

IN THE HIGH COURT OF SINDH, KARACHI

Suits No. 603/2005 & 1713/2008

PRESENT:

Mr. Justice Arshad Hussain Khan.

Suit No.603/2005

[As per amended title dated 18.03.2010]

Mst. Rasheedan Bibi since deceased through her legal heirs

Vs.

Muhammad Hanif and others.

AND

Suit No.1713/2008

Muhammad Ayaz

Vs.

Military Estate Office and others

M/s. Shahensha Hussain and Zulfiqar Ali Advocates for the Plaintiff.

Mr. Muhammad Sadiq Hidayatullah, Advocate for Defendant No.2.

Mr. Asadullah Lashari, Advocate for Defendant No.4.

Mr. Anwar Kamal, Assistant Attorney General

Date of Hg: 30.10.2019, 12.11.2019, 04.12.2019, 10.12.2019, 16.12.2019 & 24.12.2019.

JUDGMENT

ARSHAD HUSSAIN KHAN, J. These counter suits filed by the parties against each other have been consolidated, vide order dated 17.05.2010 on the ground that the parties and the subject matter are the same. Hence, they are taken up together for disposal of the same.

2. **Suit No.603/2005:**

This suit, which is a leading suit per order dated 17.05.2010, was presented on 16.04.2005 for Declaration, Possession, Cancellation of Documents, Damages & Permanent Injunction with the prayer to pass judgment and decree in favour of the Plaintiff against the Defendant as follows:-

- i) To direct the legal heirs / survivals of defendant No.3 and defendant No.4 to perform the contract by executing sale deed before the Sub-Registrar having territorial jurisdiction of the suit property i.e. plot bearing No.795/M-1, measuring 550 square yards situated at Defence Officers Housing Society, Phase-I, Malir Cantt., Karachi, in favour of the plaintiff.

OR

In case of failure of the above defendant, the Nazir of this Court may be pleased to direct to perform the said contract on their behalf in respect of the suit property in favour of the plaintiff.

- ii) To declare that the General Power of Attorney dated 28.10.1999 issued at Kharian, Gujrat [Punjab] vide Registration No.814/4 executed by defendant No.3 in favour of defendant No.5 and Sub-Power of Attorney vide Registration No.4068 dated 10.11.1999 executed by defendant No.5 in favour of defendant No.1 or any other document/documents, if any, issued anywhere in Pakistan/abroad in respect of the suit property, i.e. plot bearing No.795/M-1, measuring 550 square yards situated at Defence Officers Housing Society, Phase-I, Malir Cantt. Karachi, are null / void and have no legal effect in the eyes of law.
- iii) To order for cancellation of the document in respect of the suit property i.e. plot bearing No.795/M-1, measuring 550 square yards situated at Defence Officers Housing Society, Phase-I, Malir Cantt., Karachi, except the document/documents executed in favour of the plaintiff.
- iv) To deliver a copy of the decree of cancellation to the Sub-Registrars having jurisdiction regarding the above registered documents to note it the facts of the cancellation of the registered between any of the defendants except the plaintiff in respect of the suit property i.e. plot bearing No.795/M-1, measuring 550 square yards situated at Defence Officers Housing Society, Phase-I, Malir Cantt., Karachi, in the Book of Record.
- v) To declare the documents i.e. approval plan of the suit property i.e. plot bearing No.795/M-1, measuring 550 square yards situated at Defence Officers Housing Society, Phase-I, Malir Cantt. Karachi, issued in favour of defendant No.1 as null and void. As such the same has been obtained by way of fraud by showing forged General Power of Attorney which was executed in favour of defendant No.5 at Kharian, Gujrat [Punjab] on the basis of said Power of Attorney. The Sub-Attorney was issued at Karachi in favour of defendant No.1 and the construction on the suit property was made on the basis of above said approval plan & and further to declare the said construction raised on the suit property is illegal and defendant No.1 and 2 have no authority to raise construction thereon.
- vi) To direct defendant No.7 to demolish the construction raised on the suit property i.e. plot bearing No.795/M-1, measuring 550 square yards situated at Defence Officers Housing Society, Phase-I, Malir Cantt., Karachi on the basis of approval plan, which was obtained by defendant No.1 by way of fraud.

- vii) To direct defendants 1, 2 & 5 to pay Rupees One Million each to the plaintiff as damages.
- viii) To grant permanent injunction against the defendants, their servants, agents, attorney/s representative/s or any other on their behalf and restraining them for transferring /selling /gifting / leasing or any other act by creating any third party interest in any manner in respect of the suit property i.e. plot bearing No.795/M-1, measuring 550 square yards situated at Defence Officers Housing Society, Phase-I, Malir Cantt., Karachi.
- ix) Cost of the suit.
- x) Any other / better relief/s as this Court may deem fit and proper.

3. Whereas **Suit No.1713/2008** was filed by Muhammad Ayaz son of Muhammad Haneef [defendant No.2 in suit No.603/2005], inter alia against Mst. Rasheedan Bibi [plaintiff in suit 603/2005], on 16.12.2008 for Cancellation, Declaration, Permanent Injunction and Damages with the following prayers:-

- a) To declare that the documents in the office-record of defendant No.1 vide its registration No.2065 [Annexure L-2 to L-6] pertaining to the suit property plot bearing No.795/M-1, measuring 550 square yards, situated at Defence Officers Housing Society, Phase-I, Malir Cantt., Karachi, are fabricated, motivated and prepared maliciously in order to deprive the plaintiff from his possession and legal rights.
- b) To cancel the forged documents prepared by defendant No.2 in connivance of defendant No.1 against the right of plaintiff and in favour of defendant No.1, vide its registration No.2065 [Annexure L-2 to L-6].
- c) To declare that the lease in the name of Muhammad Aslam son of Choudhry Ali Ahmed through Attorney Captain Abid Akhtar vide its registration No.544 dated 27.02.1999 [Annexure A-4 to A-10] on the basis of attorney the sale agreement in favour of plaintiff and approval by the Central Government / Military Estate Officer NOC and documents in the name of plaintiff are legal and genuine, as he acquired the suit property after fulfillment of clause (9) Schedule IX-A of the Cantonment Land Administration Rules, 1937.
- d) To restrain defendant No.1 from tempering the record of suit property in its office and direct the authority of MEO / defendant No.1 to seal the record of suit property till the final disposal of the suit.

- e) To restrain defendants 1 & 2 from visiting at the suit property in order to attempt to dispossess the plaintiff from the suit property.
- f) To direct defendants 1 & 2 to pay the damages amount of Rs.3,000,000/- in favour of plaintiff, either separately or jointly.
- g) To restrain the defendants, their agents, persons, and workers from dispossessing the plaintiff from the suit property vide plot bearing No.795/ M-1, measuring 550 Square Yards situated at Defence Officers Housing Society, Phase-I, Malir Cantonment, Karachi, till the disposal of the suit.
- h) Any other better relief which this Court deem fit and proper according to the circumstances of the case.

4. Since the above suits are consolidated and the parties more or less are same therefore for the convenience sake the parties hereinafter referred to as *Mrs. Rasheedan Bibi* [Plaintiff in Suit No.603/2005 & Defendant No.2 in Suit 1713/2008] '**Plaintiff**' and *Muhammad Hanif* as '**Defendant No.1**' *Muhammad Ayaz* [Plaintiff in Suit 1713/2008 & Defendant No.2 in Suit 603/2005], as '**Defendant No.2**', *Muhammad Aslam* as '**Defendant No.3**', *Haji Noor Muhammad* [defendant No. 4 in both the suits] as '**Defendant No.4**' , *Captain Muhammad Akhtar Abid* as '**Defendant No.5**', *Military Estate Office* [defendant No.6 in Suit No. 603/2005 and defendant No. 1 in suit No. 1713/2008] as '**Defendant No.6**', and *Cantonment Executive Officer* [defendant No.7 in Suit No. 603/2005 and defendant No. 3 in suit No. 1713/2008] as '**Defendant No.7**'. And the property bearing plot No.795/M-1, measuring 550 square yards, Defence Officers Housing Society, Phase-I, Malir Cantonment, Karachi, No.795/M-1, measuring 550 square yards, Defence Officers Housing Society, Phase-I, Malir Cantonment, Karachi, subject matter of both suits will be referred to as the '**suit property**'.

