

THE HIGH COURT OF SINDH AT KARACHI

Present: Mr. Justice Salahuddin Panhwar

Suit No. 1104 of 2013

Plaintiff : Fawwad Salim Malik

Defendants : Mrs. Samina Ansari and others.

Suit No. 1284 of 2013

Plaintiff : Mrs. Samina Ansari

Defendants : Akhund Khair Mohammad & another

APPEARANCE

Mr. Zayyad Khan Abbasi, advocate for plaintiff in Suit No. 1104/213 and for defendant in Suit No. 1284 of 2013

Mr. Khurram Memon, advocate for defendant No.1 in Suit No. 1104/2013 and for plaintiff in Suit No. 1284 of 2013

Date of hearing : 14.12.2021

Date of order : 14.12.2021

SALAHUDDIN PANHWAR, J.-By dint of this order, I intend to decide maintainability of both suits as questioned by this Court.

2. Precisely, the facts as narrated in Suit No. 1104 of 2013 are that the plaintiff purchased agriculture land situated at "Seharki Taluka' Tando Allah Yar, District Hyderabad, Sindh, measuring about 82.34 Acres, (hereinafter referred to as the "subject property") falls in the following Survey numbers:

- i) 216, 219, 250, 252, 217, 241, 251, 253.
- ii) 66/1, 2, 3 & 4, 663/1 & 5, 675/1, 676/1 & 2.

- iii) 231, 233, 267, 298, 310, 312, 316, 654/3-A, 660/2, 677/1, 678, 286, 296, 266, 237, 244, 297, 309, 311, 313, 317, 660/1 & 3, 667/2, 280, 296, 263, 268, 228, 242, 243, 247, 248, 249, 281, 650/1, 2, 3 & 4, 278 & 471.
- iv) 271, 279-A & B.
- v) 455, 459, 462,/B, 677/3, 678-2, 458, 462/A, 460, 463, 677-4.
- vi) 314, 315, 316, 317, 468 total. "1.10 Acres" which are Kharant in the Khate from Mukhtarkar Office, Tando Allah Yar.
- vii) 246, 452, 451, 453 Total (22-11) Acres.
- viii) 54, 468, 676/3 & 4, 675/3 & 255 Total (31-36) Acres.
- ix) 262, 241, 315, 359, & 470, Total "(25-36)" Acres.
- x) 208, 215, 277, 456, 540, 683, 659, Total "98-16" Acres, 275, 276, 627-6 Kharanth.

from defendant No.1, which she acquired by way of inheritance from her father who expired on or about in the year 1965; that property more than 600 acres including the subject property bearing agriculture land situated at "Seharki Taluka" Tando Allah Yar, District Hyderabad, Sindh, measuring 82.34 acres, was allotted to Akhund Ghulam Ahmed Siddiqui (late), who expired at Karachi on or about 1965 leaving behind him one widow, one son and six daughters including the defendant No.1; that upon the death of Akhund Ghulam Ahmed Siddiqui (late), the entire property was mutated in the name of his legal heirs in the record of rights of the Defendant No.3 on or about 17.5.1976; that out of total agricultural land about 600 acres, which was transferred/mutated in the name of all the legal heirs of late Akhund Ghulam Ahmed Siddiqui, the defendant No.1 acquired about 82.34 acres as such the defendant No.1 being the co-owner of the property was seized, possessed of and otherwise well and sufficiently entitled to sell her share in the property; that since the defendant No.1 was/is residing in United States of America, as such she executed General Power of Attorney in favour of her real brother Mr. Akhund Khair Muhammad Siddiqui Son of Akhund Ghulam Ahmed Siddiqui, at USA duly attested by Mr. Sarfaraz Hussain, Consular Attaché, Embassy of Pakistan, Washington, DC, CD/251/08 dated 6.11.28 as such the plaintiff entered into Sale Agreement with the defendant No.1 through her duly constituted General Attorney. It is further stated by the plaintiff that he entered into Sale Agreement dated 7th January 2009 with the defendant No.1 through her duly constituted Attorney Akhund Khair Muhammad Siddiqui for the purchase of the subject property against total sale consideration of Rs.15,120,000/- (Rupees Fifteen Million One Hundred and Twenty Thousand Only); that the plaintiff paid Rs.60,00,000/- (Rupees Six Million Only) in the shape of 150 Prize Bonds, each of Rs.40,000/- from serial No.231600 to 231750 at the time of execution of Sale Agreement which was duly acknowledged/admitted by the Attorney in the Sale Agreement; that the Plaintiff after execution of Sale Agreement in order to take reasonable care to

ascertain the title of defendant No.1 had visited the office of defendants to 2 to 5 alongwith copies of Deh Form-VII which were provided at the time of execution of sale Agreement and the defendants duly verified the same as true and correct entries available on record of rights and that too having been acquired by way of inheritance; that the defendants 4 and 5 verified that the share of defendant No.1 is approximate same as mentioned in the Sale Agreement; that plaintiff after satisfaction, paid the balance sale consideration in different times as mentioned below.

