

Stereo.HCJDA 38.
Judgment Sheet
IN THE LAHORE HIGH COURT,
MULTAN BENCH, MULTAN
JUDICIAL DEPARTMENT

....

Regular Second Appeal No.56 of 2005.

Safdar Yar Khan, etc.

Versus

Mohammad Iqbal Khan, etc.

JUDGMENT.

Date of hearing: **23.02.2023.**

Appellants by: Pirzada Niaz Mustafa Qureshi,
Advocate.

Respondent No.1(a) by: Muhammad Khalid Mahmood Ayaz,
Advocate.

Appellant No.3 Asif Khan in person.

AHMAD NADEEM ARSHAD, J. Through this *Regular Second Appeal* appellants have assailed the vires of judgments & decrees of the Courts below dated 26.03.2004 and 07.06.2005 whereby suit of respondent No.1 was decreed concurrently.

2. Tensely, necessary facts forming background of proceedings in hand are that plaintiff/respondent No.1 Muhammad Iqbal Khan (*hereinafter referred to as “respondent No.1”*) instituted a suit for declaration on 09.10.1996 titled “*Muhammad Iqbal Khan V. Collector, etc.*” against the Collector and legal heirs of Muhammad Anwar Khan Lodhi/defendants No.2 to 11/appellants & respondent No.2 (*hereinafter referred to as “Appellants”*) by contending therein that plot No.8(19-20) situated in Block No.E, Khasra No.9976 measuring 06 Marlas & 16 ½ feet, Dera Ghazi Khan (*hereinafter referred to as “suit property”*) was an evictee property which came in the custody of Rehabilitation Department and after the diminishing of Rehabilitation Department, ADC(G) is custodian of evictee properties; that respondent No.1 moved an application to the

Rehabilitation Department that the suit property be given to him for consideration and as such he paid an amount of Rs.4770/- and got the suit property; that after making due payment respondent No.1 became exclusive owner of the suit property but appellants, by taking advantage of his absence, illegally occupied over the suit property in the month of May, 1998; that respondent No.1 had appointed predecessor of the appellants namely Muhammad Anwar Khan as his special attorney to look after the affairs of suit property; that from inspection of Rehabilitation record it came to his knowledge that P.T.O was issued in the name of Muhammad Anwar Khan, whereas, it was to be issued in his name; that he felt need of inspection of the record as appellants were adamant to sell the plot upon which he came to know that predecessor of appellants have fraudulently got issued P.T.O in his name; that he time & again asked them to get their names deleted from the record of Rehabilitation Department but they refused to do so, which constrained him to institute the suit.

3. Contrarily, appellants contested the suit by filing written statement in contrast whereby they raised certain legal as well as factual objections. They asserted that suit property has been transferred in the name of their predecessor namely Muhammad Anwar Khan through Transfer Order (*PTD No.61666 dated 09.01.1974*) from Rehabilitation Department; that the Rehabilitation Laws have been repealed since July 1974; that against the Transfer Orders no appeal, revision, review have been filed, therefore, it attained finality, hence, it was a past & closed transaction; that the Court has no jurisdiction to entertain the suit; that respondent No.1 has not challenged Provisional Transfer Order and Transfer Order with regard to the suit property, therefore, suit is not maintainable in its present form; that the plaint does not disclose any cause of action; that Provisional Transfer Order and Transfer Order with regard to suit property was issued in the name of Muhammad Anwar Khan in the years 1960 & 1974, therefore, the suit is not within time; that respondent No.1 has no possession over any portion of the suit property; that the value for the purpose of Court fee and jurisdiction

was not correctly assessed; that respondent No.1 is real brother of original allottee Muhammad Anwar Khan and he admitted him owner in possession of the suit property in his lifetime, therefore, he is estopped to file the suit from his own words & conduct; that parties settled their disputes alongwith the dispute of suit property amicably wherein respondent No.1 admitted Muhammad Anwar Khan as owner of the suit property; that the suit is bad due to non-joinder and mis-joinder of parties. While replying on facts, they admitted that suit property is an evacuee property and after diminishing of Rehabilitation Department it was in the custody of Province of Punjab. They further maintained that suit property was rightly transferred in the name of their predecessor and alleged that respondent No.1 did not give any power of attorney to their predecessor with regard to the suit property. Learned Trial Court reduced the controversy in the following issues:

ISSUES:

1. *Whether the plaintiff is owner in possession of disputed plot No.8 block-E DGKhan city? OPP*
2. *Whether the plaintiff deposited the sale price of the disputed plot to the rehabilitate Department? If so its effect? OPP*
3. *Whether the P.T.O issued in the name of Muhammad Anwar (special attorney of the plaintiff) is against facts and inoperative against the rights of the plaintiff? OPP*
4. *Whether the Civil Court has no jurisdiction to adjudicate the matter? OPD*
5. *Whether the suit is not maintainable in its present form? OPD*
6. *Whether the plaintiff has no cause of action to file this suit? OPD*
7. *Whether the suit is barred by limitation? OPD*
8. *Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD*
9. *Whether the suit is bad due to non-joinder of necessary parties? OPD*
10. *Relief.*

4. After recording evidence of the parties pro & contra, oral as well as documentary, learned Trial Court decreed the suit vide judgment & decree dated 26.03.2004 in the following manner:

“...the suit of the plaintiff is decreed to the extent that record of Settlement Department/Revenue Department is required to be corrected in favour of the plaintiff and he is also entitled for its possession. To the extent of mesne profits his claim is rejected and there is no evidence in this respect from his side. The parties are left to bear their own cost.”

5. Feeling aggrieved, appellants preferred an appeal which was dismissed by the learned appellate Court via judgment & decree dated 07.06.2005. Being dissatisfied, they approached this Court through Regular Second Appeal which also met the same fate and dismissed through judgment dated 26.10.2010. Appellants called into question the vires of the judgment of this Court by preferring Civil Appeal (No.88 of 2011) before august Supreme Court of Pakistan whereby the matter was remanded vide order dated 18.01.2016 with the following observation:

“Learned ASC appearing on behalf of respondent No.1 contended that what he is concerned with is final adjudication of the case whether it is done by this Court or on remand by the High Court or even the Notified Officer but in no case its procrastination is in the interest of justice or the parties as it would tend multiply their agonies. In these circumstances, all the learned ASCs for the parties agree that the matter be remanded to High Court for decision afresh by attending to all the questions raised in this case including the application moved by respondent No.2 before the High Court, without creating another occasion for remand of the case. In this view of the matter, and with the consent of learned ASCs for the parties, we allow this appeal, set aside the impugned judgment and send the case to the High Court for decision afresh as hinted to above. Let this case be given priority in view of its age as it was instituted in the High Court in 2005. Needless to say the High Court may examine the original record. As the learned Judge hearing the case earlier, has expressed his view, let this case be listed before some other Judge of the High Court.”

