

IN THE HIGH COURT OF SINDH AT KARACHI

High Court Appeal No.375 of 2018

[Air Vice Marshal Muhammad Afzal *versus* Sqdr. Ldr. (R) K.A. Chaudhry and 4 others]

Present:

Mr. Muhammad Faisal Kamal Alam, J.

Ms. Sana Akram Minhas, J.

Dates of hearing : 20.01.2026 and 04.02.2026.

Appellant : Air Vice Marshal Muhammad Afzal, through Barrister Muhammad Sarmad Khan Azad, along with M/s. Fouzia M. Murad, Alizeh Azad and Qasim Iqbal, Advocates.

Respondents No.1 to 4 : Sqdn. Ldr. (R) K.A. Chaudhry and 3 others, through Mr. R.F. Virjee, Advocate.

Respondent No.5 : Pakistan Defence Officer Housing Authority, through Mr. Zahid Khalil Arif, Advocate.

Case law cited by the Appellant's Counsel.

- i. **P L D 1990 Lahore 467**
[Muhammad Saeed *versus* Mst. Nahid Shagufta and 3 others];
- ii. **1990 S C M R 1031**
[Majeeduddin Khan and others *versus* Sardar Khan and others];
- iii. **2004 S C M R 1545**
[Haji Hashmat Ali (deceased) through Legal Heirs and another *versus* Manzoor Ahmed] – **Hashmat Ali Case**;
- iv. **2007 S C M R 729**
[Rehmatullah and others *versus* Saleh Khan and others];
- v. **P L D 2008 Supreme Court 73**
[Allah Diwaya *versus* Ghulam Fatima, Represented by Ahmad Sher and others] – **Ghulam Fatima Case**;
- vi. **P L D 2021 Supreme Court 538**
[Sheikh Muhammad Muneer *versus* Mst. Feezan]; and
- vii. **2018 C L C 478**
[Fahim Saeed *versus* Mst. Yasmeen and 3 others] - **Faheem Saeed Case.**

Case law relied upon by Counsel for Respondent No.1 to 4.

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[*Kiramat Khan versus IG, Frontier Corps and others*]

Other Judicial Precedents

- i. **1995 CLC 1977**
[*Ghulam Ali Shah and another versus Abbas Ali and 5 others*]; and
- ii. **2023 Y L R 104**
[*Abdul Aziz versus Abdul Kareem and 9 others*].

Law under discussion:

- (1) Limitation Act, 1908.
[**Limitation Law**]
- (2) Qanoon-e-Shahadat Order, 1984.
[**Evidence Law**]
- (3) Registration Act, 1908.
- (4) The Pakistan Defence Officers Housing Authority Order, 1980
[President's Order No.7 of 1980]
[**DHA Law**]

JUDGMENT

Muhammad Faisal Kamal Alam, J: The Appellant has challenged the Judgment dated 12.09.2018 [and Decree dated 28.09.2018], passed in Suit No.910 of 1996, filed by the Appellant against the Respondents.

2. Complaint contains the following Prayer:

- “(i) to declare that the plaintiff is lawful owner of the plot bearing No.91, 26 Street, Khayaban-e-Sehar, Phase-VI, Defence Housing Authority, Karachi.
- (ii) to further declare that the transfer in the name of defendant No.1 is void and illegal and division of the aforesaid plot is also illegal as no such request was made by the plaintiff and further declare that the transfer in the name of defendant No. 2,3 and 4 by way of gift is also invalid and based on fraudulent transaction and consequently be cancelled all leases, transfers orders, documents and title documents.
- (iii) to direct the defendant No.5 to restore the plot in the name of the plaintiff by cancelling of the transfer in the name of defendant No.1 to 4 and also cancelling the order of division of the plot.