5. The brief facts of the case as per the pleadings of Mst. Rasheedan Bibi are that the suit property was allotted by defendant-Cantonment Executive Officer to Muhammad Aslam son of Chaudhry Ali Hameed [Defendant No.3] on 28.12.1987. The defendant No.3 has executed special power of attorney dated 30.05.1988 in favour of one Muhammad Aslam son of Shaikh Muhammad Zaman and authorized him to present the paper lease deed before Military Estate Officer

[Defendant No.6] and accordingly a registered lease deed of suit property was executed on 02.06.1988 in favour of Defendant No.3. It has been stated that in the month of September, 1990, a sale agreement was executed between Defendant No.3 and Haji Noor Muhammad [Defendant No.4] in respect of the suit property for a total sale consideration of Rupees One Lac, which was paid to him upon which physical possession of the suit property along with the original papers was handed over and a registered general power of attorney having power to sell in favour of Defendant No.4 was executed. Besides this, a registered construction agreement was also executed between Defendants No.3 and 4. It has been further stated that Defendant No.4, being a registered attorney of Defendant No.3, and owner of the suit property in the month of November 1992, through a sale agreement, has entered into a sale transaction with the plaintiff to sell the suit property for a total sale consideration of Rs.1,80,000/-. The plaintiff on 10.11.1992 paid the total sale consideration amount to defendant No.4 upon proper receipt. The defendant No.4 upon receiving the entire sale consideration has executed a registered sub-power of attorney in favour of the plaintiff and handed over the possession of the suit property along with all original documents. The defendant No.4 has also sworn an affidavit in respect of the suit property wherein he has given undertaking that he is agreed to be ready and prepared to sign and execute all papers whenever required in connection of the suit property in favour of the purchaser / plaintiff. It has been further stated that Defendants No. 1, 2 and 5 have made conspiracy and played fraud by preparing forged and fabricated documents and occupied the suit property by force with mala fide and ulterior motive to deprive the plaintiff from her valuable property. It has also been stated that defendant No.5 has got forged general power of attorney in respect of the suit property, which was registered at Kharian [Gujrat, Punjab] by showing the fictitious residence of Defendant No.3 on 28.10.1999. Thereafter, through a sale agreement Defendant No.5 sold the suit property to Defendant No.2 by purporting himself as attorney of Defendant No.3. He also executed a registered sub-power of attorney in favour of Defendant No.1. It has been also stated that on 14.06.2002, the plaintiff's counsel sent a letter to defendant No.7 asking therein for removal encroachment on the suit property. The said letter was

subsequently replied by defendant No.7 whereby it came into the knowledge of the plaintiff about the forged and fictitious transaction in favour of defendants No.1. The plaintiff filed a civil suit bearing No.49/2002 in the court of learned Senior Civil Judge, Malir, Karachi, against defendants 1, 4 and the government functionaries where after receiving summons, defendant No.1 appeared and filed written statement. However, subsequently, the plaint of said suit was rejected under order VII Rule 11 of CPC by learned Senior Civil Judge vide order dated 07.03.2005. The plaintiff thereafter filed the present suit. It has been stated that the documents viz. Second Lease deed in favour of Defendant No.3, and subsequently General Power of Attorney in favour of Defendant No.5 by Defendant No.3, and thereafter Sub-General Power Attorney in favour of Defendant No.1 and the agreement to sell dated 10.11.1999 in favour of Defendant No.2 are bogus and fabricated documents have been obtained through fraud and manipulation after the death of defendant No.3 who expired on 2.12.1992, hence said documents having no legal value are required to be declared void. It has been further stated that the plaintiff being an old aged lady greatly injured and humiliated by defendants 1, 2 and 5, who forcibly occupied the suit property and put the suit property in litigation and as such she claimed Rupees One Million each from the defendants 1,2 & 5 as damages.

6. On the contrary, Muhammad Ayaz, defendant No.2 in the aforesaid Suit No. 603/2005 has also filed Suit No.1713/2008 against Mst. Rasheedan Bibi [plaintiff in Suit No. 603/2005] and other defendants, which was presented on 16.12.2008 for cancellation of documents, declaration and permanent injunction and damages of Rs.30,00,000/-, the stance of Defendants No.1 and 2 in their pleadings are that the suit filed by the plaintiff is not maintainable on various grounds. Further that defendant No.2 [Muhammad Ayaz] is the owner and in physical possession of the suit property, which was originally allotted to Defendant No.3 [Muhammad Aslam s/o Choudhry Ali Ahmed] by the defendant-Military Estate Office on 28.12.1987, and original allottee subsequently on 28.10.1999 executed a registered General Power attorney in favour Captain Muhammad Akhtar Abid [Defendant No.5]. It has been stated that defendant No.2 purchased the

suit property after payment of valuable sale consideration Rs.15,50,000/- under the agreement to sell dated 10.11.1999, the entire sale consideration was paid through cheques and pay orders simultaneously the physical, vacant peaceful possession of the suit property was also handed over to him in presence of witnesses and since then defendant No.2 is paying occupancy charges / taxes of the suit property regularly to defendant-Cantonment executive officer. The Military Estate Officer issued NOC and demarcation was also carried out on 05.01.2002, thereafter, proposed building plan was moved before the office of Cantonment Board, which was approved, vide order dated 20.02.2002. It has been further stated that issuance of NOC by defendant No.6 conclusively proved that there was no interruption with the suit property towards any entry or transaction on the official record before January 2002. The NOC could have been refused by defendant No.6 in case of any dispute or controversial situation with the suit property. It has been also stated that lease deed dated 27.02.1999 was executed by defendant No.6 in favour of original allottee through Attorney Captain Muhammad Akhtar Abid who had sold out the suit property to the Defendant No.2. It has been further stated that defendant No.2 after taking over the possession of property completed all the formalities under the rules and regulation of the competent authority and by spending heavy amount raised construction on the suit property in pursuance of the approved plan. It has been further stated that earlier suit 49/02 for declaration, injunction and possession filed by Mst. Rasheedan Bibi was rejected under Order VII Rule 11 CPC and after its rejection, Mst. Rasheedan Bibi did not prefer any revision / appeal or petition before any legal forum and failed to exercise the next remedy in the said suit but on 16.04.2005 by concealment of facts on the basis of fabricated, manipulated bogus and so called sale agreement filed a suit 603/2005 for possession, cancellation, declaration and injunction. Since the fate of the suit was already adjudicated / decided before the trial court, therefore, the present suit could not be filed on the same cause of action and as such the suit of the plaintiff is hit by principle of res judicata. It has been further stated that the plaintiff [Rasheedan Bibi] has relied upon sale agreement wherein neither any date of execution is mentioned nor the same is registered and according to the Rules and Regulations of

defendant No.1, as mentioned in Schedule IX-A of the Cantonment Land Administration Rules 1937, Clause 9, that the property within the jurisdiction of Cantonment cannot be assigned, transferred or sub leased or any part thereof without the prior approval of the Central Government, therefore, the un-dated sale agreement is illegal as such the claim of the plaintiff in respect of the suit property is untenable in law. It is further stated that the plaintiff, in connivance with official defendants made a conspiracy against defendant No.2 and prepared some forged documents after a long time of rejection of the plaint of the Suit No.49/2002 and the documents filed by plaintiff in the office of defendant No.6 in subsequent stage is a development with malicious act, which have been designed with ulterior motives. It has been further stated that after execution of lease dated 27.02.1999, the plaintiff has not taken any action, which establishes the malafide on the part of the plaintiff in connivance of defendant No.6 who after taking handsome gratification attempted to prepare the record of the suit property against defendant No.2 and misused the powers by defendant No.6, which they are not entitled under the law. It has been further stated that the claim of the plaintiff is based on the bogus and fabricated documents prepared and designed with ulterior motives, therefore, the documents submitted by the plaintiff in the office of defendant No.6 are liable to be cancelled. And the documents possessed by defendant No.2 including the lease in the name of Muhammad Aslam son of Choudhry Ali Ahmed and the documents viz. approved plan, NOC, Demarcation letter in favour of the defendant No.2 are required to be declared as legal and valid. The defendants also claimed damages of Rs.30,00,000/- against the plaintiff and defendant No.6 for causing losses monetary and others.

7. Besides defendants No.1 and 2, the defendants No. 4, 5 and 6 have also filed their respective written statement.

8. Defendant No.4 [Haji Noor Muhammad] in his written statement while admitting the stance of the plaintiff has stated that he had received full and final payment from the plaintiff and consequently physical possession of the suit property had been delivered to the plaintiff with all original documents of the suit property.

9. Defendant No.5 [Captain Muhammad Akhtar Abid], in his written statement while taking preliminary objections has stated that the plaintiff has no locus standi or prima facie case and has come to the Court with unclean hands as such the suit is not maintainable under the law and liable to be dismissed under the doctrine of res judicata. It has been further stated that the claim of the plaintiff is bogus as the plaintiff could not have been purchased the suit property without obtaining the prior permission from the Central Government as mentioned in Clause 9(A) of the Lease, therefore, the purported sale agreement between defendant No.3 [through attorney defendant No.4] and the plaintiff, is untenable in law. It has also been stated that defendant No.5 being the attorney of defendant No.3 at the time of selling of the suit property to defendant No.2 obtained permission from the Central Government, thereafter, NOC, demarcation and approved plan were accorded to the defendant No.2, which establish that the suit property was free from all encumbrances, lien and or objections whatsoever. It has been further stated that the suit property was sold out to defendant No.2 upon receiving the sale consideration through banking transaction, and after making query from defendant No.6. Furthermore, without obtaining the NOC, approved plan and demarcation plan, the defendant No.2 or any other person could not have been raised construction.

10. Defendant No.6 [Military Estate Office], in its written statement has admitted that suit property was allotted to Defendant No.3 by the Government of Pakistan, Ministry of Defence [Defendant No.8] and the above said property is held by the said allottee/officer on lease in Schedule IX-A of the Cantonment Land Administration Rules, 1937, through a lease deed executed by the MEO Karachi [Defendant No.6] on behalf of the President of Pakistan. It has been also admitted that the Ministry of Defence granted extension in time limit for completion of lease formalities in favour of said allottee [defendant No.3] as a special case subject to payment of development charges prevalent at that time. It has been stated that a lease deed through Mr. Muhammad Aslam son of Sheikh Muhammad Zaman was executed by defendant No.6 on behalf of President of Pakistan. However, copy of registered lease deed was not supplied to MEO Karachi due to which the entry under rule 10 of the Cantonment Land Administration Rules 1937 in record of rights

could not be made. It is also stated that departmental enquiry leading to execution of second lease deed of suit property has been carried which proved that the second lease deed dated 27.02.1999 was constructed on forged, fake and fabricated documents presented by defendants 1 & 5. It is further stated that the plaintiff has submitted a copy of memo of payment of pension of allottee officer / defendant No.3 in support of her averments in the office of defendant No.6, according to which the date of death of allottee officer is 02.12.1992. Furthermore, MEO Karachi will not process the case of sale transaction of the lease hold rights of suit property till the decision of this case. Lastly, it has been stated that the suit of the plaintiff may be decreed as prayed.

