

*Order Sheet*  
**IN THE HIGH COURT OF SINDH, KARACHI**

Date	Order with signature of Judge
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**IInd Appeals No. 141/2020**  
[Mr. Muhammad Waseem vs. Mst. Jameela Bano & Others]  
**IInd Appeals No. 142/2020**  
[Mr. Muhammad Waseem vs. Mst. Jameela Bano & Others]  
**IInd Appeals No. 143/2020**  
[Mr. Muhammad Waseem vs. Mst. Jameela Bano & Others]  
**IInd Appeals No. 144/2020**  
[Mr. Muhammad Waseem vs. Noor Muhammad & Others]  
**IInd Appeals No. 145/2020**  
[Mr. Muhammad Waseem vs. Abdul Karim & Others]  
&  
**IInd Appeals No. 146/2020**  
[Mr. Muhammad Waseem vs. Abdul Karim & Others]

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**Date of Hg & Order 30.09.2025.**

Mr. Altamash Arab, Advocate for the appellants.  
Mr. Muhammad Aqil Zaidi, Advocate for the KDA.  
Muhammad Ali Khan son of respondent No.1-Jameela Bano.  
M/s. Syed Aly-e-Maqbool Rizvi & Ahmed Khan Khaskheli, AAGs Sindh.

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**ARSHAD HUSSAIN KHAN, J.-** Since these Appeals arise from the same set of facts and involve common questions of law, they are being disposed of through this **common judgment**, in the interest of consistency and to avoid duplication.

The appellant through **Appeal No.141/2020**, being treated as leading one, has challenged the concurrent findings of the courts below and sought relief as follows:

**A. SET ASIDE**

- (i) the Impugned Judgment dated 5 March 2020 passed by the learned Additional District and Session Judge Karachi Central.
- (ii) the Impugned Judgment and decree passed by 1st Senior Civil Judge Karachi Central dated 15 May 2017 ONLY to the extent of cancellation of the Mutation / Transfer Order in the name of the Appellant as Exhibit P-21 of the Appellant.

**OR IN THE ALTERNATIVE**

- (i) Allow production of evidence and examination of witnesses under order XLI Rule 27 (1) (b) of the Code of Civil Procedure, 1908

**B. RESTRAIN:**

- (i) the Respondents from dispossessing the Appellant until final decision of the Subject Appeal,

**C. GRANT:**

- (i) Costs.
- (ii) Any other relief that this Court may deem fit in the facts and circumstances of the Subject Appeal.

2. **Concisely stated,** the City District Government Karachi (CDGK), now Karachi Development Authority (KDA), filed Suits No. 799,800,801,802,803 & 804 of 2011 as Plaintiff No. 1, wherein the present appellant, Muhammad Waseem, was subsequently impleaded as Plaintiff No. 2, seeking cancellation of instrument/lease against the defendants, including Arif Ahmed, the respondent herein, before the court of the learned Ist Senior Civil Judge, Karachi-Central, with the following prayers:

- (a) to cancel instrument / lease Annexure-B & B1 by holding that the same has been obtained fraudulently and by concealment of material facts and in collusion with the officials of the then KDA/CDGK and defendant No. 4 & 5 to be ordered to cancel the relevant Register and further holding that the lease in question has no legal effect whatsoever and the same may be declared void ab initio document, so also other subsequent transaction(s).
- (b) Any other relief /reliefs which this Court may deem fit and proper.
- (c) Grant the cost of this suit.

**Whereas respondent No.2 herein-Arif Ahmed filed Suits No. 146,147,148,149, 150 & 151 of 2012 for Declaration, Cancellation, Damages and Permanent Injunction, against the KMC including Muhammad Waseem, the appellant herein, before 1<sup>st</sup> Sr. Civil Judge Karachi [Central] with the following prayers:**

- a. To declare that letter dated 12/04/2010 for cancellation of NOC for sale in respect of suit property have no legal value in the eyes of law and the same may be declared null and void.
- b. To cancel the allotment/lease or any letter in respect of suit property bearing Plot No. R-894. (ST-12), Sector-9. North Karachi Township. Karachi issued in favour of the defendant No.3 or any else and the same may be declared null and void.
- c. Awarding sum of Rs.4 Millions to plaintiff payable by the defendants as compensation/damages.
- d. Grant permanent injunction restraining the defendants. their agent, attorney or any other person(s) from dispossessing, selling, transferring, gifting and created any third party interest to the hearing Plot No. R-894 (ST-12). Sector-9, North Karachi Township, Karachi, till final disposal of the case.
- e. Cost of the suit.
- f. Any other/ better relief's as this Hon'ble Court may deem lit and proper.

