

IN THE HIGH COURT OF SINDH AT KARACHI

J. M No. 41 of 1999

[Maulana Ibadur Rehman Abbasi v. Jehangir Adam and others]

Date of hearing : 03.11.2021

Applicant : Through Khawaja Shamsul Islam,
Advocate alongwith Mr. Khalid
Iqbal, Advocate

Respondents : Through Mr. Iftikhar Javed Qazi,
Advocate

JUDGMENT

Zulfiqar Ahmad Khan, J:- This order will dispose of instant J.M, which is an application made under section 12(2) CPC and aims to answer the following questions:-

1. Whether the present application is maintainable under section 12(2) of CPC?
2. Whether an order XXXIII rule 3 application made in one suit can be transposed in another suit effecting rights of a party who was not part of the compromise application?
3. Was any fraud or misrepresentation was committed by parties to Suit Nos.1571/1998 and 62/1999 against the applicant?

2. Brief facts of the controversy at hand are that two suits were filed before this Court bearing Suit No.1571 of 1998 and Suit No. 62 of 1999, where the Suit No.1571 of 1998 was filed by Vice President Jamia Masjid Al-Siddique and Madarasah Abi Bakar Al-Islamia Trust against various private individuals including defendant No.1 Jehangir Adam, seeking declaration and permanent injunction that the said Jamia Masjid/Madarsah were under the supervision of the aforementioned Trust and belonged to the plaintiff having Deobandi school of thought and the defendants were sought to be declared having no legal right to

interfere in the present management of the Trust and affairs of the said Masjid/Madrasah. It was alleged that the said defendants were trying to take over the said Mosque under the umbrella of Kehkeshan Society, whereas, the counter Suit No.62 of 1999 was filed by the said Society and its certain members against the Trust and its Trustees. The latter suit for declaration and permanent injunction sought that creation of the Trust was unlawful and appointment of defendant No.7 Ibrahim Oan Alomri, Saudi Assistant Military Attache of the Royal Embassy of Saudi Arabia, Karachi as Mutawali was also illegal. Other prayers were also made as to the management of the affairs of the said Mosque /Madrasah.

3. Suit No. 1571 of 1998 was filed on 12.12.1998. Through order dated 14.12.1998 Official Assignee was directed to inspect the suit premises i.e. Mosque/Madrasah. It appears that the Official Assignee's report was taken on record through order dated 24.12.1998. Seemingly at that juncture, Suit No. 62 of 1999 was filed where through order dated 10.02.1999 defendant No.4, who was Pesh Imam of the Mosque, was restricted to perform his religious duties only, while through order dated 16.03.1999 in Suit No. 1571 of 1998 defendants were restrained from interfering in the work of the Trust. It appears that on 31.08.1999 Mr. Raja Qureshi, counsel for the plaintiff in Suit No.1571 of 1998 moved an application under order XXIII rule 3 CPC, which application was resisted by Mr. Khawaja Shamsul Islam, who stated that he was also acting for the plaintiff. In the circumstances, Court directed the counsel to bring the parties in the Court on the next date of hearing, accordingly, the matter was taken up on 01.09.1999 when, except Mr. Naseem Khan all appeared on behalf of the plaintiff as Trustees stating that their counsel is only Mr. Raja Qureshi and this Court through order of 01.09.1999 disposed of the suit in terms of the said compromise application. Office was directed to allot CMA number to the said

application, to which office allotted CMA No.7361 of 1999. Full text of the compromise application is reproduced as under:-

“It is respectfully prayed that this Hon’ble Court may graciously be pleased to dispose of the aforementioned suit on the following terms which have been agreed upon between the parties to the aforementioned proceedings:-