- (iv) *to direct the defendants to restore the possession of the plaintiff and hand over the physical vacant possession of the aforesaid plot to the plaintiff.*
- (v) *to grant compensation to the plaintiff in the tune of Rs.50 lacs due to mental torture received by the plaintiff on the knowledge of the fraudulent transaction, decree of the compensation against the defendant No.1 to 4 only.*
- (vi) *to restrain the defendants their agents, representatives, attorneys or any other person acting on their behalf from transferring, parting with possession, construction, alienating, encumbering or renting out the plot bearing No.91, 26 Street, Khayaban-e-Sehar, Phase-VI, Defence Housing Authority, Karachi.*
- (vii) *any better relief / reliefs which this Hon'ble Court deem fit and proper in the circumstances of the case may also be awarded.*
- (viii) *Cost of the proceedings.”*

3. The relevant facts are, that the present Appellant filed a Suit for Declaration, Cancellation and Possession, Compensation and Permanent Injunction in respect of Plot No.91, 26th Street, Phase-VI, DHA, measuring 2000 square yards [the “**Suit Plot**”]. Averred that the Suit Plot was allotted by Respondent No.5 – DHA to the Appellant and he paid the entire price through Respondent No.1, because Respondent No.1 was posted at P.F Masoor Karachi, **whereas**, Appellant was being posted at different places outside Karachi. Since the Suit Plot was in an undeveloped area there was no occasion to construct a building, coupled with the fact that the Appellant was a salaried person at the relevant time; when Appellant applied for demarcation of land, the Respondent No. 5 – DHA, vide its registered Letter of 13.07.1996 informed the Appellant that the same has been transferred in the name of Respondent No.1 on the basis of Letter dated 26.10.1970. Later it transpired that Suit Plot has been bifurcated into three plots on the request of Respondent No.1. Legal Notice dated 03.07.1996 was served upon Respondent No.5 – DHA, but was never replied. Also applied for commercialization of Suit Plot vide his Application dated 16.02.1994 as the owner of Suit Plot, which was replied in negative by Respondent No. 5 – DHA by their Letter of 03.04.1994 [DHA / PND / 108/P]; this led to filing of the above Suit by the Appellant, which was contested by Respondents No.1 to 4 through their joint Written Statement. Respondent No.5 – DHA also filed its Written Statement, opposing the stance of the Appellant.

4. Mr. Muhammad Sarmad Khan Azad, the learned Counsel, argued in support of the above averments, and in particular, that the purported Agreement dated 18.04.1969 [**Exhibit PW 5/8**]- ‘the said Agreement’ and the Affidavit dated 22-2-1971 [**Exhibit 5/9**] are of no legal value, on the basis of which the Suit Plot was illegally transferred in the name of Respondent No.1, because both the Documents are undisputedly not registered, as required under Section 17 of the Registration Act; since the above Affidavit has a relinquishment clause favouring the Respondent No.1, thus, its non-registration is fatal and even the subsequent purported transfers in favour of the Respondents No. 2 to 4 [the Daughters] is also of no legal effect and the Suit Plot should be restored in the name of the Appellant; placed reliance on Section 32 [of the Registration Act]. In support of the above arguments, The Legal Team of the Appellant has cited the Case Law, which is already mentioned in the opening paragraph of this Judgment.

5. The Respondents No.1 to 4 have filed their joint Written Statement and disputed the claim of the Appellant, besides, questioning the maintainability of the Suit, that it is time barred. The main stance of the private Respondents is that the Suit Plot was relinquished by the Appellant in favour of Respondent No.1 [Father of Respondents No.2, 3 and 4], for a consideration of Rs.10,000/-, by way of afore-referred Agreement dated 18.04.1969 and Affidavit dated 22.01.1971, produced in the evidence [by both the Appellant and private Respondents] as Exhibits 5/8 and 5/9. Even initial deposit of Rs.5,200/- sent to Respondent – DHA was given by Respondent No.1. Since the transfer / mutation of Suit Plot on 28.10.1970, it was in exclusive ownership and possession of the private Respondents. Averred that codal formalities were completed; a Letter dated 26.10.1970 was also addressed by the Appellant to Respondent No.5 [DHA], requesting for transfer in favour of Respondent No.1, which was accepted by Respondent No.5 [DHA]. In this regard subsequent Correspondence of 27.05.1971 was addressed by Respondent No. 5 to the Appellant, confirming that the Suit Plot originally allotted to the Appellant, subsequently stood transferred in the name of Respondent No.1. Subsequently, as per rules and procedure, the Suit Plot was sub-divided in the names of the three daughters of Respondent No.1, that is, present Respondents No. 2, 3 and 4, approval whereof was communicated by Respondent No. 5 [DHA] to Respondent No.1, by the Correspondence of 07.01.1985 [Exhibit 7/42]. This transaction

