

Judgment sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 1266 of 2016

Present

Mr. Justice Muhammad Jaffer Raza

Tariq Rafi

(since deceased through his legal heirs)

and others Plaintiffs.

Versus

Farukh Saeed Rizvi Defendant.

Mr. Abdul Wajid Wyne, Advocate for the Plaintiff

a/w Mr. Waqas Wajid Wyne Advocate.

None for the Defendants.

Date of Hearing: 27.02.2025

Date of announcement: 27.02.2025

J U D G M E N T

MUHAMMAD JAFFER RAZA – J : The Plaintiffs have filed the present suit with the following prayers:

“PRAYER

In view of the above it is, therefore, prayed that this Hon'ble Court be pleased to decree the suit in favour of the plaintiff and against the defendant as under: -

- i) It be declared that the plaintiffs are the legal and the lawful owners of the said property in bearing Plot No. F-52. and subdivided plot Nos.F-52, F-52/1, F-52/2 and F-52/3, total Measuring 2028.52 square yards, Block-8, KDA Scheme-5 Clifton Karachi, having inherited the same from the said deceased to the extent of their respective share and entitled to use, possess and enjoy the same without any interference or hindrance by the defendant or any other person.
- ii) Permanent injunction be granted in favour of the plaintiffs restraining the defendant, his agents, associates, representatives attorneys, assigns or any other person or persons from alienating, transferring, creating any third party interest and/or in respect of the said property i.e. bearing Plot No.F-52, and subdivided Plot Nos.F-52, F-52/1, F-52/2 and F-

52/3, total Measuring 2028.52 Sq. Yds., Block-8. KDA Scheme-5, Clifton, Karachi.

- iii) The defendant be further restrained from interfering with use, occupation and possession of the said property i.e. bearing Plot No F-52, and subdivided Plot Nos.F-52, F-52/1, F-52/2 and F-52/3, total Measuring 2028.52 Sq. Yds, Block-8, K.D.A. Scheme-5, Clifton, Karachi, ejecting, ousting or dispossessing the plaintiffs there from illegally and unlawfully, by himself or through his men, agents, assigns, in any manner by any means, whatsoever.
- iv) Cost of the suit and any other relief for which the plaintiff be found entitled, though not specifically prayed therein, may also be granted.”

2. Primary contention of the Plaintiff is that Mirza Muhammad Rafi son of Mirza Rehmat-Ullah (**‘Deceased’**) was the father and predecessor of the Plaintiffs, who expired on 03.02.2001. It was contended by learned counsel for the Plaintiffs that the deceased was the owner in respect of property bearing Plot No. F-52, measuring 2028.52 Sq. yards, Block-8, K.D.A Scheme-5, Clifton, Karachi (**‘Suit Property’**), which was acquired by the deceased under an allotment order No.279/719, dated 09.02.1963 issued by the Administrative Officer K.D.A Lands and Estates Department. The entire occupancy value and other charges according to the learned counsel were paid by the Deceased to the Government functionaries.

3. The possession order of the suit property was issued to the Deceased on 17.04.1967 and the possession of the suit property was handed over under the acknowledgement of possession by the Executive Engineer, Clifton Division-I, K.D.A Karachi to the Deceased on 19.05.1975. Thereafter, after having received the possession of the suit property, the Deceased applied for sub-division of the suit property and the permission was duly granted by the competent authority on 09.04.1983. After payment of fee and charges the suit property was sub-divided into four portions and a sub-division site plan of said portions was issued by the competent authority, details of which are as follows:

- i. F-52, admeasuring 471.45 Sq. yards.
- ii. F-52/1, admeasuring 554.76 Sq. yards.
- iii. F-52/2, admeasuring 462.56 Sq. yards.
- iv. F-52/3, admeasuring 540.15 Sq. yards.

