

**IN THE HIGH COURT OF SINDH AT KARACHI
(ORIGINAL SIDE)**

Suit No.1172 of 1997

(Haji Maqbool Ahmed v. Ms. Sikandar (Deceased) Through Her Legal Heirs)

Plaintiff:	Haji Maqbool Ahmed Through Mr. Abdul Qadir Khan, Advocate
Deceased Defendant's (Ms. Sikandar's) Legal Heirs No.(i) to (ix):	Nemo
Proposed Intervenor:	Hussain Dawood Through M/s Arshad M. Tayebaly & Talha Javed, Advocates
Date(s) of Hearing:	19-10-2023, 27-10-2023, 16-11-2023, 7-9-2024 & 17-1-2025
Date of Decision:	30-1-2025

ORDER

1. **Sana Akram Minhas, J:** The circumstances of this case are far from ordinary, as demonstrated by the unusual facts that underpin its sequence of events.
2. This Suit ("**Suit 1172**"), filed for a "*Declaration, Permanent Injunction, Possession, and Mesne Profits*," has been initiated on 27.9.1997 by the Plaintiff against his mother ("**Deceased Defendant**"), who subsequently passed away on 3.12.2020. The Plaintiff contends that the Deceased Defendant was merely a *benami* holder, asserting that he is the true owner of the residential property bearing House No.48/1, 5th Street, Khyaban-e-Momin, Phase 5, DHA, Karachi, measuring 1000 sq. yards ("**Suit Property**"). During her lifetime, the Deceased Defendant, acting through her duly authorized attorney and son (viz. Iqbal Ahmed Kohawar, who happens to be the Plaintiff's brother and now arrayed as legal heir No.1(iv) of Deceased Defendant) executed a registered Sale Deed dated 14.3.2018 ("**Sale Deed**"), transferring the Suit Property to the Proposed Intervener (viz. Hussain Dawood).

3. This order adjudicates upon the following three applications, all filed by the Plaintiff:
- i) CMA No.9961/2020 (presented on 21.9.2020): Filed under Order 6 Rule 17 read with Section 151 of the *Code of Civil Procedure, 1908 (“CPC”)*, this application seeks amendment to the valuation clause of the Plaint (i.e. paragraph 11 of Plaint), seeking to enhance the valuation of Suit 1172 from the originally stated Rs.10 million to Rs.145 million on the ground that the Suit Property had been sold for this price as per Sale Deed.
 - ii) CMA No.13958/2021 (presented on 3.9.2021): Filed under Order 6 Rule 17 read with Section 151 CPC, this application seeks a two-fold amendment to the Plaint:
 - (a) Amendment of paragraph 11 of the Plaint, proposing an increase in the valuation from the original Rs.10 million to Rs.145 million.
 - (b) Addition to the Prayer Clause by including a prayer for the cancellation of the aforesaid registered Sale Deed, executed in favour of the Proposed Intervener.
 - iii) CMA No.13959/2021 (presented on 3.9.2021)¹: Filed under Order 1 Rule 10 read with section 151 CPC, this application seeks the joinder of the Proposed Intervener (viz. Hussain Dawood), as Defendant No.2 on the grounds that he purchased the Suit Property through the aforementioned Sale Deed.

Facts

4. The relevant factual narrative leading to the filing of the aforesaid three CMAs is as follows:
- i) On 27.9.1997, the Plaintiff filed the present Suit 1172 in this Court.
 - ii) On 18.9.2002, a Notification was issued increasing the pecuniary jurisdiction of this Court.
 - iii) Consequently, Suit 1172 was transferred to the Court of the 8th Senior Civil Judge, South (and renumbered as Suit No.1943/2003).