1. That in terms of Clause-2 of the Sale Agreement balance sale consideration of Rs.91,20,000/- (Rupees Nine Million One Hundred Twenty Thousand Only) was payable within twelve (12) months.
2. That the plaintiff paid the following amounts from time to time to the Attorney of the Defendant No.1 in terms of the Sale Agreement, which were duly acknowledged by the Attorney:-
 - a. Rs.26,71,500/-, dated 27.02.2009 by way of 39,000 \$ U.S
 - b. Rs.27,50,000/- (Two Million Seven Hundred and Fifty Thousand Only) on 18.03.2009 through three post dated Cheques bearing Nos.0007225964, dated 21.03.2009, amounting to Rs.5,00,000/- (Five Hundred Thousand Only), 0007225966, dated 22.03.2009, amounting to Rs.2,50,000/- (Two Hundred and Fifty Thousand Only) & 0007225974, dated 29.03.2009, amounting to Rs.20,00,000/- (Two Million Only)
 - c. Rs.5,00,000/- (Five Hundred Thousand Only on 03.08.2009 through two post dated Cheques bearing No's.0004350069, dated 17.08.2009, amounting to Rs.3,00,000/- (Three Hundred Thousand Only),0004350071, dated 26.08.2009, amounting to Rs.2,00,000/- (Two Hundred Thousand Only).
 - d. Cash Rs. 10,00,000/- (One Million Only) on 26th day of March 2010.

3. It is further averred in the plaint that after payment of Rs.10,00,000/= (Rupees One Million Only) towards balance sale consideration, the physical possession of the subject property was also handed over to the Plaintiff through handing over Physical Possession & Acknowledgement of Possession dated 26.03.2010 and since then the plaintiff is enjoying the physical possession as well; that as per requirement of the Defendants No. 2 & 3, for the purpose of mutation and/or execution of instrument of transfer / Sale Deed, NOC is required and the Defendant No. 1 was required to apply for the issuance of NOC for sale within time; that since the Defendant No. 1 failed to obtain NOC for sale from the competent authorities, as such the plaintiff withheld Rs.24,48,500/- from the

balance sale consideration as such presently the plaintiff is liable to pay Rs.24,48,500/- only towards balance sale consideration in terms of Sale Agreement referred above; that the Plaintiff has requested the Defendant No. 1 through her Attorney to complete the sale transaction as required under the law but no positive response has come forward from the Defendant No. 1 or from her Attorney; that the Plaintiff is ready to pay the balance amount and is entitled for the mutation of the suit property in his name under the Provisions of Transfer of Property Act, having made the substantial payment. But the Defendant No. 1 has failed / neglected to complete the transaction despite Plaintiff's just demand for registration/ execution of Sale Deed / Instrument of transfer; that it is pertinent to mention here that out of total sale consideration of PKR. 151,20,000/- (Rupees Fifteen Million One Hundred and Twenty thousand Only), the Plaintiff had paid an amount of PKR. 12,671,500/= (Rupees Twelve Million Six Hundred Seventy One Thousand Five Hundred Only) through Prize Bonds, US Dollars, Cheques and Cash and only an amount of PKR. 24,48,500/- (Rupees. Two Million Four Hundred Forty Eight Thousand Five Hundred Only) is balance which the Plaintiff is ready and willing to pay the Defendant No. 1 subject to execution of Sale Deed / Instrument of Transfer in terms of Sale Agreement. The Plaintiff is also ready to deposit the balance sale consideration with the Nazir of this Court; that the Plaintiff has reasons to believe that the Defendant No. 1 is not ready and willing to perform her part of the contractual obligation and acting with malafide intentions; that Plaintiff also seriously apprehends that the Defendant No. 1 may create third party interest in respect of Suit Property, hence this suit is also for permanent injunction as well as Specific Performance of Contract; that the cause of action accrued to the Plaintiff when the Sale Agreement dated. 7.1.2009 was executed at Karachi and from time to time paid the balance sale consideration and the Plaintiff time and again requested the Defendant No. 1 for completion of transaction but no positive response has been received and the same is still continuing, hence the plaintiff prayed for the following reliefs:

PRAYER

- i. Declare that the Plaintiff is bonafide purchaser of Suit Property bearing agriculture land situated at "Sehathi Taluka" Tando Allah Yar, District Hyderabad, Sindh, measuring about 82.34 Acres for valuable consideration.
- ii. Decree for specific performance of Sale Agreement dated. 7.1.2009 in respect of suit property bearing agriculture land situated at "Seharki Taluka" Tando Allah Yar, District Hyderabad, Sindh, measuring about 82.34 Acres, falls within the Survey Numbers as

mentioned in Para-1 of the Plaint, with the directions to execute a registered Sale Deed / Instrument of Transfer in respect of suit property in favour of the Plaintiff OR in case of failure of Defendant No. 1 the Nazir of this Honourable Court may be directed to execute the Sale Deed / Instrument of Transfer in favour of Plaintiff on behalf of the Defendant No. 1.

- iii. To grant permanent injunction thereby restraining the Defendants or anybody else claiming / acting through them or under their authority from selling, alienating, encumbering, the Suit Property and/or dispossessing the Plaintiff from the suit property bearing agriculture land situated at "Seharki Taluka" Tando Allah Yar, District Hyderabad, Sindh, in the Survey numbers as particularly mentioned in Para-1 of plaint, measuring about 82.34 Acres, without due course of law.
- iv. Award cost(s) of the suit.
- v. Any other / further / additional / better relief (s) or order (s) against the defendants and/or in favour of Plaintiff as this Honourable Court may deem fit under the circumstances of the instant case.

