

# IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.234 of 2007

[Baseerat Dad Khan Lodhi and others *versus* Farhat Dad Khan Lodhi and others]

Date of hearing : 01.06.2022.

Plaintiffs : Baseerat Dad Khan Lodhi and 3 others through Mr. Abdul Khurshid Khan, Advocates.

Defendant No.3 : Karachi Development Authority, through Mr. Naseer Ahmed, Advocate.

Defendant No.4 : Muhammad Samad, through Ms. Naeema Aziz, Advocate.

Defendants No.1,2&5 : Nemo

## **J U D G M E N T**

**Muhammad Faisal Kamal Alam, J:** Plaintiffs have filed this *Lis, inter alia*, seeking cancellation of the Sale Deed in respect of the sole **Suit Property**– House No.B-263, Block-N, North Nazimabad, Karachi. Plaintiff contains the following prayer clause\_

- a) *To restrain the Defendants, their agents, attorneys, assignees, person or persons acting on their behalf to create third party intervention in the Suit Property bearing No.B-263, Block N, North Nazimabad, Karachi.*
- b) *To declare that the Suit property is the joint property of the legal heirs and co-owners and all of them have equal rights regarding the Suit property and the Defendant No.1 has not right to keep the possession of the Suit property.*
- c) *It may be directed to the Defendant No.4 and 6 to cancel all the documents i.e. Transfer, Mutation Order and Sale Deed dated 11.08.2003, which were issued illegally in favour of the Defendant No.1, without any entitlement and to direct the Defendant No.4 to pay the damages of Rs.25,00,000/- for issuing illegal Transfer / Mutation orders and to direct the Defendant No.1 to pay damages of Rs.25,00,000/- for dishonesty, fraud and cheating.*

- d) *To direct the Defendant No.1 to pay Rs.20,000/- being Rent of the joint property to other co-owners and legal heirs since the death of the deceased father.*
- e) *To appoint Nazir of the Court to attach the Suit property and after disposal the said Property divide among the legal heirs, in accordance with the 'Shariat'.*
- f) *Cost of the Suit may be awarded.*
- g) *Any other relief or relieves may deem fit and the proper by this Hon'ble Court according to the circumstances of the Suit.*

2. Claim of Plaintiffs is that the Suit Property was originally owned by the Father of the Plaintiffs and Defendants No.1, 2 and 4, who are siblings of Plaintiff No.1. However, after the death of the Father [Roshan Ali Khan Lodhi], Defendant No.1 avoided to distribute the Suit Property as inheritance, *wherein*, Defendant No.1 (Farhat Khan Lodhi) was residing. Upon sending the Legal Notice dated 27.09.2002 [Exhibit P/11], when nothing happened, an earlier Suit No. 1554 of 2004 was filed, and upon filing of the Written Statement of present Defendant No.1, it transpired for the first time that the Suit Property has been illegally (*as alleged*) sold by Defendant No.1 to Defendant No.5 [now Defendant No.4] through a Sale Deed dated 11.08.2003, produced in the evidence as Exhibit D/9, of which cancellation is also sought in the present proceeding. It is the stance of Plaintiff(s) that the sale transaction in favour of Defendant No.4 is a result of fraud, manipulation and collusion between private and Official Defendants, because the Mutation dated 07.12.1999 [**Exhibit D/13**, at Page-193 of the Evidence File] in favour of Defendant No.1, was made on the basis of a bogus Heirship Certificate, issued by Mr. Azhar Hussain, who at the relevant time was the Officer of Patent and Design Department [a government servant]; he was also confronted by Plaintiff, who admitted his mistake in his Letter dated 19.01.2004.

3. The above stance was refuted by Defendant No.5, who later became Defendant No.4 [the PURCHASER] in view of the amended title filed in this Suit, as per the Order dated 04.02.2008 and 02.02.2010. Defendant-Purchaser has stated that after completing requisite formalities, he has purchased the Suit Property and is a *bona fide* purchaser for value. Contended that the present Suit is not maintainable in view of another *Lis* – Suit No.1554 of 2003, filed by the same Plaintiffs earlier on similar facts. *Whereas*, Defendant – KDA in its Written Statement has stated that mutation in favour of Defendant-Purchaser has been done after completing codal formalities.

