbal Ali-*

DW-1), the conclusion is that the said Muhammad Rafiq had no authority to execute the sale receipt Exh-P/1. The second line of arguments of Plaintiff is that the sale transaction was subsequently ratified by the Defendant No.1, when he was alive, as evident from subsequent addendum receipt produced as Exhibit P/2. This argument of Plaintiff is hardly of any assistance to him, in view of the discussion in the preceding paragraphs, *inter alia*, as the attesting witnesses of both these vital documents/receipts, including this subsequent Exhibit P/2, were admittedly never examined as witnesses to prove the execution of these receipts and particularly, the said addendum receipt (*Exhibit-P/2*). Thus, both the basic documents relating to the sale transaction between Plaintiff and Defendant No.1 in respect of the subject properties are not proved by the Plaintiff. The afore-mentioned case law cited by the Plaintiff primarily with regard to the law point that where a Statement of the adverse party in the evidence is not questioned in cross-examination then the same would be deemed to be correct and even a receipt containing terms, can make the same as an agreement. These are the settled principles of law, but at the same time the said reported decisions do not lend a favourable support to the case of Plaintiff, in view of the discussion in the foregoing paragraphs, *inter alia*, as the latter (Plaintiff) failed to prove the validity and the authenticity of the afore-mentioned Exhibit-P/1 and the execution of subsequent addendum receipt Exhibit-P/2, therefore, the Category "B" Issues, viz. **Issue No.4 is answered in Negative** and against the Plaintiff, that Defendant No.1 never agreed to sell the subject properties to Plaintiff. **Issue No.5 is also answered in Negative** as both the documents (*Exhibits P/1 and P/2*) lack authenticity and hence cannot be termed as a binding contract between plaintiff and erstwhile Defendant No.1, hence, no question arises for it to be a contingent contract. Similarly, the **Issue No.6 is also answered in Negative**, for the simple reason, when no contract had /has been entered into between the Plaintiff

and the Defendant No.1, the question of its enforceability against the legal heirs does not arise.

ISSUES OF CATEGORY “C” (ISSUES NO.7, 8 and 9)

14. The Affidavit-in-Evidence of DW-1 has produced the documents relevant for the present controversy including Irrevocable General Power of Attorney dated 22.05.1996 as **Exhibit D-1**, given by deceased Defendant No.1 (*Deedar Ali Issran*) in favour of Defendant No.2, another Irrevocable General Power of Attorney executed by legal heirs of said Defendant No.1 in favour of one of the legal heirs Hassan Ali. This document is of 08.06.1998 and has been exhibited as **D/2**. The Third relevant document is the Sub- Irrevocable General Power of Attorney given by above-named son Hassan Ali in favour of Defendant No.2 (*Syed Ikhlaque Ali*) and is of 15.06.1998. Based on this last Irrevocable General Power of Attorney, the three impugned Sale Deeds have been executed. The said witness of Defendants (DW-1) has not been cross-examined on the existence or authenticity of these registered documents, by the Plaintiff side. It is also pertinent to mention here that when the suit was earlier reserved for Judgment, it had to be fixed for re-hearing, as one of the main documents, that is, General Power of Attorney executed by the legal heirs of deceased Defendant No.1 in favour of Hassan Ali, was not in a legible condition and on 28.08.2017, Mr. Mushtaq Ahmed, the Sub-Registrar Larkana, in compliance of the earlier order of 31.07.2017, attended the proceeding along with the entire record. The original Irrevocable General Power of Attorney is available in the official record, detail whereof has been mentioned in the aforesaid order, which for the sake of reference is produced herein under: -

“Mr. Mushtaq Ahmed, Sub-Registrar, Larkana is in attendance as per direction of this Court on 31.07.2017. He placed

on record a Photocopy of Irrevocable General Power of Attorney dated 08.06.1998 as mentioned in the above order and also has brought the Register, description whereof shows that it is Book No.IV and Volume No.37. Original Irrevocable General Power of Attorney/the said instrument bearing Registration No.108 is available on Pages-132 to 138 together with Photocopy of NICs of following persons:

- i. Shahid Ali Isran son of Deedar Ali
NIC No.421-92-119312*
- ii. Qamar Jehan Isran W/o. Deedar Ali
NIC No.421-45-119304*
- iii. Kausar Parveen D/o. Deedar Ali
NIC No.421-93-119307*
- iv. Sarvat Bano Isran D/o. Deedar Ali
NIC No.425-93-310426*
- v. Tassawar Isran D/o. Deedar Ali
NIC No.421-93-119308*
- vi. Hasan Ali S/o. Deedar Ali
NIC No.421-73-119311*
- vii. Aarfa Isran D/o. Deedar Ali
NIC No.421-94-119310*
- viii. Muhammad Hassan S/o. Muhammad Saleh
NIC No.432-43-078258*
- ix. Tanveer Ahmed Qazi S/o. Bashir Ahmed.
NIC No.421-94-030184.*

Original Register has been returned to the concerned Sub-Registrar, who is not required to be present, unless ordered otherwise. Photocopy of the above instrument/Irrevocable General Power of Attorney has been given exhibit No.D/2. Original record produced today has been examined by both the learned counsel for the parties.