was also completed when separate Transfer Orders in favour of the three private Respondents [Daughters] were issued by Respondent No.5 – DHA, produced in the evidence as Exhibits 39, 40 and 41 after payment of requisite transfer fee. For one of the portions of the sub-divided plot, even a B – Lease dated 25.07.1995 is also issued in favour of Ms. Ayesha Chaudhry [Respondent No.3], produced in evidence as Exhibit 7/32.

6. Mr. R. F. Virjee, Advocate, placed reliance on the reported Decision of the Hon'ble Supreme Court, which is mentioned in the opening paragraph of this Judgment.

7. **Whereas**, Respondent No.5 [DHA] has also disputed the claim of the Appellant as mentioned in his Complaint, while stating that Suit Plot was transferred on 27/30 May, 1971, in favour of Respondent No.1 on receipt of valid transfer documents. Averred that the Letter dated 30.07.1996 addressed on behalf of the Appellant to the Respondent – DHA was replied with advice / Correspondence [NO.DHA/A/AF - 3193/COORD] dated 21.08.1996, to seek remedy from the Court of law.

8. Following Issues were framed:

- “1. *Whether the suit is maintainable?*
2. *Whether the plaintiff is an allottee of the plot subject matter in the above suit?*
3. *Whether the instalment of the price of the plot was deposited in the name of the plaintiff?*
4. *Whether the plaintiff applied to the defendant No.5 for allotment of commercial plot vide application dated 16.4.1994 which was replied by defendant No.5 vide letter dated 3.4.1994?*
5. *Whether the defendant No.5 informed the plaintiff vide his letter dated 3.4.1994 that his plot was transferred to the defendants?*
6. *Whether the plot was transferred in the name of the defendant No.1 and thereafter to defendant No.2 to 4 without the consent and knowledge of the plaintiff?*
7. *Whether the transfer in the name of defendant No.2 to 4 based on forged documents and affidavit submitted by the defendant No.1?*
8. *Whether the plaintiff came to know about fraudulent transfer first time on 15.7.1996?*
9. *Whether the transfer in the name of defendant No.1 and thereafter in the name of defendant No.2 to 4 which is illegal and based on forged documents and if so that's its legal effect?*

10. *What should the decree be?”*

9. Parties led the evidence. The Appellant himself testified, whereas, on behalf of the private Respondents No.1 to 4, Respondent No.1 [DW-2] and one other Witness Mr. Rana Muhammad Fazlur Rehman [DW-1] deposed. Lt. Col. (Retd.) Iftikhar uddin gave evidence on behalf of the Respondent No.5-DHA.

10. Arguments heard and Record perused.

11. **Points for determination are as follows**

- i. Whether the Suit is barred by Limitation Act [1908] ?
- ii. Whether the Suit Plot was invalidly transferred in the name of the Respondent No.1 in the year 1971, without the consent and knowledge of the Appellant and thereafter to the private Respondents 2 to 4 ?
- iii. On the basis of testimonies and available record, who is the actual owner of the Suit Plot, the present Appellant or private Respondents?

12. Summary of the case law cited by the Barrister Muhammad Sarmad Khan Azad, is, that where an instrument has an effect to release, relinquish or surrender an interest in respect of immovable property, should be compulsorily registered otherwise it has no legal value, therefore, any attempt to overcome this lacuna would be a futile exercise. It is held in Faheem Saeed Case [*ibid*], that relinquishment deed was not a legal document for the purpose of alienating the share of co-owner to the respondent [of the reported decision], because it was not registered. The Honourable Supreme Court in Ghulam Fatima Case [*ibid*], has held that since execution of a gift deed was not proven, therefore, it is futile to examine that whether it was registered or not. In Hashmat Ali Case [*supra*], the Apex Court interpreted Sections 34, 35 and 38 of the Registration Act and is of the view that usually procedural defects would not vitiate the registration of a document, unless those defects are substantial, for instance, the document was produced by an unauthorized person, registration is done in absence of its executant,

denial of the execution of the document, language of the document is non-understandable; consequently, registration of sale deed under dispute was invalidated. The case law is in support of the contention, that the said Agreement [Exhibit 5/8] and the Affidavit [Exhibit 5/9] are invalid Instruments so is the transfer in favour of the private Respondents.