¹ CMA No. 13959/2021 was initially allowed by a Single Judge through an order dated 6.4.2022 in the absence of the Proposed Intervenor. However, the order was later set aside by a Division Bench in HCA No.173/2022 (*Hussain Dawood v. Haji Maqbool Ahmed*) via order dated 5.12.2022, which remanded the CMA for re-hearing

- iv) On 3.12.2003, the Civil Judge dismissed Suit 1172 for non-prosecution.
- v) After a lapse of 14 years, the Plaintiff on 6.11.2017 filed an application for restoration of Suit 1172. This application was dismissed by the Civil Judge on 28.11.2017.
- vi) On 23.2.2018, the Plaintiff filed a Civil Revision application (against the order dated 28.11.2017 dismissing his restoration application). This Civil Revision was also dismissed by order dated 6.9.2018.
- vii) Meanwhile, while Suit 1172 remained dismissed and unrestored, the Deceased Defendant sold the Suit Property to the Proposed Intervener via the aforementioned registered Sale Deed dated 14.3.2018, after completing all legal and procedural formalities.
- viii) Subsequently, the Plaintiff filed a Review Application (against the order dated 6.9.2018, which had dismissed his Civil Revision). The Review Application was allowed on 18.12.2019, ultimately resulting in the restoration of Suit 1172.

Respective Submissions

5. Learned Counsel for the Plaintiff in support of his two amendment applications (viz. CMA No.9961/2020 and CMA No.13958/2021) argued that the Plaintiff is not altering the nature of Suit 1172 but merely seeking a consequential relief arising from the original cause of action to include the cancellation of the Sale Deed for the Suit Property, sold by the Deceased Defendant during the pendency of Revision Application No.25/2018 (filed on 23.3.2018 and dismissed on 6.9.2018); the Intervenor has argued on behalf of the Deceased Defendant, who did not contest the CMA, but as the Intervenor is not yet a party to the proceedings, he lacks the legal standing to oppose the amendment; delay does not bar amendment of pleadings as Order 6 Rule 17 CPC allows amendments "*at any stage*" of the proceedings; the doctrine of *lis pendens* under Section 52 of the *Transfer of Property Act, 1882 ("Act 1882")* applies to the Sale Deed dated 14.3.2018 executed during the pendency of the *lis*.
6. In advocating for the joinder application (CMA No.13959/2021), the Plaintiff's Counsel contended that the Proposed Intervenor, having purchased the property during the pendency of the *lis*, is a necessary and proper party; the need for filing a separate suit for cancellation of the Sale Deed is avoided, preventing multiplicity of proceedings; all parties should face each other in one trial; additionally, Order 22 Rule 10 CPC governs cases involving assignment or creation of interest during the pendency of a suit, making it

mandatory to implead the subsequent transferee of the Suit Property as a party to the proceedings.

7. On the other hand, the learned Counsel for the Proposed Intervenor has resisted all three applications and sought their dismissal, asserting that the Intervenor is neither a necessary nor a proper party as Suit 1172 pertains to a family dispute over a benami declaration, unrelated to him; the Plaintiff has not raised any claims regarding the Power of Attorney executed by the Deceased Defendant in favour of her son and Attorney (Iqbal Ahmed Kohawar) for the sale of the Suit Property; no amendment altering the scope of Suit 1172 should be allowed, as the Plaintiff is attempting to convert it from a benami declaration case into one for cancellation of the Sale Deed, which harms already accrued third-party rights; the applications are designed to circumvent limitation laws and to avoid filing a fresh suit, as the prayer for cancellation of the Sale Deed is already time-barred; the doctrine of *lis pendens* is inapplicable due to non-compliance of the statutory provision by the Plaintiff; relevant authorities, including DHA, Clifton Cantonment Board, and the Military Estates Office, were not impleaded by the Plaintiff; the Proposed Intervenor, as a bona fide purchaser under Section 41 of Act 1882, complied with all legal requirements and holds clear title, and his rights would be prejudiced if Suit 1172 proceeds against him; the Plaintiff cannot seek cancellation of the registered Sale Deed, as the suit is barred under Section 42 of the *Specific Relief Act, 1877*, with no legal character, right, or title shown regarding the Suit Property, making the cancellation claim untenable.
8. Both Counsel drew on case law to bolster their submissions².