6. The Hon’ble Supreme Court of Pakistan while remanding the matter to this Court directed to attend the application moved by respondent No.2 for setting aside of ex-parte judgment and decree. Perusal of record it appears that respondent No.2 did not move any application before this Court for setting aside of ex-parte judgment and decree. The learned trial court proceeded ex-parte against the respondent No.2 vide order dated 27.06.1997 after publication in the newspaper and decreed the suit after full-fledged trial vide judgment and decree dated 26.03.2004. Respondent No.2 (Arshad Yar Khan

Lodhi) moved an application on 15.04.2004 for setting aside of the ex-parte judgment & decree dated 26.03.2004 before the learned Trial Court, which was resisted by respondent No.1 through filing its contesting written reply. Learned Trial Court, in the light of divergent stances of the parties, framed issues and invited the parties to produce their respective evidence. During the proceedings of said application, respondent No.2 left to attend the Court, therefore, learned Trial Court dismissed his application for non-prosecution vide order dated 04.12.2012. Respondent No.2 moved an application for its restoration which was allowed vide order dated 19.12.2013 and restored his application. Subsequently said application was adjourned sine-die vide order dated 06.11.2014. When confronted to the learned counsel for respondent No.2 namely Sheikh Muhammad Shafi-ur-Rehman Advocate that how this Court can decide said application of respondent No.2 for setting aside ex-parte judgment and decree of learned trial court pending before the said court. He frankly conceded that this Court has no jurisdiction to set-aside the judgment and decree of learned Trial Court at this stage on the application of respondent No.2 which is pending before the learned trial court. However, he states that respondent No.2 does not press his application for setting aside ex-parte judgment & decree moved under Order IX Rule 13 C.P.C. and seeks to withdraw it if an opportunity of hearing is provided to him, therefore, said application of respondent No.2 is dismissed as withdrawn.

7. I have heard learned counsel for the parties (including respondent No.2) at length and perused the record with their able assistance. In addition to this, I have also summoned the original record of Settlement & Rehabilitation Department and gone through the same carefully.

8. Admittedly, suit property bearing plot No.8 (19-20) situated in Khasra No.9976 measuring 06 Marlas & 16 ½ feet was an evictee property which was allotted by Settlement and Rehabilitation Department. The stance of respondent No.1 is that suit property allotted to him against his reservation and he paid the price of the

suit property and appointed Muhammad Anwar Khan Lodhi as his special attorney to look after the affairs of the suit property but he fraudulently got transferred the same in his name. Whereas, version of the appellants is that suit property was originally allotted to their predecessor namely Muhammad Anwar Khan through Provisional Transfer Order in the year 1960 and thereafter Transfer Order was also issued in his name in the year 1974 and he was remained occupant of the suit property during his lifetime and after his demise appellants being his legal heirs occupied the same. Learned Trial Court with regard to said controversy framed issues No.1 to 3 and decided the same in favour of respondent No.1 and said findings were upheld by the learned first Appellate Court. In order to reach a just conclusion, it is better to evaluate the evidence produced by the parties both oral as well as documentary.

9. From scanning of record it appears that respondent No.1 got recorded his statement as P.W.1 and produced Gull Muhammad Khan as P.W.2. In documentary evidence, he produced thirteen documents as Exh.P.1 to Exh.P.13. On the other hand, appellants produced Sajjad Hussain ASI as D.W.1, Muhammad Shahzad Khan as D.W.2 and one of the appellants namely Muhammad Asif Lodhi appeared as D.W.3. They produced fifteen documents as Exh.D.1 to Exh.D.15.

10. Respondent No.1 while recording his statement as P.W.1 deposed that he is owner of the suit property on the basis of reservation of Rehabilitation Department and he paid Rs.4770/- as its price. He explained that he made partial payment through claim and remaining amount through bank challan. He maintained that Anwar Khan Lodhi was his elder brother who was used to initiate any proceedings or moved any application to Rehabilitation Department on his behalf being his special attorney. Further maintained that he appointed him as attorney because he was not residing there. Respondent No.1 also produced Gull Muhammad Khan as P.W.2 who supported his version.

11. Respondent No.1 produced copy of an application moved to Deputy Settlement Commissioner D.G Khan on 29.09.1964 as Exh.P.1. Perusal of said application it appears that it was moved on his behalf through his special attorney. Said application was moved through signature of Anwar Khan Lodhi. It was disclosed in the said application that property No.19-20/9976, Block No.E, D.G Khan was transferred to him and he showed his intention to pay the balance transferred price of Rs.2826/- towards the said property and wants to clear the total dues vide deed of association and attached CB No.1433.

The objection of the appellants is that at the bottom of application words “for Muhammad Iqbal Khan through special attorney” were subsequently interpolated.

It is a certified copy issued by relevant department and attached presumption of correctness being a public document. Appellants did not raise any said objection before proper forum, therefore, this objection has no force.

12. Respondent No.1 produced copy of an application dated 06.01.1966 addressed to the Deputy Settlement Commissioner as Exh.P.2 wherein he prayed for issuance of PTO of Plot No.19-20 (Khasra No.9976). Said application was also shown to be moved through A.K. Lodhi, Special Attorney of respondent No.1.

The appellants also alleged interpolation in this application by maintaining that words “special attorney and elder brother of the allottee named Muhammad Iqbal Khan Lodhi s/o Muhammad Ayyub Khan resident of House No.9, B.’E’ D.G.Khan” were subsequently added.

It is a certified copy issued by relevant department and attached presumption of correctness being a public document. Appellants did not raise any said objection before proper forum, therefore, this objection has no force.

13. Exh.P.3 is challan form whereby an amount of Rs.1944/- as outstanding consideration price of plots No.19-20 was deposited by

respondent No.1 through Faiz Muhammad Khan. Said payment was made on 28.02.1974.

Appellants alleged that it is a forged document. It is a certified copy issued by relevant department and attached presumption of correctness. The Settlement & Rehabilitation Department acknowledged the said deposit, hence, appellant's objection has no force.

