

# IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 1767 of 2014  
[Abdul Sattar Shaikh vs. Adeel Zahoor Malik]

Dates of hearing : 19.04.2019 and 30.04.2019

Date of Decision : 30.05.2019.

Plaintiff  
[Abdul Sattar Shaikh] : Through Ms. Uzma Khan,  
Advocate.

Defendants No.1 and 2  
[Adeel Zahoor Malik and Col  
(R) Zahoor Ahmed Malik] : Through Mr. Muhammad Shahid  
Qadeer, Advocate.

Nemo for other Defendants

Mr. Dhani Bux Lashari, Advocate  
for SBCA along with Mr.  
Muhammad Shahid, Deputy  
Director, Gulshan-e-Iqbal Town,  
Karachi.

## **Case law relied upon by Plaintiff's counsel.**

1. 2017 SCMR page-1882  
(Falak Sher vs. Province of Punjab and others) – **Falak Case**
2. 2018 YLR page-742 [Lahore]  
(Mehmood Anwar through Special Attorney vs. Abdul Hanan and  
3 others) – **Anwar Case.**
3. 2018 MLD page-904 [Baluchistan]  
(Muhammad Yousuf Khan vs. Haji Barat and another) – **Yousuf  
Case**

## **Case law relied upon by learned counsel for Defendants No.1 and 2**

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## **Other Precedent:**

1. 2007 Y L R [Karachi] 2067  
(Haji Muhammad Khan vs. Muhammad Nasir Khan and others)
2. P L D 2015 Supreme Court page-187

3. (Farzand Ali and another vs. Khuda Bakhsh and others) – **Farzand**  
P L D 2011 Supreme Court page-241  
(Hafiz Tassaduq Hussain vs. Muhammad Din through Legal Heirs  
and others) – **Hafiz**
4. 2012 C L D page-6  
(*Abdul Majeed Khan v. Tawseen Abdul Haleem and others*) – **Abdul  
Majeed Case.**
5. P L D 1996 Supreme Court page-737  
(*Sufi Muhammad Ishaque v. The Metropolitan Corporation, Lahore  
through Mayor*) – **Ishaque Case.**

- Law under discussion:
- (1) The Specific Relief Act, 1877 (**SRA**)
  - (2) Code of Civil Procedure, 1908 (**CPC**).
  - (3) Qanun-e-Shahadat Order, 1984.  
*[Evidence Law]*.
  - (4) The Limitation Act, 1908 (“**Limitation  
Law**”).

## **JUDGMENT**

**MUHAMMAD FAISAL KAMAL ALAM, J.** The present action at law is brought against Defendants and primarily against private Defendants No.1 and 2, *inter alia*, seeking cancellation of Sale Agreement. The Plaintiff contains the following relief\_

*“It is, therefore, prayed on behalf of the above named Plaintiff that this Honourable Court may be pleased to pass the judgment and decree in favour of the plaintiff as under: -*

- i. To direct the defendants No.1 and 2 to remove the illegal construction of the Plaintiff plot bearing No.B-2 at measuring 400 S. Yards situated at Block No.10, Gulistan-e-Johar, Karachi and handed over the peaceful vacant possession of the said plot to the plaintiff.*
- ii. To direct the defendant to pay a sum of Rs.1,00,00,000/- (One Crore Only) damages on account of causing distress, anxiety and mental torture.*
- iii. To direct the defendant to pay Rs.5000/- per day mesne profit to the plaintiff from 13 March 2013 to 31<sup>st</sup> August 2014 total*

*comes to Rs.26,50,000/- and future mesne profit with effect from 1<sup>st</sup> September 2014 till the recovery of the possession of the suit property.*

- iv. To restrain the defendants No.1 and 2, his agent successors, survivor, agent, attorney person or persons in respect of plot bearing Plot No.B-2, admeasuring 400 Sq. Yards, situated in Block-10, Gulistan-e-Jauhar Karachi and to restraint the Defendants No.1 and 2 not to sell out, transfer and create third party interest in the said property till the final disposal of the case.*
- v. To direct the defendants No.4 and 5 not to execute, sale deed, transfer or mutate the said plot to the defendants No.1 and 2 or any other person till the finalize of the above suit.*
- vi. To declare the so called sale agreement is forged, fabricated and fictitious documents and the same has been preferred by the defendant No.2 to usurp the Plaintiff property and the same may be cancelled.*
- vii. Cost of the suit.*
- viii. Any other relief or reliefs which this Honorable Court may deem fit and proper circumstances of the case.”*

2. The case of Plaintiff, as argued by his Advocate, Ms. Uzma Khan, is that the Plaintiff purchased the open Plot No.B-2, measuring 400 Square Yards, situated in Block-10, Gulistan-e-Johar, Karachi (*'Suit Plot'*) from one Naseeruddin Humayon and mutation was also done in favour of Plaintiff in the record of Defendant No.4. It is further averred that since the Plaintiff used to live abroad in connection with his employment, when he came back in the year 2013, more particularly, in the month of March, the latter visited the suit plot and was shocked to see that it is in illegal possession of Defendant No.1. Subsequently, when Defendant No.2, who is real father of Defendant No.1, was impleaded vide order dated 29.08.2016, latter produced

a Sale Agreement between Plaintiff and the said Defendant No.2, regarding which the Plaintiff then amended the pleadings and also sought relief of cancellation of this Agreement dated 15.12.2008 **{the impugned Sale Agreement}**.