1. Both the parties had differences with regard to the management and upkeep of the Mosque and Madrassa which have been now resolved by consent. Accordingly in view of the settlement arrived at for management and upkeep the Mosque and Madarsa which is for the welfare of the mohalla people, Suit bearing No. 1571/98 is compromised on terms stated below and Suit No.62/99 is being withdrawn, application Under Order 23 Rule 1 CPC is being filled by plaintiff in the said suit No.62/99 pending in this Hon’ble Court filed by the parties against each other would stand withdrawn by consent.
2. **Both the parties have arrived at an amicable settlement to replace the present Imam namely Mulana Ibadur Rehman. Such replacement shall be of a person, if not better than at least a person having equivalent religious knowledge. [emphasis supplied]**
3. That the exercise of replacement is agreed by both the parties to be under taken by the learned Official Assignee of this Hon’ble Court Mr. Bashir Memon who will first replace the present Imam by taking all necessary steps which may be incidental and consequential to such replacement of Imam.
4. The replacement of Imam shall be done by the Official Assignee of a person who could perform the functions of an Imam without any personal aims or motives which could create differences of opinion between Namazis as had been done resulting into the filling of the aforementioned proceedings.
5. That it is further agreed that the Kehkashan Society will take over the Masjid, Al-Siddique Trust which will be an independent body but would remain as an organ of the society replacing the present Masjid Committee of the Society which shall be responsible for the Management of the Masjid Al-Siddique as well as the Madrassa.
6. That the Trust shall amend its bye-laws, rules and regulations etc for the smooth running of the Masjid and Madrassa and shall ensure that management of the same is run by the trustees who are elected after every two years from amongst the members of Kehkashan Society.
7. That it has further been agreed, by consent, that the management of the Mosque shall be in the hands of the members of the trust/newly agreed body as said in paras 5 and 6 above.
8. That by consent, it is agreed, that the learned Official Assignee shall take all such steps which are necessary for smooth substitution of the Imam after having obtained consensus of the members of the Society as well as the Trust/new agreed body.
9. That it is by consent further agreed that during the intervening period of removal and substitution of the Imam,

the Official Assignee shall continue to exercise exclusive domain and control in to the affairs of the Mosque and Madrassa which should be beyond a period of three weeks.

10. That in view of the aforementioned terms, the above suit No.1571/98 be disposed of in terms of this settlement/compromise.”

4. Thereafter, Suit No. 62 of 1999 was taken up on 03.09.1999, when the Court was informed by the counsel for the plaintiff in Suit No.62 of 1999 i.e. the Society, of the said compromise application having been moved in Suit No.1571 of 1998 and the order dated 01.09.1999 passed thereon. Incidentally, an application under order XXIII rule 1 was also presented to the Court on the said date. Full text of the said application is reproduced hereunder:-

“Both the parties had differences with regard to the management and upkeep of the Mosque and Madrassa which have been now resolved, by consent. Accordingly in view of the settlement arrived at for management and upkeep of the Mosque and Madrassa which is for the welfare of the mohalla people, Suit bearing No. 1571/98 is compromised and in view of that compromise this Suit No. 62/99 has become infructuous.

For the sake of record the settlement/compromise referred to above is as follows:-

1. Both the parties have arrived at an amicable settlement to replace the present Imam namely Mulana Ibadur Rehman. Such replacement shall be of a person, if not better than at least a person having equivalent religious knowledge.
2. That the exercise of replacement is agreed by both the parties to be under taken by the learned Official Assignee of this Hon'ble Court Mr. Bashir Memon who will first replace the present Imam by taking all necessary steps which may be incidental and consequential to such replacement of Imam.
3. The replacement of Imam shall be done by the Official Assignee of a person who could perform the functions of an Imam without any personal aims or motives which could create differences of opinion between Namazis as had been done resulting into the filling of the aforementioned proceedings.
4. That it is further agreed that the Kehkashan Society will take over the Masjid, Al-Siddique Trust which will be an independent body but would remain as an organ of the society replacing the present Masjid Committee of the Society which shall be responsible for the Management of the Masjid Al-Siddique as well as the Madrassa.
5. That the Trust shall amend it bye-laws, rules and regulations etc for the smooth running of the Masjid and Madrassa and shall ensure that management of the same is run by the trustees who are elected after every two years from amongst the members of Kehkashan Society.

6. That it has further been agreed, by consent, that the management of the Mosque shall be in the hands of the members of the trust/newly agreed body as said in paras 5 and 6 above.
7. That by consent, it is agreed, that the learned Official Assignee shall take all such steps which are necessary for smooth substitution of the Imam after having obtained consensus of the members of the Society as well as the Trust/new agreed body.
8. That it is by consent further agreed that during the intervening period of removal and substitution of the Imam, the Official Assignee shall continue to exercise exclusive domain and control in to the affairs of the Mosque and Madrassa which should be beyond a period of three weeks.
9. That in view of the compromise filed in suit No.1571/98, this suit has become infructuous and is accordingly withdrawn.”