(‘Subject Properties’)

4. It was averred by the learned counsel for the Plaintiffs that the Deceased till his death was enjoying the possession of the Subject Properties and after his death the Plaintiffs have maintained possession of the same. It has been contended by the learned counsel for the Plaintiffs that the Defendant has no concern whatsoever in respect of the Suit Properties. However, the Plaintiffs have filed the instant suit for the reason that the Plaintiffs were shocked to see a public notice dated 20.12.2015 published in Daily "Nawa-e-Waqt" in which it was stated that the Defendant has informed the general public that he is desirous of purchasing the Suit Property and objections were called from the public. Learned counsel for the Plaintiffs has invited my attention to the objection dated 22.12.2015 filed against the said publication. In such objection it was categorically stated that the Plaintiffs are the lawful owners of the Suit properties and the Defendant is fraudulently claiming to be the owner of the same. Various correspondences have been exchanged between the counsels of the Plaintiffs and the Defendant.

5. The instant suit was filed on 19.05.2016. After issuance of summons and notices on 10.04.2018 a Vakalatnama was filed on behalf of the Defendant and four weeks' time was granted by the Additional Registrar (OS) to file written statement on behalf of the Defendant. That due to failure of filing written statement the Defendant was debarred from filing written statement on 25.09.2018 and the matter came up for final hearing and disposal.

6. Thereafter, the Plaintiffs filed affidavit-in-ex-parte proof of Tariq Rafi son of Mirza Muhammad Rafi along with all the annexures. However, prior to recording of evidence the said Tariq Rafi son of Mirza Muhammad Rafi, passed away and vide order dated 15.05.2023 legal heirs Tariq Rafi were brought on record. Thereafter on 20.10.2023 learned Commissioner was appointed for recording of evidence of the Plaintiffs on the affidavit-in-ex-parte proof.

7. Thereafter affidavit-in-ex-parte proof filed by Muhammad Abdullah Tariq son of Tariq Rafi [Plaintiff No.1(e)]. The said witness appeared in the witness box on 22.11.2023 and produced his affidavit-in-ex-parte proof as Exhibit PW/1 and has also produced the following documents:

Sr. No.	Name of document	Exhibit No.	Page No. of evidence file
1	Death certificate issued by NICVD of Mirza Muhammad Rafiq Baig	PW/02	19
2	Death certificate of Mirza Muhammad Rafiq Baig issued by Union Council	PW/03	21
3	Allotment order dated 09.02.1963	PW/04	23
4	Paid Challan dated 05.10.1983	PW/05	25
5	Paid Challan dated 16.02.1983	PW/06	27
6	Paid Challan dated 04.01.1975	PW/07	29
7	Paid Challan No.193	PW/08	31
8	Paid Challan dated 22.02.1977	PW/09	33
9	Paid Challan dated 05.05.1975	PW/10	35
10	Paid Challan dated 24.02.1972	PW/11	37
11	Paid Challan dated 10.08.1971	PW/12	39
12	Paid Challan dated 29.11.1966	PW/13	41
13	Paid Challan dated 09.02.1963	PW/14	43
14	Receipt No.436855 dated 18.01.1983	PW/15	45
15	Possession order dated 17.04.1967	PW/16	47
16	Acknowledgment of possession letter dated 19.05.1975	PW/17	49
17	Division letter dated 28.04.1983	PW/18	51
18	Paid Challan dated 31.03.2001	PW/19	53
19	Paid Challan dated 01.12.2001	PW/20	55
20	Paid Challan dated 22.04.1999	PW/21	57
21	Paid Challan dated 12.01.1995	PW/22	59
22	Paid Challan No.41994	PW/23	61
23	Paid Challan dated 17.10.1989	PW/24	63
24	Paid Challan dated 10.10.1987	PW/25	65
25	Paid Challan dated 31.03.2001	PW/26	67
26	Paid Challan dated 01.12.1999	PW/27	69
27	Paid Challan dated 22.04.1999	PW/28	71
28	Paid Challan dated 22.04.1999	PW/29	73
29	Paid Challan dated 12.01.1995	PW/30	75
30	Paid Challan dated 17.10.1989	PW/31	77
31	Paid Challan dated 10.10.1987	PW/32	79
32	Paid Challan dated 27.04.1992	PW/33	81
33	Paid Challan dated 31.03.2001	PW/34	83
34	Paid Challan dated 01.12.1999	PW/35	83
35	Paid Challan dated 22.04.1999	PW/36	85