4. From the Pleadings, following issues were framed\_

1. *Whether the plaintiffs and the defendants are co-owners in respect of the suit property bearing No.B-263, Block N, North Nazimabad, Karachi?*
2. *Whether the defendant No.1 has the right of ownership to sell the property without consent of other legal heirs?*
3. *Whether the documents i.e. transfer order, conveyance deed executed on the basis of forgery with mala fide intention are liable to be cancelled.*
4. *Whether the suit is within time? If not, what effect?*
5. *Whether the defendant No.5 after complying with all the codal formalities, purchased the suit property i.e. the House No.B-263, measuring 420 sq.yds. situated in Block-N, Scheme No.2, Karachi, for valuable consideration, duly paid by the defendant No.5 to defendant No.1 vide registered sale deed duly registered on 11.08.2003 at No.1679, who was the ostensible owner of the suit property? If so to what effect?*
6. *Whether the defendant No.1 has executed valid sale deed in favour of defendant No.5 which has been registered at No.1679 with Sub-Registrar 'T' Division-VIII-B on 11.8.2003, M.F. Roll No.54805/1407 dated 19.8.2003?*
7. *Whether the defendant No.1 has paid consideration to the legal heirs of his late father Roshan Ali Khan Loadhi, if so, to what effect?*
8. *What should the decree be?*

5. Following Issues were re-casted on 19.01.2021\_

1. *Whether the plaintiffs can seek cancellation of sale deed and other title documents of transfer for the subject property benefiting Defendant No.4 who claims to be a bonafide purchaser? If so to what extent?*
2. *What should the decree be?*

6. Plaintiff himself led the evidence. Defendant-Purchaser deposed in favour of his pleadings, along with Two other Witnesses, namely, Matinuddin Khan, Advocate, and Saleem Akhtar Qureshi (Estate Broker); *whereas*, representative of Defendant-KDA, Mr. Rashid Kamal Khan also testified.

7. In support of his arguments, Mr. Abdul Khurshid Khan, Advocate representing the Plaintiffs, has cited the following case law\_

1. **2014 M L D 677**  
[*Muhammad Riaz and others versus Muhammad Nawaz and others*];
2. **1974 S C M R 255**  
[*Rehman Shah versus Muhammad Shah and others*];
3. **2007 Y L R 1636**  
[*Mst. Asia Latif versus Tariq Muhammad Khan and 8 others*]; and
4. **2006 S C M R 1689**  
[*Zulfiqar Ali and 3 others versus Barkat Ali and 12 others*].

8. Précis of the case law cited by Plaintiffs' counsel is as follows\_

It is an established rule that a Vendor cannot pass on to the Vendee anything better than he himself holds. Legal Heirs, who were ladies, deprived of their share when the property was purchased by a person, who was also a relative of the family; held, that he should have adopted due care before purchasing the property by examining the revenue entries; hence, plea of *bona fide* purchaser and reliance on Section 41 of the Transfer of Property Act, was discarded by the Honorable Supreme Court. Section 41 (of the Transfer of Property Act) and principle of *bona fide* purchaser of value without notice will only be applicable for those purchasers / vendees, who have acted in good faith and they must show that before purchasing a

property a reasonable care was taken to ascertain the ownership thereof and the transferor (seller) had possessed the power / authority to make the transfer. If the title is defective, then merely because the subsequent purchaser was in continuous possession of the property as owner, for a longer period of time, would not improve his / her title. Even longstanding mutation entries in favour of beneficiaries would not help them, if the foundation of such entries is based on fraud.

9. In support of her arguments, Ms. Naeema Aziz, Advocate representing Defendant No.4 (Purchaser), has relied upon the following case law\_

1. **2022 S C M R 1558**  
[*Syed Kausar Ali Shah and others versus Syed Farhat Hussain Shah and others*];
2. **1974 S C M R 255**  
[*Rehman Shah versus Muhammad Shah and others*];
3. **2014 M L D 677 [Lahore]**  
[*Muhammad Riaz and others versus Muhammad Nawaz and others*];
4. **2014 M L D 681 [Sindh]**  
[*Ather Naeem alias Waqas Chaudhary versus The STATE*];
5. **2007 Y L R 1636 (Lahore)**  
[*Mst. Asia Latif versus Tariq Muhammad Khan and 8 others*]; and
6. **2006 S C M R 1689**  
[*Zulfiqar Ali and 3 others versus Barkat Ali and 12 others*].