3. On the other hand, Mr. Muhammad Shahid Qadeer, the learned counsel representing the Defendants No.1 and 2, has argued that the claim of Plaintiff is time barred as the present *lis* is filed in the year 2014 and after making amendments in the pleadings, the relief of cancellation of the Sale Agreement dated 15.12.2008, has been sought. It is further averred that private Defendants No.1 and 2 are in lawful possession of the suit plot and subsequently a further development has taken place, when the area in which suit plot was located, was resumed by the Board of Revenue and was declared as 'Chishti Nagar Goth' **{the Goth}**, with the effect that ownership of Plaintiff ceases to exist.

4. Defendant No.4 in its Written Statement has narrated the history of suit plot that it was earlier allotted to Nasiruddin Humayon vide Allotment Order No.641 dated 18.06.1981 through ballot and physical possession was also handed over to the said allottee and subsequently the suit plot was transferred in the name of Abdul Sattar son of Abdul Qayyum; that is, the present Plaintiff.

5. Following Issues were framed on 12.09.2017 by the Court, where after parties led their evidence \_

- "i. Whether the Plaintiff is legal and lawful owner of the plot No.B-2 admeasuring 400 square yards, situated at Block-10,Gulistan-e-Jauhar, Karachi?"***
- ii. Whether the suit plot is still exist in the name of the Plaintiff in the record of CDGK?"***

- iii. *Whether the so-called alleged agreement filed by the Defendant No.2 along with his application under Order I Rule 10 CPC is a false, forged, fictitious and fabricated documents?*
- iv. *Whether the Defendants are illegally and unlawfully occupied the said plot and raised illegal construction on it?*
- v. *Whether the Plaintiff is entitled for mesne profit at the rate of Rs.5000/- per day from March, 2013 till the recovery of the possession of the suit plot?*
- vi. *Whether the Plaintiff is entitled to recover damages Rs.10,00,000/- from the Defendant?*
- vii. *Whether the Defendant No.2 has purchased the suit property from Plaintiff vide sale agreement dated 15.12.2008 and has been taken over possession from the Plaintiff as part performance of contract?*
- ix. *Whether the Board of Revenue has declared Block No.10 and 11 as the (Chishti Nagar Goth) situated in N.C. No.166, Deh Safoora Karachi vide letters dated 19.08.2013 and 23.08.2013 issued by the Government of Sindh?*
- x. *What should the decree be?"*

6. The Plaintiff has examined himself as PW-1 and other two witnesses as PW-2 and PW-3, namely, Musaddaq Ashraf Arain and Aftab Ahmed Khan, respectively; whereas, the contesting Defendants No.1 and 2 have examined Defendant No.2 as DW-1, namely, Zahoor Ahmed Malik and one more witness, namely, Malik Muhammad Rabnawaz as DW-2.

7. The Court record shows that a site inspection was directed vide order dated 17.10.2014 and the learned Official Assignee submitted his Reference No.1 of 2014, conclusion of which is that Plaintiff was / is not in physical possession of the suit Plot. In paragraph-2 of the said Reference, it is observed that the Assistant Director Land of Karachi Development Authority

(KDA) Wing, Karachi, also appeared before the learned Official Assignee on 30.10.2014 and produced original title document of suit plot showing the title of Plaintiff. This Report / Reference has not been objected to by any of the Parties.

8. The Issue-wise finding is mentioned herein under:

<b>Issue No.i</b>	<b>:</b>	<b>Affirmative</b>
<b>Issue No.ii</b>	<b>:</b>	<b>Affirmative</b>
<b>Issue No.iii</b>	<b>:</b>	<b>Affirmative</b>
<b>Issue No.iv</b>	<b>:</b>	<b>Affirmative</b>
<b>Issue No.v</b>	<b>:</b>	<b>As under</b>
<b>Issue No.vi</b>	<b>:</b>	<b>As under</b>
<b>Issue No.vii</b>	<b>:</b>	<b>Negative</b>
<b>Issue No.viii</b>	<b>:</b>	<b>Negative</b>
<b>Issue No. ix</b>	<b>:</b>	<b>Suit is decreed.</b>

*Discussion / Reasons of the Issues.*

**ISSUES NO. (i) and (ii).**

9. The Plaintiff with his Affidavit-in-Evidence / Examination-in-Chief has produced the Sale Agreement of the year 1993 between the above named earlier allottee and the Plaintiff, which was marked as “X” because it was a photocopy. The Plaintiff has also produced Transfer Order dated 04.12.1995 of suit plot in the name of Plaintiff, which has been exhibited as Exhibit-P/2. The Allotment Order in favour of original allottee, namely, Nasiruddin Humayun as Exhibit P/3, acknowledge of payment and occupancy value by official Defendant No.4 (KDA) as Exhibits P/4 and other payment receipts as Exhibits P/5 to P/7. The said witness has produced the site plan issued by Engineer Wing of Defendant-KDA as Exhibit P/8 (*available at page-53 of the Evidence File*). Possession Order in favour of above named original allottee, Nasiruddin Humayun, is produced as Exhibit P/10. Acknowledgment of Possession as Exhibit P/11. The Complaint dated 20.05.2014 to Superintendent of Police (SP) Gulshan-e-Iqbal, Karachi for re-

possession of suit plot by Plaintiff is produced as Exhibit P/12. The Plaintiff has also produced the relevant pages of his Passport and entries mentioned therein as Exhibit P/14 and the Legal Notice to private Defendants No.1 and 2, as Exhibit P/15.