36	Paid Challan dated 12.01.1995	PW/37	87
37	Paid Challan dated 22.04.1999	PW/38	89
38	Paid Challan No.41996	PW/39	91
39	Paid Challan dated 17.10.1989	PW/40	93
40	Paid Challan dated 10.10.1987	PW/41	95
41	Paid Challan dated 31.03.2001	PW/42	97
42	Paid Challan dated 22.04.1999	PW/43	99
43	Paid Challan dated 22.04.1999	PW/44	101
44	Paid Challan dated 01.12.1999	PW/45	103
45	Paid Challan dated 12.01.1995	PW/46	105
46	Paid Challan dated 27.04.1992	PW/47	107
47	Paid Challan dated 17.10.1989	PW/48	109
48	Paid Challan dated 10.10.1987	PW/49	111
49	Paid Challan dated 19.98.1984	PW/50	113
50	Photocopy of sub-division MAP	Annex-X/1	115
51	Site plan of Plot No. F-52	PW/51	117
52	Site plan of Plot No. F-52/1	PW/52	119
53	Site plan of Plot No. F-52/2	PW/53	121
54	Site plan of Plot No. F-52/3	PW/54	123
55	Photocopy of news cutting Nawa-e-Waqt dated 19.12.2015	Annex-X/2	125
56	Letter of objection dated 22.12.2015	PW/55	127-129
57	Reply of objection dated 28.12.2015	PW/56	131
58	Counter reply dated 01.01.2016	PW/57	133-135

8. The matter was thereafter adjourned to 05.12.2023 for cross-examination of the Plaintiffs' witness. I have examined the record and diary of the learned Commissioner which reflects that learned commissioner had issued intimation notices on 07.11.2023 in respect of the commission to the Defendant. It was noted by the learned Commissioner that the Defendant was debarred earlier on 25.09.2018 and subsequently remained absent and side of the Plaintiffs was closed and the cross-examination of the Plaintiffs' witness was marked as "NIL".

9. It is evident that the plea of the Plaintiff has gone un-rebutted. It has already been noted above that the Defendant failed to file written statement and subsequently debarred and the said Defendant also chosen not to cross-examine the Plaintiffs' witness. Therefore, the testimony of the Plaintiffs' witness is deemed to be admitted.

Reliance in this regard is placed on the following judgements and the relevant parts are reproduced below:-

- **Mst. Nur Jehan Begum through Legal Representatives v. Syed Mujtaba Ali Nagvi¹**

“The principle enunciated in the commentaries and rulings is that where on a material part of his evidence a witness is not cross-examined it may be inferred that the truth of such statement has been accepted. Statement of a witness which is material to the controversy of the case particularly when it states his case and the same is not challenged by the other side directly or indirectly, then such unchallenged statement should be given full credit and usually accepted as true unless displaced by reliable, cogent and clear evidence.”

- **Islamuddin and others v. Ghulam Muhammad and others²**

“It is important to note that in cross examination the appellants/defendants did not challenge, the statement of respondent Ghulam Ahmed on material point i.e. relating to controversy between them, therefore; the presumption would be that the statement of the witness to such extent stands proved against the appellants/defendants.”

10. Even otherwise I have examined the documents exhibited with the Affidavit in Ex-Parte proof, more particularly the Allotment order, series of challans, Site plans and Possession Orders, and find no reason to disbelief the version advanced by the Plaintiffs. Hence. I decree the suit in terms of prayer clause 1, 2 and 3, as prayed.

The above are the reasons of short order dated 27.02.2025. Office to prepare decree in the above terms.

J U D G E

Nadeem Qureshi “PA”

¹ 1991 S C M R 2300

² P L D 2004 Supreme Court 633