4. In Suit No. 1284 of 2013, the plaintiff (who is defendant No.1 in suit No.1104 of 2013) has submitted that in the year 1965, the father of the plaintiff and the defendant No. 1 expired hence the plaintiff inherited her share from agricultural land in Tando Allahyar; that in the year 1992 the plaintiff executed a General Power of Attorney in the United States of America in favor of her Attorney namely Mohammad Moosa Mirbahar s/o Wattu Khan Mirbahar for presenting the instant lis before this Court; that said General Power of Attorney was notarized by the competent authority in the Consulate General of Pakistan, New York; that in the first quarter of the year 2013, the plaintiff came to know through her attorney that the defendant No. 1 is trying to create third party interests in the subject property through fake and concocted documents, hence, the plaintiff notified competent authority for keeping the proprietorial rights of the plaintiff intact on the subject property vide letter dated 18-3-2013 containing description of the subject property; that under the principles of caveat emptor, general public was also informed as to the above said phenomenon through notices published in daily Jang issued on 4th April, 2013 and Daily Kawish dated 22.3.2013; that in the month of September, 2013 the plaintiff came to know that Suit No. 1104/2013 has been filed by the present defendant No. 2 (who is plaintiff in suit No.1104/2013) through her fake attorney i.e. the present defendant No. 1 who is claiming to be the attorney of the present plaintiff to which claim the plaintiff has, long before even institution of Suit No. 1104/2013 notified general public and competent authorities to be fake and based upon

concocted documents, as an abandoned caution. It is further averred in the plaint that plaintiff and/or her validly constituted attorney has no privity of contract with the defendant 2 and thus anything emanating out of fake and forged document on the basis of which the defendant No. 2 has, as claimed, paid amounts to the defendant No. 1 for purchase of subject property is illegal per-se and cause of action, if any, accruing to the defendant No. 2 is against the defendant No. 1, in personam, stretching to the jurisdictions of civil and criminal courts of competent jurisdictions; that the Power of Attorney annexed as annexure P/2 pp. 25 to Suit 1104/2013, which is, for the sake of convenience again being produced as annexure "G" hereof, through which the present defendant No. 1 has created third party interest as to the subject property favoring the defendant No. 2, hereof, is concocted, fake, fictitious and fraud and having no significance in the eyes of law; that it would be in the supreme interest to cancel the above said general power of attorney, judicially, and all the benefits arisen through the said power of attorney to any person whatsoever to be judicially declared to be of no effects, retrospectively; that initial cause of action accrued to the plaintiff in the year 1965 when her father died and the plaintiff inherited the subject property. The cause of action again accrued to the plaintiff in June, 1999 when a General Power of Attorney was executed by the plaintiff in favor of the present attorney. The cause of action looks a horizontal flight in first quarter of 2013 when the plaintiff came to know that the defendant no. 1 is trying to create third party interests in the subject property claiming to be the attorney of the plaintiff. The cause of action again accrued to the plaintiff when the plaintiff notified the competent authority as well as general public that the present attorney is the real attorney of the plaintiff and the defendant No. 1 is trying to play with some fake and fictitious documents as the attorney. The cause of action took serious turn triggering presentation of the present suit when in September, 2013, Suit No. 1104/2013 was filed by the defendant No. 2 against the present plaintiff and the fake attorney of the present plaintiff and it is still continuing. The plaintiff has prayed for the following reliefs:

PRAYER

- i. Declare that the General Power of Attorney qua Annexure "G" to the instant lis and Annexure P/2 to Suit: 1104/2013 sub judice before this Hon. Court is concocted, fake, fictitious, a fraud and of no legal consequence with retrospective effects.

- ii. Declare that no privity of contract ever existed by and between the plaintiff and the defendant No. 2.
- iii. Perpetually restrain the defendants as to usage of the fake and concocted General Power of Attorney qua Annexure "G" of the instant plaint and Annexure P/2 to Suit 1104/2013 for any purpose whatsoever.
- iv. Any other relief/ reliefs deemed fit may also be granted.

5. It is pertinent to mention here that both the plaintiffs who are also defendants in each other suit have filed their respective written statements wherein they raised preliminary objections as regards to the maintainability and further pleaded their cases.

6. Since the subject property is situated out of the territorial jurisdiction of this Court, therefore, the issue whether this Court has jurisdiction to try the captioned suits requires to be addressed first, so as to avoid further proceedings, orders etc. as redundant or *coram non-judice*. Here, I would not hesitate in adding that whenever the Court is confronted with the issue of territorial jurisdiction, then it shall always be safe to decide such issue because it relates to competence of the Court in entertaining (taking cognizance) the suit. For deciding such like issue the Court is not supposed to go deep into the merits of the Case, including that of '*Cause of Action*' but such question is always to be decided while examining the '*pecuniary & territorial jurisdiction*'. Needless to add that the jurisdiction of the Court(s) is neither dependent upon the wishes of party or parties nor consents of two or more can control such subject but the '*jurisdiction is always subject to Constitution or any other law relating to such question*' therefore, it is safe to add that no Court shall exercise any jurisdiction in any matter brought before it until and unless such jurisdiction has been conferred upon it by the Constitution itself or under any law, as held in the case of Malik Iqbal Hassan v. DHA & Ors PLD 2019 Lahore 145 as:-

"4. We are further of the view that in accordance with Article 175(2) of the Constitution of Islamic Republic of Pakistan, 1973 no Court shall exercise any jurisdiction in any matter brought before it until unless such jurisdiction has been conferred upon it by the Constitution itself or under any law. Article 175(2) is reproduced verbatim for ready reference:-

"No Court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law".

