

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE MIAN SAQIB NISAR
MR. JUSTICE SARMAJ JALAL OSMANY

CIVIL APPEAL NO.514 OF 2008

*(Against the judgment dated 25.3.2008
of the Lahore High Court, Lahore passed
in Writ Petition No.9530/1998)*

Nasir Fahimuddin and others

...Appellant(s)

VERSUS

Charles Philips Mills son of Patrick Mills, resident of 4/2-A, Habib
Ullah Road, Lahore and others

...Respondent(s)

For the appellant(s): Ch. Khurshid Ahmed, Sr. ASC

For respondent No.1: Mr. Amir Alam Khan, Sr. ASC

For respondent No.2: Ch. Ihsan-ul-Haq, ASC

Date of hearing: 01.10.2014

...
JUDGMENT

MIAN SAQIB NISAR, J.- This appeal with leave of the
Court dated 13.5.2008 entails the following facts:- property bearing
No.S-XX-25-S-22, Canal Park, Lahore measuring 02 kanals 01
marla (*suit property*) admittedly was owned in the year 1940 by
Katherine Helen Patinger. According to the respondents (*respondent
No.1 is her son, hereafter referred to as the respondent*) she remained the owner
throughout, while the appellants avow that the lady sold the suit
property to Dr. Dewan Chand in 1940 and that on the partition of
sub-continent the property was treated as an evacuee property.
The appellants claimed that being displaced person from India they
occupied the said property after the partition, and on account of

such occupation, and the property being an evacuee property, they moved to the Settlement Department for the transfer thereof. As the property had two portions, and two occupants, one (*portion*) was transferred to Mufti Nasir Fahimuddin (*the predecessor-in-interest of appellants No. 1 to 11*) while the other was transferred to Muhammad Akhtar Mohsin (*the predecessor-in-interest of appellants No. 12 to 16*). The PTDs of the said property were issued to the two above named on 1.2.1962 and 27.3.1965 (*Ex.P7 and Ex.P8*) respectively; and throughout the appellants have been in occupation of the said property. Further relevant facts of the case are:- that after the death of Katherine Helen Patinger on 19.12.1978, her son Charles Philips Mills, the respondent filed a suit against his father (*the husband of the above-named lady*) on 3.4.1979, as also impleading the public at large, averring that his father has abandoned and relinquished his right of inheritance in the said property in his favour and thus he now is the exclusive owner thereof. The father appeared in the matter, conceded to the suit of the respondent and, therefore, a consent decree dated 10.6.1979 was passed in favour of the respondent and against the father. It may be pertinent to mention here that the respondent, thereafter sold the property to Muhammad Akram (*the predecessor-in-interest of other respondents*) for a consideration of Rs.1,00,000/- (*rupees one lac only*), who was able to obtain an eviction order vide an ejectment petition against the appellants. However, this eviction order could not be executed for the reason that in the meantime, the appellants had filed a civil suit seeking the setting aside of the consent decree while asserting themselves to be the owners of the suit property on the basis of noted PTDs. The defendants of the case, namely,

Charles Philip Mills and Muhammad Akram filed separate written statements. In the written statement of the respondent, the defense set out was that the property was owned by his late mother (*named above*). She was a saintly woman who had inducted the appellants in possession of the property for providing them shelter on compassionate grounds and that they (*plaintiffs*) are thus the licensees under the lady and this status of the appellants remain unchanged. It was also asserted that the suit property was never an evacuee property; it was not a part of the compensation pool which could validly be transferred to the appellants; besides setting out the same defense, Muhammad Akram also took up the plea of being the *bona fide* purchaser of the suit property. It may not be out of context to mention that the ejectment petition which was filed by Muhammad Akram and in which the order of eviction had been obtained by him, was withdrawn on the pretext that now the matter about the title is sub-judice before the Civil Court. Issues were framed; parties were put to trial, the learned Civil Judge seized of the matter and dismissed the suit not only on merits, finding that the appellants have failed to prove a valid transfer of the property by the Settlement Department in their favour as an evacuee property, but also on the score that the suit challenging the consent decree dated 10.6.1979 in favour of the respondent is not maintainable because of the bar contained in Section 12(2) CPC. Aggrieved, the appellants filed an appeal which was disallowed on 18.12.1988. The appellants challenged both these decisions in revision before the learned High Court which was accepted. The suit was held to be incompetent, the same was treated as an application, under Section 12(2) CPC and the matter

