

## ORDER SHEET

### IN THE HIGH COURT OF SINDH, KARACHI IInd Appeal No. 76 of 2012

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Date	Order with signature of Judge
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- 1.For hearing of CMA No.5472/2022
- 2.For hearing of CMA No.5473/2022
- 3.For hearing of CMA No.5474/2022

15.05.2024

Mr. Asif Memon, Advocate for the appellant.

Mr. Muhammad Aqil Zaidi, Advocate for KDA.

Ms. Nida Zafar, Advocate for applicant/intervener.

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1-2. Through these applications primarily filed under the provisions of Section 12(2) of Civil Procedure Code, 1908 (“C.P.C.”) the applicant sought indulgence of this court to set aside an Order dated 24.10.2019 passed by this Court on the allegation that the order dated 24.10.2019 was solely based on a false statement submitted by the respondent KDA. This Appeal was previously allowed vide above referred order dated 24.10.2019 and orders passed by subordinate Courts were set aside.

Ms. Nida Zafar advocated the case of the applicant and contended that the applicants are the predecessors-in-interest of the Muhammad Ibrahim Siddiqui and came to know about the factum of transfer of the subject property bearing plot No. SE-2 measuring 1733 sq. yards in the KDA records. She further stated that the agreement dated 12.02.1976 on the basis of which transaction was executed was with a minor girl which fact was also recorded by the lower fora in their concurrent findings. Her next stance is that the applicant are the legal heirs of Muhammad Ibrahim Siddiqui and the right of legacy demands that the subject property ought to be

mutated in favour of the applicant as right of inheritance which never dies. She further contended that the impugned order dated 24.10.2019 was obtained surreptitiously on the report submitted by the KDA ignoring the factum of concurrent findings recorded by the learned lower fora and that the concurrent findings cannot be disturbed on mere report of the attesting authority/KDA.

Mr. Asif Memon advocated the case of the appellant and introduced on record that the appellant acquired the title of the subject property having paid the entire consideration. The respondent KDA which is a custodian of record of rights submitted its report confirming the title of the appellant and such report was also filed before this Court, based upon which, the impugned order was passed which order ought to be sustained and that the application filed under the provisions of Section 12(2) CPC being hopelessly time barred be dismissed and if such sort of applications are entertained and allowed, the entire superstructure of Law of Limitation would rest in otiose, therefore, the application be dismissed with cost.

While exercising the right of rebuttal, Ms. Nida Zafar, Advocate submitted that the limitation under the prescriptions of Section 12(2) CPC starts as soon as the applicant/aggrieved person acquired the knowledge of fraud and misrepresentation played by the successive party, therefore, the application in hand is maintainable in the eyes of Law.

I have extensively heard the submissions of the learned representative of the litigating parties and have scanned the material available. The chronology of events demonstrates that pursuant to sale agreement dated 12.02.1976 and the same being accepted by Karachi Development Authority-respondent, who had

addressed numerous letters to the appellant as part of acceptance of pre-lease transfer, however, execution of pre-lease transfer was stayed on account of pendency of Suit as well as First appeal before the learned lower fora. Pursuant to the execution of the agreement of sale dated 12.02.1976, all the original title documents were handed over to the appellant as well as possession of the entire subject property bearing plot No. SE-2 measuring 1733 sq. yards in part performance of contract. The appellant has rented out shops situated on ground floor of the subject property and enjoys constructive possession till this day. As to the possession upon execution of sale agreement dated 12.02.1976, the title as far as acquisition from the predecessor-in-interest of applicants is concerned, that claim has never been disputed by any authority, rather the respondent being a dominant lessor had accepted the transfer and addressed numerous letters to the appellant, as an allottee. The claim of learning regarding transfer of the subject property in August 2022 and about disposal of the instant matter is only fictitious to me and a ground to set the prescriptions of Section 12(2) CPC in motion in order to avoid limitation on account of time. The fact is that the said Muhammad Ibrahim Siddiqui (father of the applicant) in his life time never complained or reported against the alleged fraud during his lifetime. The plea of unawareness on the part of late Muhammad Ibrahim Siddiqui and the applicants is totally unjustified to undo the order dated 24.10.2019 passed by this Court on the report submitted by the KDA-respondent and the filing of application under Section 12 (2) C.P.C. in the present situation amounts to dragging the proceedings unnecessarily and opening a new round of litigation in the proceedings.