14. Exh.P.4 is also copy of challan form wherein Rs.23.85 were deposited on account of settlement fee of plots No.19-20 Khasra No.9976 from respondent No.1. Said amount was tendered by A.Q. Khan and deposited on 01st April 1965. It is also a certified copy of original record.

15. Exh.P.5 is deed of agreement dated 29.09.1964 which was executed between Muhammad Naeem Khan and respondent No.1 through his special attorney Anwar Khan Lodhi, wherein Muhammad Naeem Khan agreed that the amount of Rs.2826/- deposited by him will be adjusted from CB No..DGK.1433/30607 in the PTD case of House No.153 Block-E D.G. Khan towards the balance of transfer price. Through this document, Muhammad Naeem Khan agreed to give authority to respondent No.1 to use his compensation book towards payment of the price of suit property transferred to him by the Deputy Settlement Commissioner. Appellants denied existence of said agreement. However, it is matter of record that payment of Rs.2826/- was made in the light of said agreement. Predecessor of appellants signed this document on behalf of respondent No.1 as his special attorney.

16. Exh.P.6 is copy of application form for permanent transfer of evacuee property, bearing registration No.6340 dated 31.03.1965, wherein name of respondent No.1 is written as applicant and detail of evacuee property was mentioned as Khasra No.9976 Block No.E, 19-20 D.G. Khan. At the backside of said document price was mentioned as Rs.4770/- and settlement fee Rs.23.85. It is a printed form wherein entries were hand written.

17. Exh.P.7 is an application dated 09.11.1960 moved by A.K Lodhi (predecessor of the appellants) on behalf of respondent No.1 and prayed that suit property be transferred in his name.

Appellants also raised objection upon the said Exh.P-7 by maintaining that said application was also interpolated. They alleged that actually first para was written as under:-

"I most respectfully submitted that the above plot may very kindly be transferred and reserved in my name....."

But after cutting the word "my" word "the" was inserted and words "of Muhammad Iqbal Khan" were added and made this para as under:-

"I most respectfully submitted that the above plot may very kindly be transferred in the name of Muhammad Iqbal Khan....."

At the bottom "A. K. Lodhi s/o Muhammad Ayyub Khan" was manipulated and made it "A.K. Lodhi s/a for Muhammad Iqbal Khan".

It is also a certified copy of a record maintained by public Department. Appellants did not move any objection before the concerned Department for such alleged interpolation.

18. Exh.P.8/Exh.D.10 is Provisional Transfer Order No.090376 dated 31.12.1960 wherein it was disclosed that suit property was transferred to A.K. Lodhi. Said letter was issued by Deputy Settlement Commissioner.

19. Exh.P.9/Exh.D.11 is Transfer Order No.61666 dated 09.01.1974 wherein suit property was transferred in the name of predecessor of the appellants namely A.K. Lodhi. In the said Transfer Order, transfer price Rs.4470/-, Settlement Fee Rs.22/35 total 4492/35 was shown outstanding in the schedule 'A' and in schedule-B it was stated that Rs.1944 was paid in cash, whereas, Rs.2826 adjusted from C.B No.DGK 1433/30607. There are also two cuttings in the said document. "Iqbal" was replaced by "Ayub" and Iqbal was replaced by "Ayub". Spelling of Ayub and handwriting of both the cuttings are different. First cutting was made through black ink with an initial in green ink. Exh.P.9 showing Ayub with spelling of "Ayub", whereas, Exh.D.11 showing spelling as "Ayyub".

Whereas, second cutting was cutting was made through green ink and Ayub was also written in green ink. Said cutting were made on 27.11.1980 much after issuance of original Transfer Order which was issued on 09.01.1974. It appears that said cutting were made to accommodate appellants.

20. Exh.P.10 is an application moved by respondent No.1 to the ADC(G)/DSC D.G Khan for inquiry and correction of Transfer Order dated 22.09.1980 regarding plot No.19-20. On the backside of said application, report was made on 21.10.1996 by Fayyaz Baig, Settlement Clerk, wherein it was disclosed that from the perusal of file it appears that application for transfer of the suit property was moved by Muhammad Iqbal Khan applicant through A.K Lodhi and all dues were paid by said Muhammad Iqbal and application for issuance of P.T.D was also moved on his behalf through his brother A.K Lodhi but for the unknown reasons PTO was issued in the name of applicant's brother.

21. Exh.P.11 is attested copy of register wherein it was disclosed that amount Rs.2826 was adjusted vide CB No.1433/30607 of No.0714D.G K and an amount of Rs.1944/- was paid in cash vide challan No.51 dated 28.02.1974. A note was also given that an agreement regarding compensation book No.DGA-1433 was attached with file which was not allowed and through said agreement amount Rs.2826 was obtained.

22. Exh.P.12 is also attested copy of register wherein at serial No.1384 T.O No.61666, name of A.K Lodhi s/a Muhammad Iqbal Khan with regard to plot No.19/20 was mentioned.

23. Exh.P.13 is copy of special power of attorney dated 24.11.1959 wherein respondent No.1 namely Muhammad Iqbal Khan appointed his real elder brother namely Anwar Khan Lodhi as his special attorney in the following manner:-

"By this power of attorney, I, Mohd Iqbal Khan Lodhi s/o late Mohd Ayub Khan resident of Karachi do hereby constitute and appoint my elder (real) brother namely Mr. Anwar Khan Lodhi s/o late Mohd Ayob Khan special attorney for me, in my name and on my behalf in my claim case No.A-SH-155/57 decided by appeal at Sukkur, in the court of Dy. Claims Commissioner, Sukkur, to conduct the said case, to make statements in the court, to make negotiation, to receive compensation book, to realize

compensation, to file and withdraw documents, to engage advocates if necessary, to issue receipts and discharges, and to do all other lawful acts and things in connection with the realization of compensation of the said case as effectually as I could do if I were personally present.”

