

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 1316 of 2000

***[Dr. Abdul Rashid Paracha vs. The Defence
Housing Authority and 4 others]***

Dates of hearing : 18.04.2017, 26.05.2017,
15.02.2018, 22.02.2018,
11.03.2019, 19.03.2019
and 20.05.2019.

Date of Decision : 20.01.2020

Plaintiff
[Dr. Abdul Rashid Paracha] : Through Mr. Shahan Karimi,
Advocate for Plaintiff.

Defendant No.1
[The Defence Housing Authority] : Through M/s. Nazar Hussain
Dhoon and Shahid Hussain,
Advocates.

Defendant No.6
[Shujaat Ali] : Through Mr. Imtiaz Ali Effendi,
Advocate.

Defendant No.8
[Ajmal Hussain] : Through M/s. Akhter Hussain and
Muhammad Masood Ghani,
Advocates.

Defendant No.9
[Mrs. Zahida Khan] : Through Mr. Muhammad Abdur
Rahman, Advocate.

Mirza Tanveer Ahmed, Focal
Person, FIA Immigration, JIAP,
Karachi.

Defendants, No.2, 3, 4, 5 and 7
*[Amir Abdul, the District
Registrar, the Sub-Registrar,
Mrs. Rashida Bano and
Miss. Sabra Begum, respectively].* : Nemo

Case law relied upon by Plaintiff's counsel.

1. 2015 SCMR page-1704
[Baja through L.Rs. and others vs. Mst. Bakhan and others]
2. 2016 CLC Note-22
[Shamshair Ali vs. Mukhtiarkar (Revenue) and City Survey Officer and 2 others].
3. 2013 CLC page-792
[Shahnawaz Mallah and 2 others vs. Raza Muhammad Brohi].
4. 2003 SCMR page-549
[Talib Hussain and others vs. Member, Board of Revenue and others]
5. PLD 1958 SC page-104
[Yousuf Ali vs. Muhammad Aslam Zia]
6. 2016 SCMR page-1
[Muhammad Ijaz Ahmad vs. Mumtaz Ahmed Tarar]
7. 2013 CLC page-1789
[Kuhinoor Tobacco Company (Pvt) Ltd. vs. S.M. Idrees Allhawala]
8. 2017 YLR Note-193 Supreme Court (AJ&K)
[Chaudhary Muhammad Saeed vs. Custodian Evacuee Property of AJ&K].
9. 2015 MLD page-111 (Peshawar High Court)
[Wahab Ali vs. Frontier Pharmaceutical (Pvt.) Ltd].
10. 1995 SCMR page-284
[Wali vs. Akbar]
11. 2016 YLR page-1233
[Farzand Ali vs. Bashir Ahmad]
12. 2016 YLR page-748 (Sindh)
[Lt. CDR. Mirza Mansoor Hussain Qazalbash vs. Syed Mohammad Faheem].
13. Unreported decision given in
HCA No.328 of 2015
[Pakistan Defense Housing Authority vs Lt. Cdr. Mirza Mansoor Hussain Qazalbash and 4 others]

Case law relied upon by learned counsel for Defendant No.1.

1. 1982 CLC page-1286 [SC (AJ&K)].
[Muhammad Sarwar and another vs. Fazal Rehman]
2. 2007 SCMR page-838
[Ch. Muhammad Shafi vs. Shamim Khanum].

3. 2016 YLR page-748 [Sindh]
[Lt. CDR. Mirza Mansoor Hussain Qazalbash through Attorney vs. Syed Mohammad Faheem and 4 others].

Case law relied upon by learned counsel for Defendant No.5

1. 1999 CLC page-296 [Karachi]
[Messrs Raees Amrohvi Foundation (Regd.) vs. Muhammad Moosa and others].
2. PLD 1983 Supreme Court page-53
[Kanwal Nain and 3 others vs. Fateh Khan and others]
3. PLD 1961 Supreme Court page-436
[Muhammad Moin Khan deceased represented by legal representatives vs. Chief Settlement Commissioner, Pakistan Lahore and 2 others].
4. 1977 SCMR page-208
[Officer on Special Duty, Central Record Office and others vs. Bashir Ahmad and 9 others]
5. 2016 YLR [Sindh]
[Lt. CDR. Mirza Mansoor Hussain Qazalbash through Attorney vs. Syed Muhammad Faheem and 4 others].