10. It is the case of private Defendants that they have purchased the suit plot by a Sale Agreement dated 15.12.2008 for a total sale price of Rs.35,75,000/- (*Rupees Thirty Five Lac Seventy Five Thousand only*) from Plaintiff. Thus ownership of Plaintiff in respect of suit plot has not been disputed by contesting Defendants. Primarily the case of Defendants is that after receiving part payment of Rupees Two Million, the vacant and physical possession of the suit plot was handed over to them (Defendants No.1 and 2), by Plaintiff.

The other two witnesses of Plaintiff, namely, Musaddaq Ashraf Arain and Aftab Ahmed Khan have also supported the version of Plaintiff. PW-2 (Musaddaq Ashraf Arain) who is a doctor by profession, stated that he knows the Plaintiff for the past 25 years and the suit plot was purchased in his presence. He has further corroborated the evidence of Plaintiff that he returned from Saudi Arabia after 25 years of service and has deposed that he has seen the original documents of suit plot.

With regard to testimony of Plaintiff about the ownership, the same has not been questioned by the contesting private Defendants No.1 and 2. **Rather the Defendant No.2 in his testimony has admitted** the fact that the suit plot still exists in the name of Plaintiff in the record of KDA. No one has come forward to testify on behalf of Defendant No.4-KDA, but in their Written Statement it has been categorically mentioned that present Plaintiff is the transferee. Even though the Written Statement by itself does not have any evidentiary value, unless, deponent of pleadings (plaint or Written Statement), enters the witness box to lead the evidence, but at the same time,

it is a matter of record that the factum of ownership of Plaintiff has also been mentioned in the afore-referred Reference of learned Official Assignee, to which no objection has been filed. Thus the fact about ownership of Plaintiff in respect of the suit plot and its still in the name of the latter, is an undisputed fact. Hence, **Issues No.(i) and (ii) are answered in Affirmative** that Plaintiff is lawful owner of suit plot and the mutation in favour of Plaintiff in the official record is still intact.

**ISSUES No. (iii), (iv) and (vii).**

11. The Issues are interlinked and pivotal for deciding the present controversy. Mr. Muhammad Shahid Qadeer, Advocate, has also raised a question of limitation in respect of the Sale Agreement dated 15.12.2008, produced by the Defendant No.2 in his evidence as Exhibit D/2 (**the impugned Sale Agreement**). The learned counsel further elaborates that the Agreement is of 15.12.2008 and its cancellation is sought on 17.11.2016 when the Plaintiff filed amended plaint in compliance of order dated 04.11.2016. Further contended that even if the original plaint is seen, through which the present *lis* was instituted on 13.09.2014, no relief of cancellation is mentioned in the prayer clause and thus in terms of Article-91 of the Limitation Law, the Plaintiff is debarred from seeking cancellation of the impugned Sale Agreement.

12. On the other hand, Ms. Uzma Khan, the learned counsel for Plaintiff states that it has been specifically pleaded in the amended plaint (by the Plaintiff) in paragraph-4, that only on 29.08.2016 when the Defendant No.2 filed an application under Order I Rule 10 of CPC, for the first time Plaintiff came to know about the copy of the impugned Sale Agreement, as it was appended with the said Application. It is further averred that on the date mentioned in the impugned Sale Agreement, Plaintiff was not in Pakistan,

therefore, it is a bogus document. Findings on these Issues will also decide the objections of Defendants about the time barred claim.

13. The Plaintiff in his Affidavit-in-Evidence / Examination-in-Chief has specifically denied that he has ever signed the impugned Sale Agreement and it is a forged and fabricated document and further deposed that on a particular date he was out of Pakistan. Plaintiff has produced relevant pages of his Passport (an official document) as Exhibit P/14. The learned counsel for Plaintiff has invited the Court attention to the endorsement regarding entry and exit on the Passport to show that on 14.11.2008, the Plaintiff made entry into Pakistan and on 06.12.2008 he again exited from Pakistan. The next entry stamp on the Passport is of 08.12.2009, that too at Islamabad Airport, whereas the impugned Sale Agreement bears the date of 15.12.2008, signed at Karachi. The Defendants No.1 and 2 through their Advocates, in cross-examination put questions that entries of the Passport are overlapping and is result of a collusion between Plaintiff and F.I.A. Department, but Defendants failed in their attempt to impeach the authenticity of the above endorsements on the Passport and could not falsify the evidence of Plaintiff. These entry and exist stamps are relevant fact in view of Article-49 of the Evidence Law. Passport being an official document and the entries made therein by a competent Government Agency, viz. Federal Investigation Agency (FIA), carry presumption of genuineness attached to an official document and the Official acts as envisaged in *Articles 90, 92 and 129 (e) and (f)* the Evidence Law is attracted to the above Passport entries.

The negative assertions of Plaintiff in his evidence about the impugned Sale Agreement could not be disproved in his cross-examination. He has firmly denied the suggestion that he has received any amount of Rupees Two Million as part payment in lieu of handing over possession of the suit plot to Defendant No.2 or any balance amount remains to be paid at

the time of execution of Sale Deed. He reiterated his denial that due to increase in market value, he is denying the existence of Sale Agreement.