11. Record reveals that during pendency of the above proceedings, the Plaintiff [Mst. Rasheedan Bibi] expired on 07.2.2010 and upon application, the legal heirs of deceased were brought on the record through amended title filed on 18.03.2010.

12. On 17.05.2010, proposed issues filed on behalf of the plaintiff were taken on the record and the same were adopted as consolidated issues in these suits. On the same day, by consent, Commissioner for recording evidence of the parties was appointed. Subsequently, commissioner after completing the commission has submitted his report along with evidence, which was taken on the record on 05.08.2014.

From the perusal of the report, it transpires that the Plaintiff in support of her stand has examined her son namely Muhammad Iqbal son of Muhammad Yaqoob Arain, as [PW-1]. During the examination-in-chief, he has produced the following documents:-

DOCUMENTS	EXHIBIT/ANNEXURE
Affidavit in evidence	PW/1
Photocopy of power of attorney executed by the other legal heirs of deceased plaintiff.	PW/2
Photocopy of allotment letter dated 28.12.1988	O/1
Photocopy of Special Power of Attorney dated 30.05.1988, executed by the deceased Muhammad Aslam Gondal .	PW/3
Photocopy of registered lease vide registration No.2065 dated 02.06.1988 in	PW/4

favour of the deceased Muhammad Aslam Gondal.	
Photocopy of letter dated 20.06.1988 issued by Military Estate Office.	O/2
Photocopy of Receipt No.093 dated 28.05.1988.	PW/5
Photocopy of Receipt No.120301 dated 30.05.1988.	PW/6
Photocopy of sale agreement dated September, 1990.	PW/7
Photocopy of General Power of Attorney dated 17.09.1990.	PW/8
Photocopy of construction agreement dated 17.09.1990.	PW/9
Photocopy of sale agreement dated 10.11.1992 between Muhammad Aslam Gondal through attorney Haji Noor Muhammad with deceased plaintiff.	PW/10
Photocopy of Receipt of payment issued by the attorney of deceased Muhammad Aslam Gondal.	PW/11
Photocopy of registered Sub Power of Attorney vide registration No.2611 dated 12.11.1992.	PW/12
Photocopy of affidavit of Haji Noor Muhammad son of Haji Abdullah.	PW/13
Photocopy of legal notice dated 31.06.2002	O/3
Photocopy of affidavit dated 28.11.2008 sworn by widow Mst. Ghulam Fatima of Muhammad Aslam Gondal.	PW/14
Copy of Inquiry Report dated 02.11.2006 issued by Military Estate Officer Karachi Circle.	O/4
Certified copy of written statement filed by defendant No.6 [suit 603/2005].	O/5
Photocopy of pension book	O/6
Photocopy of death slip issued by Rawalpindi General Hospital of deceased Muhammad Aslam Gondal.	O/7
Photocopy of affidavit of deceased nephew Najeeb Ahmed Gondal.	PW/15
Photocopy of letter dated 27.10.2009, issued by the Military Estate Office.	O/8
Photocopy of letter dated 16.10.2009	O/9
Photocopy of letter dated 14.12.2009 for cancellation of building plan.	PW/16

Photocopy of GLR of Extract Form dated 28.10.2009, issued by Military Estate Office.	O/10
Photocopy of FIR No.21/2009 dated 30.06.2009	O/11
Photocopy of Inquiry Report by Executive Officer, Cantonment Board.	O/12
Photocopy of Pension Memo in favour of the legal heirs of deceased Muhammad Aslam Gondal.	O/13
Photocopy of Memo of payment of pension dated 10.08.2000.	PW/17
Photocopy of forged NIC of deceased Muhammad Aslam Gondal.	O/14
Photocopy of NIC of defendant No.5	O/15
Photocopy of application for transfer of plot written by defendant No.5.	PW/18
Photocopy of letter issued by Town Planner to defendant No.5.	PW/19
Photocopy of application filed by defendant No.4 for issuing certified copy of receipt No.093 Book No.133, dated 28.05.1988.	PW/20
Photocopy of inquiry report on alleged illegal transaction of Plot No.795 DOHS, Phase-1, Malir Cantt. Karachi.	O/16
Photocopy of Note Sheet	O/17

Subsequently, PW-1 was cross-examined by the defendants' counsel. Thereafter, plaintiff examined another witness namely Choudhry Muhammad Yousaf son of Haji Muhammad as PW-2. During his examination-in-chief he has produced his Affidavit in evidence as Exh.PW-2/1. The said witness was also cross-examined by the Defendants' counsel.

13. On the other hand, Muhammad Ayaz [Defendant No.2 in Suit No.603/2005 and Plaintiff in Suit No.1713/2008] examined defendant No.1 [Muhammad Hanif] being his attorney as Exh.DW-1. During his examination he has produced the following documents :-

DOCUMENTS	MARKED
-----------	--------

Affidavit-in-evidence.	DW-1/1
General Power of Attorney	DW-1/2
Irrevocable Power of Attorney	DW-1/3
Copy of Sale Agreement dated 10.10.1999	DW-1/4
Copy of Receipt dated 08.11.1999	DW-1/5
Copy of Receipt dated 30.11.1999	DW-1/6
Photocopy of cheque 48058 dated 30.11.1999	O/1
Photocopy of pay order No.527296 dated 10.11.1999	O/2
Photocopy of cheque No.24121 dated 10.10.1999	O/3
Affidavit of Capt. Muhammad Akhtar Abid dated 10.11.1999	DW-1/7
Copy of Indemnity Bond of Capt. Muhammad Akhtar Abid	DW-1/8
Copy of Letter dated 10.11.1999	DW-1/9
Copy of Application dated 30.11.1999 to Defendant No.7	DW-1/10
Copies of paid Tax Challan / Receipts	DW-1/11 to DW-1/15
Copy of letter dated 09.05.2002 by Defendant No.7	DW-1/16
Copy of Approved Plan	DW-1/7
Copy of certificate dated 29 th March, 2002	DW-1/18
Copy of Building Lease dated 26.02.1999	DW-1/19
Copy of Special Power of Attorney	DW-1/20
Photocopy of order dated 07.03.2005, passed in Suit No.49/2002	O/4
Photocopy of Diary Sheet	O/5
Photocopy of Final Charge Sheet	O/6
Photocopy of Affidavit Mr. Najeeb Ahmed Gondal.	O/7
Photocopy of Complaint of Suit No.1713/2008	O/8

The said witness was partially cross-examined as during his cross-examination he fell ill and subsequently failed to appear for his further cross-examination. Faced with such a situation, Defendant No.2 moved application (CMA No. 6940/12) wherein he sought permission to file his affidavit-in-evidence in place of his attorney (defendant No.1). Upon no objection of the plaintiff's counsel, this Court on 12.02.2013 granted the permission to defendant No.2 to file his own

affidavit-in-evidence for further proceedings. Relevant portion of the order dated 12.02.2013 is reproduced as under:

“By consent this application (C.M.A. No. 6940/2012) is allowed. Defendant No.2 shall be at liberty to file his own affidavit-in-evidence before the learned Commissioner and tender himself for cross-examination. The affidavit already filed by attorney of defendant No.2 and the cross-examination partly record by the learned Commissioner shall be treated as part of the record.”

However, there is nothing available on the record, which could show that defendant No.2 filed his affidavit-in-evidence or put himself for cross-examination. However, the affidavit-in-evidence of Muhammad Ghayyas, being attorney of Defendants No.1 and 2, as Exh.D/1 is available on the record. The defendant in support of his stance also examined one Javed Iqbal as Exh. D/2. The said witnesses were also cross-examined by plaintiff’s counsel as well as other counsel. The witness [D/1] during his examination-in-chief has produced the following documents :-

DOCUMENTS	MARKED
Affidavit-in-evidence.	D/1
General Power of Attorney	D/2
Irrevocable Power of Attorney	D/3
Copy of Sale Agreement dated 10.10.1999	D/4
Copy of Receipt dated 08.11.1999	D/5
Copy of Receipt dated 30.11.1999	D/6
Photocopy of Cheque No.48058 dated 30.11.1999.	O/1
Photocopy of Pay Order 527296 dated 10.11.1999.	O/2
Copy of Cheque 24121 dated 10.10.1999	O/3
Copy of Affidavit of Captain Muhammad Akhtar Abid dated 10.11.1999	D/7
Copy of Indemnity Bond of Capt. Muhammad Akhtar Abid.	D/8
Copy of the letter dated 10.11.1999	D/9
Copy of Application dated 30.11.1999	D/10
Copies of paid tax challah / receipts	D/11 to D/15
Copy of the letter dated 09.05.2002 defendant No.7.	D/16
Copy of the Approved Plan	D/17
Certificate dated 29 th March 2002	D/18
Copy of Building Lease dated 26.02.1999	D/19
Copy of Special Power of Attorney	D/20

Thereafter affidavit-in-evidence of Muhammad Akhtar Abid, [Defendant No.5 in Suit No.603/2005] has been brought on the record as Exh.D/3. This witness was also cross-examined by plaintiff's counsel.

Later, affidavit-in-evidence of Samiullah, has been brought on the record and the same has been exhibited as DW/4. The said witness was also cross-examined by the plaintiff's counsel.