was remanded to the learned Appellate Court to decide it accordingly. On remand, the learned Revisional Court (*as now the suit had been treated to be under Section 12(2) and revision could only lie against the order of the trial court dated 20.2.1988, therefore, this was treated to be a revision*) dismissed the application (*under Section 12(2)*) on merits, holding that the appellants have not proved the property to be an evacuee property in nature, which could validly be transferred in their favour by the settlement department. The appellants challenged the above decisions vide constitution petition before the learned High Court, which has been dismissed through the impugned judgment. While dismissing the petition, it has been held by the learned High Court that admittedly the property was owned by the above-named lady before partition and there is no evidence on the record if she ever, before partition of the sub-continent, had sold the same (*the property*) to an evacuee owner, namely, Dr. Dewan Chand. No sale deed in this regard has been produced; from the appellants' own evidence except for the PTO or the PTDs there is no record available with the Settlement Department to establish if the property in question was ever treated to be an evacuee property and transferred as such. The order passed by the Deputy Settlement Commissioner (*on the basis of which PTO & PTD were issued*) transferring the property to the appellants has also not been provided by them; it was also held that the allotment in favour of the appellants has not been established/proven by them. Thus the crux of the verdict of the learned High Court is that as the property was never established to be an evacuee property, it did not form part of the compensation pool and thus could not be transferred as an evacuee property to

the appellants. Leave in this case was granted to consider the following:-

“The contention of Mr. Khursheed Ahmed, learned ASC for the petitioner is that the impugned order being in conflict with the expressed provisions of Section 12(2) of the CPC with principle reference to the jurisdiction of Court as envisaged by Section 42 of the Pakistan Administration of Evacuee Properties Act, 1957 and the nature of the proceedings instituted by way of suit No.484/1/1979, wherein the consent decree was obtained by the son against his father as well as general public prima facie appeared to be collusive. In view of the above contentions of the learned counsel and the point of law involved therein, leave to appeal is granted to consider the, inter alia, above contentions.”

2. Learned counsel for the appellants has submitted that the property in question once having been treated and transferred as an evacuee property, even if it was erroneously so treated or transferred, the appellants could not be disentitled from the ownership thereof. Reliance in this behalf is placed on **Muhammad Din and 8 others Vs. Province of the Punjab through Collector and others** (PLD 2003 Lah. 441), **Azizuddin Vs. Muhammad Ismail and others** (1985 SCMR 666), **Sher Bahadar Khan Vs. Qazi Islamuddin and another** (PLD 1984 SC 213), **Sardar and others Vs. Shaukat Ali and others** (1990 SCMR 951) and **Siraj Din and 5 others Vs. Custodian, Evacuee Property, Punjab, Lahore and 4 others** (PLD 1975 Lah. 1270). It is also submitted that the consent decree which is collusive in nature and was/is meant to cause prejudice and/or deprive a 3rd party, such as the appellant, from their lawful right to property, is of no legal effect

and a nullity in the eyes of law. In any case, the suit was filed by the son against his father, who had consented to the decree and thus when the appellants were not a party thereto, such decree would have no binding effect upon them, in view of Section 43 of the Specific Relief Act. Reliance in this behalf is placed upon **Muhammad Iqbal and others Vs. Khair Din through L.Rs. and others** (2014 SCMR 33). It is further submitted that Katherine Helen Patinger even though was alive till 1978, she never claimed ownership of the property in question or ever challenged the PTDs in favour of the appellants or took any legal action to seek declaration of her title or obtain the possession of the property. Resultantly on account of the above, the respondent who is her successor would have no *locus standi* to challenge the title/ownership/PTDs in favour of the appellants. Reliance in this regard is placed upon **Abdul Haq and another Vs. Mst. Surrya Begum and others** (2002 SCMR 1330) and **Noor Din and another Vs. Additional District Judge, Lahore and others** (2014 SCMR 513). It is also argued that the suit of the appellants was converted by the learned High Court in the earlier round of litigation, as an application under Section 12(2) CPC and the matter was remanded to the learned Additional District Judge for treating it to be a revision petition (*instead of appeal*) to decide the same and because the allegation of fraud and misrepresentation had been proved in the matter by the appellants, the only course open for the courts was to allow the application by setting aside the consent decree dated 10.6.1979 and to remand the matter to the learned trial court to revive the suit enabling the parties to prove their title. It is also argued that all the courts below, particularly