7. Confining myself to such *legal* position, the learned counsel for the plaintiff in Suit No.1104 of 2013, while addressing the issue of maintainability, raised by this Court has contended that since Agreement to Sale was executed at Karachi, therefore this Court is competent to entertain this suit. Per learned counsel it is settled proposition of law that if cause of action accrued at Karachi and property is out of territorial limits of original civil jurisdiction of this Court, even then suit is competent. Counsel for the plaintiff in Suit No. 1284 of 2013 has contended that connected suit has been filed before this Court, as such under clause (c) of Section 20 CPC, this Court has ample powers to dispose of both the suits.

8. Heard learned counsel for the parties and perused the record.

9. Before proceeding any further, it would be conducive to reproduce hereunder Sections 16 and 120 of the CPC:

"16. Subject to the pecuniary or other limitations prescribed by any law, suits;

(a) for the recovery of immovable property with or without rent or profits;

(b) for the partition of Immovable property;

(c) for foreclosure, sale or redemption In the case of a mortgage of or charge upon immovable property,

(d) for the determination of any other right to or Interest in immovable property;

(e) for compensation for wrong to immovable property,

(f) for the recovery of movable property actually under distraint or attachment;

shall be instituted in the Court within the local limits of whose jurisdiction the property is situated [or, in the case of suits referred to in clause (c), at, at the place where the cause of action is wholly or partly arisen:-

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate 1[or, in the case of suits referred to in clause (c), at the place where the cause of action has wholly or partly arisen) or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain."

10. *Prima facie*, the Section 16(d) *supra* makes it quite clear and obvious that if the determination of any right or interest in *immovable property* is involved then the suit shall be instituted in the Court within local limits of whose jurisdiction the property is situated. No doubt, the Section 120 of the *Code* reads as:-

“120. (1) *Provisions not applicable to High Court in original civil jurisdiction.* The following provisions shall not apply to the High Court in the exercise of its original civil jurisdiction, namely, sections 16, 17 and 20.

and, *prima facie*, gives an impression that Section 16, 17 and 20 are not applicable to the High Court in the exercise of its *original civil jurisdiction*, with that regard it would be to germane to add, if accepted as true then the plaintiff shall have liberty to institute the suit(s) even for a property, located at any part of the Country or Sindh Province. The same, I shall insist, might fail the jurisdiction, vested by Constitution and Law upon the *Civil Courts /High Courts* of other Provinces as well that of Sindh Province. Such conclusion *legally* can't be expected from the Legislature. In a case of Muhammad Waseem Ghori & another v. Altaf Hussain Tunio & 6 others 2016 YLR 157 (authored by me), the above proposition was answered as:-

“6. In case of West Pakistan Industrial Development Corporation (*supra*) it is held that:--

"(7) *As rightly pointed out by Mr. Brohi sections 16, 17 and 20 do not apply to the High Court in the exercise of its original civil jurisdiction by virtue of the provisions of section 120, C.P.C. This section reads:--*

"*The following provisions shall not apply to the High Court in the exercise of its original civil jurisdiction, namely, sections 16, 17 and 20.*"

It is thus obvious that sections 16, 17 and 20 which prescribe the necessary conditions for giving the Court its jurisdiction and also the limitations under which such jurisdiction is given may not be available for the parties in this case.

8. *So far as the jurisdiction under clause 12 of the Letters Patent is concerned it is not the case of the parties or any one of them that this Court has any such jurisdiction to enable it to entertain the present suit. It was agreed by the learned counsel for the parties that the original civil jurisdiction of this High Court is derived under Article 5 of the High Court of West Pakistan (Establishment) Order (No. XIX) of 1955. Article 5 reads:-*

"*Original Civil and Criminal jurisdiction of the Bench at Karachi-Notwithstanding anything in this Order or in any other law for the time being in force, the Bench of the High Court at Karachi shall have the same original civil jurisdiction for the civil district of Karachi and the same criminal jurisdiction and powers of the Court of Sessions for the Sessions*

Division of Karachi, as were exercisable, immediately before the commencement of this Order, by the Chief Court of Sind under section 8 of the Sind Courts Act, 1926 (Sind Act VII of 1926).

Provided that the Governor-General may by notification in the official Gazette direct that as from a specified date such jurisdiction and powers as are mentioned therein shall cease to be exercisable by that Bench and as from that date that Bench shall cease to exercise that jurisdiction and powers."

The original civil jurisdiction for the Civil District of Karachi was exercised immediately before the commencement of this Order (Order XIX of 1955), by the Chief Court of Sind under section 8 of the Sind Courts Act, 1926 (Sind Act VII of 1926), as later amended by clause 2 of President's Order II of 1956. As section 8 of Act VII of 1926 stands, at present, the High Court has original civil jurisdiction in respect of suits and proceedings wherein the subject-matter in amount or value exceeds 25,000 rupees.

*12. Sections 16, 17 and 20 and clause 12 of the Letters, Patent prescribe the forum and the place for suing. But these sections do not apply to High Court. Article 5 of the High Court of West Pakistan Establishment Order, 1955 and also section 8 of Sind Act VII of 1926 do not prescribe the place of suing. Section 5, only saves the jurisdiction of Karachi Bench as exercised by it under section 8 of Sind Act of 1926. It is my view that the jurisdiction of the High Court has been enlarged rather than restricted by removing altogether the restrictions contained in sections 16, 17 and 20. The Legislature could never have intended to take away the jurisdiction of the West Pakistan High Court (Chief Court of Sind) altogether, since the High Court got that jurisdiction as a place of suing through these sections. Two alternative conclusions can arise from the non-applicability of sections 16, 17 and 20, C.P.C. to the High Courts. **Firstly that the West Pakistan High Court could not entertain any suit, whatsoever, and secondly, it could entertain suits, from all places within its jurisdiction.** It is true that all the District Courts except Karachi District Court have no limit prescribed to their pecuniary jurisdiction. **The present suit could, therefore, be filed at Hyderabad.** The question for decision, however, before me is whether it could not be instituted in the High Court at Karachi. The restrictions prescribed by sections 16, 17 and 20, C.P.C. having been removed the original jurisdiction of the High Court is enlarged and it has jurisdiction to entertain the present suit.*