Perusal of said special power of attorney it appears that it was notarized by the Notary Public at Karachi. It is evident from the record that respondent No.1 appointed Anwar Khan Lodhi as his attorney in appeal A-Sh-155/57 with regard to claim registration No.7 dated 07.07.1955. Perusal of order dated 08.04.1959 passed by Deputy Claims Commissioner Sukkur (available in the original file), it appears that while deciding review petition moved by predecessor of appellants and respondent No.1 passed certain observations. Said order disclosed that they were declared displaced persons and that their properties were taken by Bharti custodian of Evacuee Property. In pursuance of said order further progress was made for allotment of properties in lieu of their claim form. Suit property was also reserved and allotted in progress of said order. Respondent No.1 appoint Muhammad Anwar Khan his special attorney to pursue the matter. Therefore, it cannot be said that Muhammad Anwar Khan Lodhi was not attorney of respondent No.1 with regard to suit property.

It is matter of record that said Muhammad Anwar Khan Lodhi used said special power of attorney in the Settlement and Rehabilitation Department. He posed himself as special attorney of respondent No.1 to get transfer the suit property in his name.

24. In rebuttal, appellants produced D.W.1 Sajjad Hussain ASI who brought record of application moved by respondent No.1 and the proceedings of inquiry conducted upon said application.

25. Muhammad Shahzad Khan got recorded his statement as D.W.2 and deposed that parties are his paternal uncle. He also deposed that with regard to the suit property a Punchayat was convened in their house wherein parties and his father and his paternal uncle Muhammad Nawaz were present and it was settled that suit plot would remain with Muhammad Anwar Khan Lodhi and his legal heirs. He further stated that he has seen possession of Muhammad Anwar Khan upon the suit property since his childhood.

He disclosed during cross-examination that a compromise deed was executed and he did not know from whose possession now it is. He was unable to tell that from when Anwar Khan became owner of the suit property. He did not know, why disputes were arisen between plaintiff and Anwar Khan. He further deposed that he was asked by Asif Khan (one of the appellants) to give evidence. One of the appellants namely Muhammad Asif Lodhi appeared as D.W.3 and deposed that suit property is in their ownership and it was reserved to his father Anwar Khan Lodhi and allotted to him in the year 1960. P.T.D was issued in year the 1974. He further deposed that parentage of his father was wrongly written in Transfer Order which was later on corrected. He also deposed that dues of Rehabilitation Department with regard to the suit property were paid by his father. During cross-examination, he deposed that the reservation application was manipulated by respondent No.1. He stated that his father died in the year 1990-91. He stated the suggestion incorrect that price was paid by respondent No.1.

26. Appellants produced copy of application for registration of case moved by respondent No.1 as Exh.D.1, copy of letter qua dropage of inquiry dated 05.06.2000 as Exh.D.2, revise final report as Exh.D.3 (author of said Rapat not produced by appellants and he also did not finally concluded the matter. His report is just his observation), copy of statement of Muhammad Nawaz Khan as Exh.D.4, copy of statement of Muhammad Ejaz Khan as Exh.D.5, copy of statement of Arshad Yar Khan as Exh.D.6 (said statements have no evidentiary value as neither they appeared before the Court to verify its contents nor they faced the music of cross-examination), copy of letter issued by the office of Deputy Settlement Commissioner as Exh.D.7 wherein A.K Lodhi was asked to deposit the remaining amount of Rs.4770 within one month, copy of notice under para 24 of the schedule to the Displaced Persons (compensation & rehabilitation) Act, 1958 and para 2 of Settlement Scheme No.VIII in the name of Anwar Khan Lodhi as Exh.D.8, wherein it was described that property was provisionally transferred

through PTO No.090376 and directed him to pay the transfer fee Rs.4770 within 30 days, copy of notice under para 24 of the schedule to the Displaced Persons (compensation & rehabilitation) Act, 1958 and para 2 of Settlement Scheme No.VIII in the name of Anwar Khan Lodhi as Exh.D.9 wherein it was described that property was provisionally transferred through PTO No.090376 and directed him to pay the transfer fee Rs.4770 within 30 days, copy of Provisional Transfer Order No.090376 dated 31.12.1960 as Exh.D.10, copy of Transfer Order No.61666 dated 09.01.1974 as Exh.D.11, copy of an application dated 03.10.1996 moved by respondent No.1 as Exh.D.12, copy of application dated 23.11.2000 moved by respondent No.1 as Exh.D.13, copy of mutation No.56085 dated 31.01.1988 wherein suit property was transferred from Burj Wali Das in favour of Anwar Khan on the basis of PTO No.1384 dated 27.11.1980 as Exh.D.14, copy of inheritance mutation of Anwar Khan Lodhi No.62584 dated 14.07.1994 as Exh.D.15.

27. It is evident from the above referred evidence that consideration amount of the suit property was settled as Rs.4770/- . Said amount was paid by respondent No.1 through amount adjusted vide CB No.1433/30607 and challan form dated 28.02.1974. Amount of Rs.2826/- was adjusted from the account of Muhammad Naeem Khan who deposited the same in the PTD case of House No.153, Block-E, D.G. Khan. In this regard, respondent No.1 produced a deed of agreement dated 29.09.1964 (Exh.P-5) wherein Muhammad Naeem Khan agreed that amount of Rs.2826/- be adjusted from C.B. No.DGK-1433/30607 and gave authority to respondent No.1 to utilize his compensation book. This is a very important document for reaching a just conclusion. It was stated in it as under:-

"This agreement executed on this day of 29th Sep. 1964, between Mohammad Naeem Khan s/o Amir Ali Khan r/o Block E, Dera Ghazi Khan, hereinafter called the first party and Mohammad Iqbal Khan Lodhi s/o Mohammad Ayyub Khan Lodhi, r/o Dera Ghazi Khan through A.K. Lodhi, r/o Block E, D.G.Khan special attorney, hereinafter called the second party.

Whereas plot No..19/20 Khasra No.9976 measuring 6 marlas Block E Dera Ghazi Khan has been transferred to the second party by the Deputy Settlement Commissioner, D.G.Khan, and he has to pay the transfer price of the said property.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. That Rs.2826/- (two thousand eight hundred and twenty six) will be adjusted from C.B.No..DGK-1433/30607 of the first party deposited in the P.T.D. case of house No.153, Block E, D.G.Khan towards the balance of transferred price.
 2. 1st party No:... has received the consideration and will haveor any interest in the said property.
 3. The parties have set their respective hands to this agreement in presence of the witnesses."
- (underlined to give emphasis)

Said document was signed by Muhammad Naeem Khan and Anwar Khan Lodhi as special attorney of Iqbal Khan Lodhi. By using compensation book of Muhammad Naeem Khan bearing No. C.B. No.DGK-1433/30607 an amount of Rs.2826/- had been paid towards payment of price of plot No.19/20 Khasra No.9976 (suit property).