Argument Evaluation

9. Counsel for both parties have been heard, and the record duly considered.

² Plaintiff's Citations: 2006 SCMR 1067 (*Zahoor Hussain v. Ch. Niaz Ali*); PLD 1992 SC 180 (*Abdul Rashid v. Muhammad Tufail*); 1995 SCMR 69 (*Muhammad Mian v. Shamimullah*); 1997 SCMR 171 (*Rashid Ahmad v. Jiwan*); 2003 SCJ 731 (*Ahsanul Haq v. Sardar Muhammad*); 2005 MLD 526 (*Samiullah v. Government of Sindh*); PLJ 2013 SC 16 (*Tabassum Shaheen v. Uzma Rahat*); 2017 CLC 1204 (*Mal Pakistan Ltd v. Pakistan*); 2022 SCMR 1433 (*Gulzar Ahmad v. Muhammad Aslam*)

Proposed Intervenor's Citations: PLD 2013 Sindh 83 (*Abdul Aziz v. Abdul Rehman*); 2017 CLC 1204 (*Mal Pakistan Ltd. v. Pakistan*); 2008 SCMR 515 (*Khair Muhammad v. Nawab Bibi*); 2010 CLC 273 (*Ziaul Islam v. Alauddin Malik*); 2010 YLR 763 (*Zohra Begum v. Sajida Begum*); PLD 2011 Kar 281 (*Ilyas Begum v. Pakistan Defence Officers*); 2020 YLR 1294 (*Muhammad Rafi v. Additional District Judge*); 2022 SCMR 778 (*Athar Hussain Shah v. Muhammad Riaz*)

First Amendment Application (CMA No.9961/2020)

10. As the relief of valuation enhancement sought in the First Amendment Application is identical to that requested in the Second Amendment Application (CMA No.13958/2021), the former no longer serves any independent purpose. Consequently, the First Amendment Application is rendered infructuous and is hereby dismissed.

Second Amendment Application (CMA No.13958/2021)

11. The Second Amendment application seeks a dual amendment to the Plaint:
- (a) Amendment of paragraph 11 of the Plaint, seeking to enhance the valuation of Suit 1172 from the originally stated Rs.10 million to Rs.145 million on the ground that the Suit Property had been sold for this price as per Sale Deed dated 14.3.2018.
 - (b) Amendment of the Prayer Clause by adding a plea for the cancellation of the aforesaid registered Sale Deed dated 14.3.2018, executed in favour of the Proposed Intervener.
12. Amendment In Valuation: The Plaintiff has sought an amendment to the valuation clause on the solitary ground that the price of the Suit Property, as mentioned in the Sale Deed, is higher than the valuation originally stated in the Plaint. Notably, it is not even the Plaintiff's case that the Plaint was undervalued or incorrectly valued on the date of its institution (i.e. 22.9.1997). The Plaintiff simply contends that the amendment is necessary to align the valuation with the price specified in the Sale Deed, executed on 14.3.2018. There is a significant time gap of over twenty (20) years between the initiation of Suit 1172 and the execution of the Sale Deed, during which prolonged period, real estate values are bound to undergo changes. Accepting the Plaintiff's logic or reasoning for this amendment would set a precedent wherein any plaintiff could seek to amend the plaint whenever the market value of an immovable property changes (be it upward or downward), where subsequent changes take place after filing. Such an approach is legally untenable, as the valuation of the subject matter is determined at the time of instituting legal proceedings and cannot be altered based on subsequent fluctuations in market value. The valuation given by the Plaintiff (in paragraph 11 of Plaint) at the time of institution of Suit 1172 shall govern the Plaint. Accordingly, the Plaintiff's request to amend the valuation clause is rejected.

13. Amendment Seeking Addition Of Prayer Clause: Order 6 Rule 17 CPC³ empowers the Court to permit either party to amend or modify their pleadings at any stage of the proceedings, provided such amendments are necessary for a fair and just adjudication of the dispute. The Court may allow alterations on terms it deems appropriate, ensuring that the amendments serve the essential purpose of resolving the core issues in controversy between the parties.
14. When evaluating an application for the amendment of a plaint, the Court has to carefully consider the frame of the suit. The frame of a suit refers to its foundational structure including the parties involved, the subject matter, and the cause of action as originally presented. This scrutiny is crucial to ensure that any proposed amendment does not fundamentally alter the scope or complexion of a suit.
15. The scope or complexion of a suit refers to its fundamental nature, purpose, and the legal rights or reliefs sought by the parties. These aspects are primarily determined by the parties' pleadings, the claims asserted, the reliefs sought, and the issues framed for adjudication by the court. Collectively, these elements establish a suit's legal and factual dimensions or framework. Any amendment that seeks to fundamentally alter these core aspects risks changing the very nature of the suit, potentially leading to procedural and substantive implications.