Plaintiff in his deposition has specifically mentioned that he acquired the knowledge about the impugned Sale Agreement on 29.08.2016 when the Defendant No.2 filed an Application under Order I Rule 10 of CPC. It has been specifically stated that since Defendants No.1 and 2 are the owners of adjacent Plots No.B-3 and B-4 at which they are operating their CNG Station, therefore, the suit plot was also illegally occupied by these private Defendants. In his cross-examination, the Plaintiff has stated that though he does not know the exact date when the private Defendants No.1 and 2 dispossessed the Plaintiff from the suit plot, but he (Plaintiff) approached and met the said Defendants in the months of March and April, 2014 and requested them to handover the vacant possession of Plaintiff's plot.

As against that the Defendant No.2 in his Affidavit-in-Evidence/Examination-in-Chief, has specifically stated that he has purchased the suit plot for a total sale consideration of Rs.35,75,000/- (Rupees Thirty Five Lacs Seventy Five Thousand only) and reiterates his stance that the impugned Sale Agreement was executed between him and the Plaintiff and at the time of signing of the Sale Agreement, he paid a sum of Rs.20,00,000/- (Rupees Twenty Lacs only) in cash to Plaintiff but the remaining amount could not be paid as Plaintiff disappeared. Defendant No.2 on behalf of private Defendants No.1 and 2 testified, that since they have paid a huge amount to Plaintiff, therefore, the vacant possession of the suit plot was also handed over to them (the said Defendants). The Defendant No.2 further deposed that he has invested a huge amount of Rs.34,85,200/- (Rupees Thirty Four Lacs Eighty Five Thousand Two Hundred) on the construction of the building, underground Water Tank, Car Wash portion and Tyre Shop together with Bathrooms and Labour rooms, but has acknowledged in his cross-examination that no details of expenses as purportedly incurred for

raising construction at the suit plot has been produced in the evidence. In his cross-examination, he has admitted that suit plot is still in the name of Plaintiff in the record of KDA and status of the plot is residential. He has denied that the suit plot is used as a CNG Station. He has acknowledged that the original documents of the suit plot are in possession of Plaintiff while further admitting that marginal witnesses of impugned Sale Agreement, Receipt and Possession Letter, are employees of Defendant No.2. The said witness/Defendant No.2 has not denied the suggestion in his cross-examination that the Plaintiff possessed a Computerized National Identity Card (CNIC). This question of Computerized National Identify Card was specifically put to weaken the authenticity of the impugned Sale Agreement because in the said **Sale Agreement, the old number of National Identity Card (NIC)** of Plaintiff is mentioned. The said defence witness acknowledged that the impugned Sale Agreement was signed at the premises of Defendant No.2, that is, at the CNG Station (SIMRA CNG Station). With regard to payment mode, the said Defendant No.2 deposed that he paid Rupees Two Million in cash, while further accepting the suggestion in cross-examination, that he has not filed any application for mutation / transfer of the suit plot in KDA or any Government Department, while voluntarily stating, that it is to be done after payment of balance amount. To a suggestion the said Defendant No.2 has admitted that no letter or notice sent to Plaintiff for receiving the balance amount and completing the sale transaction nor the latter (Defendant No.2) has instituted any legal proceeding against the Plaintiff. He has further admitted that when the parties signed the Agreement, it was not before the Notary Public. In response to a question, he stated in his cross-examination, that first time he met with Plaintiff in November, 2008 and second time in the first week of December, 2008. He further acknowledged the fact that no sale notice was given in any Newspaper about transaction in question.

Since the authenticity of the impugned Sale Agreement is seriously disputed, thus, onus is on Defendant No.2 to prove the impugned Sale Agreement, *inter alia*, by at least examining the two attesting / marginal witnesses, but he did not examine both marginal witnesses, but only one, the above named Malik Muhammad Rabnawaz (DW-2), who admittedly is the Manager of Defendant No.2, and thus is an interested witness. The said Muhammad Rabnawaz has basically corroborated the version of Defendants about execution of impugned Sale Agreement. In his Evidence, the said DW-2 has testified that the impugned Sale Agreement was executed before him, however, in his cross-examination, he did not dispute the suggestion that Plaintiff possesses a new CNIC. In his cross-examination, the said DW-2 (one of the marginal witnesses) has not disputed that the Plaintiff was residing abroad. He further admits that he never went at the given address of the Plaintiff, mentioned in the impugned Sale Agreement.

14. The learned counsel for the Plaintiff has relied upon the reported decisions of *Anwar and Yousuf (ibid)*, in support of her arguments, gist of which is that failure to examine two witnesses is fatal to the claim of a party, who is claiming his / her entitlement under a Sale Agreement, besides, it is also necessary to prove signature of the opponent. In order to exhaustively address this Issue the two reported decisions of the Hon'ble Supreme Court handed down in *Farzand* and *Hafiz* cases (*supra*); [P L D 2015 Supreme Court 187 and P L D 2011 Supreme Court 241], provide a guidance and are relevant. In both these Judgments, the Hon'ble Apex Court has held that Agreement to Sale is a type of transaction which falls within the preview of Article-17 (2)(a) of the Evidence Law, because it relates to a financial obligation, and thus is compulsory to have it attested by two marginal witnesses and is to be proved as required by Article 79 (of the Evidence Law). It has been further held, that to prove the validity of a

questioned/disputed sale agreement, if only one attesting witness is examined instead of both, then it is fatal to the case of a party, who has given the evidence in support of the execution of Sale Agreement.