Other Precedent and Material / Record

1. 2017 SCMR page-17
[Ghulam Rasool vs. Noor Muhammad]
2. 2003 Pakistan Criminal Law Journal page-1353
[Agha Wazir Abbas vs. The State].
3. HAND BOOK FOR GUIDANCE TO MEMBERS, 1988
[Pakistan Defence Officers Housing Authority].

- Law under discussion:
- (1). The Transfer of Property Act, [IV of 1882].
 - (2). The Specific Relief Act, 1877 (**SRA**)
 - (3). Tort Law.
 - (4). Code of Civil Procedure, 1908 (**CPC**).
 - (5). Qanoon-e-Shahadat Order, 1984. *[Evidence Law].*

JUDGMENT

MUHAMMAD FAISAL KAMAL ALAM, J. The present action at law is filed by Plaintiff against Defendants in respect of an Immovable Property- Plot No.25, 27th Street, Phase-V, Defence Housing Authority, Karachi,

measuring 1000 square yards (*Suit Plot*), *inter alia*, seeking declaration of ownership rights, permanent injunction against creating any third party interest and damages. The Complaint contains the following Prayer Clause_

“The Plaintiff, therefore, prays that this Hon’ble Court may be pleased to pass Judgment and Decree in favour of the Plaintiff and against the Defendants to:

- i) Declare that the Plaintiff is the lawful, sole and absolute owner of Plot No.25, measuring 1000 Sq. Yards, situated on 27th Street, Defence Housing Authority, Phase V, Karachi, by virtue of the Transfer Letter No.DS/M/AM-935 dated 05.05.1978 issued by the Defendant No.1.***
- ii) Declare that the transfer of the Plot by Defendant No.1 in favour of the Transferees by way of fraud, production of forged, fabricated, manipulated and manufactured documents, is illegal unlawful and the Transfer Letters issued by Defendant No.1 in favour of Transferees are illegal, unlawful and void and liable to be cancelled.***
- iii) Declare that the Transferees are illegal and unlawful occupants of the Plot and are liable to be ejected through police force by demolishing the structure thereon by the Defendant No.1.***
- iv) Issue mandatory injunction against Defendant No.1, thereby directing it to cancel the Transfer Letter issued by it in favour of Transferees and further directing the Defendant No.1 to handover vacant physical possession of the Plot to the Plaintiff.***
- v) Issue further mandatory injunction against the Defendant No.1, thereby directing it to produce the Transfer Letters and / or other documents obtained by fraud, for cancellation through Nazir of this Hon’ble Court.***
- vi) Permanent injunction against Defendants, their agents, servants, administrators, legal heirs, subordinates, employees, officers, officials, attorneys, sub-attorneys, and / or any other***

person / persons acting through or under them from transferring, mutating, mortgaging, alienating, by way of sale deed, gift deed, conveyance deed, transfer deed, and / or any other deed / deeds including mortgage deed to any other person/persons and creating third party interest in respect of the above said Plot.

- vii) Permanent injunction against the Defendants, restraining them from registering any sale deed, transfer deed, gift deed, mortgage deed and / or any other deed/deeds in favour of any person/persons in respect of the above said plot, except the Plaintiff.*
- viii) Pass a decree for the recovery of Rs.10,000,000/- (Rupees One Crore only) as unlawful damages/compensation from Defendants No.1, 2, 5, 6 7, 8 and / or 9.*
- ix) Any other better / additional relief(s), which this Hon'ble Court may deem fit and proper in the circumstances of the case.*
- x) Cost of the suit."*

2. As per the averments of plaint, the Plaintiff is practicing medicine in the United States of America (USA) for the past many years. During his visit to Karachi in the year 1978, Plaintiff purchased the above mentioned Plot from its the then transferee Mrs. Shahida Majid after making payment of full sale price of Rs.62,000/- (Rupees Sixty Two Thousand only) and subsequently the Transfer Order was issued in favour of Plaintiff by Defendant No.1-The Defence Housing Authority (DHA). It is stated that when Plaintiff after few years again visited Karachi on 04.05.2000, he was shocked and surprised to see that two houses were constructed on the above Plot. Plaintiff made inquiries with Defence Housing Authority (Defendant No.1) and it transpired that the plot in question was transferred in the name of private Defendants in due course of time. Plaintiff challenged this transfer

on the ground of fraud and lodged a complaint with Defendant No.1-DHA as well as Police officials but the same did not yield any result and ultimately after serving the Defendant No.1 with the Legal Notice dated 08.05.2000, the present proceeding was filed.