28. Said fact was verified by Exh.P.11, copy of record of Settlement/Rehabilitation Department (Register for payment of price of evacuee property) wherein execution of the agreement was specifically mentioned by stating that an agreement with regard to compensation book No.DGK-1433 is attached with the file but it was not sanctioned and through this agreement amount Rs.2826/- was received. Exact wording in verbatim is written as under:-

"نکل میں ایک ایگرینٹ بابت معاوضہ بک نمبر DGK.1433 حاصل ہے۔ مگر منظور
نہیں ہوا۔ اس ایگرینٹ سے رتم 2826 حاصل کی گئی ہے۔ معاوضہ بک M.K C-II
174680 سے رتم وضع کر کے کیا گیا ہے۔ مگر معاوضہ بک دفتر ہذا کے رکارڈ میں جع
نہیں ہوئی ہے۔"

In this document, in the column of particular of transaction it is mentioned that amount adjusted vide order of DSC and in column reference to order relating to transaction, number of compensation book is mentioned as C.B.1433/30607 and the amount adjusted is shown as Rs.2826/- against the total price of plot Rs.4770, balance price payable after adjustment of compensation book is shown as Rs.1944/-.

29. Amount of Rs.1944/- was paid by respondent No.1 through Fayyaz Muhammad Khan vide challan form dated 28.02.1974 (Exh.P-3). This fact is also mentioned in Exh.P.11 and has been shown to be deposited on 28.02.1974. After payment of Rs.1944/- total amount paid is shown Rs.4770/- and account was shown to be

closed. Settlement fee of Rs.23.86 was also paid on behalf of respondent No.1 through challan form (Exh.P-4).

30. An application dated 29.09.1964 (Exh.P.1) was moved on behalf of respondent No.1 through Muhammad Anwar Khan and sought permission from Deputy Settlement Commissioner for payment of balance transferred price of Rs.2826/- through C.B No.1433.

31. Another application was also moved on behalf of respondent No.1 on 06.01.1966 (Exh.P.2) for issuance of P.T.O. This application was also moved through special attorney namely A.K. Lodhi. An application for issuance of Permanent Transfer Order was moved on behalf of respondent No.1 bearing registration No.6340 dated 31.03.1965 (Exh.P.6). In this application, (which is on a prescribed performa for issuance of evacuee property), name of applicant was shown Muhammad Iqbal Khan (respondent No.1) and in the column particulars of evacuee property Khasra No.9976, Block No.E, *Mall* No.19-20, city Dera Ghazi Khan, District Dera Ghazi Khan were entered. Said application also disclosed price of plot Rs.4770/-, settlement fee Rs.23.85 and issuance of challan form on 31.03.1965. Said application moved on 31.03.1965 by Anwar Khan Lodhi (Muhammad Iqbal) through Syed Azmat Ali. Copy of Challan Form (Exh.P.4) is showed that it was issued for payment of settlement fee Rs.23.85 on 31.03.1965 and paid on 01.04.1965 by respondent No.1.

32. Application dated 09.11.1960 (Exh.P.7) was moved from A.K Lodhi on behalf of respondent No.1 wherein it was prayed that suit plot may be reserved and transferred in the name of Muhammad Iqbal. It is also evident that on the said application plot was reserved for the applicant i.e., Muhammad Iqbal Khan Lodhi (respondent No.1). PTO No.090375 dated 31.12.1960 (Exh.P.8/Exh.D.10) was issued in the name of A.K. Lodhi but it is a Provisional Transfer Order issued on the basis of an application dated 09.11.1960 (Exh.P.7) moved on behalf of respondent No.1.

33. Through letter (Exh.D.7) A.K. Lodhi (predecessor of appellants) was informed in the year 1961 that suit property was reserved for him and he was required to deposit the remaining amount Rs.4770/- within one month. Appellants produced notice No.344 dated 12.07.1967 (Exh.D.8) and notice No.1384/DSC/2aR/75 dated 13.12.1975 (Exh.D.9) wherein predecessor of appellants namely Anwar Khan Lodhi was asked to pay transfer price Rs.4470/- within 30 days. There is no evidence available on record from appellants' side that Anwar Khan Lodhi paid said amount. Appellants did not produce any document or challan about the payment of consideration amount of suit property. Whereas, record transpires that said payment was made by respondent No.1 through challan (Exh.P.3) and deed of agreement (Exh.P.5). Most of the documents produced by respondent No.1 are part of the public record and presumption of truth is attached to it.

34. Appellants raised an objection in their written statement that Civil Court has no jurisdiction to entertain the suit. In this regard, learned Trial Court framed issue No.4 in the following terms:

1. Whether the Civil Court has no jurisdiction to adjudicate the matter? OPD

35. Contention of the learned counsel for the appellants is that the jurisdiction of Civil & Revenue Courts has been barred under the Repealing Acts.

36. No doubt Section 25 of the Displaced Persons (*Land Settlement*) Act, 1958 (Act XLVII of 1958) and the Displaced Persons (*Compensation & Rehabilitation*), Act 1958 (Act XXVII of 1958) and Section 41 of the Pakistan (Administration of Evacuee Property) Act, 1957 (Act XII of 1957), bar the jurisdiction of Civil & Revenue Courts wherein it was provided that if any person was aggrieved of any action or decision of Settlement Authority or Evacuee Authority, he had remedy of appeal, revision etc. and Civil & Revenue Courts have no jurisdiction to entertain said matters. August Supreme Court of Pakistan remained consistent with regard to bar of jurisdiction by

holding that Civil Courts have no jurisdiction to entertain such like cases.