15. Since burden is on said Defendant No.2 to prove the execution of the impugned Sale Agreement, as it is a disputed document, and his (Defendant No.2) failure to examine the second attesting witness, which though was his employee, as admitted by him in his cross examination, is fatal to the case of said Defendant No.2, because no plausible reason has been given for not examining the second marginal witness. Hence, said contesting Defendant No.2 has failed to prove the execution of Sale Agreement (**impugned**). The reported Decision of *Yousaf Case (ibid)* has been correctly relied upon by Plaintiff's Advocate. In addition to the above, the impugned Sale Agreement bears the old NIC number of Plaintiff, although it is not denied by the Defendant No.2 in the evidence, that at the relevant time Plaintiff was already in possession of his new CNIC, because, the Plaintiff in his evidence has produced his CNIC bearing the date of issue as 22.08.2003, as **Exhibit P/13**; this has further impeached the authenticity of the impugned Sale Agreement. More so, instead of making part payment through some negotiable instrument or banking channel, which is a usual current market practice, part payment is made by cash, as deposed by the said Defendant No.2, which is denied by Plaintiff in his testimony. The other factor going against the stance / pleadings of Defendant No.2 about execution of impugned Sale Agreement, is that till date he has neither initiated any proceeding for enforcement of the impugned Sale Agreement, nor, admittedly serve the Plaintiff with any Legal Notice.

In addition to the above discussion, it is also a matter of common knowledge that the price of suit plot, even in the year 2008, considering that it is a 400 Square Yards residential plot in a developed scheme, is much higher than the

purported sale consideration of Rs.35,75,000/-. Consequently, the version of contesting private Defendants No.1 and 2 cannot be believed. The said Defendants No.1 and 2 have failed to prove the payment of sale consideration and cash amount of Rs.20,00,000/- (Rupees Twenty Lacs only) as part payment to plaintiff by Defendant No.2.

More so, the passport entries of Plaintiff carry much weight, as already discussed in the afore-referred paragraphs. From the passport endorsement/entries, Plaintiff has proved that he was not in Pakistan on the date mentioned in the impugned Sale Agreement, that is, 15.12.2008 and thus the signatures of Plaintiff on the said impugned sale agreement have been forged, as well as on the receipt and Possession Letter of same date; Exhibits D/3 and D/4, respectively. Testimony of Plaintiff has remained consistent with his pleadings, unlike that of Defendant No.2. The impugned Sale Agreement dated 15.12.2008-**Exhibit D/2**, is a bogus and fabricated document and the Defendant No.2 has not purchased the suit property from Plaintiff and thus there is no question of taking over physical possession of suit property as part performance of the contract.

Adverting to the arguments of learned counsel for private Defendants, that the claim is time barred as hit by Article-91 of Limitation Law relating to cancellation of a document. Per learned counsel for the Defendants No.1 and 2, the impugned Sale Agreement of 15.12.2008 cannot be cancelled in the present proceeding, because relief of cancellation has been included subsequently, on 17.11.2016 when the Plaintiff filed the amended plaint. On the other hand, learned Advocate for Plaintiff has controverted the arguments, as already mentioned in the forgoing paragraphs.

Since it has been proven that the impugned Sale Agreement has not been signed / executed by the Plaintiff, therefore, obviously he has no knowledge of its existence. Per undisputed record of the present proceeding, the impugned Sale Agreement first time surfaced when it was filed as

Annexure with the Written Statement of Defendant No.1, which was filed on 19.09.2015, in reply to the original plaint. The said Written Statement of Defendant No.1 is available at page-191 of the main Court File and the impugned Sale Agreement is at page-203, therefore, in fact on 19.09.2015, the Plaintiff acquired the knowledge about existence of the impugned Sale Agreement and its cancellation was sought in the amended plaint filed on 17.11.2016. Period prescribed in Article-91 of the Limitation Law, for bringing an action at law for the cancellation of an instrument is three years; whereas, consequently, cancellation in the present case has been sought after fourteen months, therefore, this relief is not time barred. It would be illogical to believe the version of said Defendant No.2, that even after passage of more than a decade {15-12-2008, when the impugned Sale Agreement alleged to have been signed}, Parties here to have done nothing for its implementation; neither Plaintiff has demanded (undisputedly) the balance sale price, nor, contesting private Defendant No.2 has admittedly taken any measure to perfect his title/ownership in respect of the suit plot.

**Issue No.(iii) is answered in Affirmative and against the Defendants** that the impugned Sale Agreement is forged, fictitious and fabricated document, and is void abinitio, which is liable to be cancelled; *whereas*, Issue No.(vii) is also replied in Negative but in favour of Plaintiff, that no sale transaction had taken place between the Plaintiff and Defendant No.2 and thus no physical and vacant possession was handed over to the private Defendants.

**ISSUE No.(iv).**

16. In the light of above discussion findings on this Issue is not difficult. The Defendant No.2 himself in his testimony has admitted that he is in occupation of the suit plot though in view of the impugned Sale Agreement, regarding which the finding has already been given that it is a bogus and

forged Agreement having no sanctity in the eyes of law. Secondly, there is a glaring contradiction in the evidence of Defendant No.2, when he said on the one hand, that he has developed the suit plot as a part of his business venture, but on the other hand accepting in his cross-examination, that he has not filed any record of expenditure incurred. The evidence of said DW-2 has been further falsified by the two Reports submitted by the concerned official / Deputy Director of Sindh Building Control Authority (SBCA), Gulshan Town-1, during course of proceeding. These Reports were submitted in the Court in compliance of the order dated 19.04.2019 and no objection was filed in response to the said Reports dated 30.04.2019, the crux of which is that the suit plot No.B-2 is lying vacant with some structure of huts / jhuggis. Therefore, the evidence of Plaintiff that the suit plot has been throughout utilized by private Defendants as accommodation of their staff / employees has been found correct, hence, **Issue No.(iv) is answered in Affirmative but against the Defendants and in favour of Plaintiff.**