Extracted Legal Principles Of Order 6 Rule 17 CPC

16. The authority to permit an amendment is undeniably broad and can be exercised at any stage when necessary to serve the interests of justice. However, the use of such extensive discretionary power must be guided by judicial prudence. The broader the discretion, the greater the need for caution and careful deliberation by the court⁴.
17. Over time, certain basic principles have emerged and been established, which must be considered when deciding whether to allow or reject an

³ Order 6 Rule 17 CPC: Amendment of pleadings. The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

⁴ *Ganga Bai v. Vijai Kumar* (AIR 1974 SC 1126); *Muhammad Essa v. Haseena Begum* (1987 CLC 1723)

amendment application, as recognized in *Karachi Electric Supply Corporation*⁵ and reiterated in *Mal Pakistan*⁶. Thus far, these are:

- i) Courts may allow amendment at any stage of the proceedings to facilitate the just resolution of disputes, if such modification does not alter the fundamental nature or complexion of the case or the cause of action.
- ii) Amendments may be permitted to seek consequential relief arising from the cause of action originally pleaded in the plaint.
- iii) A plaintiff may be allowed to amend the plaint to include additional reliefs that are available in higher courts, such as the High Court and Supreme Court.
- iv) Amendments may be granted to base the plaint on a different legal title.
- v) An amendment will be denied if it is not made in good faith or is mala fide.
- vi) An amendment will not be allowed if it introduces a factual plea that contradicts a previous plea in the plaint, particularly when such a fact constitutes an admission benefitting the opposing party.
- vii) An amendment will not be allowed to substitute the original cause of action.
- viii) An amendment will not be permitted if it amounts to introducing a new cause of action that was not available at the time of filing the suit.
- ix) Amendments that cause prejudice or injustice to the opposing party are impermissible.
- x) Amendments based on findings made by another tribunal concerning the same subject matter are not allowed.
- xi) Rights already vested in one party cannot be arbitrarily taken away through an amendment unless it meets the legal tests established by superior court rulings.

⁵ *Karachi Electric Supply Corporation v. Muhammad Shahnawaz* (PLD 2017 Sindh 23)

⁶ *Mal Pakistan v. Pakistan* (2017 CLC 1204)

- xii) An amendment will not be allowed if a fresh suit on the amended claims would be barred by limitation on the date of application.

Applying Legal Principles To The Present Context

18. To translate these legal principles into the context of this case, it is necessary to take a closer look at the underlying facts. The present Suit was instituted on 22.9.1997 by the Plaintiff against his mother (i.e. the Deceased Defendant) asserting that he is the real/actual owner of the Suit Property and that the Deceased Defendant was merely an ostensible owner i.e. a benami-holder on his behalf. The prayer clause(s), both at the time of Suit 1172's institution and as it remains to this day, are:

P R A Y E R

It is therefore most humbly prayed that this Hon'ble Court may be pleased to pass decree and judgement in favour of the plaintiff declaring that the plaintiff is the real owner of the property bearing No. 48/1, 5th Street, Phase-V, Khayaban-e-Momin, Defence Housing Authority, Karachi measuring 1000 square yards.