7. In the case of Abdul Kadir (supra) the suit for specific performance of contract and ratio of that judgment at placitum "C" at relevant page 121 is as under:--

"These payments are not disputed. Plaintiff was not able to disprove the payments of these cheques. It is also held that in view of section 16 of C.P.C. the Court at Hyderabad has jurisdiction to entertain the suit as respondent No. 3 Nusrat Ali resided at Hyderabad. Plaintiff in the suit from which the present appeal arises served Nusrat Ali at his address in Hyderabad and has shown his address at Hyderabad in the amended plaint. Moreover the appellant before us has not been able to prove that agreement Exh. 140 was a forged document and was not executed on 29-5-1966 as we have held above."

Whereas in this dictum the application of Section 16 of the C.P.C. was affirmed.

8. In the case of Mst. Fatima Bai (supra) it was observed that main contesting defendant residing out of jurisdiction of this court where suit was filed, hence plaint of plaintiff as such was declined.

In case of Mst. Rais Akhtar (supra) it is observed that:--

*"It is an admitted position that the contract was entered into at Karachi. The petitioner No.1 not only received the entire sale consideration at Karachi but issued receipt at Karachi. It is also an admitted position that the petitioner No.1 executed irrevocable General Power of Attorney as well as Special Power of Attorney at Karachi and notice for revocation of General Power of Attorney was issued at Karachi and received at Karachi by the respondent. **In view of the cases referred to hereinabove and the finding of the Court at Karachi has jurisdiction.** The revision petition is, therefore, dismissed. I, therefore, uphold the judgment before me."*

9. In said judgment, the application of Section 16 of the C.P.C. was affirmed.

10. On same issued there is case of Muhammad Naveed Aslam and others (2011 CLC 1176), being relevant para 32 is reproduced herewith:--

*"32. The non-applicability of sections 16, 17 and 20 read with Order XLIX, Rule 3 is only applicable and limited to the original side jurisdiction for the district of Karachi and when it is found that the property is situated outside the territorial jurisdiction of Karachi then sections 16 and 17 will automatically come into operation. The initial guiding principles for institution of various suits is provided under sections 16 to 19, C.P.C. whereafter section 20 has been provided for other suits to be instituted where the defendant resides or cause of action arises. In the present matter section 16 is applicable therefore, the suit should have instituted in Thana Bola Khan where the property is situated and since the claim of damages is not an independent relief but arising from the alleged wrong done committed by the defendants in the suit, therefore, this relief can also be easily claimed in the same suit at Thana Bola Khan along with other reliefs including the declaration as to the ownership, permanent and mandatory injunction. The honourable Full Bench of this court in case **"Rimpa Sunbeam Co-operative Housing Society Ltd. v. Karachi Metropolitan Corporation"** reported PLD 2006 Karachi 444 already held that Jurisdiction of Sindh Court to entertain suits is basically neither the ordinary nor the extraordinary original civil jurisdiction, of the High Court but simply a District Court jurisdiction, the jurisdiction of Sindh High Court to try Civil suits is confined to matters where the pecuniary value of the subject-matter exceeds Rs.30,00,000. All other suits are liable to be tried by the District Courts. In another judgment reported in 2005 MLD 1506 in the case of (Murlidhar P. Gangwani v. Engineer Aftab Islam Agh), the learned Division Bench held that territorial jurisdiction of the Court could not be extended or curtailed on compassionate grounds or looking to the financial position of a party and the expenses which he might have to incur in pursuing the litigation before the proper Court having jurisdiction in the matter. Further, the question of maintainability of a suit with reference to the territorial*

jurisdiction, vis-a-vis cause of action accrued to a party for institution of such suit, is to be judged on the basis of averments made in the plaint."

In this judgment, the application of Sections 16 to 20 of the Code was affirmed while referring to other reported judgments.

11. There is a case reported as **Mst. Aisha Siddiqui's case** (PLD 2010 Karachi 261) and others being relevant paras 13, 14, 15, 16 and 17 are reproduced herewith:--