13. **Whereas**, the crux of the above cited Judgment on behalf of Counsel for the private Respondents is, that even against a void Order, limitation runs. This Judgment is cited to augment his arguments, that the entire Suit of the Appellant is hopelessly time barred.

14. It is the case of the Appellant so also stated by him in his evidence, that he was allotted the Suit Plot vide Letter dated 11.04.1970 [Exhibit 5/2], but the allotment Letter was not received by him as in the intervening period [September 1970], he was posted outside Karachi and he informed Respondent No.5 – DHA about change of location through Respondent No.1, vide Letters of 31.05.1969 and 21.02.1970 [Exhibits 5/3 and 5/4]. The Respondent No.1 deposited the amount of Rs.5,000/- with Respondent No.5 – DHA on the instructions of Appellant and remaining installments were also paid by the Appellant to Respondent No.5 – DHA through Respondent No.1.

15. That Appellant learnt about the transfer of the Suit Plot by Respondent No.5 in favour of Respondent No.1 for the first time in 1996, when in response to the correspondence of Appellant, Respondent No.5 addressed a Letter dated 13.07.1996 [Exhibit 5/6], which was responded through Legal Notice [Exhibit P.W.-5/7] by the Appellant.

16. The relevant Exhibits produced by the Appellant are as follows_

- i. Exhibit P.W.-5/1 – a prescribed Form / Application of Respondent No.5 for allotment of plots. It is signed both by the Appellant and Respondent No.1 and in his cross-examination to the Counsel of DHA, the Appellant admits his signature.
- ii. Exhibit P.W.-5/2 – Allotment Order dated 11.04.1970.
- iii. Exhibit P.W.-5/3 – a Letter dated 31.05.1969, addressed by Appellant to Respondent No.5 – DHA, informing the latter about change in rank and postal address of the Appellant.
- iv. Exhibit P.W.-5/4 – Letter dated 21.02.1970 by the Appellant to Respondent No.5, seeking confirmation that whether address has been changed. In this correspondence, it is stated that a cheque of Rs.3,700/- was also enclosed.

- v. Exhibit P.W.-5/5 – Letter dated 10.04.1967, by Appellant to Respondent No. 5, stating that the Appellant had requested Respondent No.1 to deposit Rs.5,000/- on behalf of the Appellant, as he was not in Karachi and the amount would be paid back to Respondent No.1.

17. The testimony of the Appellant is self-contradictory, when he has stated in his examination-in-chief, that the Exhibits P.W.-5/3 and 5/4 [*supra*] were addressed by Respondent No.1 to Respondent No.5, but in them incorrect address was mentioned. In fact the above two Letters were addressed by the Appellant himself [signed by him] and not by Respondent No.1.

18. Similarly, the undisputed last Correspondence exchanged between the Appellant and Respondent No. 5 – DHA is of 1.04.1969 - Exhibit P.W.-5/16 [*requiring the Appellant to provide photographs to the record of Respondent No.5*]; whereafter, the next Correspondence is of 16.02.1994 [Exhibit P.W.-5/24], wherein, the Appellant has stated that he was allotted a residential plot in DHA in 1969, but no commercial plot has been allotted thus far, with a request to allot one commercial plot; this request was declined by Respondent No.5, by their Correspondence of 03.04.1994 [Exhibit P.W.-5/25]. Again after a silence of more than two years, Appellant addressed a request [dated 03.07.1996, P.W.-5/26] to Respondent No. 5 – DHA, that he was the original allottee of the Suit Plot and he intended to raise construction thereat, therefore, demarcation of the above plot be made.