Subsequently, affidavit-in-evidence of Haji Noor Muhammad brought on the record. During his examination-in-chief, he has produced the following documents:-

DOCUMENTS	MARKED
Affidavit-in-evidence	D
Power of Attorney	D/1
Schedule of Cantonment Land Administration Rules, 1937	D/2
General Power of Attorney of Muhammad Aslam	D/3
Photocopy of Sale Agreement dated 17.09.1990	D/4
Copy of Construction Agreement dated 17.09.1990	D/5
Sub Power of Attorney between Noor Muhammad and Rasheedan Bibi	D/6
Copy of Sale Agreement dated 10.11.1992 between Haji Noor Muhammad and Rasheedan through her Attorney	D/7
Copy of Affidavit of Haji Noor Muhammad dated 10.11.1992	D/8
Receipt attached with Sale Agreement	D/9
Copy of Receipt dated 28.05.1988 and 30.5.1988	D/10 and D/11
Photocopy of allotment order in respect of suit plot	Marked "X" Under objection

14. Record also transpires that besides above, the deputy MEO, Mr. Hamid Ali, holding CNIC No.3840-2288331-9 appeared and produced following documents:

- (i) Allotment Letter dated 28.12.1987 as Exh.D/1.

- (ii) Letter dated 28.04.1988 as Exh.D/2
- (iii) Note Sheets consisting of 2 pages as Exh.D/3
- (iv) Fact Finding Report dated 2.11.2006 issued by MEO as Exh.D/4.
- (v) Letter dated 16.10.2009 issued to the Sub-registrar, T-Division by MEO, Karachi Circle Karachi for revocation of lease deed dated 26.2.199 as Exh.D/5.
- (vi) Letter dated 27.10.2009 addressed to Cantonment Executive, Officer Malir, by MEO, Karachi Circle Karachi for cancellation second lease in respect of suit property as Exh.D/6.
- (vii) Copies of fake and genuine CNICs of Muhammad Aslam , Captain Akhtar Abid as Exh.D/7.
- (viii) Enquiry report along with documents and proceedings as Exh.D/8.

After conclusion of the evidence of the parties the matter has come up for the final arguments.

15. Before proceedings further, it would be appropriate to mention here that though in the matter issues were settled on 17.05.2010, as mentioned above, however, on 06.11.2019, by consent of the learned counsel for the parties, following issues were reframed:-

1. Whether the suit No.603/2005 is maintainable under the law ?
2. Whether defendant No.3 through his attorney defendant No.4 agreed on 10.11.1992 to sell the subject property to the plaintiff?
3. Whether the defendant No.3 died on 02.12.1992 ?
4. Whether the General Power of Attorney allegedly executed by the defendant No.3 in favour of defendant No.5 on 28.10.1999 was forged and fabricated documents ? If so, its effect ?
5. Whether the agreement to sell dated 10.11.1999 executed by the defendant No.5 in favour of defendant No.2 was legal and valid document ? if so, its effect ?
6. Whether the Lease Deed dated 26.02.1999 executed in favour of defendant No.3 is legal valid document ? If so, its effect ?
7. What should the decree be ?

After re-framing of above issues, learned counsel for the parties submitted that since the evidence have already been recorded in the present matter, therefore, they do not wish to lead any further evidence on the above re-framed issues and the matter was proceeded to be heard.

16. During the course of the arguments, learned counsel for the plaintiff has contended that defendant No.3 has executed special power of attorney dated 30.05.1988 in favour of one Muhammad Aslam son of Shaikh Muhammad Zaman and authorized him to present the paper lease deed before defendant No.6 and accordingly a lease deed of suit property was executed on 02.06.1988 in favour of defendant No.3 by the competent authority, vide registration No.2065, Book No.1, Sub-Registrar, T-Division,III, Karachi, dated 02.06.1988. He further contended that in the month of September 1990, a sale agreement was executed between defendant No.3 and 4 in respect of the suit property for a total sale consideration of Rupees One Lac. Defendant No.4 paid the entire sale consideration to Defendant No.3, who also executed a general power of attorney in favour of defendant No.4, which was duly registered at Islamabad, vide Registration No.5666 dated 17.09.1990 wherein defendant No.3 authorized defendant No.4 to sell the suit property to anyone else. A registered construction agreement in respect of the suit property was also executed between Defendant No.3 and 4. And pursuant thereof physical possession along with the original papers were handed over to Defendant No.4. It is further contended that Defendant No.4, being a registered attorney of defendant No.3 and owner of the suit property executed a sale agreement with the plaintiff in the month of November, 1992, to sell the suit property for a total sale consideration of Rs.1,80,000/-. The defendant No.4 upon receiving the entire sale consideration executed a sub-power of attorney, vide registration No.2611, Book No.4, dated 12.11.1992 in favour of the plaintiff and handed over the possession of the suit property along with all original documents. It is argued that after full and final payment, the plaintiff has got physical possession and the relevant original documents from defendant No.4. The defendants 1,2, & 5 played fraud by preparing forged and fabricated documents and occupied the suit property by force with ulterior motive to deprive the plaintiff from her

property which purchased for value. It is argued that defendant No.5 has got forged general power of attorney in respect of the suit property, which was registered at Kharian [Gujrat, Punjab] by showing the fictitious residence of defendant No.3 on 28.10.1999. Thereafter, he entered into a sale agreement with defendant No.2 in respect of the suit property by purporting himself as attorney of defendant No.3 and executed a registered sub-power of attorney in favour of defendant No.1, vide registration No.4068 dated 10.11.1999. It is argued that defendant No.3 had died on 2.12.1992 and as such there arises is no question of executing the alleged general power of attorney in favour of Captain Muhammad Akhtar Abid [Defendant No.5] on 28.10.1999. Consequently, the agreement for sale dated 10.11.1999 executed by Defendant No.5 in favour of the plaintiff on the bases of forged and fabricated power of attorney is also of no legal sanctity. It is further argued that the lease deed 27.02.1999 in favour of defendant No.3 through defendant No.5 is also a sham document as the same was issued on the basis of forged and fabricated document as defendant No.5 [Captain Muhammad Akhtar Abid] was never the attorney of defendant No.3 [late Muhammad Aslam]. It is further argued that defendant No.2 raised the construction on the suit property in violation of the status quo order, granted by the trial court in suit No.49/2002. It is also argued that under the law the rejection of plaint under order 7 rule 11 CPC does not debar any person from filing another suit on the same subject matter and cause of action and no exception can be taken by any party including defendants 1, 2 and 5. Further argued that the earlier suit was defective therefore the plaintiff instead of filing the appeal against the rejection order filed the present suit by removing the defect, which had led to the rejection of the plaint, and under the law it is permissible and as such no adverse inference can be drawn against the plaintiff. It is also argued that Schedule IX-A of the Cantonment Rent Administration Rules 1937 Clause-9 does not apply to the mere agreement for sale but it prohibits the execution of registered sale deed only and agreement for sale does not by itself create any interest in the immovable property as is clear from the provisions of Section 54 of the Transfer of Property Act. It is also argued that the plaintiff had produced the death certificate and pension memo of Defendant No.3 [Muhammad Aslam] before the Military Estate Officer who had

initiated enquiry and subsequently given his report against the defendants 1, 2 and 5 pertaining to the alleged lease deed produced by defendant No.2. In the said enquiry, it has been stated that the lease deed in favour of late Muhammad Aslam in the year 1988 is genuine and his number of identity card is correctly mentioned therein whereas the leased deed dated 27.2.1999 was found fraudulent and fabricated as neither identity card number shown in the said lease deed of Defendant No.3 is correctly mentioned nor his address even the photograph is not of Defendant No.3. Further argued that the enquiry held by the Military Estate Officer, the Defendant No.2 in spite of notices abstained himself from participating in the said enquiry for obvious reasons. It is argued that the plaintiff suffered losses on account of fraudulent acts of defendants 1, 2 and 5 and as such the plaintiff is liable to be compensated as claimed in suit. It is also argued that the suit filed by defendant No.2 on the basis of fraudulent and fabricated documents is not sustainable in law and as such the same is liable to be dismissed. Learned counsel in support of his contention has relied upon the case of **AL-MEEZAN INVESTMENT MANAGEMENT COMPANY LTD. and 2 others v. WAPDA FIRST SUKUK COMPANY LIMITED, LAHORE and others [PLD 2017 SC 1]**, **MAQSOOD AHMAD and others v. A.D.C. (C) A.S.C. (L), GUJRANWALA and others [2002 SCMR 1997]** and **FARZAND ALI and another v. KHUDA BAKHSH and others [PLD 2015 SC 187]**.