13. A bare reading of Section 120 of Civil Procedure Code show that firstly it makes sections 16, 17 and 20 of Civil Procedure Code inapplicable for the High Court in exercise of its original civil jurisdiction. The need to make sections 16, 17 and 20 of C.P.C. inapplicable to a High Court arose because the jurisdiction of Civil Courts under sections 16, 17 and 20, C.P.C. and the original civil jurisdiction of the High Courts under the then Letters Patent determine separate places where a civil suit and proceedings could be filed. Section 120 of C.P.C. was enacted to settle the conflict of sections 16, 17 and 20 of C.P.C. with the laws that conferred original civil jurisdiction on the High Courts and to obviate any confusion as regards place of suing. This can be understood through an example. Ordinarily a suit relating to a dispute of immovable property situated in Saddar, Karachi is to be brought in the Civil Court, which under the provisions of sections 16 and 17 of Civil Procedure Code has jurisdiction to try such suit. As the area of Saddar in Karachi falls within the limits of Police Station, Saddar which is in District East, Karachi, therefore the Civil Court which can try suits of area falling in Police Station Saddar becomes the place where such a suit is to be filed when sections 16 and 17 of the Civil Procedure Code are applied. However, if the same suit is of a value, which is more than three million rupees then by virtue of section 7 of Sindh Civil Courts Ordinance, 1962 the place of suing shifts to the Original Side of this High Court. In order to overcome this overlapping of jurisdictions, provisions of sections 16 and 17 of C.P.C. were made inapplicable under section 120 of C.P.C. so that these provisions may not come in the way of filing a civil suit or proceedings on the Original Side of this Court. Therefore, while entertaining a suit relating to immovable property emanating from the area of Saddar in Karachi having a value of more than three million rupees, the place of suing as determined under sections 16 and 17 of the C.P.C. becomes immaterial and is not to be considered as under section 7 of the Sindh Civil Court Ordinance 1962, the Original Side of this High Court becomes the place of suing. **Section 120 of C.P.C. can be interpreted only in this manner and not in a manner that any suit of more than three million rupees in value, coming from any part of the territorial jurisdiction of this Court viz. the entire Province of Sindh can be entertained on the Original Side of this Court. If the interpretation as given to section 120 of C.P.C. by the learned counsel for the plaintiff is accepted then every suit of a value above three million rupees relating to any part of Sindh has to be entertained on the Original Side of this Court. Such an interpretation would defeat the very purpose that created original civil jurisdiction in this High Court for the Districts of Karachi.** While interpreting section 120 of C.P.C., the meaning of the words "in the exercise of its original civil jurisdiction appearing in that section should not be lost sight of which clearly mean that place of suing is not to be determined by sections 16, 17 and 20 but by the provision which confer original civil jurisdiction on this High Court. Now original civil jurisdiction is conferred on this Court under section 7 of the Civil Courts

Ordinance, 1962 which is limited only for the territorial limits of Karachi. No other territory of this High Court comes within the ambit of the original civil jurisdiction prescribed under section 7 of the 1962 Ordinance. Therefore, if a suit does not fall within the ambit of original civil jurisdiction of this High Court then certainly the place of suing for such a suit is to be determined under sections 16 to 20 of Civil Procedure Code. What is actually meant by inapplicability of sections 16, 17 and 20 of C.P.C. to High Court under section 120 of C.P.C. is that High Court shall not apply these provisions to a suit if it comes under the ambit of section 7 of 1962 Ordinance i.e. sections 16, 17 and 20 of Civil Procedure Code shall not apply if a suit pertains to any part of the four Districts of Karachi and is valued at more than three million rupees. On the other hand, if a suit is filed in this Court which does not fall within the original civil jurisdiction of this Court i.e. **it does not pertain to a dispute relating to any of the four Districts of Karachi or in not of a prescribed value then certainly the provisions of sections 16, 17 and 20 shall be attracted and the plaint shall be returned for its presentation to a Court of appropriate jurisdiction.** Section 120 of Civil Procedure Code therefore only renders ineffective provisions of sections 16, 17 and 20 of C.P.C. to suits that can be entertained by this High Court in exercise of its original civil jurisdiction which is confined to civil suits and proceedings pertaining to the Districts of Karachi only and not for any other area falling within the jurisdiction of this High Court.

14. While discussing the real meaning and intent of section 120 of the Civil Procedure Code, it could occur in one's mind as to why only sections 16, 17 and 20 of Civil Procedure Code have been made inapplicable when the place of suing is also determined by sections 18 and 19 of the Civil Procedure Code. The reasons are these. Taking up section 18 of C.P.C. first, it provides that where there is uncertainty as to the local limits of two or more Courts and a suit is filed in anyone of them then upon its disposal, the decree would be regarded as if it was passed by a Court of competent jurisdiction. The object of enacting section 18 of Civil Procedure Code is to treat a decree passed by a Court to be legally valid even though there was confusion as to Courts' local limits and subsequently the uncertainty of limits is resolved and the area is found not be within the jurisdiction of the Court which passed the decree. In order not to disturb this legal position as envisaged by section 18 of Civil Procedure Code and not to render such decree a nullity, **the provisions of section 18 of Civil Procedure Code were not made inapplicable under section 120 of Civil Procedure Code.** Thus a suit valued at more than three million rupees even if it is filed on the Original Side of this Court on account of uncertainty of local limits and this Court decrees the suit then the decree would still be treated as valid and passed by a Court of competent jurisdiction though subsequently the uncertainty is resolved and the area to which the suit related is found to be part of Thatta. Thus, to keep such decree valid, Section 18 of Civil Procedure Code has not been made inapplicable to the original civil jurisdiction of the High Court under section 120 of Civil Procedure Code.

15. Section 19 of C.P.C. on the other hand gives an option to the plaintiff to sue for his claim for compensation for wrong done to him or to his movable property at the place where the wrong was done as well as at the place where defendant resides as provided in the illustrations to section 19 of Civil Procedure Code. Now section 19 of Civil Procedure Code has not been made inapplicable to the original civil jurisdiction of the High Courts under section 120 of Civil Procedure Code for the reason that legislature

*intended that options for the place of suing provided therein should not be taken away and remain available with the plaintiff. However, if one of the two options provided in section 19, C.P.C. is exercised in a manner that suit of a category falling under section 19, C.P.C., i.e. claim for compensation for wrong done to him or to his movable property is to be filed in Karachi then such a suit can be competently filed on the original side of the Court provided only if the amount or value of subject-matter of dispute is of prescribed value. **Therefore, for these reasons i.e. to keep the options as to place of suing open for the plaintiff in suits relating to his claim for compensation for wrong done to person or to movable property, the provisions of section 19, C.P.C. have not been made inapplicable to the Original Civil jurisdiction of this Court under section 120 of Civil Procedure Code.**"*

(Underlining is supplied for emphasis).