37. Now the question arises that after repeal of the Act, 1957 and the Act, 1958 through the Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975 [Act XIV of 1975], bar of the jurisdiction of Civil Courts to call in question of the character of property and its alienation by the settlement Authority existed or not? The Hon'ble Supreme Court of Pakistan while answering this question in its judgment reported as "NAZEER AHMAD and others versus GHULAM MEHDI and others" (**1988 SCMR 824**) held that the argument that with the repeal of the Act of 1957, the bar contained in section 41 on the jurisdiction of Civil Court was also wiped off is untenable, in the following terms: -

"Section 41 of the Pakistan (Administration of Evacuee Property) Act, 1957, explicitly bars the jurisdiction of the Civil Court in clear and unambiguous terms and as such no Civil Court can give declaration about the status of a person or property being evacuee or non-evacuee. The order of the Custodian dated, 10th June, 1963, on which reliance is placed for challenging the validity of the subsequent order of the Custodian, dated 29th March, 1974, has not been shown to relate to the disputed property, therefore, the very basis of the claim set up in the suit appears to us to be groundless. Additionally this appears to be a new case set up in the suit in that the appellants did not rely upon the previous order of the Custodian passed in 1963 when they themselves moved the Custodian subsequently to obtain declaration with regard to the status of the property now in dispute. The reason appears to be obvious that the previous order did not relate to the property now the subject matter of dispute. In the light of the forgoing, the claim of the appellants in the suit substantially was to call in question the subsequent order of the Custodian which did relate to the disputed property but was protected from challenge in the civil Court under the existing law by virtue of Section 41 of the Act of 1957 and as stated above, the repeal of the said Act did not have the effect of removing the bar of the General Clauses Act so far as the orders passed during the operation of the repealed law. The arguments that with the repeal of the Act of 1957, the bar contained in section 41 on the jurisdiction of the civil Court was also wiped off is

untenable. This being the position, upsetting the order of the Court below merely for the reason that the Court was not competent to look outside the averments made in the plaint would amount to merely pressing a technicality.” (Emphasize supplied) ion and jurisdiction is clearly barred to entertain the suit involving disputes of title relating to the evictee property and with regard to orders passed by the Settlement Authorities.

38. The maxim “*Ubi jus ibi remedium*” (wherever there is a right, there is a remedy), is a fundamental principle of law. By virtue of section 9 of the Code of Civil Procedure, 1908 granted general jurisdiction to try all suits of a civil nature unless the jurisdiction of the Court is barred. Although said Section indicates that Civil Courts cannot try suits in respect of which their jurisdiction is expressly or impliedly barred under any law, but proceedings challenged as *coram-non-judice* are not covered by the exceptions contained in it.

39. This Court in a case titled “IQBAL KHAN AND 9 OTHERS VERSUS SHAHID ULLAH BAIG AND ANOTHER” (**1989 CLC 1265**) held that:-

“After the repeal Act XII of 1957 the only forum to determine whether a property is available property or not, is the Civil Court and not the Residual Authorities”

This Court in a judgment titled “Wazir Hussain V. Abdul Rehman through Legal Heirs & another (2002 YLR 1600)” held as under:

“Through the suit the plaintiff sought a declaration that P.T.O dated 16.12.1963 and P.T.D dated 24.06.1971 procured by defendant was result of fraud and forgery. Inter-alia other reliefs of right of transfer were also prayed. Civil Court is a Court of plenary jurisdiction. The question of fraud & forgery is determinable only by the Civil Court, particularly in the settlement cases, where after the repeal of Settlement Laws no other forum is available for adjudicating such dispute. Notified Officer appointed under the Repeal Act do not possess jurisdiction to declare P.T.O & P.T.D as illegal, null & void on the ground of fraud & forgery. After repeal of Settlement Laws, this jurisdiction only vested with the Civil Court.”

And in another case titled as “MST. KUBRA BEGUM AND OTHERS VERSUS SHAMS DIN AND ANOTHER” (**2014 YLR 1456**) held that

“after the repeal of Settlement Laws the ultimate jurisdiction only vests with Civil Court”.

40. The main allegation leveled by the respondent No.1 is that predecessor of the appellants had obtained P.T.O and T.O in his favour by practicing fraud, therefore, the question for determination would be whether forgery and fraud had been committed by him in obtaining P.T.O and T.O in his favour. Where question of fraud, forgery or misrepresentation is involved, unless specifically barred under law, the jurisdiction remains with the Civil Court to decide such issue.

41. In case titled “Muhammad Rafique V. Abdul Ghafoor” (**1992 SCMR 1971**), *august Court of Pakistan held as under:*

“As regards the first contention, the learned Addl. District Judge in the first round of litigation before the Civil Courts had held that since fraud was involved, the Civil Courts had the jurisdiction. He remanded the case for decision on merits. This order, dated 21.02.1982 was not challenged by the appellant. He took a chance to succeed in remand proceedings. Having failed, he cannot turn round and say that the Courts had no jurisdiction. In any case, in view of the leave granting order, the question was examined whether in exercise of suo-motu jurisdiction, the order of the learned Addl. District Judge should be allowed to stand. The learned Addl. District Judge had held that in view of the fraud alleged (in getting the mutations sanctioned) which matter could not be adjudicated upon the authorities, the Civil Courts had the jurisdiction. It may be noted that the litigation was going on before the relevant authorities until the law under which they exercised jurisdiction i.e. settled law was repealed, therefore, recourse could be had to the Civil Courts possessed of plenary jurisdiction to determine the dispute.”

August Supreme Court of Pakistan in a case titled “Sultan Hassan Khan & 02 others V. Mst. Naseem Jahan & 17 others” (**1994 SCMR 150**) held as under:

"The main allegation in the suit filed by the plaintiffs/respondents is that the petitioners' predecessor-in-interest had obtained P.T.D in his favour on the basis of forged documents and by practicing fraud. The question therefore to be considered would be whether forgery and fraud have been committed by the petitioners' predecessor-in-interest in obtaining P.T.D. in his favour. Such question cannot be decided by the departmental authorities. Where question of fraud, forgery or mis-representation is involved, unless specifically barred under the law, the jurisdiction remains with the Civil Court to decide such issue."

In another case, august Supreme Court of Pakistan held that after repeal of Settlement Laws factual controversy could be resolved by Civil Court of plenary jurisdiction for reference "Muhammad Ayub through L.Rs. & others V. Ghulam Muhammad & other (2005 SCMR 1650)", whereby observed as under:

"After the repeal of Settlement Laws all these factual controversies could be resolved by the Civil Courts of plenary jurisdiction. It is to be appreciated that in the declaratory suits exception was taken to the order of the Settlement Authority dated 23.04.1974 which suit was dismissed being not maintainable. In these circumstances, no illegality has been committed by the learned Single Judge in remanding the case to the Trial Court to judge the veracity of the Transfer Order."