17. On the other hand, learned counsel (for defendant No. 1 and 2 in Suit No.603/2005 and Plaintiff in suit No. 1713/2008), during the course of the arguments, while reiterating the contents of the pleadings as well as affidavit-in-evidence of the said defendants has contended that suit No. 603/2005 filed by the plaintiff is not maintainable under the law and as such the same is liable to be dismissed. It is further contended that defendant No.6 executed lease deed in favour of defendant No.3 through special attorney namely Captain Muhammad Akhtar Abid [Defendant No.5], by way of registration No.544 dated 27.02.1999, the said special attorney subsequently executed a general power of attorney vide its registration No.814 dated 28.10.1999, where after defendant No.2 purchased the suit property through general power of sub-attorney dated 10.11.1999. It is further contended that defendant

No.2 made the entire sale consideration through cheques and pay orders besides charges towards the utility connections and others as such defendant No.2 is the bonafide owner of the suit property for value. It is further argued that the sale agreement dated September 1990 is bogus, fictitious and manipulated one as there is no date of agreement mentioned therein even otherwise the sale consideration of Rs.1,00,000/- in the agreement is also unrealistic and unbelievable whereas defendant No.2 purchased the suit property against a sale consideration of Rs.15,50,000/-. It is argued that the mala fide on the part of the plaintiff can be gauged from the fact that there is no mention in general power of attorney about the sale agreement. Moreover, the construction agreement is also untenable in law as the same was executed without seeking the permission of defendants 6, 7 & 8; and the receipt of sale consideration of Rs.180,000/- produced by the plaintiff is also undated and without any revenue stamp and as such the same is also unacceptable in law. It is argued that no property can be purchased or transferred within the cantonment land, without seeking the prior permission or consent of the Central Government as specifically defined under Schedule IX-A of the Cantonment Land Administration Rules 1937, and in violation of the said rule if any transaction is taken place, the same would be null and void, illegal and without any justification. It is further argued that neither the physical possession of the suit property was ever remained with the plaintiff, nor it was on the record of defendant No.7. Conversely, it is defendants 1 & 2, the father and son, on 10.11.1999 through sale agreement legally purchased the suit property from original allottee namely; Muhammad Aslam through his duly constituted attorney namely Captain Muhammad Akhtar Abid. Moreover, defendant No.2 after completing all requisite formalities also got demarcation dated 29.03.2002, where after building plan was submitted and approved by the Cantonment Executive Officer in the month of May 2002, and thereafter the defendants by spending huge amount raised the constructions over the suit property within a period of one year. It is further argued that no fraud was ever committed or any document was fabricated. It is further argued that after rejection of the plaintiff of the plaintiff's earlier suit, she had ample opportunity to exercise the right to challenge the order of the lower court, either in appeal or by some other remedy but instead

of exhausting remedy available under the law, she preferred to file the instant suit which is hit by the principle of res judicata. It is also argued that the plaintiff has no right over the suit property, therefore, neither she during her life time or her legal heirs after her death are entitled for any relief. Lastly argued that the suit of the plaintiff is liable to be dismissed with special cost and whereas defendant No.2, who is the lawful owner in possession of the suit property is entitled to the decree of his suit as prayed. Learned counsel in support of his stance has relied upon the case of Mst. MAROOF BEGUM AHMED and another v. IJAZ-UL-HAQ through attorney and another [PLD 2018 Islamabad 341].

18. Learned counsel for defendant No.4 while reiterating the contents of his written statement as well as affidavit-in-evidence, filed in the present case, has supported the stance of the plaintiff and the argument advanced by her counsel.

19. The learned Assistant Attorney General representing the Federation as well as the Military Estate Office while reiterating the contents of the written statement filed on behalf of the MEO and relying upon the Enquiry Report conducted by Cantt. Executive Officer, Hyderabad Cantonment [Exh.D/8], produced by the deputy MEO during his deposition in the instant case, has also supported the stance of the plaintiff.

20. I have heard learned counsel for the parties, perused the record, and have also gone through the relevant law as well as the case law relied upon by the learned counsel for the parties and my findings on the above issues are as follows :-

Issue No.1:

This issue has been framed on the objections raised by the defendants No.1, 2 and 5 in their written statements.

The main objection of the defendants is that the present suit is hit by doctrine of Res judicata on the ground that the plaintiff brought the present suit on the same facts and cause as that of earlier suit bearing No.49 of 2002 filed by the plaintiff before the court of learned Senior Civil Judge, Karachi (Malir) and since the plaint of the said suit was rejected and the plaintiff did not prefer any appeal or revision

against the said order and as such has attained finality, therefore, on the same cause of action, the instant suit is clearly hit by the principle of res judicata. Whereas the stance of the plaintiff in this regard is that the earlier suit as framed was legally defective and as such the plaintiff instead of wasting time in filing of any appeal or revision against the rejection order filed the present suit by rectifying the error hence the present suit is not at all hit by principle of res judicata and is absolutely maintainable.

Before dilating upon the issue in hand, it would be advantageous to refer to the Section 11 of CPC, which reads as under:

“11. Res judicata— No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I.—The expression "former suit" shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.

Explanation II.—For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to right of appeal from the decision of such Court.

Explanation III.—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.— The matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.—Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.

Explanation VI.—Where persons litigate bona fide in respect of public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.”

21. It is now well settled that in respect of doctrine of res judicata, no exhaustive test can be laid down for determining which matters are directly and substantially in issue in every case, rather it depends on the facts and circumstances of each case. The most important condition that needs to be satisfied is that the matter in issue in the subsequent suit was in issue, directly and substantially, in a former suit in which such

issue has been subsequently raised, and has been heard and finally decided by such Court. The general and ordinary meaning of 'suit' is a proceeding which is commenced by presentation of a plaint. Ordinarily, and in more specific terms, a 'suit' is a civil proceeding that is instituted by the presentation of a plaint. The expression 'former suit' denotes a suit that has been decided earlier in time than the suit in question, that is, the subsequent suit, regardless of whether such a suit which was decided earlier was instituted subsequently to the suit in question or not. If two suits are instituted one after the other, and both relate to the same question in controversy, the bar of res judicata will apply even in cases where the subsequently instituted suit is decided first.

Furthermore, a 'party' is a person whose name appears on the record at the time of the decision. A party may be the plaintiff or defendant. The condition recognizes the general principle of law that judgments and decrees bind the parties. Once the matter is heard and decided in one suit, the same cannot be agitated again by the same parties, their legal representatives or successors-in-interest. Rule of res judicata applies to and binds in a subsequent suit, the same parties to the former suit, and their legal representatives or anyone claiming through such parties. For applying res judicata, it is necessary that the matter should have been heard and finally decided in the former suit. Reliance in this regard is placed on the case of *S.M. YOUSUF and 3 others v. The SECRETARY, GOVERNMENT OF PAKISTAN MINISTRY OF WORKS AND REHABILITATION DIVISION, ISLAMABAD and 4 others* [2017 CLC 800].

22. From perusal of the record it appears that neither the plaintiff nor any of the defendants have filed the plaint of earlier suit bearing No. 49 of 2002 in the present proceedings whereby it could be ascertained that the issue in the earlier suit and the present suit are directly and substantially the same. Nevertheless, from the perusal of order dated 07.03.2005 passed by learned Senior Civil Judge, Karachi (Malir) in the above said suit, it could be gathered that the plaintiff had filed the earlier suit against present Defendants No.1, 4, 6 and 8 besides Sub-Registrar T-Division, Karachi, Malir, for declaration of her ownership and possession of the suit property on the basis of sale

agreement entered into between the plaintiff and defendant No.4. Learned Senior Civil Judge, Karachi (Malir) on the application under order VII Rule 11 of CPC filed by the defendants, while holding that the claim of ownership of the plaintiff on the basis of un-registered sale agreement is untenable in law, rejected the plaint of the said suit on the ground that the agreement to sell does not confer any right or title in the purchaser, it only extends a right to the parties to maintain a suit for specific performance of the said contract.

Whereas the plaintiff filed the present suit against defendants No.1 to 8, seeking **Specific performance** of the agreement from defendants No. 3 and 4, **Declaration** in respect of documents viz. General Power of Attorney dated 28.10.1999 in favour of Defendant No.5 and sub-Power of Attorney dated 10.11.1999 in favour Defendant No.1 being null/void and have no legal effect in the eyes of law, **Cancellation** of all registered documents in favour of Defendants No.1, 2 and 5 in respect of suit property, **Injunction** (Mandatory and Permanent) against the defendants and **Damages** against Defendants No.1, 2 and 5. In the present case defendants No.2, 3 and 5, who were not made parties in the earlier suit, have been impleaded in the instant case. Whereas the Registrar T-Division, Karachi, was the party in the earlier suit but has not been impleaded in the present case.

Above said fact clearly reflects that the issue and the reliefs of earlier suit were different from the present suit besides the parties [i.e. defendants 2,3, and 5 against whom the relieves sought] were also not the same as that of the present case. Furthermore, the rejection of plaint of the earlier suit cannot be termed as an adjudication on merits, it was rejected summarily on the application. It is also a settled law that rejection of plaint is not an adjudication on merit. It is a decree only by fiction, therefore, there is no bar to file a fresh suit. Reference in this regard can be placed on the case of Mst. KANIZ FATIMA and 3 others v. MEMBER (REVENUE), BOARD OF REVENUE, PUNJAB, LAHORE and 5 others [PLD 1973 Lahore 495].

Moreover, the rejection of plaint under Order VII Rule 11 of CPC does not preclude the presentation of fresh plaint in view of Order VII Rule 13 of CPC which states:

Order VII, rule 13 of C.P.C. Where rejection of plaint does not preclude presentation of fresh plaint.--- The rejection of the plaint on any of the grounds hereinbefore mentioned shall not of its own force preclude the plaintiff from presenting fresh plaint in respect of the same cause of action.

And the plaint is also not liable to be dismissed on the principle of res judicata qua filing a fresh suit on the same cause. Reliance in this regard can be placed on the cases of SAKHI MUHAMMAD v. MUNSHI KHAN [PLD 1992 SC 256], MEMON EDUCATIONAL BOARD v. MUNAWWAR HUSSAIN [2001 YLR 1241] and MIAN KHAN v. AURANG ZEB and 12 others [1989 SCMR 58].