**Issue No.(viii).**

17. This Issue can be decided in the light of the decisions handed down by the learned Division Bench of this Court in number of constitutional petitions, C. P. No. D – 1608 of 2005 {filed by *Mst. Talat Ejaz*} being the leading one, which was subsequently maintained by the Honourable Supreme Court in its two separate decisions; one in Civil Petition No.3470-K of 2015 and the other in Civil Petition No.2086 of 2015 [*Pir Masoom Jan Sarhandi v. Ms. Talat Ejaz*] (hereinafter referred to as “*Ejaz Case*”), which was subsequently followed by the single Bench of this Court in Suit No.2322 of 2014 [*Dr. Arifa Farid and others v. Mitha Khan and others*]. It has been held, *inter alia*, that no village/Goth can be established in an urban area in terms of Land Grant Policy and the Sindh Gothabad Act, 1987.

18. It is also pertinent to mention here that the above referred *Ejaz Case*, also **relates to Block – 10 and 11 of Scheme 36, KDA, and the present suit plot also situate in Block 10 of Scheme 36, KDA.** More so, in recent decision given in the above Suit No.2322 of 2014, it is already held that the Judgments in the *Ejaz case*, earlier given by the learned Division Bench of this Court and subsequently upheld by the Honourable Supreme Court, are decisions **in rem and not personam.** Therefore, in any case, this Issue of the present *lis* has to be decided in the light of above referred Decisions.

19. To effectively decide the controversy and issues in the present *lis*, it is necessary to reproduce herein below some relevant paragraphs of Suit No.2322 of 2014, which are based on the findings of learned Division Bench in afore referred *Ejaz case*, that is later upheld by the Hon’ble Supreme Court\_

***“13. The said Decision (of Ejaz Case) has laid down the legal principle that Sindh Government (Defendant No.8) cannot cancel the 2000 Acres of land earlier allotted to the KDA way back in the year 1977, merely because the said KDA did not pay the entire price. It has been further held that since Scheme – 36 is a duly notified Scheme under the Karachi Development Authority Order, 1957, therefore, the Petitioners (of the said Ejaz Case) should not be made to suffer on account of dispute between the two Government Functionaries, viz. Sindh Government and KDA; both are also impleaded as Defendants in the present lis.***

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*Fifthly*, it has been unequivocally held in the *Ejaz Case* by the learned Division Bench of this Court (and upheld by the Honourable Supreme Court) that when no village existed at the time of launching of Scheme – 36 as per the KDA Order 1957, way back in the year 1977, then there is no question of granting of land by Sindh Government and its other Departments, which are also Defendants in the present *lis*, to occupants of a Village, which this Court and the Honourable Supreme Court has termed as dummy village. This finding of fact given by the learned Division Bench of this Court fully

covers the factual and legal aspect of the present case, because the learned Division Bench after considering various official documents produced by the Government Officials, who are also present Defendants in this *lis*, arrived at this conclusion. It is necessary to reproduce herein under the relevant portion of the judgment from Ejaz case (given by the learned Division Bench)\_

*“Mr. Pirzada repeatedly argued that the land to the villagers were granted by the Government of Sindh in accordance with their existing Land Grant Policy made under Section 10 of the Colonization of Government Land Act, 1912 through Notification dated 12.01.1980 and the so-called Sanads of the villagers which are placed by the Intervenor M/s. Roshan Associates on record also reflects that Deputy Commissioner granted so-called Sanads on the terms and conditions as envisaged in Policy dated 12.01.1980 oblivious of the fact that Clause 5 of the Policy dated 12.01.1980 states that “no land lying within the limits of Karachi Development Authority, Hyderabad Development Authority and Municipal areas, shall be granted without prior approval of the Board” and there is nothing on record to show that the Board ever accorded such approval. Additionally Clause 11 of the Policy states that “land allotted under the Policy dated 12.01.1980 is to be used for the sole purpose of establishment of Village”, Clause 11 reads as follows:-*

**“The land shall be used for the sole purpose of establishment of village and extension of the existing village within such period as may be fixed by the Collector from the date of approval of the plan under condition 10.”**

*And Clause 2(g) defines a village as a settlement of habilitation of the people, but does not include a habilitation of less than ten houses. Likewise Clause 16 places a condition on the title of the grantee by stating that*

**“the grantee shall be entitled to the proprietary rights over the land only after the full price thereof and other dues payable under these conditions are paid by him and he has fully complied with these terms and conditions to the satisfaction of the Collectorate.”**

*It appears to be an admitted position that at no point of time there was any village on the subject land which is now claimed by the builders (Para 5 of the summary approved by the Chief Minister in the year 2006 reproduced above) nor the price has been paid. One more important aspect which we would like to dilate upon is that on the one hand Revenue Department has taken a stance that the village was regularized by the Deputy Commissioner East by regularizing the possession of 59 villagers whose Sanads have been placed on record by the intervenor Roshan Associates and the total area so granted to them in the shape of various plots ranging from 800 to 2700 square yards, which according to our calculation, comes to around 80,000 square yards i.e, hardly 17½ acres and on the other hand they were regularizing the sale of 30-00 acres of land.*