5. The counsel appearing for defendant Nos.2 and 3 Raja Qureshi admitted the said position and through order dated 03.09.1999 the Suit No.62 of 1999 was dismissed as withdrawn without incorporating any terms stated therein. Full text of the said order is reproduced hereunder:-

“Mr. Mohammad Sharif, learned counsel for the Plaintiff has filed an Application Under Order 23 Rule 1 CPC for withdrawal of the Suit on the basis of compromise in Suit No. 1571/1998 the terms of which are stated in the Application. Mr. Raja Qureshi, learned Counsel for Defendant Nos. 2 and 3, has no objection and does not claim costs. Mr. Shamsul Islam opposes the withdrawal of the Suit on the ground that important religious questions and principles of natural justice are involved and therefore he should be given an opportunity to file a Counter Affidavit to the Application. According to Mr. Shaif this is an Application without any condition and that the terms of the compromise of Suit No. 1571/99 though mentioned do not form part of his Application or the prayer for withdrawal of the Suit.

In view of the statement of Mr. Shaif the Suit is dismissed as withdrawn without incorporating any terms stated therein.

Mr. Shamsul Islam claims costs as his client had to incur expense in defending the proceedings. He is entitled to be compensated if he claims costs. Accordingly, the plaintiff is directed to pay a sum of Rs.2,000/- to Mr. Islam. Mr. Islam, however, states that instead of paying the costs to him, the same may be deposited in the High Court Bar Library Fund. Ordered accordingly.

Consequently, all the pending Applications have become infructuous and are dismissed as such.”

6. Through the instant J.M, the order dated 01.09.1999 passed in Suit No. 1571 of 1998 has been challenged. The contentions of the learned counsel for the applicant were that Maulana Ibadur Rehman Abbasi, who was arrayed as defendant No.4 in Suit No. 62 of 1999 has been prejudicially treated by the compromise reached between the parties in Suit No.1571 of 1998, in which the said applicant was not even a party. Per learned counsel, the parties to Suit No.1571 of 1998 dealt with fate of the said applicant in a vacuum, where parties agreed that the said applicant would be replaced with, *“if not better than at least a person having equivalent religious knowledge”*. The other grounds raised through the instant application are reproduced hereunder:-

- That the learned Official Assignee was to replace the present Imam by taking all necessary steps which may be identical and consequential to such replacement of Imam without the consent of the said Imam (defendant No.4 in Suit No.62 of 1999)..
- That it is further agreed that the Kehkashan Society will take over the Masjid, Al-Siddique Trust which will be an independent body but would remain as an organ of the society replacing the present Masjid Committee of the Society which shall be responsible for the Management of the Masjid Al-Siddique as well as the Madrassa at serious loss to the said defendant.

7. The instant 12(2) application was only challenged by the defendant No.1, where learned counsel for the said defendant (Jehangir Adam) stated that initially Suit No. 1571 of 1998 was filed by Khawaja Shamsul Islam acting on behalf of the Trust, therefore, he could not represent the present applicant, who was an adversary to the said Trust. At one point in time, he took the stance that Mr. Shams was counsel for Jehangir Adam, therefore, he could not represent conflicting interests. At that juncture, through this Court's order dated 16.08.2021 Jehangir Adam was called in the Court, who accordingly appeared on 28.09.2021 and denied that he ever having engaged Mr. Khawaja Shamsul Islam.

8. With regards to the contentions that Khawaja Shamsul Islam acted for the Trust, it was pointed out that the said Trust never made the present applicant Maulana Ibadur Rehman Abbasi as defendant in its

suit, therefore no adversary relationship existed between the Trust and the present applicant.

9. Now coming to the contentions raised by the learned counsel for the respondent, who stated that the instant 12(2) application was not maintainable as the applicant has not alleged fraud and misrepresentation, he also stated that the applicant did not produce any document in support of his stance that the consent order in Suit No. 1571 of 1998 was obtained by fraud or misrepresentation.

10. This Court vide order dated 14.04.2003 fixed the matter for recording of evidence. On 14.01.2004, when the learned counsel for Respondent No.1 submitted that he had misplaced copy of affidavit-in-evidence of the applicant's witness and requested for time to obtain copy and then cross-examine him, to which, learned counsel for the applicant extended his no objection, and the matter was adjourned. Then on 18.03.2004, evidence of PW-1 Moulana Ibadur Rehman Abbasi was concluded and request for time was sought to produce further evidence. Relevant extract of his deposition is reproduced as under:-

"I was appointed Pesh Imam in the Mosque in 1984. Jamia Masjid was built from the funds provided by Abdul Rehman Bukhatir. The management of the mosque is in the hands of Military Attaché of Saudi Consulate General in Karachi.... I also produce a pamphlet of mosque as Ex.5/4A....I produce conditions of membership of the Shoora as Ex.5/6. I produce a photocopy of list of members of Shoora as Ex.5/7..... I produce photocopy of list of Shoora of the mosque as Ex.5/9... Mr. Sharif states that the documents which are photocopies, it may be noted that they are all subject to proof. It is obvious that such documents are taken on record subject to proof.