10. Crux of the above case law is, that the purchaser has checked the official record, *whereas*, plaintiff (of the reported case) did not challenge the proprietary and possessory rights in suit property for more than twenty years, which in fact enabled subsequent sellers to deal with the suit property as owners; consequently, plaintiff cannot be allowed to defeat the title of petitioner. One set of legal heirs agitated that names of daughters have not been mutated, but the suit was withdrawn with a permission to file a fresh one, which was subsequently decreed. On the basis of mutation

entries, land was sold to a third party-builder and developer, which announced a project and third party interest was created. From the record, it appears that first challenge to the inheritance mutation number was made when one of the daughters asserted her right to the estate and submitted an application for correction of the said mutation on 09.02.2008, which was after forty five years, when father died. The said objection was overruled by the Revenue Officials but was not further challenged by the lady. Other female legal heirs did not contest the said mutation entry. Honourable Supreme Court has made a distinction between cases, where a person alleges his / her rights to inheritance and a situation where an heir sits idly by, does not challenge mutation entries of longstanding or acquiesces, and only comes forward when third party rights in the subject land have been created. In the later situation, genuine third party interest is to be protected.

11. Mr. Naseer Ahmed, Advocate for Defendant-KDA, has supported the mutation in favour of Defendant No.1. He has argued by referring to his Written Statement and evidence, that Defendant-KDA after completing formalities has mutated the Suit Property in favour of Defendant No.1 and no illegality is committed, as claimed by Plaintiffs.

12. Arguments heard and record considered.

13. It is very pertinent to mention the Order dated 02.02.2010, which is still intact. It is mentioned in the said Order that Defendant No.1 stated that he has paid shares to all the Legal Heirs except Plaintiffs No.1 and 2 (Baseerat Dad Khan and Mst. Rabia). Plaintiff No. 1 **admitted** that he was offered Rs.4,00,000/- by Defendant No.1 before the sale of the property. Defendant No.1 has stated that since Plaintiffs No.1 and 2 refused to receive their shares, the amount was invested in two plots and the plot, in

which share of Plaintiff No.1 was invested, was still intact, *whereas*, plot, in which investment was done for Plaintiff No.2, has been disposed of and she was paid amount of Rs.4,50,000/-. It is observed that after agreeing to take Special Oath, **Plaintiff No.1 took summersault**, but conceded that Defendant No.3 has received the amount. Advocate for Defendant No.3 was present and states that her share was paid by Defendant No.1. It is observed that **“Plaintiff No.1 has not approached this Court with clean hands”**. Further observation is reproduced hereunder\_

*“ . . . . . This suit is liable to be dismissed on that score alone, as he admitted that the Defendant No.1 has disposed of the property after intimating them and the dispute was in regard to the sale consideration of the property.*

*Under these circumstances this matter is adjourned. The injunction application of the Plaintiffs is dismissed, as the Defendant No.1 has purchased this plot as a bona fide purchaser and the dispute at the relevant time of purchase of the property was never brought to the notice of the Defendant No.5. The injunction application is accordingly dismissed.*

*The counsel for Defendant No.3 states that he has no interest in this litigation and seeks deletion the name of the Defendant No.3 from the array of Defendants. This oral request is allowed, name of the Defendant No.3 is directed to be deleted from the array of Defendants. The Plaintiffs shall file the amended title.”*

14. Plaintiffs in his evidence has produced the following documents\_

Sr. No.	Description	Exhibit
1.	Death Certificate of his father Haji Roshan Ali Khan Lodhi	P/1
2.	Lease of Suit Property executed by KDA	P/2
3.	Letter of Defendant-KDA showing deceased father as Lessee	P/3
4.	Mutation Letter dated 18.10.1971 in favour of deceased father	P/4
5.	Site Plan of the Suit Property	P/5
6.	Document dated 24.04.1984. Alleged Will by the deceased father.	X
7.	Irrevocable General Power of Attorney by Plaintiff No.4-Abdul Jabbar Lodhi in favour of Plaintiffs	P/6
8.	Statement dated 07.2.2019 filed by Mr. Tariq Ali, Advocate, along with Affidavit of Sadakat Lodhi, Defendant No.2	P/7 and P/8

9.	Power of Attorney dated 15.03.2001 by Rafaat Lodhi in favour of Plaintiffs	P/9
10.	Special Power of Attorney by Mst. Rabia Khatoon Lodhi - in favour of Plaintiffs	P/10
11.	Legal Notice of 27.09.2002 from Defendant No.1	P/11
12.	Objection before Defendant-KDA dated 27.08.2003 by Plaintiffs	P/12
13.	Legal Notice of 13.01.2004 by Plaintiffs to one Izhar Hussain	P/13