*Keeping in view the fact that no Goth ever existed on the subject land and this we say after going through all the summaries, the gist whereof has been reproduced hereinabove despite the orders from the Governor and the Chief Minister were obtained by stating that the villagers have obtained a declaratory judgment and decree dated 10.07.1994 in Suit No. 1543/1992 in respect of said Goth, however, said decree was set aside in Civil Appeal No. 151/1994 by the Vth Additional District Judge, Karachi East, and ultimately plaint of Suit No. 1543/1992 was rejected by VIIth Senior Civil Judge, Karachi East, vide its order dated 08.9.2010. Even letter dated 06.06.1996 whereby 30-00 acres of land was resumed and Mir Khan Gabole village was regularized was obtained by taking the shield of the said judgment and decree dated 10.07.1994 confirming possession of the said villagers and even this letter does not reflect that the Goth ever existed or the facts of the existence of Goth were ever verified. Resultantly, we have reached to the conclusion that there was never a village in terms of clause 2(g) of the Policy dated 12.01.1980, therefore, the entire exercise of getting land resumed and Goth declared from the Hon'ble Governor and the Chief Minister on the basis of misdirected and self-contradictory summaries by taking*

*shield of a fraudulent judgment and decree declaring the existence of the Goth itself was totally unlawful and in gross violation of the Land Grant Policy made on 12.01.1980. Likewise the regularization of land in favour of builders so-called representative of 59 non-existing dummy villagers/sanads-holders was also violative of Clause 11 of the referred Policy which restricts the use of land granted under the Policy dated 12.01.1980 only for the purposes of establishment of a village and/or its extension. We, therefore, declare the entire process of declaring Goth vide letter dated 06.06.1996 as well as attempt to regularize land in favour of the builders through summary approved on 13.07.2006 as sham and without lawful authority and of no consequences at all.*

**(Underlined to add emphasis)**”

20. Since now it is an admitted legal and factual position that no Village/Goth can be allowed in area falling within the remit / territorial jurisdiction of Scheme-36 – KDA, Karachi, therefore, the stance of present private Defendants that subsequently the suit plot has become part of the afore named said Goth and have been re-numbered as Plot Numbers 711, 712 and 713, is not only meritless but misleading also.

In addition to the above, the Defendants have failed to produce any document in their evidence to show that the suit plot got re-numbered as above. The document marked as *D/X/7* having caption ‘Summary for Chief Minister, Sindh’, produced by Defendant No.2 in his evidence actually disproved his case, as the said Document clearly states that the Hon’ble Supreme Court has imposed a ban on any further transaction. The other documents marked as *D/X/3*, *D/X/4* and *D/X/5* as relied upon the above Defendants are also of no value, inter alia, in view of the afore referred Decisions in the Ejaz case and subsequently in Dr. Arifa Fareed versus Mitha Khan case (*ibid*); secondly, authenticity of these documents is highly doubtful as they are photo copies and no official witness was summoned to

produce these documents from the official record; thirdly, these documents show that at the above plot numbers 711, 712 and 713, a ‘CNG Pump’ (Service Station) exists, **but, when the afore-referred Report** was called vide Order dated 19-4-2019, it has been reported by the concerned Deputy Director SBCA, which is not objected to by any of the parties here to, that no CNG Station existed at the suit plot. Regretfully, private Defendants made another unsuccessful attempt to mislead the Court through their dishonest conduct. Thus finding on this Issue, that is, **Issue No.(viii) is in Negative;** that no Goth, particularly, the said ‘Christi Nagar Goth’ existed or exists in Block 10 and 11, with a further clarification, that the residential status of the suit plot is still intact and it does not form part of any Village.

**ISSUES NO. (v) and (vi).**

21. The Plaintiff could not be contradicted in his evidence about the fact that first he lodged a complaint before the Police Official, which is brought on record as Exhibit-12 and is dated 20.05.2014. It would be necessary to reproduce the contents of the said complaint\_

*“I am an overseas Pakistani served Saudi Navy of about 30 years. I purchased a plot B-2 measuring 400 sq. yard in Gulistan-e-Johar, Karachi block 10. My plot is adjacent to CNG station belong to one a retired colonel who erected a wall and placed a gate on my plot, during my absence out of the country for my job requirements, since I have been retired and shifted to Karachi, I visit my plot and shocked to see that someone has grabbed the land unauthorisedly.*

*Sir I served Pakistan to send all my remittance through the legal channel when Pakistan was needed badly to run day to day business of the country. In reward to this I have been deprived of my land.*

*I request you to kindly evocate my land from the CNG station owner and give its legal possession to me, I shall be very grateful to you.”*

It is appalling that how an overseas Pakistani was deprived of his property purchased from hard earned income. The contents of the complaint were not questioned in the evidence, which states that he was sending

remittances to Pakistan. Testimony of Plaintiff that Defendant No.2 used his Army background to influence the Police official, does not seem to be a false assertion. The Legal Notice on the part of Plaintiff served upon Defendant, which has been produced as Exhibit-15 was also sent to Defendant No.3 as well as to General Headquarters Rawalpindi, but regrettably no action has been taken by the officials.