The august Supreme Court of Pakistan in case titled "Begum Syeda Azra Masood V. Begum Noshaba Moeen & others (2007 SCMR 914)", declared that ouster clause in any statute only applies when authorities constituted therein act within four corners of the statutes and held as under:

"The Law is clearly settled that an ouster clause in any statute will only apply when the authorities constituted therein act within the four corners of statute and if they step out of it, the protection available to the orders passed by a Tribunal of special jurisdiction is no more available and Court of plenary jurisdiction could examine the controversy."

It was also held that:

"We will also like to observe that Transfer Order in favour of Mr. Saleem Ullah Baig was issued on 29.06.1974 and on 30.06.1974. Evacuee laws were repealed by virtue of Displaced Persons &

Evacuee Laws (Repeal) Ordinance (No.XV) of 1974, while the suit was filed after repeal of laws. When an illegal order of transfer was sought to be enforced against the plaintiffs-respondents. Thus, even on this score, the Civil Court had jurisdiction.

August Supreme Court of Pakistan in its recent judgment cited as "Muhammad Deen V. The Deputy Settlement Commissioner & others" (**2022 SCMR 1481**), held as under:

"It hardly needs reiteration that after the promulgation of the Repealing Act, the Officers notified under that Act do not possess the jurisdiction to declare any P.T.O or P.T.D. regarding which no proceedings were pending on the cutoff date, as null & void on the grounds of alleged fraud or forgery; they can only deal with and decide the pending proceedings and cannot initiate any new proceedings. Anyone who wants to challenge any P.T.O or P.T.D issued under the repealed laws, and has locus standi to do so, is to knock at the doors of Civil Court, a Court of plenary jurisdiction for the redress of his grievance."

42. In view of above discussion and in the light of guidance sought from the case laws referred supra, I am of the considered opinion that the suit of respondent No.1 was maintainable as the Civil Court had plenary jurisdiction to entertain the same. Findings of learned Courts below qua this particular point are upheld.

43. Appellants also raised another objection that the suit of respondent No.1 is not within time. Learned Trial Court in this regard framed issue No.7 as under:

7. *Whether the suit is barred by limitation? OPD*

44. Learned counsel for the appellants maintains that the P.T.O was issued in the year 1960, T.O was issued in the year 1974, therefore, for filing a suit the limitation was six years maximum as provided under Article 120 of the Limitation Act, 1908 but the suit was instituted on 09.10.1996 which is clearly barred by time. Whereas, learned counsel for respondent No.1 maintains that plaintiff stated in the plaint and evidence that he gained knowledge of wrong entries in the record only a few weeks before the institution of the suit. He filed an application to A.D.C (G) for the correction of

the record wherein ADC(G) directed him to approach the Civil Court for redressal of his grievance. Respondent No.1 in his plaint categorically maintained that he came to know about the fraud and forgery committed by predecessor of the appellants in procuring the impugned P.T.O and T.O few weeks ago. Where fraud and forgery is alleged, the time is computed from the date of knowledge. There is no evidence on record which showing earlier knowledge of the respondent No.1 in respect of factum of issuance of P.T.O and T.O in favour of predecessor of the appellants.

45. It is well settled principle of law that fraud vitiates even the most solemn transaction. Any transaction based on fraud would be void. Limitation does not run against void transaction. Mere efflux of time did not extinguish the right of any party. Notwithstanding the bar of limitation, the matter can be considered on merit so as not to allow fraud to perpetuate. In this regard, I seek guideline from the cases of Hon'ble Supreme Court of Pakistan reported as "PEER BAKHSH through LRs and others vs. Mst. KHANZADI and others" (**2016 SCMR 1417**); "Muhammad Iqbal versus Mukhtar Ahmad" (**2008 SCMR 855**) "Mst. Raj Bibi etc. versus Province of Punjab, etc." (**2001 SCMR 1591**) and "Hakim Khan versus Nazeer Ahmad Lughmani" (**1992 SCMR 1832**).

46. With regard to point of limitation, the august Supreme Court of Pakistan in case titled as "KHAN MUHAMMAD through L.Rs and others versus Mst. KHATOON BIBI and others" (**2017 SCMR 1476**) held as under:-

"As far as the question of limitation in filing suit for declaration is concerned, we also would like to discuss it in some detail. In general, the time provided for such suit under Article 120 of the Limitation Act, 1908 is six years. Different aspects regarding reckoning/calculating this period of limitation have been considered and some yardsticks have been settled by this Court in different nature of cases and the situation cropping-up according to the facts and circumstances of the cases. In the cases of simple correction of revenue record, it is settled by now that every fresh wrong entry in the record of rights would provide fresh cause of action provided the party aggrieved is in possession of the property as owner needless to say that it can be either

*physical or symbolic possession. Similarly, in the cases of claiming right of inheritance, it is well settled that the claimant becomes co-owner/co-sharer of the property left by the predecessor along with others the moment the predecessor dies and entry of mutations of inheritance is only meant for updating the revenue record and for fiscal purposes. If a person feels himself aggrieved of such entries, he can file a suit for declaration within six years of such wrong entries or knowledge. Any such repetition of the said entries in the revenue record would again give him a fresh cause of action or when the rights of anyone in the property are denied it would also give fresh cause of action. Similarly, it is again. settled by now that no limitation would run against the co-sharer. We for instance can quote few judgments covering all these aspects like “Ghulam Ali and 2 others v. Mst.Ghulam Samar Nagvi” (**PLD 1990 SC 1**), “Riaz Ahmad and 2 others v. Additional District Judge and 2 others” (**1999 SCMR 1328**), “Mst. Suban v. Allah Ditta and others” (**2007 SCMR 635**), “Muhammad Anwar and 2 others v. Khuda Yar and 25 others” (**2008 SCMR 905**) and “Mahmood Shah v. Syed Khalid Hussain Shah and others” (**2015SCMR 869**).*

August Supreme Court of Pakistan in judgment “Muhammad Yaqoob V. Mst. Sardaran Bibi & others (PLD 2020 SC 338), held as under:

“In addition, any transaction/document which is the result of fraud or misrepresentation can neither be perpetuated nor can it be protected on the ground of expiry of the period of limitation, whenever such transaction is assailed in a Court of law.”