- (b) *Permanent injunction restraining the Defendant, her agents, servants, attorneys Defendant, servants, and persons acting under or through her from selling, transferring, mortgaging, creating any 3rd party right or interest on the said property during the pendency of the suit.*
 - (c) *The possession of the suit property may be given to the plaintiff.*
 - (d) *Mesne profit, @ Rs.30,000/- per month may be given to the plaintiff till he gets possession of the property.*
 - (e) *Cost of the suit.*
 - (f) *Such better and further relief(s) this Hon'ble Court deems fit and proper in the circumstances of the case.*
19. The addition of a prayer for the cancellation of the Sale Deed, as proposed in the amendment, would fundamentally alter the character of Suit 1172⁷. It would no longer remain a suit merely seeking a declaration of benami ownership, but would instead reshape it into one seeking both a declaration of title and the cancellation of the Sale Deed. The Plaintiff's argument that the cancellation relief is merely consequential is not only an overstretch but

⁷ *Ma Shwe Mya v. Maung Mo Hnaung* (AIR 1922 PC 249) – It ruled that all court rules aim to ensure the proper administration of justice, and thus, should be subordinated to this purpose, allowing for liberal exercise of amendment powers. However, no power has been granted to substitute one cause of action for another or to alter the subject matter of the suit through amendment

also a deliberate oversimplification of the matter. It is intended to camouflage and paper over the significant legal implications of such relief, which would entirely transform the nature of Suit 1172. This contention is unfounded and devoid of merit, and cannot be sustained in any reasonable legal context.

20. Consequential relief refers to a relief that is secondary or ancillary to the primary relief sought in an action. It typically arises as a natural consequence of the main claim and is not considered an independent or standalone remedy. Instead, it is designed to address issues that flow directly from the primary relief.
21. The claim for cancellation may be subject to its own limitation period (as discussed in paragraphs 22 to 25 below) and cannot simply be treated as an automatic consequence of declaring ownership. In the given circumstances, the Plaintiff's assertion that the inclusion of cancellation relief is merely a consequential relief is disingenuous and a gross mischaracterization. The proposed amendment does not simply add an ancillary or incidental claim; rather, it introduces a substantive and transformative change to the nature of Suit 1172. If this does not constitute a fundamental shift and a material change to the core of Suit 1172 then what possibly could? The relief of cancellation carries distinct legal implications, affecting not only the scope of the proceedings but also the rights and liabilities of the parties involved. Treating it as a mere consequence ignores its fundamental impact on Suit 1172's character and legal standing.
22. There is yet another significant impediment to this proposed amendment viz. the considerable delay in seeking it. The Suit 1172 was originally instituted on 22.9.1997, while the First and Second Amendment Applications were filed on 21.9.2020 and 3.9.2021 respectively (the First Amendment Application having been dismissed for reasons stated in paragraph 10 above). The Second Amendment Application, filed on 3.9.2021, is particularly notable as it seeks to introduce a prayer for the cancellation of the Sale Deed dated 14.3.2018. This application comes after a lapse of three years and six months (3 ½ years) following the execution of the Sale Deed.
23. In *Kisandas Rupchand*⁸ decided over 115 years ago, (and is said⁹ to be perhaps the first leading case decided by the High Court of Bombay under the then newly enacted CPC), Beaman, J in his concurring note observed that:

⁸ *Kisandas Rupchand v. Rachappa Vithoba Shilvant* (ILR (1909) 33 Bom 644)

⁹ *Revajeetu Builders & Developers vs Narayanaswamy & Sons* (AIR 2009 SC 6644)

" 14. Amendments of pleadings will always be allowed, unless allowing the amendment will place the other party at a disadvantage for which he cannot be adequately compensated by costs. "

He proceeded to state:

" 15. In my opinion two simple tests, and two only, need to be applied, in order to ascertain whether a given case is within the principle. First, could the party asking to amend obtain the same quantity of relief without the amendment? If not, then it follows necessarily that the proposed amendment places the other party at a disadvantage, it allows his opponent to obtain more from him than he would have been able to obtain but for the amendment. Second, in those circumstances, can the party thus placed at a disadvantage be compensated for it by costs? If not, then the amendment ought not, unless the case is so peculiar as to be taken out of the scope of the rule, to be allowed."