15. Plaintiff filed his Affidavit-in-Evidence in support of his above stance and his examination-in-chief was done. At this juncture, it is pertinent to mention that it is one of the main stance of Plaintiff No.1 in his pleadings so also evidence, that Azhar Hussain attested a forged Heirship Certificate, which was the basis of mutation in favour of Defendant No.1, by KDA. When Azhar Hussain was sent a Legal Notice dated 13.01.2004 (produced by the said Plaintiff as Exhibit P/13), the said Azhar Hussain replied by his Letter dated **19.01.2004**, and in effect did not deny the stance of Plaintiff. *Interestingly and surprisingly*, no such Letter of 19.01.2004 has been produced by Plaintiff No.1 in his evidence, which can be attributed towards Izhar Hussain. It means that allegation of Plaintiff No.1 with regard to Izhar Hussain is not correct.

16. In his cross examination about the possession of the Suit Property, Plaintiff No.1 acknowledged that since 1992 (when the father passed away), till 2003, Defendant No.1 resided and he [Plaintiff] did not take any action and Suit Property was in possession of Defendant No.1. Acknowledged that Suit Property is not physically partition-able. Did not dispute the suggestion that Defendant-Purchaser made enquiry from Defendant-KDA about the ownership of the Suit Property. Denied that in the Official Record of KDA, Defendant No.1 is mentioned as owner while disputing that in his favour Mutation was effected in the Year 1999. On a



specific question, he has not denied the suggestion about the possibility that Defendant No.1 informed the Defendant No.4, that siblings of Defendant No.1 had no objection for sale of the house / Suit Property. Not disputed the fact that possession of the house / Suit Property was handed over to Defendant-Purchaser (Muhammad Samad) by Defendant No.1; did not deny the suggestion that Defendant-Purchaser engaged an Advocate for the subject sale transaction. Denied the knowledge about sale transaction between Defendant No.1 and Defendant-Purchaser, while asserting that Plaintiff No.1 objected to the sale when Defendant-Purchaser made an application for mutation of property in his name. **Not denied that Public Notice about proposed sale and sale price paid by defendant purchaser.**

Admitted filing of previous Suit No.1554 of 2003 against the same Defendant No.1, wherein, Defendant-Purchaser subsequently was impleaded as one of the Parties. Admitted that the said Suit was withdrawn and the present *Lis* is filed in this Court, due to valuation of the property.

17. In his cross-examination to the counsel for Defendant-KDA, Plaintiff No.1 has admitted that in the earlier Suit, no relief was sought against the KDA. Accepted that no objection was made before the KDA regarding the mutation of the Suit Property, as it was not in the knowledge of Plaintiff. To a question, he has admitted that he has not specifically stated the facts and circumstances for his claim of damages; did not deny that Izhar Hussain has not been impleaded as Defendant. Denied that original Mutation and the subsequent Mutations were validly done after completing formalities. Admitted that he did not file any proceeding for grant of the Succession Certificate.

18. Defendant No.4 (Purchaser) has produced the following documents in his evidence\_

Sr. No.	Description	Exhibit
1.	Receipt about receiving payment of Rs.10,000/- by Defendant No.1	D/2
2.	Public Notice dated 07.10.1999	D/3
3.	Sale Agreement dated 29.12.2002	D/5
4.	Receipt about payment of rupees twenty nine hundred thousand was issued by Defendant No.1 in favour of Defendant Purchaser	D/6
5.	Receipt issued by Defendant No.1 of receiving Rs.2,00,000/-	D/7
6.	Conveyance Deed of Suit Property dated 11.08.2003 between Defendant No.1 and Defendant No.4 – Purchaser	D/9
7.	Indemnity Bond by Defendant No.1 in favour of Defendant-Purchaser along with Affidavit, not exhibited but only page number is given	Pages-149 and 150 of the Evidence File
8.	Written Statement on behalf of Defendant No.1 in earlier Suit No.1554 of 2003	D/10
9.	Written Statement of KDA in earlier Suit No.1554 of 2003	D/11
10.	Written Statement of present Defendant-Purchaser in earlier Suit file	D/12
11.	Mutation Order dated 07.12.1999 showing Defendant No.1 as Sole Owner.	D/13