the learned High Court has misread the evidence on the record. In this regard not only the statements of other witnesses produced by the appellants have been ignored and misread but particular reference in this context has been made to the statement of PW-2 who in categorical and unequivocal terms has mentioned that both the predecessors-in-interest of the appellants have been making payment of property tax. Furthermore in his cross-examination PW-2 on a suggestion given by the respondent has mentioned that the PTD/PTO was issued to the appellants after treating the property to be an evacuee property. This part of the evidence has not been taken into account at all by all the courts below. It is submitted that after having withdrawn the ejectment petition on the pretext that now the question of title is sub-judice before the Civil Court, the respondents never filed any suit challenging the PTDs; it is also argued that in the facts and circumstances of the case, Civil Court has no jurisdiction in the matter for the purposes of determination of the validity of PTDs/PTO or the transfer of the property as an evacuee property to the appellants.

3. Controverting the above, learned counsel for the respondents have stated that it is an admitted fact that Mst. Katherine Helen Patinger was the owner of the property; she was not an evacuee, thus her property cannot be treated as an evacuee property and could, therefore, not form part of the compensation pool for further transfer in favour of the appellants. There is no evidence on the record whatsoever that the lady had ever sold the property in favour of Dr. Dewan Chand by any registered instrument, because the property in question was situated in the city of Lahore and the only legal and valid mechanism to transfer

the same was through a registered sale instrument, but this is conspicuously missing in the present case. The record of the Lahore Municipal Corporation, in which some proposals depict the name of Dr. Dewan Chand as owner/transferee of the property has been made without inviting objection in that context, thus such fact recorded is absolutely baseless for the reason that there is no registered instrument of transfer supporting either the proposal of change of ownership or even to establish that the property was validly transferred to Dr. Dewan Chand. Once this was not established, undoubtedly, the property could neither be treated to be an evacuee property nor could be validly transferred onto the appellants. It is also argued that the property was never treated to be an evacuee property before the target date i.e. 1.1.1957 in terms of the Pakistan (Administration of Evacuee Property) Act, 1957; the decree in favour of the respondent even if is a consent decree was a valid decree; there was no need for the respondents to file a separate suit challenging the PTDs in favour of the appellants as in the suit filed by the appellants, the question of ownership was an issue between the parties and as it has already been decided by the court of competent jurisdiction that such PTDs are not an adequate proof of transfer, the omission on part of the respondents in terms of challenging these PTDs by independent civil action has no adverse consequence or bearing on their rights. It is also argued that the lady had died in the year 1978 and since it was never brought to her notice that the appellants had procured PTDs in their favour, failure on her part in challenging those PTDs and not taking any action would not operate as estoppel against the respondent who, therefore, could not be precluded from

challenging these PTDs at a later stage on the basis that no *locus standi* had passed on to the respondent in light of the judgments reported as **Abdul Haq and another Vs. Mst. Surrya Begum and others** (2002 SCMR 1330) and **Noor Din and another Vs. Additional District Judge, Lahore and others** (2014 SCMR 513).

Above all, respondent No.2 was the *bona fide* purchaser for valuable consideration, therefore, his rights are duly protected in terms of Section 41 of the Transfer of Property Act.

