

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Constitutional Petition No. D-924 of 2026
*(Abdul Rauf Tabani & others versus Learned Special Court for Co-operative Societies,
Karachi Division & others)*
Constitutional Petition No. D-17 of 2026
(M/s KDA Officers Co-operative Housing Society Limited versus Abdul Rauf Tabani & others)

Date	Order with signature of Judge(s)
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Before:-
Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Zulfiqar Ali Sangi

Date of hearing and order: 28.4.2026

M/s. Murtaza Wahab, advocate, along with Asad Iftikhar, advocate for the petitioners in CP No. D-924/2026

M/s. Ahmed Ali Ghumro, advocate, along with Mr. Abdul Samee, advocate for respondent No.4 in CP No. D-924/2026

Mr. Muhammad Siddique Darya advocate for respondent No.2 in CP No. D-924/2026 and for the petitioner in CP No. D-17/2026

ORDER

Adnan-ul-Karim Memon, J. The petitioners had initially instituted Misc. Appeal No.179 of 2025, which was subsequently converted into Constitutional Petition No. D-924 of 2026 and placed before this Court for appropriate orders.

2. The petitioners seek to declare the judgment and decree dated 27.11.2025 as perverse and unlawful, alleging misreading and non-reading of evidence, and pray for its setting aside. They challenge the lease deed dated 21.09.2017 as forged and void, and contest subsequent transfers in favour of respondent No.4 as illegal and mala fide. Claiming ownership as legal heirs of late Haji Mohammad Siddiq, they seek cancellation of the lease and related documents, restoration of the property, permanent injunction against third-party interests or construction, and restraint against further transfers.

3. Learned counsel for the petitioners submits that, as legal heirs of late Haji Muhammad Siddiq, they are aggrieved by the judgment and decree dated 27.11.2025 whereby their suit for declaration, cancellation of forged documents, and restoration of property was declined in substance. It is contended that the deceased was the lawful owner since 1989, and after his death, the respondents, in collusion, fraudulently transferred and leased the property to respondent No.4 in 2017 on fabricated documents. The trial Court, despite evidence of record tampering and admitted irregularities, failed to grant substantive relief, misread the evidence, and wrongly treated the lease as a valid title while declaring respondent No.4 a bona fide purchaser. The judgment is stated to be contradictory, as it denies the main relief yet grants alternative relief of an unavailable plot. It is thus prayed that the impugned judgment and decree be set aside, the fraudulent transactions be declared void, and the property be restored to the petitioners.

4. Learned counsel for respondent No.4 supported the impugned judgment and decree and sought dismissal of the petitions, contending that the petitioners' case is based on unproven allegations of fraud without any cogent evidence to challenge the registered chain of title. It is submitted that the petitioners failed to establish ownership or seek proper declaratory relief, rendering their claims non-maintainable; that the record reflects a continuous, lawful chain of registered transactions culminating in the 2017 sub-lease, carrying a presumption of validity which remains unrebutted; that allegations of fraud were neither proved through credible evidence nor supported by expert or forensic material. Respondent No.4 is a bona fide purchaser for value without notice, and no irregularity in title has been established; the trial court's grant of alternative relief is argued to be equitable, not contradictory, and the non-impleadment of necessary parties further weakens the petitioners' case. It is thus contended that the judgment is well-reasoned and calls for no interference.

5. At this stage, we confronted the counsel for the respondent No.4 that the impugned judgment and decree dated 27.11.2025, passed by the learned Special Court for Cooperative Societies, Karachi Division, in Society Suit No.4840 of 2025, suffer from apparent inconsistency and lack of clarity. On the one hand, the suit has been held to be not maintainable, whereas, on the other hand, substantive directions have been issued for the provision of an alternate plot of equivalent measurement. Such contradictory findings, without a clear determination of jurisdictional competence and merits, render the judgment legally vulnerable. Moreover, serious allegations have been raised about the execution of the lease deed dated 21.09.2017, including its alleged forgery, manipulation, and illegality, as well as the legality of subsequent transfers and entries in favour of respondent No.4. These issues go to the root of the matter and require proper adjudication based on evidence already on record, particularly in view of the claim of ownership raised by the petitioners as legal heirs of the original allottee.

6. After some arguments, learned counsel for respondent No.4 agreed to the disposal of the petitions with remand to the trial Court for a fresh decision based on existing evidence, to be decided in accordance with law within one month.

7. The learned counsel for the petitioners in both petitions have also agreed to the aforesaid proposal and prayed for setting aside of the judgment and decree by remitting the matter to the trial court for fresh decision on merits.