In the circumstances, since a fresh suit can be filed after the rejection of plaint, the principle of res judicata is manifestly not applicable as there is no adjudication in a case where plaint is rejected. The principle of res judicata cannot be pressed into service unless the matter in issue in the subsequent suit was in issue, directly and substantially, in a former suit in which such issue has been raised subsequently, and has been heard and finally decided by such court of competent jurisdiction. Hence, I am of the view that the principle of res judicata cannot be invoked in the instant case.

Besides above, there is another objection raised by the defendants that the suit is not maintainable under Schedule IX-A Clause '9' and under the law of transfer of Property Act.

The stance of the plaintiff in this regard is that clause-9 of Schedule IX-A of the Cantonment Administration Rule 1937 does not apply to the agreement for sale but it prohibits the execution of registered sale deed and Sub-lease and whereas the agreement for sale does not by itself create any interest in the immovable property under the provisions of section 54 of Transfer of Property Act.

23. Here it would be advantageous to reproduce relevant portion of the Building Lease for a term of Ninety-nine years granted to the Defendant No.3 by Military Estate Officer, Karachi Circle, Karachi under Schedule IX-A, of the Cantonment Land Administration Rules 1937 [Exh.PW/4] as under:

“SCHEDULE E IX-A
OF THE CANTONMENT LAND ADMINISTRATION RULES 1937
BUILDING LEASE FOR A TERM OF NINETY-NINE YEARS.”

THIS INDENTURE made the 02 day of June, 1988 BETWEEN the PRESIDENT OF PAKISTAN (hereinafter called the Lessor) of the one part and MR. MOHAMMAD ASLAM son of CH. ALI AHMED adult, Muslim, C/o AGE (DP) 34-37, PNH Lines, Karachi through his special power of attorney MR. MOHAMMAD ASLAM son of Sheikh Mohammad Zaman resident of Karachi Motor Store Shirin Manzil, Abdullah Haroon Road, Karachi (hereinafter called the Lessee) of the other part:

WHEREAS by virtue of rules made under Section 280 of the Cantonments Act, 1924 the Military Estates Officers, Karachi Circle, Karachi has agreed on behalf of the Lessor with the confirmation of the Government of Pakistan, Ministry of Defence, Military Lands and Cantonments, Rawalpindi letter No.118/5/TP/ML&C/87/795/M-1, dated 28-12-1987, to demise the plot of land hereinafter described to the Lessee in manner hereinafter appearing;”

“AND THE LESSOR DOTH HEREBY covenant with the Lessor:-

- (1)
- (2)
- (3)
- (4)
- (5)
- (6)
- (7)
- (8)
- (9) Not to assign transfer or sub-lease the premises hereby demised or any part thereof without the prior approval of the Central Government.”

From the perusal of clause-9 above, it appears that it prohibits transfer of right and title in the property by way of assigning transfer or sub-lease without prior approval of Central Government, however it does not prohibit any agreement either for sale or otherwise. Even otherwise, it is a settled position of law that an agreement to sell itself does not create any right and title or charge on immovable property, rather same only creates a right to obtain another document conferring title in respect of immovable property mentioned therein, and for that very reason, the same does not require registration. Reliance in this regard is placed on the case of Mst. RASHEEDA BEGUM and other v. MUHAMMAD YOUSAF and others [2002 S C M R 1089].

From the perusal of the record, it appears that the plaintiff entered into the sale transaction to purchase the suit property from its registered lessee through his attorney for which no prior approval of the federal government as envisaged in clause 9 of Schedule IX-A, of the Cantonment Land Administration Rules 1937 was required.

In view of the above discussion this issue is answered in affirmative.

24. **Issue No.2.**

From the record, it appears that the suit property was allotted to defendant No.3 namely Muhammad Aslam, A/XEN (MES) vide Govt. of Pakistan (ML&C Deptt) letter No.118/59/TP/ML&C/79/795/M-1, dated 28.12.1987 [Exh.PW/19]. Thereafter, defendant No.3 on 28.05.1988 deposited Rs.38,500/-[Exh.PW/5] towards development charges and on 30.05.1988 deposited Rs.2925/- [Exh.PW/6] towards premium and ground rent. Thereafter, on 2.06.1988 the lease deed in favour of defendant No.3 through his special attorney namely Mr. Muhammad Aslam son of Shaikh Muhammad Zaman [Exh.PW/3] was executed and registered with Sub-Registrar T-Division, Karachi, vide Registration No.2065, Book No.1. and Micro Filming Roll No.664 dated 12.06.1988 [Exh.PW/4]. However, there is nothing available on the record, which could show that the said lease was provided to MEO Office for entering into relevant GLR. The defendant No.3 thereafter through a sale agreement [Exh.PW/7] entered into the sale transaction in respect of suit property with Haji Noor Muhammad (Defendant No.4) and subsequently executed a registered General Power of Attorney [Exh.PW/8]. Defendant No.3 also executed construction agreement [Exh.PW/9] with defendant No.4 in respect of suit property. Subsequently, defendant No.4, through a sale agreement dated 10.11.1992 [Exh.PW/10] entered into sale transaction with the plaintiff and subsequently Defendant No.4 upon receipt of sale consideration also executed a registered Sub-Power of Attorney [Exh.PW/12] and also handed over the physical possession as well as all original title documents and other record of the suit property to the Plaintiff. In the month of May 2002 the plaintiff upon coming to know that the suit property is occupied by Muhammad Hanif, defendant No.1, immediately sent legal notice dated 31.05.2002 [mark as O/3] to MEO, Karachi, for removing illegal occupation at the suit property and subsequently also lodged complaint to the DG ML&C Rawalpindi which was referred to MEO, Karachi, who submitted his Fact-Finding Report dated 2.11.2006 [Exh.D/4]. Subsequently, on the basis of the said Fact-Finding Report, an inquiry was also conducted by Cantt. Executive Officer, who submitted a detailed report in respect thereof [Exh.D/8].

25. Record also transpires that pursuant to the notices and summons issued in suit No.603 of 2005, the Additional Registrar, D-II Branch of this Court, bearing Entry No.9373 dated 03.12.2008 through TCS received an affidavit of one Mst. Ghulam Fatima widow of Muhammad Aslam Gondal (Defendant No.3) sworn before First Class Magistrate, Lahore, on 28.11.2008 (available at Page No.367 of the Court file). For convenience sake said affidavit is reproduced as under:

“AFFIDAVIT

I, Mst. Ghulam Fatima Widow of Muhammad Aslam Gondal, Muslim Adult present resident of 255/L, Model Town Extension, Lahore Permanent Address: Mohallah Acharkey, Shadiwal, Dist. Gujrat, do hereby state on solemn affirmation as under:

1. That I am legal heirs of defendant No. 3 named Muhammad Aslam Gondal in suit No. 603 of 2005, Sindh High Court, Karachi;
2. That my husband Muhammad Aslam Gondal, Late was working as A/XEN, B&R Section, G.H.Q. Ministry of Defence, Rawalpindi in 1987-88. Department allotted a plot of land bearing No. 795-M-1, situated in Defence Officer's Housing Society (D.O.H.S), Malir Cantt. Karachi;
3. That we are permanent residents in Gujrat. We tried to exchange the said plot in Gujranwala, Lahore or Rawalpindi, but department regretted for transfer of the said plot;
4. That my husband in his life time in September 1990 sold the said plot bearing No. 795-M-1, Malir Cantt. Karachi to Mr. Haji Noor Muhammad s/o Haji Abdullah and executed General Power of Attorney in his favour registered in Islamabad dated September 17, 1990 and Sale Agreement & handed over the physical possession along with all the original papers.
5. That my husband died in Rawalpindi on 02-12-1992 and buried in our native graveyard in Shadiwal, Dist. Gujrat;
6. That I am getting the pension since December 03, 1992 of my husband Muhammad Aslam Gondal, late from National Bank of Pakistan, Township Branch, Lahore, Pakistan.
7. That due to old age and poor health condition, I am not able to travel to any place and if court or any authority require any further information they can approach me through an authorized person in this respect on my address 255/L, Model Town, Extension, Lahore.

I do hereby verify on oath that whatever statements in above Para's of the Affidavit are true and correct to the best of my knowledge and belief.

Witnesses:

DEPONENT

Sd/-28/11

Sd/-

1.Col. ®. Mubashar Ahmed

(GHULAM FATIMA)

CNIC # 35201-4683548-7

Wd/o Late Muhammad Aslam Gondal

Sd/-
2. Muhammad Nasir Khan”
CNIC # 35202-1732581-9

[Emphasis supplied]

Along with above affidavit, defendant No.3's widow appended photocopies of pension book and N.I.Cs./CNICs of deponent as well as the attesting witnesses. The said affidavit was subsequently produced by the plaintiff in his evidence. The record does not show that any of the defendants have filed any objection to this affidavit so much so they have neither disputed said document in their affidavit-in-evidence nor produced any documentary evidence to rebut the contents of the said affidavit. The defendants have also not taken any step to check the veracity of the contents of the said affidavit whereas in the last para of the affidavit it has been clearly mentioned by the deponent of the affidavit that though due to her old age and poor health she was not able to travel yet if the court or any authority require any further information they can approach her through an authorized person on her address 255/L, Model Town, Extension, Lahore. Hence, in absence of any objection, the contents of the above affidavit are deemed to be true and correct.

A Perusal of the above affidavit clearly transpires that defendant No.3 during his life time, in September 1990, sold out the suit property to Mr. Haji Noor Muhammad (defendant No.4), executed registered General Power of Attorney in his favour and handed over the physical possession along with all the original documents in respect thereof.