3. **Before the learned trial court**, the defendants 1 & 2 namely; Mrs. Jameela Bano and Arif Ahmed in Suit No.801/2011, [respondents 1 & 2 herein], filed their written statement jointly wherein they denied the claim of the plaintiffs stating therein that the plaintiff-CDGK has cancelled the NOC on 12.04.2010 for sale with mala fide intention and with ulterior motives illegally, unlawfully without hearing of defendants and raised preliminary objections. They have stated that the plaintiff-CDGK has allotted the suit plot in alternate plot of North Karachi Township and the defendant has paid required fee and got formalities from the office of the plaintiff and then lease was issued in favour of defendant No.1 and thereafter defendant No.1 has sold out the suit property to defendant No.2 (Arif Ahmed), as being lawful owner. Defendant No.2 is in possession of the suit property. The Plaintiff did not come with clean hands and filed the suit with *mala fide* intention, ulterior motives and prayed for dismissal of the aforesaid suit with special costs.

4. **Whereas in Suit No.150/2012, the defendants 1 & 2 [KMC] filed** their written statement jointly and defendant No.3-Muhammd Waseem, the appellant herein filed his written statement separately. The defendants No.1 & 2 stated that the suit is not maintainable as no cause of action has accrued to the plaintiff-Arif Ahmed [the respondent No.2 herein] against the defendant-KMC and the suit is also hit by the provisions of Section 42, 54 and 56 of the Specific Relief Act; and the plaintiff has no *locus standi* or *prima facie* case for the reason that the suit for declaration without having the legal title in respect of the property in question is itself incompetent and bad in law. It is further stated that the plaintiff has *mala fidely* obtained forged lease deed through fraud and concealment of facts in connivance with the then officer, DDO, [NKT]. It is further stated that the plaintiff obtained NOC for sale through fraud and concealment of facts on the basis of forged & fictitious lease deed. Whereas, defendant No.3 by filing his written statement has stated that he is true and rightful owner of the entire plot bearing No.ST-12, Sector-9, North Karachi Township and he supported the version of defendant Nos. 1 & 2. They all denied the claim of the plaintiff-Arif Ahmed.

Subsequently, the trial court clubbed the suits of the both the parties framed the **consolidated issues** in the matter and after hearing the counsel for the parties and examining the evidence brought on the record, recorded its findings that Arif Ahmed [Plaintiff in Suits No. 146,147,148,149, 150 & 151 of 2012] and Muhammad Waseem [Plaintiff No.2 in Suits No.799,800,801,802,803 & 804 of 2011] are not entitled to any reliefs claimed by them. Accordingly, suits filed by the plaintiff namely, Arif Ahmed were dismissed and the Suits filed by the CDGK/ KMC were decreed only to the extent of payer clause (a) vide the impugned judgment of the trial court dated **15.05.2017**.

5. **The aforesaid judgment of the trial court was assailed** by Muhammad Waseem, [the appellant herein] before the IInd Additional District Judge Karachi [Central] in Civil Appeals No.160,161,162,163,164,165 of 2017, with the following prayers:

- i. Set aside the judgment and decree dated 15-05-2017 only to the extent of cancelation of mutation /transfer order in the name of the appellant as Exh-P-21 of the appellant.
- ii. Allow production of evidence and examination of witnesses under Order XLI Rule 27(1) (b) of the Code of Civil Procedure 1908.
- iii. Restrain the respondents from dispossessing the appellant until final decision of the subject appeal.
- iv. Costs.
- v. Any other relief that this Hon'ble Court may deem fit in the circumstances of the subject appeal.