12. The above view with regard to the extent of the powers of this High Court to exercise original civil jurisdiction in suits and proceedings is further fortified from the view taken in the case of **Firdous Trading Corporation v. Japan Cotton and General Trading Company** reported in PLD 1961 Karachi 565 referred to by Mr. Kamal Azfar, which is authored by an eminent Judge of this Court Justice Wahiduddin Ahmed. Justice Wahiduddin at pages 575 and 576 held as follows:--

Pages 575 and 576

"The history of the establishment of the High Courts in the sub-continent shows that there were only three Courts which were conferred ordinary original civil jurisdiction within certain limits under their Letters Patent. No other High Court established under the High Court Act of 1861 or under the Government of India Act, 1915 or under the Government of India Act, 1935 was invested with powers of ordinary civil jurisdiction. The Chief Court of Sindh was no doubt a High Court within the meaning of section 219 of the Government India Act, but the jurisdiction which it exercised in the civil district of Karachi was not that of an ordinary original civil jurisdiction of the High Court but it was only performing the duties of the principal Civil Court of original jurisdiction within the district of Karachi under a special statute viz. section 8 of Sindh Court Act, 1926."

Then at page 577 Justice Wahiduddin Ahmed held as follows:--

"I have not the slightest doubt on the language of section 8 of Sindh Act, 1926 and the definition of 'District in section 2(4) of the Civil Procedure Code, that it was exercising District Court jurisdiction in contradistinction to the ordinary original civil jurisdiction of the High Court. In my opinion the mere fact that the Sindh Chief Court later on was included with the definition of High Court under Section 219 of the Government of India Act, did not change the nature of this jurisdiction. I am fortified in this view by another circumstances. Formerly in Sindh there used to be a Court of the Judicial Commissioner. It was exercising jurisdiction in civil matters within the district of Karachi under section 2 of Bombay Act No.1 of 1906. It reads as under:--

"There shall be for the Province a Court of the Judicial Commissioner of Sindh (hereinafter called the Court of the Judicial Commissioner) which shall be the highest Court of Appeal in civil and criminal matters in the

said Province and which shall be the District Court and Court of Session of Karachi."

This position continued till 1937 although in the Government of India Act, Judicial Commissioner's Court in Sindh was deemed as a High Court. But in spite of this in civil matters it continued as District Court. In 1926 the Sindh Courts Act was passed by the Bombay Legislature; which came into force in 1940. But in this enactment, instead of treating the Chief Court of Sindh as District Court, it was designated as the principal Court of original civil jurisdiction. Thus the same position was maintained and it was not enacted that it will have ordinary original civil jurisdiction within the limits of Karachi and also did not change the nature of the jurisdiction in civil matters"

Then in the last sentence of first paragraph at page 580 he goes on to hold as follows:--

"It seems to me that the jurisdiction exercised in such matters is a District Court jurisdiction and since it is exercised by the High Court it may be called as special original civil jurisdiction or extraordinary original civil jurisdiction, but certainly cannot be described as ordinary civil jurisdiction of the High Court." (Underlining is mine)

13. Thus, in the case of Firdous Trading Corporation v. Japan Cotton and General Trading Company reported in PLD 1961 Karachi 565 **it was held that this Court while exercising the powers of original civil jurisdiction is exercising jurisdiction that is exercised by Civil Courts in the civil district of Karachi i.e. it is functioning as the principal Civil Court of original jurisdiction for the District of Karachi only under a special statute.** This decision of Justice Wahiduddin Ahmed reported in PLD 1961 Karachi 565 was though overruled by the Division Bench of this Court which is reported in PLD 1975 Karachi 944 but this Division Bench decision was reversed by the Hon'ble Supreme Court in the case of Province of Sindh v. Haji Razzaq reported in 1991 SCMR 920 and the decision reported in PLD 1961 Karachi 565 was upheld by the Supreme Court.

14. From such background and the dictum, laid down in the judgment (supra), it should not be disputed any more that application of Section 120 and its effect of making sections 17 to 20 of the Code, should always be taken to matters, confined within territorial jurisdiction of 'Karachi' hence whenever the matter is relating to a property falling beyond the territorial jurisdiction of 'Karachi', the Court shall always consider the question of 'jurisdiction' with reference to Sections 16 to 20 of the Code, whichever is applicable."

11. The above legal position, even, stood affirmed through the case law, relied by both the sides, i.e Haji Abdul Malik & 10 others v. Muhammad Anwar Khan & 26 others 2003 SCMR 990 wherein it has categorically been clarified as:-

..... Under section 16 of C.P.C. a suit for declaration relating to the rights and interest in an immovable property is instituted in a Court within local limits of which the property is situated. **The suit for the purpose of determining the rights or interest in the property being different to that**

of the suit in which the relief claimed does not relate to the rights in the immovable property, can be filed at the place at which the cause of action fully or partly arose. **The suit relating to the rights in the immovable property would lie before the Court within the local limits of which the property is situated and if the property is situated outside the territorial jurisdiction of the Court, and the relief being sought in the suit relates to the property, the suit would not be maintainable before any other Court except the one within territorial jurisdiction of which property is situated.** In the present case, the parties in the suit in question residing the local limits of District Mansehra and the agreement was also registered at Mansehra therefore cause of action in favour of respondents-plaintiffs relating to the cancellation of agreement would arise at Mansehra. The essential factor for determination of jurisdiction for the purpose of entertaining the suit would be judged from the contents of the plaint and the dispute subject-matter of suit and not from the consequence flown from the suit. The declaration in the suit filed by the respondents sought was that cancellation of registration of agreement by the Registrar was illegal which would not relate to the rights and interest in the immovable property and would be confined only to the limited extent of exercise of jurisdiction by the Registrar. The place of breach of law would furnish the forum for a suit and such place is where some act was to be performed and thus the suit to set aside the document on the ground that it was obtained through misrepresentation.....