26. The defendant No.4 in his pleadings as well as affidavit in evidence have categorically mentioned that he, being a registered General Attorney of Defendant No.3 (Muhammad Aslam Gondal), had entered into the sale transaction with plaintiff in respect of suit property and executed sale agreement [Exh.PW/10] on behalf of his principal and upon receiving entire sale consideration also executed Registered Sub-Power of attorney in favour of the plaintiff. Such assertion of defendant No.4 has gone unrebutted and unchallenged as he was not cross examined by the contesting defendants on the said statement. It is settled law that the assertion of the deponent if not cross examined the same will be deemed to be admitted.

The plaintiff in support of his stance has also produced one of the attesting witnesses of sale agreement dated 10.11.1992 namely Muhammad Yousuf, [Exh.PW/10]. The relevant portion of the affidavit-in-evidence of this witness is reproduced as under:-

“I, Ch. Muhammad Yousaf S/O Haji Muhammad Rannan, Muslim. Adult, Resident of House No. 130, Phase-1, D.O.H.S., Phase-I, Malir Cantt. Karachi, do hereby state on oath as under:

1. That, I know the deceased plaintiff and her legal heirs. Being relative I have participated in sale agreement in November 1992 which was executed between the plaintiff and attorney of Muhammad Aslam Gondal.

2. That, I know that the sale agreement was executed between the plaintiff and deceased Muhammad Aslam Gondal through his attorney Noor Muhammad in respect of Plot No. 795/M-1. measuring 550 Sq. Yards situated in Defence Officer Housing Society, Phase-1, Malir Cantt, Karachi in total sale consideration of Rs. 1,80,000/- which was paid by deceased plaintiff and got receipt of Rs.1,80,000/- from Haji Noor Muhammad attorney of Muhammad Aslam Gondal in my presence and other witness Estate Agent G.H Zafar. Advocate.

3. That, it is in my knowledge and I am one of the witness of sub-power of attorney dated 12/11/1992 which was executed by the defendant No.4/Haji Noor Muhammad in favour of the plaintiff before sub-registrar and I am one of witness.

4. That, I say that it is in my knowledge that the defendant No.4 has also sworn affidavit and undertake that he is agreed to be ready to execute all paper and documents whenever required in connection with the transfer of suit plot in favour of the plaintiff.”

The said witness was also cross-examined by the advocate.

Relevant portion of the cross is reproduced:-

“Cross-Examination of Mr.Talib Hussain Chandio,
Advocate for Defendants No.1

Q. Had the sale transaction been done in your presence?

A. Yes the sale transaction had been done in my presence.

Q. Which land had been sold in your presence?

A. Plot No.795, DOHS Phase-I, Malir Cant, Karachi.

Q. How much money was paid?

A. Rupees One Lac Eighty Thousand (Rs.180,000), I do not remember the date of sale agreement.

Voluntary says, I think that is 12 November 1992.

I do not remember that how much money was paid as token money.

Q. The sale agreement was prepared in your presence?

A. The sale agreement was prepared by the estate agent.

Q. The sale agreement was prepared in your presence?

A. It was already prepared by the estate agent, which he brought. I do not remember when the sale transaction was held.

Q. Where the agreement and transaction was made?

- A. The transaction as well as the agreement EX.PW/11 was made in the estate agency of Mr. S.H. Zafar at Malir Cant Bazar, Karachi.
- Q. How many persons were present at the time of deal/ transaction?
- A. I do not remember at the moment but myself and Mr. Iqbal and estate agent.
- Q. How much money was paid in the office of Mr. S.H. Zafar agency?
- A. There was no payment made in the office of Mr. Zafar.
- Q. There was no payment of sale consideration made in your presence?
- A. Rs.180,000/- has been paid in my presence.
- Q. Where the sale consideration has been paid.
- A. The sale consideration has been paid in the estate agency of Haji Noor Muhammad at Karimabad Karachi.
- Q. On which date sale consideration was paid?
- A. I do not remember.
- Q. Which type of payment was made?
- A. The sale consideration was paid in cash.
- Q. When the sale consideration was made?
- A. Receipt was made and Affidavit was signed and sale agreement was also signed.
- Q. After payment of sale consideration what happened?
- A. The original documents were handed over to Mr. S.H. Zafar, Estate agent, after the payment of sale consideration.
- Q. Which documents were delivered?
- A. All the documents which relate to subject plot i.e. sale agreement, lease documents.

It is incorrect to suggest that neither the documents were handed over in my presence nor I have any knowledge of the said documents.

It is incorrect to suggest that I have not explained the detail of the documents of the said transaction.

- Q. Which document was executed in the estate agency of M Zafar?
- A. There was no document executed in the office of Mr. S.H. Zafar Estate Agency.

From the perusal of above evidence, it appears that statement of witness in his affidavit has not been shaken, which confirms that the sale agreement dated 10.11.1992 was executed between the plaintiff and defendant No.3 through his attorney namely defendant No.4.

In view of the above discussion this issue is answered in affirmative.

27. **Issue No.3**

The widow of defendant No.3 in her affidavit, as mentioned in the preceding paras, has categorically stated that her husband died in

Rawalpindi on 02-12-1992 and buried in her native graveyard in Shadiwal, Dist. Gujrat. She along with her affidavit also sent pension book showing that she is receiving pension after death of her husband from 03.12.1992. Besides this, the plaintiff in his affidavit also produced death certificate of defendant No.3 [Annexure- O/7] and computerized memo of payment of pension issued by the Controller Military pensions, Sub P.O. CMA Cantt. Lahore, dated 10.08.2000 [Exh. PW/17] the said documents clearly reflects that Muhammad Aslam (Defendant No.3) died on 2.12.1992 and after the death his widow Ghulam Fatima is receiving monthly pension and other benefits on behalf of her deceased husband. The defendants have also failed to produce any documentary evidence which could show that either the date of death of Defendant No.3 is wrong or the documents relating to pension of Defendant No.3, available on the record, are false and fabricated. Besides this, Defendant No.4 in para-8 of his affidavit-in-evidence has specifically mentioned as under :

“8. That after inquiry about defendant No.3 (Muhammad Aslam A/XEN B & R) with the help of friends and plaintiff's son, from his last posting in HQ DW & CE (G.H.Q Rawalpindi) and transpired from G.H.Q that “Muhammad Aslam S/o Ch Ali Ahmed Employee No.8470087 A/XEN BPS-18 Expired on 2/12/1992, buried at Shahiwal, District Gujrat and her widow Mst. Ghulam Fatima R/o Model Town Lahore is receiving the pension since 3/12/1992 from N.B.P Town Ship Branch Lahore.”

Record reflects that the above deposition of Defendant No.4 has gone un-rebutted and unchallenged as he was not cross-examined on the said statement.

In the circumstances, this issue is answered in affirmative.

28. **Issues No.4, 5 and 6:**

Since these issues are related to each other, therefore, the same are taken up together:

The stance of defendants No.1, 2 and 5 in the instant proceedings are that Defendant No.3 [Muhammad Aslam s/o Choudhry Ali Ahmed] the original allottee of the suit property on 25.02.1999 executed special power of attorney [Exh.DW-1/20] in favour of Defendant No. 5 for execution of Lease Deed. Thereafter on 26.02.1999 lease deed was executed by MEO, Karachi Circle, Karachi which was registered at Sr. No.544 with Sub-Registrar T-Division

Karachi on 27.02.1999 [Exh.DW-1/19]. Defendant No.3 also executed an irrevocable General Power of Attorney in favour of Defendant No.5 which was registered with sub-registrar Kharian on 28.10.1999 [Exh. DW-1/3]. Subsequently, defendant No.5, on the strength of said registered General Power of Attorney, entered into sale transaction with Defendant No.2 through sale agreement dated 10.11.199 [Exh.DW-1/4]. And upon receiving the entire sale consideration, Defendant No.5 also executed a Sub-Power of attorney in favour of Defendant No.1 which was registered at Sr. No. 834 with Sub-Registrar, T.Div. III A. Karachi on 10.11.1999. Since then defendant No.2 is paying occupancy charges / taxes of the suit property regularly. The Military Estate Officer issued NOC and demarcation was also carried out on 05.01.2002, thereafter the purposed building plan was moved and subsequently approved by the office of Cantonment Board vide letter order dated 20.02.2002. Thereafter, the building was raised and defendants No.1 and 2 are residing at the suit property.

Whereas the plea of the plaintiff in this regard, as mentioned in the preceding paras, is that MEO, Karachi Circle Karachi on 2.06.1988 executed a registered 99-Years Lease [Exh.PW/3] in favour of defendant No.3. The defendant No.3 thereafter through a sale agreement [Exh.PW/7] sold out the property to Haji Noor Muhammad (Defendant No.4) and subsequently executed a registered General Power of Attorney [Exh.PW/8] in his favour. Subsequently, defendant No.4, sold out the suit property to the plaintiff through a sale agreement dated 10.11.1992 [Exh.PW/10]. Thereafter, Defendant No.4 upon receipt of sale consideration also executed a registered Sub-Power of Attorney [Exh.PW/12] and handed over the physical possession as well as all original title documents and other record of the suit property to the Plaintiff.

In view of the finding of issue No.3 above, it has become clear that the second lease [Exh.DW-1/19] in favour of defendant No.3 through his attorney namely Akhtar Abid [Defendant No.5] was executed after his death, which manifestly reflects that in execution of the second lease all the representation allegedly made on behalf of defendant were manipulated and fraudulent.