3. Upon issuance of summons and notices, the claim of Plaintiff was contested by private Defendants by filing their respective Written Statements.

4. It is also relevant to mention here that Defendant No.1 is functioning under the Presidential Order No.07 of 1980 and, *inter alia*, is also custodian of record of lands situated within the area / jurisdiction of Defendant No.1. Since the suit plot admittedly is located in the area of Defendant No.1, therefore, it has contested the present *lis*. Defendants No.3 and 4 are the officials responsible for registering documents and are formal defendants. Defendants No.6, 8 and 9, who were subsequently impleaded as Defendants vide orders dated 04.11.2002 and 28.11.2014 being subsequent transferees have also filed their Written Statements. The main defence set up by Defendant No.1 in its Written Statement is that Plaintiff on 13.05.1990 personally appeared before the designated officer of Defendant-DHA and signed the transfer document as per the procedure in favour of Amir Abdul son of Abdul Rasheed-Defendant No.2; then the the said Amir Abdul (*Defendant No.2*) on 29.05.1990 appeared before the designated officer of Defendant No.1 and completed procedure in vogue for transfer of suit property in favour of Rashida Bano wife of Hassan Ali, the present Defendant No.5; then the last transferee / Defendant No.5 got divided the above Suit Plot into two separate plots of 500 square yards each and they were subsequently given numbers as **25/I and 25/II**, 27th Street, Phase-V, Defence Housing Authority, Karachi. These two plots were then transferred in favour of Shujaat Ali and Mrs. Sabra Begum, who have been impleaded as

Defendants No.6 and 7. Further averred (in the Written Statement of Defendant No.1-DHA) that the last transferees-Defendants No.6 and 7 got constructed the houses on the above two bifurcated plots and subsequently “B” Leases were executed by Defendant No.1. It is clarified by said Defendant-DHA in its pleading that the system of video recording of signing / execution of sale transaction was introduced in the year 1999 and the said procedure was not introduced at the relevant time to which the present dispute relates to. The other main defence taken by Defendant No.1-(DHA) is about the traveling record of Plaintiff. It is averred that Plaintiff has not produced the entries of his Passport to show that at the relevant time when the disputed transaction took place on 13.05.1990, Plaintiff was not present in Pakistan.

5. Defendants No.2, 5 and 7 did not file Written Statements, hence, not contested the claim of Plaintiff. Defendant No.6 in his Written Statement has stated that he was an ostensible (*benami*) purchaser of plot in question but the same was sold out to Defendant No.7. It is denied that any fraud was committed by Defendant No.6 upon Plaintiff or anyone else. It is further averred that the plot in question was purchased after due verification from Defendant No.1.

6. The Defendant No.8 (*Ajmal Hussain*) has also refuted the claim of Plaintiff and has narrated the facts about purchase of Plot No.25/II, which was leased out in the name of Defendant No.7 from whom he purchased it through a registered Conveyance Deed dated 30.10.1994 appended with the Written Statement so also produced in the evidence as **Exhibit D-2/11**. Well known doctrine of *bona fide* purchaser for value without notice is also invoked. Similarly, the Defendant No.9 (Mrs. Zahida Khan) has taken somewhat the same stance and has averred that she has purchased the bungalow built on Plot No.25/I from its previous owner, that is, Defendant

No.6, vide Sale Deed dated 01.08.1994, produced in the evidence as **Exhibit D-3/4**. Both Defendants have stated that they have purchased the afore referred properties after getting confirmation and verification of record from the concerned authority, including Defendant No.1 (*DHA*) and Military Estate Office (*MEO*).

