

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 275 of 2019

Present

Mr. Justice Muhammad Jaffer Raza

Syed Zafar Iqbal

Versus

Sardar Wali Khan and another

Plaintiff	:	Syed Zafar Iqbal through Mr. Jawed Raza, Advocate.
Defendant No.1	:	Sardar Wali Khan through Mr. Gharib Shah, Advocate.
Date of Hearing	:	27.02.2025
Date of Judgment	:	27.02.2025

J U D G M E N T

MUHAMMAD JAFFER RAZA – J: Instant suit has been filed for possession and injunction on 13.12.2019. It has been stated by the learned counsel for the Plaintiff that the Plaintiff is the registered owner of plot No. B-432, admeasuring 400 Sq. Yards, Block No.3, Sector 3-A, Quetta Town Cooperative Housing Society, KDA Scheme No.33, Karachi (“**Subject Property**”). It has been argued by the learned counsel for Plaintiff that the Plaintiff was allotted the Subject Property on 15.03.1983 and subsequently the Lease Deed was executed in favour of the Plaintiff. The Plaintiff has also obtained various search certificates to reflect that the property stands in the name of the said Plaintiff. The Defendant No.2 being a society has tacitly acknowledged the ownership of the Plaintiff by showing demand of outstanding dues, which according to learned counsel for the Plaintiff, were duly paid. It is contended by the learned counsel for the Plaintiff that the Plaintiff resides abroad and is of advanced age. Further the Plaintiff visited Pakistan on 10.02.2018 and during the said visit on 16.02.2018, approached Defendant No.2 for payment of all outstanding dues. Thereafter the Plaintiff visited the suit property and it transpired that the suit property was illegally and unlawfully possessed by Defendant No.1 and the said Defendant was

raising construction over the same. The Plaintiff, according to the learned counsel, approached the Defendant No.2 repeatedly, who gave false assurances that the Defendant No.1 will not be allowed to trespass or raise illegal construction on the Subject Property. Thereafter, the Plaintiff again visited the subject property on 17.01.2019 and was shocked to find out that the Defendant No.1, contrary to assurance given by the Defendant No.2, has raised further construction on the suit property and also fixed iron gate thereupon. The Plaintiff therefore had no option but to file the instant suit with the following prayers: -

- a) To direct the Defendant No.1 to vacate the suit property i.e. admeasuring 400 Sq. Yards, Block No.3, Sector 3-A, Quetta Town Cooperative Housing Society, KDA Scheme No.33, Karachi and handover the peaceful physical vacant possession of the suit property as per site map to the Plaintiff being registered lawful owner of the suit property.
- b) To restrain the Defendants, their man or men, person or persons, agent or agents, worker or workers, employee or employees, attorney or attorneys and assigns acting on their behalf or under their authority from carrying further construction on the Plot No.B-432, admeasuring 400 Sq. Yards, Block No.3, Sector 3-A, Quetta Town Cooperative Housing Society, KDA Scheme No.33, Karachi as well as creating third party interest in the suit property in any manner.
- c) Any other or further relief as deem fit and proper by this Hon'ble Court may also be granted to the Plaintiff.

2. In response, the Defendant No.1 appeared and filed his respective written statement. The gist of the written statement is that the said Defendant is claiming to be the owner of the Subject Property and also admitted his possession thereon. The said Defendant vide his written statement is grounding his claim on the basis of a Sale Agreement, which he allegedly entered into with one Wali Khan on 15.06.2018. The Defendant No.2 society failed to effect appearance and as such was debarred from filing written statement and declared ex-parte vide order dated 02.06.2022.

3. On 19.01.2023, following issues were framed for determination: -

1. Whether the Plaintiff is registered owner of Plot No. B-432, admeasuring 400 Sq. Yards, Block No.3, Sector 3-A, Quetta Town Cooperative Housing Society, KDA+ Scheme No.33,

Karachi by virtue of Lease Deed Registered No.12550 dated 14.12.1986 Sub-Registrar T-Division XII Karachi, K.F. Roll No.182 Photo Registrar Karachi dated 17.12.1986?

2. Whether the Defendant No.1 has purchased the Suit Property from its actual owner after following codal formalities of Defendant No.2?
3. Whether the Plaintiff Plot has been cancelled by the Society after proper procedure and fresh allotment has registered in the name of Defendant or not?
4. Whether Defendant No.1 has encroached the Suit Plot and is liable to be evicted?
5. What should the Decree be?

FINDINGS

Issue No.1	:	Affirmative
Issue No.2	:	Negative
Issue No.3	:	Negative
Issue No.4	:	Affirmative
Issue No.5	:	Suit is decreed as prayed in terms of prayer clause A and B.