Cross-examination to Mr. Muhammad Sharif,
Advocate for the Defendant

The documents which have been produced by me were prepared by the Mosque and Madressah....Ex.5/4A has also been drawn by the administration of the mosque and madressah. The words "Deen Dushman" written in Ex.5/4A is against the persons who are obstructing the teaching of Holy Quran and the functioning of the mosque and Madressah in the area, it does not refer to any specific person... It is incorrect to suggest that I was appointed as Pesh Imam of the mosque by the Kehkeshan Society. Voluntarily says that Kehkeshan Society is one of the members of the Managing Committee of the Mosque. It is correct to suggest that Kehkeshan Society was managing the mosque at the time when I was appointed as its Pesh Imam. It is correct to suggest that

I used to be paid 'Mushahira' by the Kehkshan Society.....It is correct to suggest that Kehkshan Society has filed Suit No.62/1999 against me. I **did not make any Trust....** It is correct to suggest that Suit No.1571/1998 was filed. I see rejoinder affidavit to CMA No.10843/1998 in Suit No.1571/1998 and say that it is my rejoinder affidavit. It is correct to suggest that I have mentioned in this rejoinder that whatever is stated in plaint of suit No.1571/1998 is correct.....It is correct to suggest that in para-4 of my said rejoinder I have stated that the Masjid is under the trust management. The said rejoinder affidavit was filed on 10.5.1999. It is correct to suggest that until the date when the said rejoinder affidavit was filed the control and management of the Masjid & Madrasah was with the trust.....I know Nawab Saleem who was Vice President of the Trust... It is correct to suggest that there was an incomplete mosque before 1984. I do not know who constructed that incomplete structure. That a massive fraud has been perpetrated against the applicant and a collusive order was obtained by misrepresenting the facts and without making the applicant as party and got an order which only affect the applicant. It would be in the interest of justice to mention that the Chairman of the Trust Sher Muhammad Paracha and Secretary Abid have already resigned from their offices by handing over their resignation to the applicant but as both are very clever persons, taking the advantage of the innocence of the Applicant, again took back their resignation letter with the assurance that they will again cooperate with the Applicant.

11. Thereafter, the matter came up on 22.02.2005, when learned counsel for the applicant requested for three weeks' time for filing affidavit of witness Muhammad Saleem Butt and then to close his side after examining that witness, which request was accordingly allowed with consent of the learned counsel for Respondent No.1, who accordingly filed his affidavit-in-evidence on 11.03.2005. Relevant portion of his affidavit-in-evidence is reproduced as under:-

"I, Muhammad Saleem Butt s/o Shamsuddin Butt, Muslim, Adult, resident of Flat No.G-10, Fountain Apartments, Block-5, Clifton, Karachi do hereby state on oath as under:-

That I am Director General, Wafaqi Mohtasib Secretariat, Regional Office, Karachi and residing at the above address near to the Masjid in question for 12 years and very well aware of the facts of the mosque Al-Siddique... That feeling the ill intention of the so called Trustees as well as the officers and members of the Kehkshan Society, the Chief Patron of Trust Ibrahim Oan-al-Omri, constituted a Majlis-e-Shoora and authorized the applicant exclusively to control and manage the Mosque and Madrasah with the consultation of the Majlis-e-Shoora.

12. On 30.11.2006, learned counsel for the applicant requested for adjournment on the ground that his second witness namely Muhammad

Saleem Butt who was Director General Wafaqi Mohtasib (who was to be cross examined) had gone abroad for training. Thereafter on 29.11.2013, this Court appointed Syed Kausar Ali Bukhari, former District and Sessions Judge to record evidence of the witness (Muhammad Saleem Butt) and directed him to appear before the Commissioner on 12.12.2013 at 11:00 a.m. in the consultation room and learned Commissioner was directed to submit interim report, to which learned Commissioner submitted his interim report on 13.12.2013 by affirming that plaintiff's evidence was recorded and cross-examination was completed. Then on 19.05.2014, Mr. Iftikhar Javed Qazi sought some time to go through the said interim report by submitting that only thereafter he would be in a position to decide whether any other witness from his side needs to be examined or not. However, on 16.11.2015, none was present from respondent's side and intimation notice was ordered to be issued to the learned counsel for the respondent as well as the party with a note of caution that in case of failure, the side of the respondent may be closed and the matter was adjourned to 04.12.2015, on which date, learned counsel for the respondent submitted that no evidence was to be led by the said party and the matter was ordered to be fixed for arguments.