7. From the pleadings of the parties, following Issues were framed by the Court vide order dated 18.09.2006.

- “1. Whether suit as framed is barred by law? If so, its effect.*
- 2. Whether the Plaintiff is absolute owner of Plot No.25, measuring 1000 square yards situated on 27th Street, Defence Housing Authority, Phase-V, Karachi, by virtue of the Transfer Letter No.DS/M/AM-935 dated 05.05.1978 issued by Defendant No.1?*
- 3. Whether the alleged transfer of the suit property by the Plaintiff was a forgery and is void and of no legal effect?*
- 4. Whether Defendant No.1 is bound to allot an alternate plot of the same size in Defence Housing Society to the Plaintiff?*
- 5. Whether the suit property has been officially sub-divided into two portions and 99 years lease deed of the sub-divided plots have been granted by the President of Pakistan in favour of the lessees? If so, to what effect.*
- 6. Whether the Defendant No.8 is a bona fide purchaser and the lawful lessee of all that Plot No.25/II, measuring 500 square yards with construction thereon situated on 27th Street Phase-V of PDOHA, Karachi?*
- 7. Whether the Defendant No.9 is bona fide purchaser and the lawful lessee of all that Plot No.25/I, measuring 500 square*

yards with construction thereof situated on 27th Street Phase-V of PDOHA, Karachi?

8. *Whether the Plaintiff is entitled to any damages against Defendants?*

9. *What should the decree be?"*

8. Plaintiff himself led the evidence. On behalf of Defendant No.1, its officer-Ghulam Hussain testified; similarly, Defendants No.6 and 8 themselves led evidence; whereas, on behalf of Defendant No.9, her husband being attorney (*Muhammad Yahya Hamid Khan*) gave evidence.

9. Findings on the Issues are as follows:

ISSUE NO.1	:	As under.
ISSUE NO.2	:	As under.
ISSUE NO.3	:	Negative.
ISSUE NO.4	:	Negative.
ISSUE NO.5	:	Affirmative.
ISSUE NO.6.	:	Affirmative.
ISSUE NO.7	:	Affirmative.
ISSUES NO.8 and 9	:	Plaintiff is not entitled for his claim of damages and the present suit is to be dismissed.

ISSUES NO.1 and 2.

10. Since all the Defendants have raised a basic objection of limitation, which goes to the root of the case, hence, it should be decided first.

11. The initial ownership of Plaintiff in respect of the Suit Plot has not been disputed. Even Defendant DHA in its pleading and its witness (*Ghulam Hussain*) has acknowledged that the Plaintiff has purchased the Suit Plot from its erstwhile transferee / owner Mrs. Shahida Majid. *Secondly*, the

averments of plaintiff, that Plaintiff is an Overseas Pakistani and permanently residing in USA and is holding a U.S. Citizenship is also not controverted by any of the Defendants. The controversy is basically about the subsequent transfer of the suit plot to present private Defendants and in particular to Defendant No.2. Even though, Plaintiff has acknowledged in his evidence that he has visited Pakistan many times after 1978, that is, since he purchased the Suit Plot, but he was not present in Karachi on 13.05.1990, when the first impugned transfer (of the Suit Plot) took place; this material aspect is to be determined after appraisal of the evidence. The issue of limitation is a mixed question of fact and law, particularly in the present *lis* and in other cases as well, where this question of law (of Limitation) is dependent on the determination of other issue(s), then, in my considered view, a plaintiff should not be non-suited, unless, either there is incriminating evidence against a plaintiff that his claim is a time barred one, or, this issue could be decided on the basis of undisputed record. Case law relied upon by the Defendants in this regard is distinguishable. Therefore, **both Issues are answered accordingly**, that the present suit is not barred by any law and Plaintiff was absolute owner of Suit Plot No.25, 27th Street, Phase-V, Defence Housing Authority, Karachi, measuring 1000 square yards.

ISSUES NO.3 and 4.

12. Issue No.3 is pivotal and finding on this Issue will decide the remaining Issues. It has a consistent stance of Defendant No.1-DHA and so also testified by its sole witness, that Plaintiff himself was present on 13.05.2019 when the suit property was transferred in favour of Defendant No.2 (Amir Abdul), whereas, claim of Plaintiff is that he being a permanent resident of United States of America, was not even present in Pakistan on the above date and thus the entire transfer procedure in favour of Defendant No.1

is a result of fraud and collusion between the latter (*Defendant No.2*) and employees of Defendant No.1.