Reserved for announcement of Judgment.”

15. Also noteworthy that Plaintiff was confronted in his cross-examination about the afore-mentioned registered General Power of Attorneys and subsequent General Power of Attorney-Exhibits D/1, D/2 and D/3, but the said PW-1 neither denied their existence, nor raised

objection to their authenticity. To a specific question, the said PW-1, did not deny that contesting Defendants No.3 to 5 did not have prior knowledge of sale deal between Plaintiff and Defendant No.1.

16. The arguments of Plaintiff's counsel that the three Sale Deeds in question should be adjudged as cancelled in terms of Section 39 of the Specific Relief Act, as the same were admittedly executed on 20.08.1998, that is, admittedly after the death of Defendant No.1, who expired on 14.01.1998, Mr. Neil Kishev, Advocate, representing Defendants No.2 to 5, in reply submitted that there is no illegality in the transaction between the present contesting Defendants No.2 to 5. He has referred to the evidence of DW-1 and his testimony that since earlier *lis* was only withdrawn on 30.07.1998, hence the Sale Deeds were executed on 20.08.1998, as restraining order was passed by this Court was operating in the earlier *lis*. In response to the arguments of Plaintiff's counsel, that a very nominal sale consideration is mentioned in all the impugned Sale Deeds, Mr. Neil Kishev (Advocate) submitted that it is a matter of common knowledge as well as permissible in law that usually in such type of registered instrument / sale deed the Collectorate (DC) value/price, as notified by the Provincial Government, though for the purposes of payment of stamp duty, is mentioned as sale consideration. Number of reported decisions are cited by the Defendants' counsel, however, it is not necessary to discuss each one of them. The cited decision of *Noor Hassan (supra)* is relevant in which the sale transaction was set-aside by the Hon'ble Apex Court on the ground that the Power of Attorney on the basis of which the sale of property was entered into (*in that reported case*), was not proved by examining the other marginal witness in the evidence and even one of the marginal witnesses who was examined, could not corroborate the version of Plaintiff (*in that reported case*). The submissions of learned counsel for Defendants No.2 to 5 has been considered in the light of deposition of Defendants and the

record, particularly, the registered documents (as mentioned above) produced by the said Defendants No.2 to 5 in support of their claim. Though the argument by Plaintiff's counsel at the first instance appears to be correct, that upon the death of Defendant No.1, the Irrevocable General Power of Attorney, though a registered document dated 22.05.1996, **which** has been produced as exhibit-D/1, came to an end as it was not coupled with interest, but **when** the un-rebutted evidence **is examined** about the subsequent registered instruments, viz. General Power of Attorney (Exhibit D/2), subsequent Irrevocable General Power of Attorney in favour of Defendant No.2 (Exhibit D/3) and the impugned Sale Deeds (**Exhibits P/7, P/8 and P/9**), a conclusion can be drawn that the sale transaction between the Defendant No.1 and Defendants No.2 to 5 were subsequently ratified by the legal heirs of Defendant No.1, now arrayed as Defendants No.1(a) to (g) through the afore referred registered instruments, which have been mentioned in the foregoing paragraphs. The Irrevocable General Power of Attorney dated 08.06.0998 having registration No.108, which was produced in original by the Sub-Registrar as mentioned hereinabove and a copy whereof is retained in the record, resolves the controversy, as the legal heirs/Defendants No.1(a) to 1(g) have executed this instrument / Power of Attorney in favour of Hassan Ali, one of the legal heirs and son of deceased Deedar Ali Issran, *inter alia*, empowering him to dispose of the suit properties to anyone. This document, Exhibit D/2 has never been questioned by the Plaintiff; **this** General Power of Attorney also mentions the earlier *lis* (Suit No.409 of 1989), **which shows that the said Defendants (legal heirs) always had/have knowledge of various disputes related to the subject properties.** The said Hassan Ali, the Defendant No.1 (a) has executed a subsequent Irrevocable General Power of Attorney **Exhibit D/3** having registration No.119 and is of 15.06.1998, wherein, the said Defendant No.1(a) has ratified the first registered General Power of

Attorney (*Exhibit-D/1*) in favour of Defendant No.2, while relinquishing the respective rights and interest of other legal heirs of Defendant No.1 in respect of the subject properties. More so, this fact was also never disputed by the Plaintiff in his evidence that the *earlier lis* was withdrawn on 30.07.1998, which means that withdrawal of the earlier *lis* and after vacation of the stay order, the impugned sale deeds have been executed, in order to avoid any adverse legal consequence.