19. **Interestingly, in his above first Correspondence of 16.02.1994 with Respondent No. 5 – DHA, after a gap of almost twenty five years [from the above last Correspondence], the Appellant did not inquire about the Suit Plot, but made a request for allotment of commercial plot, which when declined by Respondent No. 5, vide their above Letter of 03.04.1994, the Appellant then addressed the afore-referred Correspondence of 03.07.1996, with the request to demarcate the Suit Plot, which obviously was declined by Respondent No.5, informing that the same was transferred way back on 26-10-1970, and subsequently, being sub-divided into three plots and further transferred.**

20. It is very pertinent to discuss here, that the Respondent No.5 addressed a Correspondence dated 31.03.1966, informing the Appellant that his cheque

No.156057 dated 09.03.1966 for Rs.5,200/-, had been returned as it was unpaid by the Bank. As a consequence, the official receipt No.7682 dated 15.03.1966 was treated as cancelled. This information about the dishonoured cheque was acknowledged by the Appellant through his Letter dated 10.04.1967, produced in the evidence by him as Exhibit P.W.-5/5, stating that he had requested the Respondent No.1 to deposit Rs.5,000/- on behalf of the Appellant while acknowledging the family terms with Respondent No. 1.

21. It means that even the initial price of the Suit Plot was not paid by the Appellant, which fact is not denied in his cross examination. This payment has direct nexus with the above said Agreement [Exhibit 5/8] and the Affidavit [Exhibit 5/9]; the said Agreement was witnessed by two persons, namely, Rana M.F. Rehman and M. Abdul Majid. The former testified as witness of Respondent No.1, but the latter had passed away.

22. With regard to the above said Agreement [Exhibit 5/8], the Appellant in his examination-in-chief has stated that “*shows to have been signed by me, but in actual fact it is not signed by me*”; **whereas**, for the Affidavit [Exhibit 5/9] he denied his signature.

In his cross examination to the Counsel for Respondent DHA, **the Appellant admitted** that the Respondent DHA “rightly transferred” the Suit Plot to Respondent No.1 as per Rules and Regulations.

23. The above named D.W.-1 corroborated the version of private Respondents, that the afore-referred Agreement dated 18.04.1969 [Exhibit P.W.-5/8, *original produced by the Appellant himself and copy whereof is produced by the Respondents’ side*], was entered into between the Appellant and Respondent No.1, wherein, *inter alia*, the fact about giving Rs.10,000/- as loan by the Respondent No.1 to the Appellant is stated. The said D.W.-1 is one of the witnesses and he has stated that the other witness Flight Lieutenant M. Abdul Majeed could not be examined, because he had passed away, which fact has not been controverted by the adversary. In his cross-examination, the said D.W.-1 has not been materially contradicted and he re-asserted that the Agreement was signed by both the Appellant and Respondent No.1 in his presence.

24. **Whereas**, Respondent No.1 in his examination-in-chief has specifically asserted that in April 1969, afore-said Agreement was signed

between him and the Appellant. Besides this, the D.W.-2 / Respondent No.1 produced another Affidavit of 5-11-1970, [notarized] as Exhibit 7/8, in which it is acknowledged by the Appellant that the Suit Plot has been transferred along with the possession to the Respondent No.1. In Clause 2 it is mentioned that the Appellant had transferred the Suit Plot to Respondent No.1 as per Bye-Law No. 15(4) of the then Society [now Respondent No.5 – DHA].

25. With his testimony, the Respondent No.1 has also produced the Transfer Order dated 27/30 May, 1971 [Exhibit 7/13], informing the Appellant about the transfer of the Suit Plot in favour of Respondent No.1. Approved Building Plan, issued by Clifton Cantonment Board [“CCB”] to Respondent No.3 as Exhibit 7/32; Completion Plan issued by the Competent Authority as Exhibit 7/35; Transfer Letters issued by Respondent No.5 – DHA in favour of Respondent No.2 to 4 [Daughters] as Exhibits 7/39 to 7/41; Approval of Sub-Division Plan as Exhibit 7/42; Sub-Lease Form A and Sub-Lease Form B in respect of one of the portions of the Suit Plot as Exhibits 7/31 to 7/32.