4. Heard. One of the important questions involved in this matter is whether the property in question was an evacuee property, had formed part of the compensation pool and has been validly transferred by the Settlement Department in favour of the appellants. In context of the above, certain facts are of considerable importance and thus need to be mentioned here. Admittedly the property was owned by Ms. Patinger in the year 1940 according to the record of the Municipal Corporation which has been produced by the respondents as Ex.P1 to Ex.P5, which clearly depicts that some change in the ownership took place in 1940 and per the same Ms. Patinger sold out the property to Dr. Dewan Chand. Ex.P1 is a copy of the notice dated 18.11.1940 issued to Ms. Patinger under the provisions of Section 65 of the Punjab Municipal Act, 1911 which postulates as follows:- *“please take notice that the assessment list is being completed and published as required by section 64 of the Punjab Municipal Act 1911, and that the Administrator will proceed to revise the valuation and assessments on the 20th day of December 1940”*. There is no record of the lady responding to the above. Ex.P2 which is the report of the concerned Municipal Corporation dated 26.9.1946 approved by the Secretary, Municipal Corporation clearly proves that the property

in question had been sold in favour of Dr. Dewan Chand. In this context the contents of the requisite documents are relevant which read as:-

“I have verified at site and find that the property in question has been sold to Dr. Dewan Chand c/o Mr. Devraj Anand tenant house No.22 street No.25 Canal Park, Lahore. The ownership may therefore be changed accordingly”.

This document is supported by a notice under Section 122 of the City of Lahore Corporation Act, 1941 which is addressed to Dr. Dewan Chand which reads as:-

“Please take notice that I propose to make the amendments given below in the assessment list in respect of land-building S x x 25 & 22 (Canal Park). The relative entries may be inspected at _____. Objection in writing to the proposed amendment may be delivered at the Municipal Office on or before 17.01.1966”.

The proposed amendment in this case was substitution of the name of Dr. Diwan Chand as the owner of the property and Ms. Patinger was notified of the above fact. The subsequent record of the Municipal Corporation, Lahore clearly indicates that the change in the ownership of Dr. Dewan Chand had been duly incorporated in the relevant record and it is Dr. Dewan Chand who has been not only mentioned as the owner of the property, but was required to make the payment of the requisite property tax. In this context, Ex.P5 is a challan pertaining to the year ending 1940 in which the value for the purposes of tax has been mentioned as Rs.540/-, the property is shown to be vacant, but the record

reflects that the ownership rests with Dr. Dewan Chand. In Ex.P11 which is form No.24 i.e. Survey List of Rent of Urban Properties, Dr. Dewan Chand is again shown to be the owner of the property. All this record has been produced and proved through the concerned official of the Municipal Corporation and such record is the one which has been maintained under the law i.e. under the Municipal Corporation Act, 1911. Therefore according to the provisions of Article 92 of the Qanoon-e-Shahadat Order, 1984 it carries presumption of correctness. No evidence at all has been lead by respondents to dispel this presumption or to even mention, if these documents and the record has been forged and fabricated by the appellants. On the basis of the above documentary evidence, a valid conclusion can be drawn that in the year 1940 lady Patinger had sold the suit property to Dr. Dewan Chand and the process of change of ownership commenced straightaway and it continued till 1946 when per the report presented as Ex.P2 it was confirmed that Dr. Dewan Chand is owner of the property and this report is founded upon inspection by the authorized and competent official and finally approved by the Secretary. It may be pertinent to mention here that the conclusion about the veracity of the above record needs to be examined in light of the conduct of lady Patinger also. From the year 1940 onwards, Ms. Patinger is not claimed or proved to have ever paid any property tax; she is not shown to be in possession of the property either directly or indirectly. It is the case of the respondents that Ms. Patinger had inducted the present appellants in possession who were immigrants from India, but there is no evidence at all on the record except the bare statement of Charles Patinger, father of the respondent who even fails to

mention which month, year etc., as to when, how, and in whose presence appellants were inducted in the property. The onus to prove that the appellants were the licensees in the property was upon the respondent but this onus has not been discharged at all. Furthermore according to the written statement of the respondent No.1, Ms. Patinger had been alive till 19.12.1980 (*otherwise the record reflects that she died in the year 1978*) which is about 33 years after the creation of Pakistan but during all this period she never ever paid any property tax to the concerned property tax department; never asked the appellants to vacate the property; never ever initiated any proceedings, meaning thereby that she herself knew and acknowledged through her conduct and silence that the property had already been sold by her in favour of Dr. Dewan Chand and, therefore, had no connection, right or interest in the property. After her death, all of a sudden, the respondent in a surreptitious manner filed a suit against his father claiming that his father had relinquished his share in favour of the respondent, obtained a decree to that effect and sold the property onto respondent No.2. Question that agitates our mind is why, if the appellants were licensees of Ms. Patinger, which interest had devolved upon the respondent, did they never ask the appellants to vacate the property, rather in a covert manner the respondent filed a suit and obtained a decree in his favor. The object of the decree in fact, as the subsequent events reveal, was to have a declaration by a court to the title of the property which otherwise, the respondent could not prove on the basis of the record of the Municipal Corporation which vividly was against him and once the decree was obtained, it is then that the property was sold to respondent No.2 in such a