19. Defendant No.1 has reiterated his stance in his testimony, that after making due diligence about the ownership of Suit Property, Defendant-Purchaser, entered into a sale transaction with Defendant No.1. He has engaged services of one Saleem Qureshi and Mr. Matinuddin, Advocate, who have also deposed separately. He has further averred that Defendant No.1 was the sole Owner and the transaction through the Conveyance Deed is valid. Deposed that Sale Deed was registered before raising any objection. In his cross-examination [to the Advocate for Plaintiff No.1], he has stated that all the original documents relating to the Suit Property is with him (Defendant-Purchaser), except the Lease. Denied the suggestion that the Suit Property is a joint property. Acknowledged the fact that he did not enquire from the neighborhood about the ownership of the Suit

Property. To a question, he replied that he did not take any action against Defendant No.1, because the property documents were correct nor he opted to file any litigation against Plaintiffs and Defendants, who are legal heirs of deceased Roshan Ali Lodhi. Categorically denied that the Conveyance Deed is a forged one. To a question, he has stated that mutation in the official record was in favour of Defendant No.1. However, he could not reply a question about production of any registered document in favour of Defendant No.1 (from whom he has purchased the Suit Property). Defendant-Purchaser did not deny that Mutation Letter is issued on the basis of Heirship Certificate, issued by Izhar Hussain (mentioned in the foregoing paragraphs). Defendant No.1 confronted with the Written Statement of KDA filed in the earlier suit and he did not deny that it is stated that the Suit Property was sold by Bashir Ahmed to the deceased father of Plaintiffs and Defendant No.1, 2 and 3 through a registered instrument and Mutation Letter was issued in favour of the deceased father on 27.11.1971. Subsequently, he attempted to justify his stance, by stating that KDA Officials did not show him (Defendant-Purchaser) the complete file nor he insisted upon it. He has not denied that the deceased father Roshan Ali Lodhi is succeeded by the other Legal Heirs, including Plaintiffs and Defendants No.1, 2 and 3.

20. Mr. Mutinuddin Khan, Advocate, has also filed Affidavit, that he was engaged by Defendant -Purchaser (Muhammad Samad), for verification of the record relating to the Suit Property; he has visited the Office of Defendant-KDA and after getting confirmation that Suit Property is in the name of Defendant No.1, same fact was conveyed to Defendant-Purchaser. In his cross-examination to counsel for Plaintiffs, he has reiterated his stance about legal services he provided to Defendant-Purchaser for verification of record from KDA. Did not deny the fact that the lease of the Suit Property was not in KDA record. Stated that he was

informed by the Clerk of Defendant-KDA about mutation in favour of Defendant No 1, but admitted, that he did not physically check the record. He had no knowledge that Suit Property was a joint property; accepted the fact that he did not witness the sale agreement. Payment was made in cash against a receipt, but he did not remember the amount nor the figure of sale consideration. He has accepted that he identified the parties before the Registrar at the time of execution of Sale Deed (Exhibit D/9). Did not deny the suggestion that the Suit Property belonged to deceased father and after his death, it devolved upon the Legal Heirs.

21. The other witness, who deposed from the side of Defendant-Purchaser, is Saleem Akhtar Qureshi, an Estate Broker. He is the same person regarding whom the Defendant No.4 has testified that the said Saleem Qureshi and Matinuddin, Advocate, were engaged for the subject sale transaction. The said Saleem Qureshi has stated in his Affidavit-in-Evidence that he was the Broker at the relevant time and the property was purchased at the market value after confirmation of title in the name of Defendant No.1. In his cross-examination, he has reiterated that he was requested by Defendant-Purchaser about his interest to purchase the house. The said witness had examined the Official File of the Suit Property, containing relevant documents, including Possession Order, Lease and Mutation.

22. On behalf of KDA, the Assistant Director (Land Department), Mr. Rashid Kamal Khan has testified. In his examination-in-Chief / Affidavit-in-Evidence, he has narrated the history of Suit Property, that it was leased in favour of Bashir Ahmed, who sold it through a registered Sale Deed dated 05.08.1971 to Roshan Ali Khan (deceased father) and Mutation Letter was also issued on 27.11.1971 in favour of the deceased father. After his death, Defendant No.1 applied for mutation by way of inheritance on

the basis of Heirship Certificate issued by Izhar Hussain (Assistant Controller of Patent and Designs, Patent Officer, Government of Pakistan). After completing codal formalities, the Mutation Letter dated 07.12.1999 was issued in favour of Defendant No.1. On 23.08.2003, Defendant-Purchaser applied for mutation on the basis of Sale Deed (Exhibit P/2) and the case was processed and in the meantime objection was received from the Plaintiffs.