The question arises here that in the existence of earlier registered lease how could the second lease was executed by the MEO. This question apparently has been answered in Fact-Finding Inquiry Report [Exh.D/8]. The said inquiry was initiated on the complaint lodged by the plaintiff to the DG ML&C, Rawalpindi, and on the basis of Fact-Finding Report dated 02.11.2006 [Exh.D/4]. Record reflects that plaintiff in his written statement in suit No. 1713 of 2008 has stated about the said inquiry besides the plaintiff's witness through his affidavit in evidence also produced fact finding report [Exh.D/4]. However, the defendants neither cross-examined the witness on this point nor in their affidavits-in-evidence have denied and/or disputed this report. The defendant No.4, in his evidence also filed report [Exh.D/4], however he was also not cross examined on this document. In the circumstance, the above said reports Exh. D/4 and Exh.D/8 having not been objected by the defendants are taken into consideration.

Here it would be appropriate to reproduce the conclusion and recommendations of Fact Finding Report dated 02.11.2006 [Exh.D/4]

c. Conclusion

- (1) That as per documents provided by the applicant and record available in this office it is proved that Lease Deed of Plot No.795 was executed by the then MEO Karachi, Mr. Javed Akhtar Lease Deed in Schedule IX-A of the CLA Rules 1937 in favour of the Allottee Officer through Attorney, Mr. Mohammad Aslam s/o Sh Mohammad Zaman and was registered with Sub-Registrar T Div III Karachi at S. No.2065 dated 02/6/1988, MF Roll No.664 dated 12/6/1988.
- (2) That the Attorney of the Lessee did not provide copy of registered Lease Deed for incorporating its registration particulars in GLR due to which the execution of second Lease Deed could become possible.
- (3) That in the light of documentary evidences now provided by the applicant, the execution as well as registration of second Lease-Deed is illegal and invalid because the allottee officer, Mr. Mohammad Aslam s/o Ch Ali Ahmed Gondal had already died on 02/12/1992 and the appointment of Special/General Attorney as well as execution of second Lease Deed was invalid, ab initio.
- (4) That the second Lease Deed was neither registered with proper jurisdiction nor microfilmed which is against the provision of section 70 (C & D) of the Registration Act 1908.

- (5) The MEO may file factual comments/report before the High Court as the applicant - Mst Rashidan Bibi - has filed Civil Suit No.603/2005 in the Honourable High Court of Sindh Karachi. The MEO has already been impleaded as necessary party in civil suit.
- (6) That neither MEO Karachi nor CEO Malir is responsible for execution and registration of second Lease Deed, There cannot be an iota of doubt that any professional officer shall not execute a lease deed upon existing lease deed.
- (7) That there has been total misrepresentation and concealment of facts not only by the concerned MEO staff while presenting lease deed to MEO for signature but by the private individuals as well. However, these is no loss to the State in the instant case.
- (8) That the - then Dy MEO, Mohammad Nasim, was solely responsible for submitting second lease deed for the signature of MEO concealing the facts and presence of first lease deed.
- (9) That in the instant case fraud has been played by an individual in connivance with Registration Authorities of Kharian and Karachi by preparing fake power of attorneys.
- (10) That the Sub-Registrar Y Div Karachi, Mr. M A Mallah is responsible for entertaining Lease documents that was not belonging to his original jurisdiction.”

d. Recommendations

.....

3. Submitted as desired please,

Sd/- 2/11/6
 O/C Military Estates Officer
 Karachi Circle, Karachi
 Tele: 9202220

Copy to: The DML&C Karachi”

It is also imperative to mention here that on the basis of above said fact-finding report, a detailed inquiry initiated which was conducted by Cantt. Executive Officer, Hyderabad Cantonment, who submitted his report [Exh.D/8]. Relevant portion [Findings (a & b)] of the said report for the sake of ready reference are reproduced as under:-

“7. **FINDINGS:-**

- a. The first Lease Deed executed on 02nd June 1988 has been validly and legally executed/ registered and the complainant (Mst Rashidan Bibi) is the lawful successor-in-interest of the Lessee in respect of Plot No. 795, measuring 550 Sq.yds, DOHS-I, Malir Cantt. (*Annex-G*).

- b. The Second Lease Deed has been based on invalid and fraudulent document i.e. Special Power of Attorney Dated 24th Oct 1999 for the execution of second lease deed as it was given to an imposter for the fraudulent purpose. Its subsequent action of registration is also illegal and invalid. From the perusal of the General Power of Attorney executed at Kharian it is revealed that Muhammad Aslam S/O Ch Ali Ahmed was residing with the Attorney Maj Akhtar Abid at his residence at B-39, State Bank Building, Preedy Street, Karachi Saddar (*Annex-P*). On cross examination, Maj Akhtar Abid expressed his ignorance about the whereabouts of the imposter, Muhammad Aslam which casts serious aspersions on the linkage between the two primary actors

Therefore, Maj. Akhtar Abid, the impostor who personated the role of deceased Muhammad Aslam S/O Ch Ali Ahmed (Rtd A/XEN MES), Mr. Muhammad Nasim, then Dy. MEO and Mr. Mohammad Jamaluddin the-then LDC/Land Clerk had a strong nexus and were responsible for the execution of second lease deed through connivance & fraudulent means. They had concealed / removed the note portion of the original lease deed and misguided MEO to obtain his signature on second Lease Deed with criminal intent.”

From the perusal of the Fact-Finding Inquiry Report [**Exh.D/8**] it clearly transpires that the execution of second lease deed dated 26.02.1999 in favour of defendant No.3 and General Power of Attorney dated 28th Oct, 1999 [executed in favour of defendant No.5 by Defendant No.3] are based on fraud, manipulation and forgery and as such the same are void and illegal documents. Consequently, all subsequent actions including execution of sale agreement dated 10.11.1999 [between defendant No.5 and 2] and sub-power of attorney dated 10.11.1999 [executed by defendant No.5 in favour of defendant No.1], on the basis of said documents are also void *ab initio* in the eyes of law.

29. It is well settled law that fraud vitiates the most solemn proceedings and any edifice so raised on the basis of such fraudulent transaction stood automatically dismantled and any ill-gotten gain achieved by committing fraud cannot be validated under any laws. Reliance can be placed on the cases of MUHAMMAD YOUNUS KHAN and 12 others v. GOVERNMENT OF N.W.F.P. through Secretary, Forest and Agriculture, Peshawar and others [**1993 SCMR 618**], LAL DIN and another v. MUHAMMAD IBRAHIM [**1993 SCMR 710**], KHAIR DIN v. Mst. SALMAN and others [**PLD**

2002 SC 677], TALIB HUSSAIN and others v. MEMBER, BOARD OF REVENUE and others [**2003 SCMR 549**]. AL-MEEZAN INVESTMENT MANAGEMENT COMPANY LTD. and 2 others v. WAPDA FIRST SUKUK COMPANY LIMITED, LAHORE and others [**PLD 2017 SC 1**].

Insofar as the claims of defendants No.1 and No.2 are concerned, it may be emphasized that entitlement of the defendants are based upon the entitlement of Defendant No.5 [Capt. Abid Akhtar] vis-à-vis the suit property, from whom the property was transferred to them, therefore, the defendants No.1 and 2 either to have survived or sunk depending upon determination of legal status of the property, vis-à-vis defendant No.5 and as now they in view of above discussion have failed to keep their entitlement alive, therefore, the claim of the defendants No.1 and 2 is bound to be rejected. Reliance in this regard can be placed on the case TALIB HUSSAIN and others v. MEMBER, BOARD OF REVENUE and others [**2003 SCMR 549**].

The learned division bench of Lahore High Court while dealing with in somewhat similar issue in a case titled as ABDUL HAMID v. M.B.R. and others [**1994 CLC 1160**], inter alia, has held as under:--

"4. The learned counsel for the petitioners has contended that all the petitioners are bona fide purchasers for value of the land from the transferee and they are entitled to retain the same. It is not disputed that transfer in favour of Noor Muhammad was found to be fraudulent. Not only that it was further found by the Notified Officer that Noor Muhammad, the real claimant, was not traceable and some other person had obtained allotment by impersonating him. As the vendor of the petitioners had no right in the land, he could not pass any title to the petitioners and they have no consequently legal right to retain the land (See Gull Muhammad and others v. The Additional Settlement Commissioner and others (1985 SCMR 491) and Manzoor Hussain v. Fazal Hussain and others (1984 SCMR 1027))."

For the foregoing discussion, the issue No.4 is answered in affirmative whereas issues No. 5 and 6 are answered in negative. As such the second lease deed dated 26.02.1999 in favour of defendant No.3, General Power of Attorney dated 28th Oct, 1999 [executed in favour of defendant No.5 by Defendant No.3], sale agreement dated

10.11.1999 [between defendant No.5 and 2] and sub-power of attorney dated 10.11.1999 [executed by defendant No. 5 in favour of defendant No.1] are liable to be cancelled.

30. **Issue No.7:**

In view of the peculiar circumstances of the case and the foregoing discussion as well my findings on issues No. 2 to 6, I am of view that the plaintiff has successfully established her claim through evidence whereas the defendants have failed to substantiate their claim. Accordingly, the above suits are disposed of in the following terms:

The Suit No.603 of 2005 filed by the plaintiff [Mst. Rasheedan Bibi] is decreed in terms of prayer clause No. (i), (ii), (iii) and (iv); the possession of the suit property is also directed to be handed over to the plaintiff's legal heirs by the defendants 1, 2 and 5 along with construction thereon as compensation. Whereas Suit No.1713 of 2008 filed by defendant Muhammad Ayaz is dismissed with cost. The charges for registration of the conveyance deed etc. and Nazir's fee for supervision/execution of documents shall be borne by the plaintiff.

Karachi:
Dated: 20.03.2020.

JUDGE