8. The proposal of the parties seems to be reasonable; however, we have noticed that the learned Trial Court, while deciding Civil Suit No. 4840 of 2025, filed by the petitioners in C.P No.D-924 of 2026, dismissed the substantive reliefs of the petitioners/Plaintiffs and partly decreed the suit only to the limited extent of alternative relief. The core reasoning of the trial Court is that the

petitioners/Plaintiffs' claim was fundamentally defective as the title of their predecessor, late Haji Muhammad Siddique, stood expressly denied through a registered lease/sub-lease in favour of Defendant No. 3. Since the very root of ownership was disputed, the trial Court observed that under Sections 39 and 42 of the Specific Relief Act, the petitioners/Plaintiffs were required to first seek a declaratory relief regarding title. In the absence of such a foundational declaration, the suit for consequential reliefs such as cancellation and injunction was held to be not maintainable. On the issue of title and alleged forgery, the trial Court noted that the Society's record contained a chain of transfer orders with effect from 1992, 1993, and 2011, culminating in a registered sub-lease of 2017. The petitioners/Plaintiffs, in contrast, relied primarily on photocopies and failed to produce original documents to dislodge the documentary chain produced by the Defendants. The trial court, therefore, held that the petitioners/Plaintiffs did not discharge the burden of proving forgery or fabrication on a balance of probabilities. With respect to Defendant No. 3, the trial Court found that he had acquired the property through a registered instrument supported by documentary evidence, and there was no material showing his knowledge of any alleged fraud or participation in irregularities. Accordingly, he was held to be a bona fide purchaser for value without notice. Regarding cancellation of the registered sub-lease, the trial Court held that no clear, cogent, and convincing evidence of forgery or lack of authority was produced by the petitioners/Plaintiffs. The trial Court also noted the non-impleadment of necessary parties, including intermediate transferees and relevant officials, which limited the scope of effective adjudication. On allegations of forgery and manipulation of records, the Court observed that although irregularities and allegations were raised, the petitioners/Plaintiffs failed to prove these claims with sufficient evidence. The Society's record and registered instruments carried a presumption of regularity, which was not successfully rebutted. Ultimately, the trial Court concluded that the petitioners/Plaintiffs failed to establish entitlement to declaration, cancellation, or injunctive relief. However, relying on equitable principles and precedents, the Court partly decreed the suit by granting the Plaintiffs only the alternative relief of allotment of a comparable plot or equivalent compensation, while dismissing all other substantive claims.

9. For the foregoing reasons, this Court is satisfied that the impugned judgment and decree dated 27.11.2025 suffer from patent legal infirmities, material irregularity, and inherent inconsistency, rendering the same unsustainable in law. The learned Trial Court, on the one hand, held the suit to be not maintainable for want of declaratory relief, yet on the other hand, proceeded to grant substantive equitable relief in the form of allotment of an alternate plot or compensation. Such mutually destructive findings reflect non-application of the judicial mind and failure to adopt a legally coherent approach, as once a suit is

held to be not maintainable, no substantive relief could have been granted therein. Moreover, the issues raised before the trial Court, particularly concerning the legality of the lease deed dated 21.09.2017, the genuineness of the chain of transfers, and the competing claims of title, go to the root of the matter and require a clear, issue-wise determination based on proper appreciation of evidence. The impugned judgment, however, does not reflect a definitive adjudication of these core controversies and instead proceeds on presumptions without reconciling material contradictions in the record. It is further evident that serious allegations of fraud, manipulation of official records, and subsequent transactions were raised, which, in law, required strict scrutiny and a reasoned determination. The failure of the learned trial Court to conclusively address these allegations, coupled with its reliance on presumptions of regularity without adequately testing the same against the available evidence, has resulted in a miscarriage of justice. Additionally, the question of maintainability, the effect of non-impleadment of certain parties, and the evidentiary value of the documents produced were not examined in a holistic and legally consistent manner. The approach adopted has led to an internally contradictory judgment, which cannot be sustained under settled principles of judicial adjudication.

10. In these circumstances, and particularly in view of the consensus between the learned counsel for the parties, this Court finds a fresh adjudication/decision by the learned trial Court is needed, based on the existing evidence and in accordance with law, would ensure a fair, comprehensive, and legally sound determination of the rights of the parties.

11. Accordingly, the impugned judgment and decree are set aside, and the matter is remanded to the learned Special Court for Cooperative Societies, Karachi Division, with direction to decide the suit afresh, strictly on merits, after proper appraisal of pleadings and evidence already on record, and without being influenced by the observations contained in the impugned judgment. The learned Trial Court shall also ensure that all material issues, including title, alleged fraud, validity of the lease/sub-lease, and entitlement of the parties, are determined through a reasoned and issue-wise judgment. The learned Trial Court is further directed to conclude the proceedings expeditiously, preferably within one month, to avoid further delay in adjudication.

12. Both petitions stand disposed of in the above terms, along with all pending applications.

JUDGE

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