[Emphasis supplied]

The said Appeal was dismissed and the judgment of the trial court was maintained, vide judgment of the lower appellate court dated **05.03.2020**. Now, the appellant has challenged the above concurrent findings in the present second appeals.

6. **Learned counsel for the appellant has contended** that the impugned judgments dated 15.05. 2017 and 5.03.2020 to the extent of cancellation of mutation/transfer order in favour of the appellant are contrary to law and facts, having been passed without proper appreciation of the pleadings, evidence, and record. It was argued that neither in the consolidated suits were there any prayer for cancellation of the appellant's mutation/transfer order dated 19.12.2009 (Exh. P/21), nor was any issue framed regarding the appellant's title in the subject

property, therefore, the trial court exceeded its jurisdiction in ordering such cancellation.

Learned counsel has further submitted that the documentary record, including Form-1s (1999 and 2009), the letter of regularization, Form-5 (2010), and the Transfer/Mutation Order (2009), clearly establish a lawful chain of ownership from Muhammad Ahmed Khan to Muhammad Zubair, and thereafter to the appellant, duly regularized by the Karachi Metropolitan Corporation (KMC), the successor of KDA/CDGK. It was further argued that the official inquiry dated 8<sup>th</sup> October 2010 and subsequent verification by KMC confirmed the appellant as the genuine owner of the subject property and declared the alleged Plot No. R-894 as fictitious. It was further contended that both courts below failed to consider the presumption of regularity of official acts under Article 129 of the Qanun-e-Shahadat Order, 1984, ignored material documents, and delivered non-speaking judgments, particularly the lower appellate judgment dated 5.03. 2020, which lacks any reasoning. Learned counsel thus urged that the impugned judgments and decrees be set aside to the extent of cancellation of the mutation order in favour of the appellant, and the appellant's lawful ownership and possession of Plot No. ST-12, Sector 9, North Karachi Township, Karachi be restored.

7. I have heard the arguments advanced by learned counsel for the appellant and have also perused the record.

**Precisely, as per the memorandum of appeal**, the appellant claims lawful ownership of Plot No. ST-12, Sector-9, North Karachi Township, Karachi, measuring 1000 square yards ("the Subject Property"), purchased through a chain of valid transactions duly regularized by the Karachi Metropolitan Corporation (KMC), successor of KDA and CDGK. It is alleged that Respondents No.1 and 2, being land grabbers, fabricated forged documents to create a fictitious Plots of from No. R-893, R-894, R-895, R-896, R-897 and R-898, subject matter of above appeals within the Subject Property, in collusion with certain officials. Upon inquiry, the competent authorities cancelled the bogus NOC and confirmed that no such plot existed in official records. The appellant contends that, despite these findings, the trial court while deciding consolidated Suits erroneously cancelled his mutation without

framing an issue on ownership, and that his appeal was dismissed by the learned II<sup>nd</sup> Additional District Judge, Karachi Central, through a non-speaking judgment. Hence, this appeal seeks reversal of the impugned judgments and restoration of the appellant's lawful title and possession.

8. In the present appeal, despite service of notices upon the private respondents, they have neither contested the matter nor entered appearance. However, the Diary dated 16.09.2025 reflects that one Muhammad Ali Khan, claiming to be the son of respondent No.2, Mst. Jameela Bano, appeared and sought time to engage counsel. At his request, the matter was adjourned to today's date of hearing, i.e., 30.09.2025, with a clear caution that no further adjournment would be granted. However, today, he has once again sought time. Since this is an old matter pertaining to the year 2020, and despite repeated notices issued from time to time the private respondents have chosen not to contest the matter, this Court deems it appropriate to proceed with the appeal on the basis of the available record.

9. **Learned counsel appearing on behalf of the KDA**, while tendering his no objection to the grant of these appeals, submits that as per the official record of the KDA, the appellant is the lawful owner of the subject property. He further refers to the counter-affidavit filed by the Additional Director, North Karachi Township, Land Management, KDA, and states that at the time of issuing the mutation/transfer order in favour of the appellant, the name of the last owner was inadvertently omitted. However, the said error was subsequently rectified after completion of all codal formalities, and a corrigendum to that effect was duly issued by the competent authority.