13. Mr. Shahan Karimi, learned counsel for Plaintiff has argued while referring to the cross-examination of sole witness of Defendant No.1 that first transaction in dispute was affected on 13.05.1990, whereas, the said Defendant No.2 (*Amir Abdul*) had done the second transfer on 29.05.1990, in favour of Rashida Bano (*Defendant No.5*), which itself contrary to the Regularization No.29 of Defendant No.1-DHA contained in "**HAND BOOK FOR GUIDANCE TO MEMBERS OF 1988**" [available in Record] in which approximate time for transfer of a property is mentioned as 3 to 4 weeks, whereas, two questionable (fraudulent) transactions in respect of the suit plot was done within a period of two weeks. Learned counsel has further argued that in terms of Regularizations No.26 and 28 of the said Book, one of the main conditions is that the original Allotment Order or Transfer Order has to be submitted to Defence Housing Authority (DHA)/Defendant No.1, by the transferors, besides clearing all outstanding dues. Since the original Transfer Order dated 05.05.1978 is in possession of Plaintiff, which has been produced in the evidence as Exhibit P/2, therefore, it is quite evident that Plaintiff was not present on 13.05.1990 for completing the formalities of a valid transfer of a suit plot to Defendant No.2; that Application for Transfer of suit plot to Defendant No.2 and Transfer Affidavit, which have been produced by the witness of Defendant No.1 as Exhibits D-3 and D-7, respectively, are forged documents as Plaintiff had not put his signature on the said documents. Learned Advocate has relied upon reported decisions (mentioned in the opening part of this Judgment) in support of his arguments. It is argued that on the relevant date when the first fraudulent transaction took place the Plaintiff was not in Pakistan and same was the position when second questionable transaction took place. The American Passport of Plaintiff which has been produced in evidence as **Exhibit P/9** was also

referred to, that lastly Plaintiff exited from Pakistan **on 15.5.1989 and later entered into on 18-12-1990 (pages 71 and 72 of the Evidence File, containing Passport entries)**. Learned counsel has also referred to Exhibit P/11, P/12 and P/14, which are the letters from Princeton Community Hospital (at United States of America), signed by Daniel C. Dunmyer (Chief Executive Officer) stating that Plaintiff in the month of May 1990 was treating patients at the above Hospital; *whereas*, Exhibit P/14 is a correspondence dated 28-3-2002, by another Hospital, stating that ‘Amir Rashid Piracha’ son of present Plaintiff was working with his father in the hospital in USA from 7-5-1990 until August 1990. Plaintiff’s Counsel has relied upon the reported case of *Manzoor Hussain {ibid, 2016 YLR (Sindh) 748}* in which as per the arguments of learned Advocate, same issues were involved about fraudulent transfer of plot and ultimately the present Defendant No.1, who was also one of the defendants in the above reported case, was directed to compensate the plaintiff of the reported case, by either giving him an alternate plot or monetary compensation, besides, paying damages. It is contended that even though present Defendant No.1 preferred a High Court Appeal No. 328 of 2015 (a Copy whereof is available in Record) against the above reported judgment, but the same was withdrawn in view of the compromise entered into between the present defendant No.1 and plaintiff of the reported case, on the terms, *inter alia*, that present Defendant DHA agreed to give an alternate plot. With regard to the authenticity of the above Exhibits P/11 to P/13, learned counsel has relied upon the reported decision of *Usman case (supra-PLD 1975 Karachi 352)*, to substantiate the plea that if a document of foreign origin is produced in original bearing seal of a Notary Public, then such document is admissible in evidence.

14. Mr. Nazar Hussain Dhoon, Advocate for Defendant No.1-DHA, has controverted the above arguments and submits that since the Plaintiff is

alleging fraud, therefore, onus is on him to prove the same. It is further argued that material document that could have supported the case of Plaintiff, is his Pakistani Passport, which was never produced, entailing an adverse consequence in terms of Article 129, illustration (g) of the Evidence Law. While supporting this argument the legal team of other private Defendants have submitted that the above mentioned exhibits/letters of Princeton Hospital (United States of America) are not public documents and secondly the case law relied upon by the plaintiff counsel is distinguishable, because in the above **reported case of Manzoor Hussain**, the latter produced his original passport in evidence to prove his contention that on the relevant dates he was not present in Pakistan, whereas Plaintiff of this *lis* has not produced his Pakistani Passport in the evidence despite acknowledging that he also has a Pakistani Passport.