13. It appears that after the compromise having been reached and the impugned order dated 01.09.1999 having been passed in Suit No. 1571 of 1998, Suit No. 80 of 2000 was moved under Section 92 CPC by some other residents of the locality against Masjid/Madarsa Trust, Mr. Sher Muhammad, Mr. Muhammad Saleem Nawab (Representing defendant Nos.1 to 3 in Suit No. 62 of 1999) etc., where following prayers were made:-

“(a) That defendants No.2 to 7 be removed as Trustees/office-bearers of defendant No.1. viz. JAMIA MASJID AL-SIDDIQ AND MADARSSA ABI BAKAR AL-ISLAMIA, Block-5 Park Lane, Clifton Karachi.

(b) That new Trustees, in terms of DEED OF TRUST (annexure P/2) and strictly belonging to Ahl-e-Sunnat-

wal-Jamaat Deobandi, be appointed, with such directions as this Hon'ble Court may deem just and proper.

(c) That, if necessary, SCHEME may be framed for the effective and smooth running and management of the Mosque and the Madarssa under the supervision and control of the NOMINEE of the Chief Patron and Mutawalli of the Mosque and the Madarssa”

14. The said suit after adding Kakhkashan Society acting through its Secretary Mr. Chaudhry Muhammad Bashir and Mr. Jehangir Adam (Respondent in the instant JM) as defendants was disposed of by consent order dated 06.12.2000, which is reproduced hereunder:-

“The plaintiffs are resident of Block No.5, Kehkashan, Clifton, where a Mosque known as Jamia Masjid Al-Siddique with Madarsa Abi Bakar Islamia is being run through the Trust, defendant No.1. Defendants No.2 to 7 are the trustees. The plaintiffs, as Namazees, after obtaining consent of Advocate General Sindh, under the provisions of Section 92 of CPC, have filed the suit for removal of the trustees, appointment of new trustees, scheme for the effective and smooth running and management of Mosque and Madrassa.

2- The Kehkashan Society, founded by residents of the said Block, registered under the Societies Act through its General Secretary Chaudary Muhammad Bashir and Jehangir Adam, the joint Secretary, moved an application as intervenors to join them as defendants in the suit.

3- During the hearing, the parties have agreed that the suit be disposed of by appointment of new trustees by the Court from the list provided by the plaintiff, defendants and intervenors for appointment of three trustees from the each list with a condition that none of the contesting party would be nominated or appointed as trustee. The parties in the suit and intervenors in pursuance, thereof, they have submitted their list, which are taken on record and made parties of the proceedings. Therefore, the following persons are appointed trustees:-

From the plaintiffs' side:

1. Mohammad Abdullah son of Muhammad Ismail.
2. Haji Ibrahim son of Haji Essa.
3. Muhammad Hanif son of Abdul Aziz.

From the side of the defendants:

4. Dr. A. Ghaffar Rehmatullah.
5. Abdul Aziz Shiwani.
6. Haji Gulzar Ali.

From the side of the Intervenors:

7. Dr. Manzoor Ali Arif
8. Dr. Syed Mahmood.
9. S.M. Aminullah.

4- The above said trustees shall have full authority to manage the affairs of the Mosque and Madrassa with power to remove any person including Pesh Imam, Moazin, Khadim, Moulim and teachers for effective management of the Mosque and Madrassa. The trustees

shall elect amongst themselves President, Vice President, Secretary and Treasurer. The trustees shall keep proper account of the receipt and expenditure. The bank account of the trust will be opened in the schedule bank to be operated either by President or by the Secretary with joint signature of the Treasurer. In case of vacancy by resignation or otherwise of a trustee, the appointment on such vacancy will be in accordance with trust deed. The trustees will manage the trust, Mosque and Madrassa strictly with the aim and object of the trust. The trustees shall also manage the affairs of the Madrassa i.e. admission on the students, appointment of teachers, Moulim and all incidental matters by majority decision. The trustees may appoint committee or sub-committee for smooth running of the Mosque and Madrassa from amongst themselves, but such appointment of such committees shall not be in derogation of the powers of the trustees. The all acts, deeds and things to be done by the trustees shall be strictly in accordance with the trust deed of Jamia Masjid Al-Siddique and Madrassa Abi Bakar Islamia. The trustee shall be disqualified as trustee, if he is adjusted as insolvent or is convicted for an offence involving moral attribute or his being guilty of misconduct in respect of the management of the affairs of the Trust. In case of mismanagement, the matter shall be referred to the Court.