24. The timeliness of this request must be assessed in light of whether the Plaintiff could have independently filed a separate suit for the cancellation of the Sale Deed within the limitation period. Under Article 91 of the *Limitation Act, 1908*, the limitation period for filing such a suit is three years, whereas the Second Amendment Application has been filed after 3 ½ years. By this standard, the proposed amendment is clearly time-barred¹⁰.
25. The Plaintiff has neither argued nor could reasonably argue that he gained knowledge of the Sale Deed belatedly. This is evident from his First Amendment Application (CMA No.9961/2020), filed on 21.9.2020, wherein he sought only to enhance the valuation clause based on the price mentioned in the Sale Deed. This demonstrates that the Plaintiff was already aware of the Sale Deed's existence as of that date. Despite this knowledge, he chose not to seek the inclusion of a prayer for its cancellation at that time, further undermining the plausibility of his current request. The Second Amendment Application must, therefore, fail too.

Plaintiff's Application For Joining Proposed Intervenor (Purchaser) As A Defendant (CMA No.13959/2021)

26. This application, filed under Order 1 Rule 10 and Section 151 CPC, seeks to join the Proposed Intervener, as Defendant No.2. The request is based on the fact that he acquired the Suit Property through the Sale Deed referenced above.

¹⁰ *Imam Hussain v. Sher Ali Shah* (1994 SCMR 2293) – [Although this is a leave-refusing order, which are generally not binding, however, in this case, the order also establishes legal principles – See: *Qaim v. Federation of Pakistan* (PLD 2016 Sindh 1 [para 10]); *Muhammad Naveed v. Habib Bank Ltd* (2024 CLD 648 [para 5])]

27. Under Order 1 Rule 10 CPC, an intervenor may be impleaded as a party only if he qualifies as either a necessary or a proper party. A necessary party is one who ought to have been joined, and in whose absence no effective adjudication can take place or decree passed. A proper party, on the other hand, is one whose presence while not indispensable, is necessary before the Court for the complete and effective resolution of all issues involved in a suit.
28. The key question for determination is whether the Proposed Intervenor, at a minimum, qualifies as a proper party and whether his presence before the Court would facilitate the effective and final resolution of all issues arising in the instant Suit 1172.
29. As previously stated, the present Suit 1172 arises from a dispute between two family members and was originally instituted by the Plaintiff (the son) against his mother (the Deceased Defendant). The Plaintiff seeks a declaration of benami ownership concerning the Suit Property. The Proposed Intervenor, being a rank outsider, has no direct connection to the fundamental dispute and lacks both the requisite knowledge and legal standing to provide any relevant evidence in this dispute of benami ownership between two family members¹¹. Given the familial nature of the dispute, introducing the Proposed Intervenor into this family dispute at this stage would, thus, only serve to convolute the dispute without adding any substantive value. No fruitful result could be achieved by the Proposed Intervenor's joinder as the point involved in Suit 1172 can independently be adjudicated upon without his presence.
30. Additionally, following the demise of the Deceased Defendant on 3.12.2020, her legal heirs were substituted as Defendants in Suit 1172, including the Plaintiff himself as Defendant No.1(ii) (vide Court's order dated 23.2.2021). To date, none of the legal heirs have filed a reply to the Plaint, including Defendant No.1(iv) viz. Iqbal Ahmed Kohawar, who sold the Suit Property to the Proposed Intervenor and executed the Sale Deed as the Deceased Defendant's authorized Attorney. The silence of the legal heirs and their failure to respond to the Plaint are significant, as they suggest either a tacit or possibly a collusive acceptance of the Plaintiff's claims. This further underscores the irrelevance of the Proposed Intervenor's involvement, rendering his inclusion unnecessary, as it would serve no meaningful purpose and would instead divert focus from the core issue at hand.

¹¹ *Zohra Begum v. Sajida Begum* (2010 YLR 763)

31. Furthermore, the Plaintiff has as yet, no title in the Suit Property and is struggling for a declaration in his Suit 1172¹². He must follow up on his own Suit 1172, and if he succeeds, the consequential events will follow automatically in accordance with law.
32. There is yet another important aspect to consider. Under Order 1 Rule 10(5) CPC, subject to Section 22 of the *Limitation Act, 1908*, proceedings against any person added as a defendant commence upon service of summons. Section 22 specifies that when a new plaintiff or defendant is added or substituted after a suit is filed, the suit is deemed to have been instituted in relation to them only from the date they were made a party, which has been held to mean on the date when the application to implead them is filed¹³. Therefore, even if the Proposed Intervenor is impleaded as a defendant in Suit 1172, the said Suit would still be time barred against him, as the very application to implead was itself time barred¹⁴.