15. Evidence of the parties and arguments of learned Advocates are considered. To the facts relating to the Issues under determination, Article 85 (concerning public documents); Article 118 about burden of proof and Article 129 illustration g, of the Evidence Law are applicable. It would be advantageous to reproduce the aforesaid provisions_

“85. Public documents. The following documents are public document:--

- (1) documents forming the acts or records of the acts--
 - (i) of the sovereign authority;
 - (ii) of official bodies and Tribunals: and
 - (iii) of public officers, legislative, judicial and executive, of any part of Pakistan, or of a foreign country,
- (2) public records kept in Pakistan of private documents;
- (3) documents forming part of the records of judicial proceedings;
- (4) documents required to be maintained by a public servant under any law; and
- (5) registered documents the execution whereof is not disputed.”

“118. **On whom burden of proof lies.** The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Illustrations.

(a) A sues B for land of which B is in possession, and which as A asserts, was left to a by the will of C, B's father.

If no evidence were given on either side, B would be entitled to retain his possession.

Therefore, the burden of proof is on A.

(b) A sues B for money due on a bond.

The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies.

If no evidence were given on either side, A would succeed as the bond is not disputed and the fraud is to prove.

Therefore, the burden of proof is on B.”

“129. **Court may presume existence of certain facts.** Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Illustrations.

The Court may presume--

(a) that man who is in possession of stolen goods soon after the theft is either the if or has received the goods knowing them to be stolen, unless he can account for his possession;

(b) that an accomplice is unworthy of credit, unless he is corroborated in material particulars;

(c) the a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration;

(d). that a thing or state of things which has been shown for be in existence within a period shorter than that which such things or states of things usually cease to exist, is still to existence;

(e) the judicial and official acts have been regularity performed;

(f) that the common course of business has been followed in particular cases;

(g) that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;

(h) that, if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him;

(i) that when a document creating an obligation is in the hands of the obliger, the obligation has been discharged.

But the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it;

as to illustration (a).--A shopkeeper has in his till a marked rupee soon after it was stolen, and cannot account for its possession specifically, but is continually receiving rupees in the course of his business;

as to illustration (b).--A, person of the highest character, is tried for causing a man's death by an act of negligence in arranging certain machinery, B, a person of equally good character, who also took part in the arrangement, describes precisely what was done, and admits and explains the common carelessness of A and himself;

as to illustration (c)--Crime is committed by several persons, A, B and C, three of the criminals are captured on the spot and kept apart from each other. Each gives in account of the crime implicating D, and the account corroborate each other in such a manner as to render previous concert highly improbable; as to illustration (d)--A, the drawer of a bill of exchange, with a man of business. B, the acceptor, was a young and ignorant person, completely under A's influence; as to illustration (d)--It is proved that a river ran in a certain course free years ago, but it is known that there have been floods since that time which might change in course: as to illustration (e)--a judicial act, the regularity of which is in question, was performed under exceptional circumstances; as to illustration (f)--the question is whether a letter was received it is shown to have been posted, but the usual course of the post was interrupted by disturbances; as to illustration (g)--a man refuses to produce a document which would bear on a contract of small importance on which he is sued, but which might also injure the feelings and reputation of his family; as to illustration (h)--a man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked; as to illustration (i)--a bond is in possession of the obliger, but the circumstances of the case are such that he may have stolen it.”

{Underlined to add emphasis}

16. The above mentioned documents / Exhibits P/11, P/12 and P/13 produced in original and bearing official seal of Notary Public of State of West Virginia, USA. These exhibits/letters are issued by the Management of a Hospital and not by any sovereign authority, official body, tribunal or

Public Officers, legislative, judicial and/or executive branch of the United States of America and therefore these Exhibits P/11 to P/14, in my considered view do not fall **within the purview of public documents**, as envisaged in Article 85 (*ibid*). More so, Exhibit P/14 is a Letter head of Princeton Internists Inc., signed by ‘Gordon F. Prescott, M.D.’, **whose name along with that of Plaintiff appear** on this Letter head, confirming the fact as discussed above. Hence, the decision of **Usman case** (*ibid*) is not applicable, *inter alia*, because in that reported case, document in question was a birth certificate, issued by Ajmer Municipality of India. In the present *lis*, the above Exhibits (P/11 to P/14) since were issued by the Management of above named Hospitals (in the United States of America), thus, they should have been proved as required under Article 78 of the Evidence Law. In this regard a reported Decision (of learned DB of this Court) in **Agha Wazir v. The State, 2003 P.Cr.L.J 1353**, is relevant, ruling, *inter alia*, that a document be proved by admission or examining the person who has signed it (in terms of Articles 78 and 81 of the Evidence Law). In the present case, if the afore named Chief Executive Officer could not come to Pakistan, his evidence could have been recorded through attorney or by any other permissible procedure, but this was not done.