4. The Plaintiff in support of his claim produced one witness in addition to himself, produced and exhibited the following documents: -

Sr. No.	Description of documents	Exhibits
1.	Original Lease Deed Registered No.12550 dated 14.12.1986, Sub-Registrar T-Division XII Karachi, K.F. Roll No.182 Photo Registrar Karachi dated 17.12.1986	Ex-PW1/2
2.	Original site plan of suit plot No.B-432	Ex-PW1/3
3.	Original Allotment Order bearing No.002876 dated 15.03.1983.	Ex-PW1/4
4.	Original Search Certificate dated 04.02.2019	Ex-PW1/5
5.	Original Search Certificate dated 04.02.2019	Ex-PW1/6
6.	Letter of Defendant No.2 dated 11.06.2003	Ex.PW1/7
7.	Photostat copy of Pay Order bearing No.06535607 dated 12.08.2013 drawn at Habib Metropolitan Bank Ltd, Business Avenue Branch, Karachi.	Annexure X/1
8.	Original envelope dated 20.06.2013	Ex.PW1/8

9.	Copy of application dated 21.02.2017 addressed to the Manager, Habib Metropolitan Bank for cancellation of Pay Order No.06545607	Annexure X/2
10.	Copy of indemnity bond dated 26.04.2016	Annexure X/3
11.	Office copy of Plaintiff's letter addressed to Administrator of Quetta Town Cooperative Housing Society Ltd.	Ex.PW1/9
12.	Letter addressed to Mr. Mirza Alam Baig, Administrator of Quetta Town Cooperative Housing Society Ltd. having endorsement and receiving stamp dated 23.02.2018	Ex.PW1/10

5. Whereas, the Defendant No.1 also appeared himself for evidence and produced one witness, namely, Wali Khan and exhibited the following documents:

Sr. No.	Description of documents	Exhibits
1.	Allotment order bearing No.006602 issued on 29.05.2002	Ex-DW1/2
2.	Share Certificate No.8304 of Quetta Town Cooperative Housing Society issued on 29.05.2002	Ex-DW1/3
3.	Right of allotment of transfer.	Ex-DW1/4
4	Memorandum of transfer of Shares	Ex-DW1/5
5	Site Plan of Plot No.432, Block # 3, Sector No.3-A, Type-B, Scheme-33, issued by Quetta Town Cooperative Housing Society	Ex-DW1/6
6	Letter of offer of Membership and Allotment of Plot dated 29.05.2005	Ex-DW1/7
7	Copy of CNIC of Wali Khan bearing No.42201-8937542-9	X/1
8	Copy of CNIC of the witness being # 42501-0590686-7	Ex-DW1/8
9	Agreement of Sale dated 05.06.2018 execution between Wali Khan and Sardar Wali Khan	Ex-DW1/9
10	Receipt of full and final payment	Ex-DW1/10
11	Newspaper cutting published in daily "Daily Nai Baat" dated 03.11.2007	Ex-DW1/11
12	Newspaper cutting published in daily "Daily Nai Baat" dated 03.11.2007	Ex-DW1/12
12	Photostat copy of another Newspaper cutting	X/2
13	N.O.C. for Sale/Extension of NOC dated 29.05.2015 issued by Quetta Town Cooperative Housing Society	Ex-DW1/13
14	Another NOC for Sale/Extension of NOC dated 10.11.2017	Ex-DW1/14
15	Payment receipt in favour of one Abdul Muneeb issued by Quetta Town Cooperative Housing Society	Ex-DW1/15
16.	Receipt No.64689 dated 10.11.2017	Ex-DW1/16

17.	Receipt No.64694 dated 13.11.2017	Ex-DW1/17
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Issue No.1 and 4.

6. The finding in Issue No. 1 will solely determine the finding in Issue No. 4, hence both these issues are dealt with communally. It is a settled principle of law that under Article 79 and 129 of the Qanoon-e-Shahadat Order 1984 (“**Order**”), presumption is attached to registered documents. The same are presumed to be genuine unless proved otherwise. Reliance in this regard is placed on the case of Mst. NAZEERAN and others Versus ALI BUX and others¹ where the Honourable Supreme Court in paragraph number 13 held as under: -