In his cross-examination, he has successfully denied the suggestion about non-signing of the above Exhibit P.W.-5/8 [the “**Said Agreement**”]. Denied that the marginal witnesses signed the above Agreement - P. W.-5/8, under the influence of Respondent No.1, and such denial could not be contradicted in overall testimonies of the Parties, concerning the existence of the afore-said Agreement. Without any contradiction, reiterated that Respondent No.1 paid a sum of Rs.10,000/- to the Appellant through two separate cheques and the same were drawn in favour of Respondent No.5, against which receipts were issued; that the installment of the Suit Plot was paid by the Respondent No.1; both the Affidavits [*ibid*, Exhibits 5/9 and 7/8] were signed by the Appellant in pursuance of the said Agreement. Respondent No.1 produced the prescribed form of the Statement of Account, as Exhibit 7/14, issued by the Respondent DHA, to show that, *inter alia*, ground rent, development charges, all are paid by the Respondent No.1, **about which he was not specifically cross examined**; consequently, this Exhibit 7/14, being an official document, attracts the presumption of genuineness, favouring the claim of the Respondent No.1, that payments and other charges of the Suit Plot have been made by the Respondent No.1.

Reiterated in his cross-examination that after transfer of the Suit Plot in favour of Respondent No.1, he received a Letter from Respondent No.5

and one copy thereof was sent to the Appellant. With regard to the afore-said documents relating to the Suit Plot, that is, the Demarcation Plan, subsequent Transfer Orders in favour of Respondents No.2, 3 and 4, Execution of B - Lease, which is a Title Document, no cross-examination was conducted by the Appellant; hence, assertion of the Respondent No.1 is proven.

26. The above named witness on behalf of Respondent – DHA testified about the transfer of the Suit Plot in favour of Respondent No.1 as per Rule and Procedure and its subsequent transfer in favour of Respondents No.2 to 4.

In his cross-examination, he affirmed that Exhibit P.W.-5/9 is one of the transfer documents, on the basis of which transfer of Plot takes place. This Exhibit P.W.-5/9 is the Affidavit sworn by the Appellant. To the question of relinquishment, the witness accepted that no such document was received by DHA [Respondent] from the Appellant, but, added [voluntarily], that DHA received relevant transfer documents in favour of Respondent No.1 by the Appellant. He has denied the suggestion that Appellant was not informed and in this regard, he has referred to the documents produced in the evidence. He has also denied the allegation of collusion in his cross-examination.

27. It is correctly observed in the Impugned Judgment that burden of proof, concerning the ownership of the Suit Plot, is on the Appellant, in view of Article 126 of the Evidence Law, *inter alia*, because admittedly the Respondents No.1 to 4 were / are in possession of the Suit Plot since decades.

28. **Exhibit 5/14** is the Correspondence dated 26.10.1970 [*enclosing therewith an Affidavit*], from the Appellant to Respondent No.5 – DHA, informing it about the transfer of the Suit Plot in favour of Respondent No.1. This Letter bears the same address [3, Putran Road, Wah Cantt.], which was earlier intimated to Respondent DHA by the Appellant, viz. Exhibits 5/3 and 5/4 [*ibid*]- a hand written Letter, dated 31.05.1969 and 21.02.1970, for future correspondences, and was duly acknowledged by the DHA vide their Reply of 09.06.1970 [**Exhibit PW-5/22**]. The Appellant in his cross-examination to the Counsel of Respondent No.5, has admitted that he was aware of the Correspondence between Respondent No.5 [DHA] and Respondent No.1, up to 1970. It means that the above acknowledgment of Respondent No.5 – DHA was in knowledge

of the Appellant. Although the Appellant had disputed his signature on the above Exhibit 5/14, but, his reply has no credibility in view of his overall self-contradictory testimony.

29. That the claim of the Appellant is belied by the documentary evidence, **in particular, the official record**. His credibility is impeached, when he denied his own signatures, regarding which the finding of the learned Single Bench is correct. There is no difference in signatures and it is unfortunate to observe that after rising to such a high rank in the forces, the Appellant resorted to such tactics.

30. By looking at the evidence and documents produced in support thereof, it is not difficult to conclude, that the Appellant attempted to claim the Suit Plot after his request for allotment of commercial plot [by the afore-referred Letter of 16.02.1994 – Exhibit P.W.-5/24] was turned down by Respondent No.5 by its Letter dated 03.04.1994 [Exhibit P.W.-5/25].