Lis Pendens

33. The Plaintiff contends that while the present Suit 1172 was still pending adjudication, the Deceased Defendant alienated the Suit Property, which was acquired by the Proposed Intervenor. Consequently, the transfer is hit by the doctrine of *lis pendens* embodied in Section 52 of Act 1882, making it subject to the outcome of this Suit 1172.
34. The doctrine of *lis pendens* dates back to 1857 and aims to prevent alienations *pendente lite*, which would otherwise make it impossible to conclude a case successfully¹⁵. A plaintiff could be repeatedly defeated by a defendant transferring the property before judgment, forcing the plaintiff to restart proceedings endlessly.
35. However, the rule of *lis pendens* takes effect in the province of Sindh only when a notice of the pendency of the suit or proceedings is registered under Section 18 of the *Registration Act, 1908*, as required by the Sindh Amendment to Section 52 of Act 1882 (an amendment that was introduced

¹² The Evidence File shows that the cross-examination of the Plaintiff was completed on 15.5.1999, while that of the Deceased Defendant was only partially conducted when it was disrupted by a quarrel between the Plaintiff and his father (i.e. husband of Deceased Defendant). As a result, the Evidence Commissioner vide his note dated 19.6.2000, referred the matter to the Court for further orders. The record reflects that, thereafter, the Plaintiff showed no apparent urgency in concluding the Deceased Defendant's evidence, and she ultimately passed away 20 years later on 3.12.2020

¹³ *Hayat v. Amir* (PLD 1982 SC 167)

¹⁴ *Ilyas Begum v. Pakistan Defence Officers Housing Authority* (PLD 2011 Kar 281)

¹⁵ *Bellamy v. Sabine* (1857) 44 ER 842

way back in 1939)¹⁶. Yet, no such notice was ever registered in this case, nor has the Plaintiff claimed to have registered one to date. Clearly, the provisions of Section 52 remain uncomplied with and, therefore, cannot be invoked to affect the validity of the Sale Deed executed in favour of the Proposed Intervenor.

36. Notwithstanding the above, even otherwise, the Plaintiff's claim that the Suit Property was alienated during the pendency of Suit 1172 could not be further from the truth. The fact remains that the Suit remained dismissed for 16 years (originally instituted on 22.9.1997, dismissed for non-prosecution on 3.12.2003, the Sale Deed was executed on 14.3.2018 and Suit 1172 was restored on 18.12.2019). It was during this period, when Suit 1172 remained dismissed¹⁷, that the Proposed Intervenor purchased the Suit Property. Therefore, at the time of the transaction, no suit was pending nor had any Section 52 notice been registered prior to its restoration¹⁸, making the doctrine of *lis pendens* inapplicable, and the Proposed Intervenor's acquisition of the property lawful. Moreover, he appears to have exercised due diligence, including issuing public notices in newspapers, before acquiring the Suit Property.

Conclusion

37. In light of the foregoing circumstances and for the reasons detailed above, all three applications filed by the Plaintiff viz. CMA No.9961/2020, CMA No.13958/2021 and CMA No.13959/2021 are hereby **dismissed**. No costs are imposed in this matter.

JUDGE

Karachi
Dated: 30th January, 2025

¹⁶ *Raza Hussain v. Muhammad Khan* (2003 CLC 250); *Roshan Ali v. Taluka Council* (2003 MLD 1970)

¹⁷ *Tabassum Shaheen v. Uzma Rahat* (2012 SCMR 983)

¹⁸ *Amanullah v. Muhammad Essa* (PLD 2024 SC 1258) – According to this judgment, if a dismissed suit is later restored, the restoration order relates back, making any transfer during the dismissal period subject to *lis pendens* under Section 52 of *Transfer of Property Act, 1882*