It is a well-settled exposition of law<sup>1</sup> that for determining the grounds of alleged fraud, misrepresentation or want of jurisdiction, if any, raised in the application moved under section 12(2), C.P.C., the Court is not obligated in each and every case to frame issues mandatorily in order to record the evidence of parties and exactly stick to the procedure prescribed for decision in the matter but it always rests upon the satisfaction of the Court to structure its proceedings and obviously, after analyzing the nature of allegations of fraud or misrepresentation, the Court may decide whether the case is fit for framing of issues and recording of evidence, without which the allegations leveled in the application filed under Section 12 (2) C.P.C. cannot be decided. In tandem, a person can challenge the validity of a judgment, decree, or order on plea of fraud and misrepresentation or want of jurisdiction under Sub-section (2) of Section 12 C.P.C. by making an application with full particulars of the fraud and misrepresentation to the Court which passed the final judgment, decree, or order and not by a separate suit. The term “person” provided in this Section cannot be interpreted narrowly to restrict its scope and application only to the judgment-debtor or his successors but it includes any person adversely affected by the judgment and decree or order of the Court without any distinction on whether he was party to the original proceedings or not.

In the case of Ghulam Muhammad v. M. Ahmad Khan and 6 others (1993 SCMR 662), the Hon’ble Supreme Court articulated that the availing of remedy under Section 12, C.P.C. is quite encumbersome. Sub-section (2) of Section 12, enacted by virtue of

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<sup>1</sup> Per Qazi Faez Isa, Muhammad Ali Mazhar and Musarrat Hilali.JJ in Civil Petition No. 2341-L of 2016 (Hafiz Malik Kamran Akbar v. Muhammad Shafiq & others) vide order dated 02.01.2024.

Ordinance 10 of 1980, expressly ordains that the validity of judgment and decree obtained by fraud and misrepresentation can be assailed through an application to the Court, which passed the final judgment, decree, order and not by a separate suit. It was further held that seemingly, a two-fold purpose is sought to be achieved by the amending provision; firstly from jurisprudential point of view it is the obligation of the Court on whom the fraud is practiced to undo the fraud. Such application lies before the Court passing the final judgment, decree or order. Since on appeal or revision, against the judgment, decree or order, obtained by fraud, the matter is re-opened before the Appellate or Revisional forum, as the case may be, the application has to be filed before the higher court seized of such matter. Secondly, by conferment of the remedy through a simple application, the litigating party is to a large extent, saved from the hardship and encumbersome procedure involved in prosecuting a suit, and the delay in the final decision thereof. It is correct that the determination of allegations of fraud and misrepresentation usually involve investigation into the questions of fact but it is not in every case that the Court would be under obligation to frame issues, record evidence of the parties, and follow the procedure prescribed for decision of the suit. If it were so, the purpose of providing the new remedy would be defeated. The matter is left to the satisfaction of the Court which has to regulate its proceedings, and keeping in view the nature of the allegations in the application, may adopt such mode for its disposal, as in consonance with justice, the circumstances of the case may require. Whereas in the case of *Mrs. Amina Bibi through General Attorney v. Nasrullah and others* (2000 SCMR 296), it was held by the

Hon'ble Supreme Court that while dealing with the allegations under section 12 (2), C.P.C., it is not incumbent upon the Court that it must, in all circumstances, frame issues, record evidence and follow the procedure prescribed for decision of the suit. In the case of Amiran Bibi and others v. Muhammad Ramazan and others (1999 SCMR 1334), it was held that there is no cavil that determination of allegations of fraud and misrepresentation ordinarily involve investigation into the questions of fact and in such cases an inquiry should ordinarily be held to adjudicate upon the matter in issue but it is not the requirement of law that the Court, while dealing with the allegation under section 12(2), C.P.C., must in all circumstances frame issues, record evidence and follow the procedure prescribed for decision of the suit which depends upon the facts of each case in consonance with justice.

In the present case, the applicants have totally failed to substantiate any allegation of fraud, misrepresentation or want of jurisdiction to upset or overturn the Order dated 24.10.2019 passed by this Court. This appeal already been decided upon the information given from the KDA and order dated 24.10.2019 was passed which Custodian of Rights is still holding the same footing in favour of the Appellant. The listed applications are dismissed. KDA to transfer/mutate the subject property in the name of the appellant within 30 days.

3. Becomes infructuous and being unwarranted and intrusive in nature for lack of bona fide is dismissed.

JUDGE