31. It would be illogical to agree with the version of the Appellant, that he was unaware about the transfer of the Suit Plot in favour of Respondent No.1 by Respondent No.5, when the Appellant was himself serving in Pakistan Air Force and rose to the rank of Air Vice Marshal. Even otherwise, it is unbelievable that the Appellant, who himself was a high ranking military officer was mis-led by Respondent DHA, when its Governing Body and the Executive Board comprise of Senior Officers from the Armed Forces.

32. Equally important is to state, that almost all the documents relied upon by the Respondents, are official documents and presumption of their genuineness is recognized in view of Articles 90 to 92 of the Evidence Law, coupled with the statutory presumption contain in Article 129(e) [of the above Law], that official acts are done in a regular manner, unless that presumption is disproved in the evidence, which could not be achieved by the Appellant.

Secondly, it is also a rule with regard to such public record, that they are presumed to be in knowledge of the adversary. In this regard, the reported Judgments, [already mentioned in the opening paragraph of this Judgment], are relevant. Thus, the Transfer Order [*ibid*] being a public document, it is assumed that the Appellant had ample knowledge of the same. The Suit was filed on 12.09.1996, that is, twenty-five years after the above Transfer Order

of 1971 [Exhibit 7/13]. Under the Limitation Law, prescribed time for seeking restoration of possession, declaration and cancellation of a document, is twelve years, six years and three under Articles 142, 120 and 91, respectively, and hence, the above Suit is hopelessly time barred, besides, the Appellant has failed to prove his ownership of the Suit Plot.

Thirdly, about the said Agreement [Exhibit 5/8] and the two Affidavits. Their existence and execution has been proved. The said Agreement is the foundational Document on the basis of which further transaction was undertaken with regard to the Suit Plot, including the two Affidavits. The gist of the terms of this Agreement is, that Respondent No.1 had given a loan of Rs.10,000/- to the Appellant for purchase of the Suit Plot, with the condition that either the loan with 7% interest would be returned or if the Appellant decides not to retain the Suit Plot, it would be transferred to the Respondent No.1 in consideration of the above amount without payment of any interest. Similarly, the Affidavit [Exhibit 5/9] in its Clause 2 mentions the word ‘relinquish’, regarding which the Appellant’s Counsel has built up his case. Neither the said Agreement [Exhibit 5/8] nor the above Affidavit can be declared as a relinquishment deed, requiring registration, *inter alia*, in view of the evidence that has come on record, in particular, when the entire price of the Suit Plot together with the other miscellaneous charges have been paid by the Respondent No.1. It is an established rule, that the substance and not the form is to be seen while interpreting a document. Merely, by mentioning the word ‘relinquish’ the Affidavit cannot become one, because the Appellant had already transferred his interest in the Suit Plot in favour of the Respondent No.1, admittedly prior to execution of the above Affidavit [Exhibit 5/9].

Fourthly, the afore-said Agreement is in fact a sale transaction simpliciter, because, it has all the basics of a contract, viz. offer, acceptance and sale consideration. Even such kind of agreement or arrangement can be made orally. Similarly, the Affidavit [Exhibit 5/9] was executed by the Appellant in pursuance of the above Bye Law No. 15 (4), and it is not shown that any registration was required to complete the transfer in favour of the Respondent No.1. Therefore, the case law cited by the learned Counsel for the Appellant is distinguishable from the facts of the present **LIS**.

33. Points for determination are answered as under:

- i. Suit of the Appellant is barred by the Limitation Law.
- ii. The transfer of the Suit Plot in favor of Respondent No.1 and subsequent transfers in favor of private Respondents, were validly done, after completing the requisite formalities.
- iii. The Respondent No. 1 was the actual owner, who competently transferred the Suit Plot and its bifurcated portions to the Private Respondents and they are the present lawful Owners.

34. Looking at the overall evidence, the observation of the learned Single Bench of this Court with regard to imposing the cost is also justified. Consequently, no interference is required in the impugned Judgment and the Appeal is dismissed.

35. The private Respondents are entitled for the cost throughout.

Judge

Judge

Karachi.
Dated: 18.08.2026.

Riaz / P.S.