In the nutshell, if a suit involves dispute relating to the rights in the immovable property, such suit will be maintainable at the place where property is situated and if the relief does not relate to the rights and interest in the property and is confined only to the extent of an ancillary matter, can be filed at the place where the cause of action wholly or partly arose. The learned Judge in Chambers in the High Court having examined the proposition in detail in the light of relevant statute has held that the suit was maintainable at Mansehra and we are of the view that no exception can be taken to the legal position explained in the impugned judgment in the facts of the present case..

12. The above case law, *prima facie*, leaves nothing ambiguous that if the case falls squarely within meaning of Section 16(d) of the *Code* the Court is not left with any discretion but to return the plaint for its presentation before the court within whose jurisdiction the property is situated. Such conclusion also affirms the answer, so was drawn by me in referred case.

13. In another case of *Khan Muhammad Tareen v. Nasir and Brother Coal Company* 2018 SCMR 2121 said *legal* position stood affirmed as:-

“9. In order to regulate place of suing and institution of civil proceedings, same is to be instituted in the Civil Court of lowest grade competent to try (section 15 C.P.C.) and in the Court where the defendant or one of the defendants resides or work for gain, or where the cause of action occurs, or where it relates to right to or interest in immovable property, is required to be instituted within the local limits of whose jurisdiction the immovable property is situated. ..

14. In view of above legal position, I am of the clear view that learned counsel for the plaintiff in Suit No.1104 of 2013 is not *legally* justified while taking plea that since the document was executed at Karachi hence this Court has jurisdiction particularly when the plaintiff is *directly* claiming rights and interests in the **immovable property** situated at Tando Allahyar. The plaintiff, *prima facie*, not challenging the document or its legality, so executed at Karachi, but *prima facie* seeking determination of his rights and interest in the *immovable property* as is evident from the prayer clauses which, for sake of convenience, are reproduced hereunder again:-

P R A Y E R

- i) Declare that the Plaintiff is bonafide purchaser of Suit Property bearing agriculture land situated at "Sehathi Taluka" Tando Allah Yar, District Hyderabad, Sindh, measuring about 82.34 Acres for valuable consideration.
- ii) Decree for specific performance of Sale Agreement dated. 7.1.2009 in respect of suit property bearing agriculture land situated at "Seharki Taluka" Tando Allah Yar, District Hyderabad, Sindh, measuring about 82.34 Acres, falls within the Survey Numbers as mentioned in Para-1 of the Plaint, with the directions to execute a registered Sale Deed / Instrument of Transfer in respect of suit property in favour of the Plaintiff OR in case of failure of Defendant No. 1 the Nazir of this Honourable Court may be directed to execute the Sale Deed / Instrument of Transfer in favour of Plaintiff on behalf of the Defendant No. 1.
- iii) To grant permanent injunction thereby restraining the Defendants or anybody else claiming / acting through them or under their authority from selling, alienating, encumbering, the Suit Property and/or dispossessing the Plaintiff from the suit property bearing agriculture land situated at "Seharki Taluka" Tando Allah Yar, District Hyderabad, Sindh, in the Survey numbers as particularly mentioned in Para-1 of plaint, measuring about 82.34 Acres, without due course of law.
- iv) Award cost(s) of the suit.
- v) Any other / further / additional / better relief (s) or order (s) against the defendants and/or in favour of Plaintiff as this Honourable Court may deem fit under the circumstances of the instant case.

Thus, it is quite safe to say that such determination of the *rights and interests* could only be determined by the competent court within whose local jurisdiction the property is situated.

15. In Suit No. 1284 of 2013 is counterblast of Suit No.1104 of 2013, wherein the plaintiff has sought for the following reliefs:

PRAYER

- i. Declare that the General Power of Attorney qua Annexure "G" to the instant lis and Annexure P/2 to Suit: 1104/2013 sub judice before this Hon. Court is concocted, fake, fictitious, a fraud and of no legal consequence with retrospective effects.
- ii. Declare that no privity of contract ever existed by and between the plaintiff and the defendant No. 2.
- iii. Perpetually restrain the defendants as to usage of the fake and concocted General Power of Attorney qua Annexure "G" of the instant plaint and Annexure P/2 to Suit 1104/2013 for any purpose whatsoever.
- iv. Any other relief/ reliefs deemed fit may also be granted.

16. It is an admitted position that subject matter of both the two suits is the same and both the suits have already been consolidated by this court, as such, I have no option but to conclude that instant suits are not maintainable before this Court and are liable to be returned for their presentation before the Court within whose local territorial jurisdiction the property is situated. Accordingly, the plaints of the plaintiff(s) be returned; plaintiff(s) is at liberty to file plaint in the Court having jurisdiction.

SAJID

JUDGE