“13. The standard of evidence required to discharge the initial burden depends on the facts and circumstances of each case. It cannot be said that it will be consistent in all situations. Sometimes, a simple denial is adequate to shift the burden to the opposite party, while at other times, material evidence is necessary for the same purpose. Therefore, the standard of evidence is not uniform when challenging a registered document as compared to challenging an unregistered document. It has been observed that in disputes relating to registered documents, a common misconception may arise when an executant attempts to dispute the validity of the document through mere denial. It is essential to emphasize that the act of registration is not a perfunctory formality but rather a deliberate and legally binding process. When a document is registered, it becomes an official record available to the public. This adds credibility to the authenticity and legal purpose of the transaction.
On the other hand, unregistered documents lack the same level of legal endorsement. While they may carry evidentiary weight, their value is inherently lessor as compared to the registered document. The absence of registration renders unregistered documents vulnerable to challenges regarding their authenticity and enforceability. Moreover, a document duly registered by the Registration Authority in accordance with the law becomes a legal document that carries a presumption as to the genuineness and correctness under Articles 85(5) and 129(e) of the Q.S.O. and which cannot be dispelled by an oral assertion that is insufficient to rebut the said presumption.” (Emphasis added)

7. It is evident that the suit plot was allotted to the Plaintiff on 15.03.1983 and subsequently after completion of necessary formalities lease deed was executed in his

¹ 2024 S C M R 1271

favour. It has also undeniable that the said Lease Deed of the Plaintiff has not been challenged by any of the Defendants and continues to remain in the field. The Plaintiff in his cross examination also in reply to a question very categorically stated as follows: -

“It is correct to say that a Lease Deed dated 14.12.1986 (Exhibit PW-1/2) was executed in my favour in respect of suit property”

8. Further the Defendant No.1's admission in his cross examination suggests that in record of the Defendant No.2 the Plaintiff was the owner of the subject property.

Relevant part of cross examination is produced below: -

“It is correct to say that as per Exhibit PW1/7 Society demanded an Extra Charges amount of the suit plot from the Plaintiff in the year 2013. I do not know that as per Exhibit PW1/7, the Plaintiff is still the owner of the suit plot.

“I see Exhibit PW1/4 and say it is correct that as per PW1/4, the suit plot was allotted in favour of the Plaintiff in the year 1983. Voluntarily says I did not know about this allotment in favour of the Plaintiff. It is correct to say that I have not filed any document of cancellation of allotment (issued in the year 1983) in favour of the Plaintiff in my evidence as I did not know about his allotment. I do not know that as per Exhibits PW1/5 & PW1/6, the Plaintiff is the owner of the suit plot till filing of the suit.... It is correct to say that as per Exhibit PW1/7 Society demanded an Extra Charges amount of the suit plot from the Plaintiff in the year 2013. I do not know that as per Exhibit PW1/7, the Plaintiff is still the owner of the suit plot. I see Exhibit DW1/6 and say it neither bears the name of any owner nor his signature nor registration number. It is correct to say that Exhibit DW1/6 does not bear the signature of the Administration. Voluntarily says that it was signed by the relevant persons. It is correct to say that Exhibit DW1/6 does not have any date of issuance.”

The Defendant No.1 further admits in his cross-examination as under: -

“It is correct to say that I have not produced the person named in Exh.DW-1/2 as witness in my case. It is correct to say that I have not produced any paid voucher or transfer fee issued in my name in respect of the suit plot. It is correct to say that I have not produced any possession order in my favour in respect of the suit property. It is correct to say that the suit plot has not been transferred and mutated in my name. It is

correct to say that I have not produced the possession letter issued in favour of Wali Khan from whom I had purchased the suit property. Vol. says no possession order is issued by the said society which only issues "No Objection Certificate" at the time of transfer of the plot. It is correct to say that no allotment order has been issued in my favour as regard to the suit property. It is correct to say that I have not produced any registered title documents executed in my favour pertaining to the suit property. It is correct to say I have not produced any registered title documents in favour of Wali Khan duly registered with the concerned Registrar.

"It is correct to say that I have raised the construction over the suit plot without an approved plan. Vol. says that all houses are constructed in the society without approved plans. It is correct to say that my whole case depends upon the sale agreement.

"I see Exhibits DW1/11 and DW1/12 and say it is correct that these publications were neither published on my behalf, nor on behalf of Wali Khan." (Emphasis added)

9. I have heard the learned counsel for the Plaintiff and also examined documents exhibited with his able assistance. It is evident that the Subject Property was leased in the favour of the Plaintiff. Admittedly, no cancellation has been sought of the said Lease deed by the Defendant No.1. Moreover, the candid admissions of the Defendant No.1, reproduced above, are sufficient to establish that the said Defendant has no right or title over the Subject Property. The instant suit was filed on 13.2.2019 and thereafter notices were issued to the Defendants. The Defendants were therefore, after receipt of the summons, aware of the pendency of the instant suit and the Lease Deed in favour of the Plaintiff. Despite a lapse of over five years the Defendant/s chose not to file any suit for the cancellation of the said Lease Deed. Moreover, the Defendant No.1 has most candidly admitted that he is not in possession of any registered instrument, possession or allotment order either in his name, or the name of his predecessor. In light of what has been discussed above, I see no cavil in holding that the Plaintiff is the owner of the subject property and hence these issues are answered *in the affirmative.*

Issue No.2.