17. Reverting to the case of Manzoor Hussain (*ibid*), which has been minutely examined; plaintiff of the above reported case has disproved the stance and evidence of Defendant No.1 (DHA) by producing his passport where from it was clear that on the relevant dates when the fraudulent transaction took place, the said plaintiff (of the reported case) was not in Pakistan. The same could have been done by the present Plaintiff (Dr. Paracha). He never produced his Pakistani Passport to prove that on the relevant date, that is, on 13.5.1990, he was not in Pakistan; if his Pakistani Passport was produced, then the defence setup by Defendant DHA would have tumbled. In order to give a further opportunity of a fair trial, vide

Orders dated 19-3-2019 and 30-4-2019, a Report was called from Federal Investigation Agency (FIA) about travel history of Plaintiff during 16.05.1989 to 17.12.1999. Compliance Report was filed by FIA and its representative appeared in Court and submitted that since the new IBMS System at immigration was not installed in the year 1989 to 1999, thus, travel history of that period could not be provided.

18. Non-production of Pakistani passport by Plaintiff raises an adverse inference against him, as envisaged in the above **Article 129 illustration (g)**, which is expounded by judicial pronouncements as ‘best evidence rule’, that is, if a party to a proceeding withholds the best piece of evidence, then it is presumed that if the same was produced, it would have gone against him.

19. The replies of Plaintiff in his deposition that he does not remember that he had a Pakistani Passport during 1984; that Plaintiff does not remember that Ms. Shahida Majeed (who is the transferor of suit plot to the Plaintiff) signed documents in Plaintiff’s presence; that “ **After 1978 I visited Pakistan many times probably after every second year. I did not surrender my Pakistani passport. I used to visit the suit plot during my visits to Pakistan**” leads to the conclusion that Plaintiff is unable to prove fraudulent transaction and forgery in transfer of Suit Plot. Certain procedural lapses, as pointed out by Plaintiff’s counsel in the testimony of officer of Defendant DHA, does not improve the case of Plaintiff and the burden of proof as required under Article 118 of the Evidence Law (*ibid*) has not been successfully discharged by Plaintiff in view of the above discussion. If as per Plaintiff’s own testimony he visited Pakistan many times after 1978 (when the suit plot was purchased) then his evidence is contradictory to his pleadings, wherein, it is averred that on 4-5-2000, Plaintiff was shocked to see the two houses on the suit plot. Secondly, if Plaintiff has produced the above Documents of USA Hospitals (Exhibits P/11 to P/14) in order to show

his absence from Pakistan, then, he could have easily produced and got exhibited his Pakistani Passport to prove his claim. Consequently, both **Issues are answered in Negative**, hence, Defendant No.1 is not bound to allot an alternate plot.

ISSUES NO.5, 6 AND 7.

20. The witness of Defendant-DHA has deposed that on 01.11.1993, Defendant No.5 (*Rashida Bano*) got the plot sub-divided into two parts, that is, Plot No.25/I and Plot No.25/II and subsequently “**B**” Leases were issued and as per the official record (of DHA), Defendant No.7 (*Sabra Begum*) sold her House No.25/II to Ajmal Hussain (*Defendant No.8*), who also testified (independently) and Plot No.25/I was in the name of Defendant No.6 (*Shujaat Ali*). No question was put to the said witness of Defendant-DHA by the Plaintiff’s side, in order to falsify his Statement about subdivision of the suit plot into Plots No.25/I and 25/II. On this aspect, he was cross-examined by the learned counsel for Defendants No.8 and 9 and the said witness of DHA has stated that Defendant No.1 (DHA) has received charges / fee of subdivision of Suit Plot and execution of Leases in favour of private Defendants, so also mutation fees. The facts about sub-division of the Suit Plot, execution/existing of ninety nine years Leases in favour of private Defendants and their subsequent acquisition through registered Conveyance Deeds have been mentioned in the Written Statements, but Plaintiff did not opt to amend the pleadings for cancellation of above registered Instruments, produced in the evidence as *Exhibits D-3/4, D-2/8, D-2/11*. On this particular aspect, the testimony of Plaintiff is relevant. To a question, he replies that he was aware that the suit plot was subdivided into two parts and houses are constructed thereat. He has further stated in his cross-examination that he has “**grievance against Defendant No.1 first of all.....**”. To a question put by learned counsel for Defendant No.8, he has acknowledged