The august Supreme Court of Pakistan in its recent judgment while explaining effect of fraud in computing the limitation period in a reported case titled “*Rabia Gula & others V. Muhammad Janan & others (2022 SCMR 1009)*”, held as under:

“Section 18 of the Limitation Act, 1908 (“Limitation Act”) is the most pivotal provision providing relief in computing the limitation period, applicable to a person who claims to be deprived of the knowledge of his right to sue based on the fraud of the other party. That section is reproduced for ease of reference:

18. Effect of fraud. Where any person having a right to institute a suit or make an application has, by means of fraud, been kept from the knowledge of such right or of the title on which it is founded, or where any document necessary to establish such right has been fraudulently concealed from him, the time limited for instituting a suit or making an application---

(a) against the person guilty of the fraud or accessory thereto, or

(b) against any person claiming through him otherwise than in good faith and for a valuable consideration,

shall be computed from the time when the fraud first became known to the person injuriously affected thereby, or, in the case of the concealed document, when he first had the means of producing it or compelling its production.

In essence, this provision postpones the commencement of the limitation period in cases where a person is by means of fraud kept from the knowledge of his right to institute a suit. In such circumstances, the period of limitation commences from the date when the fraud first became known to the "person injuriously affected". Such injuriously affected person can, therefore, institute a suit within the limitation period specified for such suit in the First Schedule ("Schedule") to the Limitation Act, but computing it from the date when he first had knowledge of the fraud, whereby he was kept from knowledge of his right to institute the suit. Thus, section 18 of Limitation Act is an umbrella provision that makes the limitation period mentioned in the Articles of the Schedule, begin to run from the time different from that specified therein.¹

8.4 It is but fundamental to appreciate that the "fraud" stated in section 18 of the Limitation Act must not be confused with the fraud that constitutes cause of action, and creates a right to institute the suit for the relief prayed therein. The "fraud" envisaged in section 18 only relates to concealing, not creating, the right to sue, and thus affects only the limitation period, and has nothing to do with the cause of action and the relief prayed.²

8.5 It would, thus, be safe to hold that, when despite obtaining knowledge of such fraud and his right to sue, as mentioned in section 18, the injuriously affected person does not institute the suit within the prescribed limitation period, no fresh period of limitation can be available to his legal heir(s) or any other person who derives his right to sue from or through him (the injuriously affected person);³ for once the limitation period begins to run, it does not stop as per section 9 of the Limitation Act.

8.6 Further, the definition of the term "plaintiff", as given in section 2(8) of the Limitation Act also has the effect of barring the fresh start of the limitation period for the legal heir(s) or any other person, who derives his right to sue from or through such injuriously affected person, as it provides that "plaintiff" includes any person from or through whom a plaintiff derives his right to sue.

8.7 Therefore, it is the date of knowledge of the "person injuriously affected" of the fraud mentioned in section 18, and of his right to sue that is relevant for computing the limitation period, not of his legal heir(s), unless he asserts and prove that his predecessor (the person injuriously affected) never came to know of the fraud, whereby his right to institute the suit was concealed, in his lifetime; in the latter eventuality, it is, of course, the knowledge of the present plaintiff (his successor) that would be the starting point for the limitation to run.

8.8 Needless to mention that, a plaintiff who wants to avail the benefit of section 18 of the Limitation Act must assert the commission of such fraud by the defendant, in the plaint, and should also give the particulars thereof, and the date of knowledge, as required under Rule 4 of Order VI of the Code of Civil Procedure 1908, and then prove the same through positive evidence."

It was further held that:

8.11 Thus, the limitation period of six years provided in Article 120 of the Limitation Act is to be computed from the time mentioned in the said Article, that is, when the right to sue accrued. It reads:

<i>Description of suit.</i>	<i>Period of limitation.</i>	<i>Time from which period begins to run.</i>
120. Suit for which no period of limitation is provided elsewhere in this schedule.	Six years.	When the right to sue accrues.

The provision clearly declares that for computing the limitation, the period of six years would commence from the date of accrual of right to sue, but it does not state when such right accrues. To ascertain, when does the right to sue accrue to a donor, to seek a declaration of his ownership right over the property shown to have been gifted and of his such right not to be affected by the gift mutation, we have to consider another provision of law, that is, section 42 of the Specific Relief Act.

8.12 A suit for declaration of any right, as to any property is filed under section 42 of the Specific Relief Act, which reads:

42. Discretion of Court as to declaration of status or right--- Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

(Emphasis added)

It becomes evident by reading the above provisions that the right to sue accrues to a person against the other for declaration of his right, as to any property, when the latter denies or is interested to deny his such right. It thus postulates two actions that cause the accrual of right to sue, to an aggrieved person: (i) actual denial of his right or (ii) apprehended or threatened denial of his right.

8.13 Now, what "actions" can be termed as an "actual denial of right", and what a mere "apprehended or threatened denial of right", in the context of adverse entries recorded in the revenue record. It is important to note that a person may ignore an "apprehended or threatened denial" of his right taking it not too serious to dispel that by seeking a declaration of his right through instituting a suit, and may exercise his option to institute the suit, when he feels it necessary to do so, to protect his right. For this reason, every "apprehended or threatened denial" of right gives a fresh cause of action and right to sue to the person aggrieved of such apprehension or threat. However, this option to delay the filing of the suit is not available to him in case of "actual denial" of his right; where if he does not challenge the action of actual denial of his right, despite having knowledge thereof, by seeking declaration of his right within the limitation period provided in the Limitation Act, then his right to do so becomes barred by law of limitation."

47. In the light of above discussion, suit of respondent No.1 was within the limitation, hence, learned Courts below have rightly decided issued No.7 qua limitation against the appellants and in favour of respondent No.1. I also endorse the findings of Courts below on this particular issue.

48. Vide separate order, all the pending C.Ms in this appeal have also been decided.

49. For the foregoing reasons, the learned Courts below have rightly decreed the suit of respondent No.1 while appreciating the evidence available on the file in its true perspective. The learned counsel appearing on behalf of the appellants failed to satisfy the Court with regard to presence of basic ingredients of regular second appeal that the impugned judgments and decrees are contrary to law or failed to determine material issue of law, or usage having the force of law; committed a substantial error or defect in the procedure provided by C.P.C, or by other law for the time being in-force, which may possibly have produced error or defect in the decision of the case upon the merits.

50. I have seen no illegality, material irregularity and misreading or non-reading of evidence on the part of learned Courts below while passing the impugned judgment and decree.

51. Epitome of above discussion is that there is no force/substance in instant Regular Second Appeal, hence, the same is hereby **dismissed** with no order as to costs.

(AHMAD NADEEM ARSHAD)
JUDGE.

Approved for reporting.

JUDGE.

Announced in open Court on_____

JUDGE.