23. The official witness of KDA has not denied the suggestion that the Suit Property is a joint property; he could not recall the date when Plaintiff filed the Objections. Accepted that the mutation was effected on the basis of Heirship Certificate. To a question, he stated that KDA does not demand the Succession Certificate; replied that KDA did not demand the registered document from Defendant No.1; did not dispute the fact that the said Izhar Hussain who issued the Heirship Certificate had denied the fact in his Reply, as the said Notice / Reply was not received by KDA. The witness has denied the suggestion that Mutation was done due to receipt of illegal gratification.

24. From the record, following is the conclusion\_

Undisputedly, deceased Father Roshan Ali Khan was the owner of the Suit Property, who passed away on 03.03.1992 at Karachi (as per the Death Certificate issued by Zonal Municipal Committee, produced by the Plaintiff as Exhibit-P/1), *whereas*, in the pleadings, it is stated that the father died on 03.03.1991. Whereafter, the Suit Property was mutated in favour of Defendant No.1 (Farhat Khan Lodhi); the Mutation Order dated 07.12.1999 has been produced in the evidence as Exhibit-D/13 by Defendant-Purchaser. It is the case of Plaintiff that first time he acquired knowledge about sale of the Suit Property to Defendant-Purchaser, when the Plaintiff preferred the above Suit No.1554 of 2003 and it was contested

by present Defendant No.1. Although, Plaintiff of the said Suit has not been produced in the evidence by either of the Parties, but since it is an undisputed fact, thus, the Plaintiff available in the Court's file, has been perused, in which present Plaintiffs have complained that Defendant No.1 is in possession of the Suit Property and is not distributing the same amongst the Legal Heirs of the deceased father and when Defendant-KDA was approached for enquiry, no information was given. In the prayer clause of the earlier Suit, restraining orders were sought against Defendants from disposing of the Suit Property and to cancel all the documents issued illegally in favour of Defendant No.1. The earlier Suit was contested not only by Defendant No.1, present Defendant-KDA, but also present Defendant No.4 (Purchaser) also became party and filed his Written Statement. The Written Statements have been exhibited as D/10, D/11 and D/12 (produced by Defendant-Purchaser in his evidence). The Written Statement-Exhibit D/10 of present Defendant No.1 speaks about a family settlement amongst the Legal Heirs-Plaintiffs and Defendants, excluding Defendant-Purchaser, in respect of the Suit Property in lieu of other family properties. *Whereas*, Written Statement of Defendant-KDA (Exhibit-D/11) has mentioned almost the similar stance as reflected in their present Written Statement, that after the death of the deceased father, Defendant No.1-Farhat Khan Lodhi (now deceased) applied for mutation by way of inheritance on the basis of Heirship Certificate issued by Izhar Hussain (referred above) and after completing the formalities, mutation order was issued in favour of Defendant No.1, which is Exhibit-D/13. Written Statement of present Purchaser has defended the sale transaction. It is pertinent to mention that present Plaintiff instead of amending his pleadings with regard to this new development going to the root of the controversy, opted to withdraw the suit (as admitted by Plaintiff in his **cross-examination**). However, he has not produced the Order allowing