that Defendant No.8 has not played fraud upon Plaintiff. To a specific question, Plaintiff has replied in affirmative that he will be satisfied if Plaintiff is monetarily compensated by Defendant No.1.

21. Defendants No.8 and 9 with their Affidavit-in-Evidence / examination-in-chief have produced the Conveyance Deeds dated 01.08.1994 and 30.10.1994 (as stated above), in support of their plea that they have purchased the respective subdivided plots No.25/I and 25/II, through a valid, registered instrument. Defendant No.8 has also produced “B” Lease in favour of Defendant No.7 (*Sabra Begum*), issued by Defendant No.1 (*DHA*) as Exhibit D-2/8. In their cross-examination, both Defendants No.8 and 9 (*subsequent and present transferees of the subdivided plots*) could not be contradicted by the Plaintiff’s Advocate. Particularly, question with regard to the authenticity of the following documents exhibited by the above two witnesses (*Defendants No.8 and 9*) were never challenged in cross-examination_

- i. Transfer Order dated 02.04.1996 in favour of Defendant No.9 (*Zahida Khan*)- Exhibit D-3/7.
- ii. Approved Building Plan, issued by the Clifton Cantonment Board to Defendant No.7 (*Sabra Begum*) in respect of Plot No.25/II as Exhibit D-2/5.
- iii. Completion Certificate issued by the Clifton Cantonment Board in favour of said Defendant No.7 (*Sabra Begum*)- Exhibit D-2/7.
- iv. Transfer Order in favour of Ajmal Hussain (Defendant No.8)- Exhibit D-2/13.

22. The above documents are public documents and since their authenticity have not been challenged, therefore, presumption of genuineness as contained in Article 92 of the Evidence Law is attracted to the above Documents/Exhibits. Case law cited by the legal team M/s. Akhter Hussain,

Muhammad Masood Ghani and Barrister Muhammad Abdur Rahman of Defendants No.8 and 9, particularly in support of their contention, that both Defendants are *bona fide* purchasers for value without notice, is relevant. This principle is developed by Courts while expounding Sections 41 of the Transfer of Property Act and 27 (b) of the SRA. It is also summarized by the Hon'ble Supreme Court in a reported decision of Ghulam Rasool and others vs. Noor Muhammad and others-2017 SCMR page-81; relevant portion is reproduced herein under _

“The essential ingredients of this section are, (a) that the transferor was the ostensible owner; (b) that the transfer was made by consent express or implied of the real owner; (c) that the transfer was made for consideration; and (d) that the transferee while acting in good faith had taken reasonable care before entering into such transaction. These four imperative / essential ingredients must co-exist in order for a person to take the benefit of the equitable principle, however, merely on account of some error committed by the revenue staff in the revenue record unintentional or deliberate or motivated which excludes the name of the lawful owner of the property therefrom and the property, shown to be in the name of some other person who is not the owner of the whole or a part thereof by itself shall not deprive and denude the true and actual owner from the title of the property and this by no means can be construed that the transfer, to the person claiming protection of the rule of equity *ibid* by a person who actually is not the owner is being made by consent express or implied of the real owner.”

Thus, **Issues No.5, 6 and 7 are replied in Affirmative**, that is, the suit property was officially subdivided into two portions and subsequently ownership leases were issued by Defendant No.1 and Defendants No.8 and 9 are *bona fide* purchasers / lawful lessees of their respective properties / plots No.25/II and 25/I.

23. In view of the above discussion, the reported Judgments relied upon by the learned counsel for the Plaintiff relating to the fraud and superstructure built thereon, are clearly distinguishable.

ISSUES NO.8 AND 9.

24. The upshot of the above is that Plaintiff is not entitled for his claim of damages and the present suit is dismissed. However, parties are left to bear their own costs.

Dated: 20.01.2020.

JUDGE

M.Javid.P.A