17. In terms of the Articles 90 and 95 of the Evidence Law, the presumption of genuineness is attached to the said registered documents, particularly, the said powers of attorney, being a registered public document. Article 126 of the Evidence Law is also applicable to the present facts of the case, because it is the plaintiff who is disputing the ownership of the said contesting Defendants, who admittedly are in possession of the subject properties and in due course have developed the same. Thus again burden of proving that the said contesting Defendants are not the owners of the subject properties was on the Plaintiff, which onus he failed to discharge.

Wherefore, the Defendant No.2 competently executed the three Sale Deeds in respect of the subject properties; **Exhibits P/7, P/8 and P/9**, are valid documents coupled with the rights and interests in favour of the contesting Defendants No.3, 4 and 5, *inter alia*, being the *bona fide* purchasers of the subject properties for value.

18. Things have not ended here. In the present suit proceeding, another set of legal heirs, namely, Abrar Ali and Mst. Mumtaz Sultana, son and second wife of Defendant No.1 intervened by filing an Application under Order I Rule 10 of CPC, which was allowed on 10.05.2010; consequently amended title was filed by impleading the above named persons as Defendants No.9 and 10 (as already mentioned in the foregoing paragraphs). The record further shows that the said Defendants No.9 and

10 subsequently filed yet another Application under Order 1 Rule 10 of CPC, being CMA No.2684 of 2013, seeking deletion of their names from the array of Defendants as according to these legal heirs, they have settled their dispute with Defendants No.2 to 5. To substantiate this, these Defendants No.9 and 10 have produced a Compromise Agreement dated 2nd February 2013 (page 257 of the Court File) with their above Application. Mr. Safdar Ali, Advocate, presently represents these Defendants No.9 and 10, besides, Defendants No.1(c) and (f), viz. Mst. Kausar Parveen and Aarfa, daughters of Defendant No.1. Interestingly, but, ironically, these Defendants No. 9 and 10 have filed two identical written statements before filing the above Application for deletion of their names. Similarly, the aforesaid daughters-Defendants No.1(c) and (f) attempted to take a different stance, which is contrary to the above referred Registered General Power of Attorney which they have earlier given in favour of their brother Hasan Ali. This factual aspect shows the questionable conduct of these legal heirs/Defendants and it also contradicts the arguments advanced by their learned counsel, who has attempted to dispute all the registered documents, particularly, the General Power of Attorneys and the Sale Deeds, but, his clients never bothered to lead evidence in support of their claim. Record of the present case further reveals that the parties on different dates of hearing have attended the proceedings and were knowledge of the same. The above application for deletion of names, however, coincidentally was never decided.

19. In view of the above, findings for the Issues falling in Category “C” is that the Sale Deeds dated 20.08.1998 registered in favour of above named Defendants are valid documents and have been entered into by Syed Akhlaque Ali, Defendant No.2, being duly authorized by a registered instrument, viz. Sub-Irrevocable General Power of Attorney dated

15.06.1998, which is in pursuance of earlier registered Irrevocable General Power of Attorney given by the legal heirs to one of legal heirs, namely, Hassan Ali. Undisputedly after withdrawal of the earlier *lis* the present Sale Deeds (afore referred) were executed in order to avoid any objections about operation of stay in the *earlier lis*. Even the second set of legal heirs have compromised their dispute with Defendants No.3, 4 and 5, hence I do not find any illegality in the subject registered Sale Deeds, all of 20.08.1998-Exh P/7, P/8 and P/9 respectively. **Issue No.7 is accordingly answered** that these registered Sale Deeds are binding on the Plaintiff and are not liable to be cancelled, in view of the discussion contained in the preceding Paragraphs and after finding handed down for Issues falling in Category “B”, similarly **Issues No.8 and 9 are answered accordingly** and in favour of Defendants No.2 to 5.

ISSUES OF CATEGORY “D” (ISSUES NO.10, 11 and 12).

20. Since the sale transaction between Plaintiff and Defendant No.1 has not been proved by Plaintiff, therefore, he is not entitled to receive any amount towards compensation nor any other relief. Accordingly, the present suit is dismissed, with no order as to costs.

JUDGE

Dated: 29.12.2017.

M.Javaid/P.A