10. The Defendant No.1 claims to have purchased the subject property from one Wali Khan, the burden of this issue rests squarely on the said Defendant. It is noteworthy at this stage to mention that the said Defendant has not filed any suit for declaration of his title and/or entitlement of his ownership. The Defendant No.1 during his cross examination made certain admissions, which can only be classified as decisive:

“It is correct to say that my whole case depends upon the Sale Agreement. It is incorrect to say that my possession of the suit plot and subsequent construction raised by me is illegal. It is incorrect to say that I have not entered into a sale agreement with the actual owner of the suit plot. I see Exhibits DW1/11 and DW1/12 and say it is correct that these publications were neither published on my behalf nor on behalf of Wali Khan.”

Further the witness produced by the Defendant, namely, Wali Khan (allegedly the predecessor-in-interest of Defendant No.1) has categorically admitted as follows: -

“It is correct to say that I have not produced any registered title document of the suit property registered before the sub-registrar. It is correct to say that I have not produced an allotment letter as well as a possession letter issued in my favour in respect of the suit plot. It is correct to say that I have not produced any proof that the Plaintiff has a forged lease deed in his favour. Voluntarily says that I did not know about the lease in favour of the Plaintiff. I neither know that the suit plot was allotted to the Plaintiff in the year 1983 nor about the execution of the lease deed in favour of the Plaintiff in 1986.

It is incorrect to say that I have mentioned in my affidavit in evidence that the lease deed executed in favour of the Plaintiff is forged, fabricated and a managed document. I do not know anything about the lease deed in favour of the Plaintiff.”

11. In light of the above admission, and the finding in Issue No.1 and 4, it is clear that the chain of ownership emanating from Wali Khan to the Defendant No.1 is defective to say the least, and the Defendant No.1 allegedly purchased the suit property from a person who was not the owner of the same. In light of what has been discussed above the issue is answered in **negative**.

Issue No.3.

12. The burden of this issue vests on Defendant No.2. It has been noted above that the said Defendant was declared ex-parte on 02.06.2022, therefore, did not lead any evidence to show that the subject plot has been cancelled. Relevant part of Plaintiff examination is reproduced as under: -

“I booked the suit plot in the year 1983. It is incorrect to say that I had received the cancellation of plot notice from Defendant No.2. It is incorrect to say that the suit plot was cancelled in the year 2002 and the same was re-allotted to Abdul Muneeb. It is correct to say that a Lease Deed dated 14th December 1986 (Exhibit PW1/2) was executed in my favour in respect of the suit property.”

13. Conversely, the Defendant No.1 has also made certain admissions in this regard. The same have already been reproduced above in which the Defendant No.1 has categorically made admissions which are fatal to his cause. Further the said Defendant admitted as under: -

“I see Exhibit PW1/4 and say it is correct that as per Exhibit PW1/4, the suit plot was allotted in favour of the Plaintiff in the year 1983. Voluntarily says I did not know about this allotment in favour of the Plaintiff. It is correct to say that I have not filed any document of cancellation of allotment (issued in the year 1983) in favour of the Plaintiff in my evidence as I did not know about his allotment.”

14. The Defendants were unable to establish the cancellation of the subject plot to the detriment of the Plaintiff. Moreover, it has already been observed above that the Defendant No.1 feigned ignorance about the existence of the lease deed in favour of the Plaintiff. That the summons of the instant suit were received by him in the year 2019, despite the lapse of approximately five years, the said Defendant has chosen not to file any suit regarding declaration of his title or cancellation of the above mentioned Lease Deed in favour of the Plaintiff. In light of what has been discussed above, this issue is answered in **negative**.

Issue No. 5

15. In light of what has been held above the instant suit is decreed in favour of the Plaintiff as prayed in terms of prayer clause (a) and (b) only.

Above are the reasons of the short order dated 27.02.2025 whereby the suit of the plaintiff was decree in terms of prayer clause (a) and (b) with no order as to cost. Office is directed to prepare the decree in favour of the plaintiff in the above terms.

J U D G E