10. **Insofar as the case of Respondents No.1 and 2** [Mst. Jameela Bano and Mr. Arif Ahmed], is concerned, it is observed that before the learned trial court, Mst. Jameela Bano neither appeared in the witness box nor produced any credible evidence to substantiate her alleged ownership of the suit plots. The lease deed relied upon by her was found by the trial court to be founded on fictitious entries, and the concerned municipal authorities categorically disowned the existence of the purported plot. The findings of the learned trial court further reveal that the lease was fraudulently procured in collusion with a

former KDA official, who was later dismissed from service. In these circumstances, the trial court rightly held that Mst. Jameela Bano had no lawful authority to transfer the purported plot to Arif Ahmed, whose suits were accordingly dismissed for want of merit. The record further reflects that neither Mst. Jameela Bano nor Arif Ahmed challenged the judgments of the trial court or the lower appellate court; hence, the findings regarding cancellation of their alleged property have attained finality.

11. Upon examination of the record and the findings of the learned trial court, it is also evident that the court primarily proceeded on the basis that Plot No. ST-12, Sector-9, North Karachi Township, measuring 1000 square yards, was originally allotted and regularized in the name of Muhammad Ahmed Khan, and that there exists no record evidencing any lawful bifurcation or sub-division thereof into smaller plots. However, while adjudicating upon the controversy relating to the alleged fictitious plots, the learned trial court declared the appellant's Mutation/Transfer Order dated 19.12.2009 (Exh. P/21) as illegally issued and consequently cancelled the same, notwithstanding the fact that no such relief was sought in the plaint nor was any issue framed in that regard.

12. A perusal of the pleadings and the issues framed in consolidated Suits manifests that neither any prayer for the cancellation of the appellant's Mutation/Transfer Order (Exh.P/21) was made, nor any issue concerning the appellant's title or ownership with respect to Plot No. ST-12 was framed. Despite this fact, the learned trial court exceeded the scope of pleadings and issues by cancelling Exh. P/21, which amounts to an act in excess of jurisdiction and without lawful authority.

13. The documentary evidence on the record, including the regularization letter, Form-1 (1999 and 2009), Form-5 (2010), and the Mutation/Transfer Order dated 19.12.2009, demonstrates that the said mutation was duly processed and issued by the competent authority of the erstwhile CDGK/KMC in accordance with prescribed procedure. Under Article 129(e) of the Qanun-e-Shahadat Order, 1984, a presumption of regularity attaches to official acts, and the respondents have failed to produce any admissible evidence to rebut such

presumption or to establish that the appellant's mutation was procured by means of fraud, misrepresentation, or collusion with any official.

14. The findings of the learned trial court regarding the alleged fictitious sub-plots and the irregular issuance of leases by certain officials may reveal administrative lapses within the concerned departments; however, they do not establish any specific illegality or defect in the appellant's Mutation/Transfer Order. Despite this, the trial court proceeded to cancel the appellant's mutation without framing any specific issue relating to title, thereby depriving the appellant of a fair opportunity to contest a matter central to the controversy. The learned appellate court, while maintaining the decree of the trial court, also failed to undertake an independent and proper re-appraisal of the evidence as required under Section 96 of the Code of Civil Procedure, 1908, and merely reiterated the reasoning of the trial court without addressing the appellant's principal contention. In the absence of any adjudication on the core issue of title, which lay at the heart of the dispute, the judgments of both the trial court and the appellate court, insofar as they sustain the cancellation of the appellant's mutation, stand vitiated for want of proper judicial determination and are, accordingly, unsustainable in law.

The question thus arises for determination in the present Appeals is whether the learned courts below acted in excess of jurisdiction by cancelling the appellant's Mutation/Transfer Order (Exh. P/21) in the absence of any pleading, prayer, or framed issue to that effect a question, which squarely constitutes a substantial question of law within the contemplation of Section 100 of the Code of Civil Procedure, 1908.