him to withdraw the earlier Suit, so that it can be seen whether he was also given permission to file the present *Lis* or not. But, subsequently Plaintiff No.1 filed the present *Lis* on 09.01.2007. **Secondly**, Plaintiff should have promptly amended his pleadings, for seeking the same relief, which he has sought in the present *Lis*, because after filing of Written Statements, in the earlier Suit No.1554 of 2003, all those facts came on record and in the knowledge of Plaintiffs, which are part of the record of present *Lis*; simply put, the present *Lis* is filed on the same set of facts, which **existed** at the relevant time, when the earlier Suit was *sub judice*, but was withdrawn simplicitor, without seeking the Relief as sought in the present *Lis*, which is not permissible in view of statutory bar mentioned in Order 23 and Order 2, Rule 2 of Civil Procedure Code. Consequently, the present *Lis* is barred by Order XXIII, Rule 3 so also Order II, Rule 2 of Civil Procedure Code, 1908. Resultantly, the present *Lis* is not maintainable. **Thirdly**, in this regard, if the cross-examination of Plaintiff is considered, wherein he has admitted that since 1992 till 2003, he did not take any action. The Mutation entry in favour of Defendant No.1 is of 07.12.1999 (Exhibit D/13), which is part of Public Record; hence as per his own admission, Plaintiffs' present claim is time barred. **Fourthly**, in the present Suit, Plaintiff is seeking Cancellation of Transfer / Mutation dated 07.12.1999 (Exhibit D/13) and Sale Deed dated 11.08.2003 [Exhibit D/9], executed between Defendant No.1 (since deceased) and Defendant-Purchaser. For cancellation of such documents Article 91 of the Limitation Act, 1908, is applicable, in which the prescribed period is three years. The present Suit is adversely affected by Article 91 of the Limitation Act, 1908, for the reasons, that Sale Deed dated 11.08.2003 is a public document and should have been challenged within time, but the present Suit is filed on 09.01.2007, that is, after three years and almost five months, thus is barred by Limitation.

The evidence about filing of objection by Plaintiff No.1 to the mutation in favour of Defendant Purchaser is of no consequence, in view of the above discussion. The above mentioned Documents [exhibits D/9 and 13] being Public and Registered Documents, thus, presumption of genuineness and the Official acts are performed in a regular manner as envisaged in Articles 92 and 129 of the Qanoon-e-Shahadat Order, 1984, are applicable here. *Fifthly*, Plaintiffs are unable to prove their claim for damages, which is also rejected.

25. The Issue-wise conclusion is as under\_

**ISSUE NO.4:**

26. Issue No.4 relates to the maintainability, therefore, is to be answered at the outset. In view of the above discussion, reply to this Issue is in negative. Present Suit is time barred.

**ISSUES NO.1 TO 3:**

27. The main stance of Plaintiff is that mutation was done in favour of Defendant No.1, on the basis of a fraudulent Heirship Certificate, issued by the said Izhar Hussain. Onus is on Plaintiff to prove this fact, which he could not prove in his evidence, *inter alia*, as neither the said response / Reply dated 19.01.2004 of Izhar Hussain has been exhibited nor the said Izhar Hussain, who is purportedly the author of the document, was examined, as required under Article 78 of the Qanun-e-Shahadat Order, 1984. Therefore, this plea of Plaintiff about the fraudulent mutation in favour of his brother, Defendant No.1, has lost its significance. In addition to this, if the evidence led and the observation made in the Order dated 02.02.2010 is considered, then applying the standard of proof as applicable to the facts of present case, the conclusion is that Defendant No.1 has not committed any fraud, in getting the mutation in his name, nor when he sold out / conveyed the Suit Property to Defendant No.4 (Purchaser).



**ISSUES NO.5, 6 AND RECASTED ISSUE NO.1:**

28. The foregoing discussion leads to the conclusion that Defendant-Purchaser has done the due diligence by examining the official record, in which the Suit Property was in the name of Defendant No.1 [Exhibit D/13, the Mutation Order of 07.12.1999], which was purchased through a registered Sale Deed (Exhibit D/8). The case law cited by Defendant-Purchaser is relevant to the facts of present case; in particular the conditions mentioned in the reported Decisions, do exist in the present case of Defendant-Purchaser; including, the basic ingredients of a valid Sale, that is, offer, acceptance and sale consideration, paid by Defendant Purchaser and admitted by Defendant No.1 (in his pleadings of the earlier Suit, which is undisputed and exhibited in the Evidence, *ibid*). Thus, Defendant-Purchaser is a *bona fide* purchaser for value and his interest is to be protected. Issues No.5 and 6 are answered accordingly and the recasted Issue No.1 is answered in negative and in favour of present Defendant No.4-Purchaser.

**ISSUES NO.7:**

29. In view of the above, Issue No.7 has become redundant, *inter alia*, as one of the Legal Heirs has even admitted to have received her share in the property, as mentioned in the Order dated 02.02.2010, *whereas*, share of Plaintiff No.1 has been invested in a plot.

**ISSUES NO.8:**

30. In view of the above, the present Suit is dismissed with cost.

**Judge**

**Karachi.**  
**Dated: 07.04.2023.**

Riaz / P.S.