5- With the above appointment and the scheme framed hereinabove, the present trustees, defendant would cease to be trustees and persons mentioned in para-3 above will act as trustees. The suit is disposed of in above terms with listed applications, with no order as to costs.”

15. Said Judgment and Decree dated 06.12.2000 and 20.12.2000 respectively passed in Suit No. 80 of 2000 were challenged by residents of the locality in High Court Appeal No.18 of 2001 admitting that the Mosque/Madrassa was built by the finances provided by Mr. Sheikh Abdul Rehman, Mohammad Bukhatir (a UAE national) through Sheikh Ebrahim Awn Al-Umeri (Defendant No.7 in suit No. 62 of 1999) as arrayed in Suit No.1511 of 1998. The said Judgment and Decree was though dismissed, however, the Hon'ble Double Bench comprising of Mr. Justice Sabihuddin Ahmed & Mr. Justice Syed Ali Aslam Jafri who chose to hold that not only Suit No. 80/2000 was not-maintainable, my Lords even went to hold that the Suit filed under section 92 CPC relating to Public Trust should not have been allowed to be compromised. With regards Suit No.1571/1998 (and Suit No.62/1999) my Lords held that *“Nevertheless there is nothing to show that the two suits disposed of through a compromise judgment fulfill the requirements and preconditions laid down by Section 92*

CPC". Operating paragraphs from the said judgment are reproduced in the following:-

“7. After hearing learned counsel for the parties we addressed ourselves, with profound respect to the learned Single Judge, to some fundamental questions regarding which the learned counsel for the appellant was unable to satisfy us. In the first place it needs to be kept in view that for all intents and purposes the appellants are attempting to question the validity of the consent decree dated 01.09.1999 passed in Suit No.1571/98. It needs to be recalled that Section 12(2) C.P.C explicitly required that the validity of a judgment or decree may be questioned on account of fraud or misrepresentation through an application to the Court passing the final judgment but not by a separate suit. When the appellants have already chosen to avail the remedy by way of an application under Section 12(2) CPC, objections to the maintainability of the suit becomes even more formidable. Indeed it could be possible to urge that a suit under Section 92 CPC being one relating to public trust should not have been allowed to be compromised. Nevertheless there is nothing to show that the two suits disposed of through a compromise judgment fulfill the requirements and pre-condition laid down by Section 92 CPC. In any even there was nothing to prevent the appellants to prefer an appeal against the compromise judgment ever since they came to know of the same.

8. The appellants have prayed for removal of the trustees of a public trust formed for management of the Mosque and the Madarsa through the Trust deed registered on 12.03.1998. We fail to see how this instrument could be treated as one creating a valid public trust. Evidently the Wakif had appointed one Mutawalli who was required to nominate a trust committee though the Mutawalli transferred some of his functions to the Imam of the Mosque no trustees were appointed by him. It is not understood how the Respondent Nos.2 to 7 arrogated to themselves the authority of managing the waqf in the absence of the Wakif or the Mutawalli and proceeded to confine such management to persons from a particular sect only in violation of the terms of the original waqf. As we are clearly of the view that the so-called Trust deed has little sanctity in law.

9. It is indeed unfortunate that institutions of prayer and religious educations are being subjected to litigation on sectarian lines, with profound respects to the learned Single Judge we are of the view that the suit itself was not maintainable and consequently this appeal is liable to be dismissed.”

16. From above discussion, as held in HCA No.18 of 2001 by a distinguished learned Divisional Bench of this Court, parties in Suit No.1571 of 1998 (relating to a Public Trust) could not have compromised amongst each other in violation of the requirement of Section 92 CPC, I am compelled to hold the same view, which even otherwise emerges

from the conduct of the parties aimed to prejudice the interests of the present applicant and cannot be held to be devoid of any misrepresentation, resultantly instant application made under Section 12(2) CPC becomes successful, that makes the compromise reached between the parties in Suit No.1571 of 1998 and transposed to Suit No.62 of 1999 *void ab initio*, as inherently defective in the light of the judgment passed in HCA No.18 of 2001.

Judge

B-K Soomro