15. It is well-settled that this Court, while exercising its **second appellate jurisdiction under Section 100 CPC**, ordinarily does not interfere with concurrent findings of fact recorded by the courts below. However, where such findings are shown to be perverse, contrary to record, or the result of misreading or non-reading of material evidence, or where the courts have acted in excess of their jurisdiction, interference becomes not only permissible but necessary to prevent miscarriage of justice. In the present case, since both the courts below travelled beyond the scope of pleadings and issues by cancelling the



appellant's Mutation/Transfer Order [Exh. P/21] without jurisdiction, this Court is justified in exercising its second appellate jurisdiction to correct the legal error to that limited extent.

It is also settled principle that no court can grant a relief not founded on the pleadings nor framed through an issue, and any finding recorded beyond the scope of the same is without lawful authority and amounts to nullity in the eye of law. Reliance can be placed upon the case of **Binyameen v. Chaudhry Hakim [1996 SCMR 336]**.

16. Besides the above, it appears from the record that both the courts below proceeded on the assumption that, as per the available documents, the property had been transferred directly from the original owner to the appellant without any intervening instruments. It is, however, pertinent to note that the principal lessor, i.e., CDGK/KMC/KDA, has never disputed the ownership of the appellant, either before the courts below or in the present proceedings. As such, the findings recorded by both courts below in respect of appellant's Mutation/Transfer Order [Exh. P/21] appears to be misconceived and beyond the scope of the same is without lawful authority.

17. The record further reveals that in pursuance of an application dated 28.09.2023 submitted by the appellant to the Assistant Director (Commercial Cell), KDA, the competent authority approved the request and accordingly issued a corrigendum dated 31.10.2024. Through the said corrigendum, the Assistant Director (Land Management), KDA rectified the omission that had occurred in the Transfer Letter earlier issued and oriented by the I.T. Department, KDA, vide No. 005189, in favour of *Mr. Muhammad Waseem*. The corrigendum clarified and rectified the entry in the footnote to reflect that the "last owner" earlier mentioned as *Muhammad Ahmed Khan S/o Abdul Hameed Khan* be read as *Muhammad Zubair S/o Muhammad Haroon*, in respect of Plot No. ST-12, Sector 9, measuring 1000 square yards, North Karachi Township, Karachi.

It further transpires that *Muhammad Zubair S/o Muhammad Haroon* had acquired the property from *Muhammad Ahmed Khan*, and the above rectification was carried out after completion of all codal formalities. Copies of the Corrigendum dated 31.10.2024, the paid

challan for double mutation fee, and the application dated 28.09.2023 substantiating the stance of the appellant have been placed on record.

18. The foregoing clearly demonstrates that the competent authority of KDA, after verifying the relevant record and fulfilling all procedural requirements, acknowledged and rectified the omission regarding the chain of title, thereby confirming that the appellant's ownership was duly derived through lawful transfer. Once such rectification was carried out by the authorized department, the foundation on which the courts below proceeded, namely, that the property was directly transferred from the original owner to the appellant, no longer survived. The documentary correction, being official and made after observance of codal formalities, carries presumption of correctness under the law and, in the absence of any challenge to its validity, could not have been ignored, as such, the same is taken into consideration.

19. In view of the above discussion, the concurrent findings of the learned courts below are modified to the extent that the **cancellation of Exh. P/21 is set aside**. Consequently, the decree passed in Suits No. 799,800,801,802,803 & 804 of 2011 is also modified to that extent, and the appellant's Mutation/Transfer Order dated 19.12.2009 (Exh. P/21) shall stand restored to its original legal position. The remaining findings and decrees relating to the fictitious sub-plots, illegal leases, and dismissal of Suits No. 146,147,148,149, 150 & 151 of 2012 shall remain intact. The parties shall, however, be at liberty to seek any appropriate remedy before the competent forum in accordance with law. All the present Appeals stand allowed only to the extent of the aforementioned modification.

Above are the reasons for my short order dated 30.09.2025.

JUDGE

*Jamil\**