*Secondly*, the evidence adduced by the private Defendants with regard to utilization of the suit plot is quite relevant to answer these Issues. Now it is an admitted fact that the suit plot is in occupation of Defendants since March, 2013 till date. Although in his cross-examination, the Plaintiff could not state with certainty that exactly to what extent the private Defendants, particularly, the Defendant No.2 is utilizing the suit plot as part of his business, but at the same time it is an admitted fact that the Plaintiff is being deprived of use, enjoyment and possession of his property-the Suit Plot, which still is in possession of private Defendants, so also stated by the learned Official Assignee in his Report (as mentioned in the preceding paragraphs). *Thirdly*, the conduct of private Defendants and particularly the Defendant No.2 cannot be ignored; who has not only given false evidence but has also produced the bogus and forged documents. The private Defendants have usurped the suit plot, that is, property of Plaintiff to the utmost disadvantage of the latter (Plaintiff) and using the same with impunity. To acquire, hold and enjoy a property in accordance with law, is one of the fundamental rights of a citizen, in the instant case, the present Plaintiff, which right has been grossly violated by the private Defendants and Defendant No.3 (area SHO) who has failed to discharge his official duties, for the obvious reason, as discussed herein above. Violation of a **fundamental right should be remedied forthwith**. The reported decision of learned Division Bench of this Court in *Ashraf case* (supra) addresses this aspect.

In view of the above discussion and the finding given on Issue No.(iv), Plaintiff is entitled to mesne profits. The reported decision of **Haji Khan Case (supra)** is relevant. The conclusive evidence about the wrongful / illegal possession of Defendants No.1 and 2 of the suit plot does not require an inquiry as mentioned in Order XX, Rule 12, Sub Rule 1 (b).

Consequently, in my considered view, Rupees One Hundred Thousand per month should be a reasonable amount towards mesne profit, therefore, **Issue No.(v)** is answered accordingly that Plaintiff is entitled for mesne profit at the rate of Rupees One Lac per month from March, 2013 till the amount of mesne profit is paid by Defendants No.1 and 2 jointly and severally to Plaintiff.

Adverting to Issue No.(vi). It is a settled principle that broadly damages are of two kinds; general and special. Special damages are awarded only when a party successfully proves actual losses suffered by him / her through positive evidence. In the present case, the Plaintiff's side has failed to adduce evidence with regard to his claim of Rupees Ten Million towards damages, which in fact are special damages. Notwithstanding this aspect of the case, the Superior Courts have held in number of decisions, **Abdul Majeed Khan v. Tawseen Abdul Haleem [2012 C L D page-6]**, being one of the leading cases, that if circumstances so warrant, general damages can be awarded by invoking the rule of thumb; particularly where violation of legal right exists.

In my considered view, the rule laid down in the two well-known Judgments of the Honourable Supreme Court, that is, Abdul Majeed Case (*ibid*) and Ishaque Case [**P L D 1996 Supreme Court page-737**], applies to the present case. In the first one (as already stated), the principle, *inter alia*, with regard to general damages has been discussed in detail; *whereas*, in second reported decision, the rule with regard to grant of damages on account of mental anguish has been explained, because the Plaintiff is basing his

damages claim on the mental distress he suffered. It is relevant to reproduce herein under the paragraph-8 from the second decision (**Ishaque Case**)\_

*“8. Once it is determined that a person who suffers mental shock and injury is entitled to compensation on the principles stated above, the difficult question arises what should be the amount of damages for such loss caused by wrongful act of a party. There can be no yardstick or definite principle for assessing damages in such cases. The damages are meant to compensate a party who suffers an injury. It may be bodily injury loss of reputation, business and also mental shock and suffering. So far nervous shock is concerned, it depends upon the evidence produced to prove the nature, extent and magnitude of such suffering, but even on that basis usually it becomes difficult to assess a fair compensation and in those circumstance it is the discretion of the Judge who may, on facts of the case and considering how far the society would deem it to be a fair sum, determines the amount to be awarded to a person who has suffered such a damage. The conscience of the Court should be satisfied that the damages awarded would, if not completely, satisfactorily compensate the aggrieved party.”*

22. In the forgoing paragraphs, the conduct of private Defendants have already been discussed, which does not need further elaboration, therefore, even though the Plaintiff could not prove his claim for special damages of Rupees One Crore, but at the same time, it is an undeniable fact, in view of the evidence that has come on record, that Plaintiff is pursuing his remedy since 2013, particularly when he first approached the Police officials through his written complaint (exhibit P/12) but without any result, which grievance continues hitherto. Due to these factors Plaintiff besides suffering mental anguish and distress has also been prevented to utilize his property – the Suit Plot. Hence, Plaintiff is entitled to general damages. The Defendants No.1 and 2 shall pay jointly and severally a sum of Rupees Fifteen Lacs (Rs.15,00,000/-) to Plaintiff towards damages.

**ISSUE No.(ix).**

23. The upshot of the above discussion is that the suit is decreed in the above terms and as prayed in terms of prayer clauses (i), (iv), (v) and (vi) with costs.

The learned Official Assignee is hereby directed to take steps for re-possession of the suit plot, viz. Plot No.B-2, measuring 400 Square Yards, situated at Block-10, Gulistan-e-Johar, Karachi from Defendants No.1 and 2, and the physical, peaceful and vacant possession of the suit plot shall be handed over to Plaintiff, by removing all the structures at the suit plot but at the costs of Defendants No.1 and 2. The learned Official Assignee will seek Police Assistance and if required that of Anti Encroachment Cell. The concerned DIG is directed to provide adequate force to the learned Official Assignee for implementing the Judgment of the Court. Fee of the Official Assignee will be settled by him.

**Judge**

**Karachi,**  
**Dated: 30.05.2019.**

*M Javid / P.A.*