strange and improbable manner. Otherwise, excepting the consent decree itself, there was no record to prove that Ms. Patinger or the respondent were the owners of the property. The very fact of filing of the suit by itself is sufficient to establish that the respondent knew that the property had been sold by his mother in favour of Dr. Dewan Chand who was an evacuee. The property had been declared to be an evacuee property and had been accordingly transferred in favour of the present appellants in whose favour the PTDs had been issued in the years 1962 and 1965 and for seeking the possession of the property from the appellants, the respondent had to cross the hurdle of challenging the said documents first. It is for this reason that the respondent never ever approached the appellants or ever made any attempt to terminate their license; asked for the restoration of possession, but in a secretive manner filed the suit mentioned above, which undoubtedly is kind of a cover given to ultimately dispossessing the appellants without ever having to prove his title in the property; it seems to be a device. Even in the Court we repeatedly asked the learned counsel for the respondents, if after 1940 the property had ever been assessed by the property tax department or remained in name of Ms. Patinger to which the learned counsel did not have a positive reply. We have questioned if lady Patinger even after the creation of Pakistan had ever paid property tax of the property in question, to which again we received no response. Likewise we did not receive an answer with regards to whether the lady ever interacted with the property or the appellants in her capacity as the alleged owner of the suit property during the time period of 33 years. Obviously the reason for non-payment of property tax was that Ms. Patinger was no-

longer the owner, because in the relevant record the change of ownership had taken place in the name of Dr. Dewan Chand and she, on account of not having any connection with the property, as mentioned above, had not paid any property tax and never dealt with the property or the appellants. Otherwise it is most improbable that an owner would be so negligent and stay aloof and oblivious of his/her property. Even the respondent or his father (*husband of the lady*) are not shown to have ever dealt with the property on her behalf. Again this is most unlikely and improbable. The argument repeatedly made by the respondents has been that there is no record of a registered sale deed. In this context, it is true that in the urban areas a sale has to be made per a registered document in terms of Section 17 of the Registration Act, 1908 which if not complied with attracts the consequences prescribed by Section 49 of the Registration Act, 1908. However, in the instant case, why should it be presumed that the sale was not conducted per the law. The possibility cannot and should not be ruled out that it was not possible for the respondents to find out the exact date of the sale deed, when the same was not on the record of the Municipal Corporation. In any case, since the property had been treated as an evacuee property, it was the duty of the respondents to challenge the PTDs in favour of the appellants instead of filing a suit for declaration against his father. The initial onus to disprove the said sale to Dr. Dewan Chand, in light of the Lahore Municipal Corporation record and on account of the PTDs, was on the respondent. It is settled law that once a property is treated to be an evacuee property even erroneously, then the same cannot be held to be otherwise and the Civil Court in this behalf would have no

jurisdiction, specifically where no attempt had been made to challenge the PTDs before the concerned Settlement Authorities before the repeal of the evacuee law or even conceding for a moment that the Civil Court has jurisdiction in this matter, before the Civil Court directly. In this context, the judgment reported as **Muhammad Din and 8 others Vs. Province of the Punjab through Collector and others** (PLD 2003 Lah. 441) is of importance, the relevant portion thereof reads as follows:-

“From the above, it stands settled that when there is a question about the evacuee nature and treatment of a property as such, the civil courts have no jurisdiction in the matter. In the instant case, not only that the property was treated as an evacuee property, but, the same had also been transferred and permanently settled in favour of the predecessor-in-interest of the petitioners, Noor Muhammad, predecessor-in-interest of respondent No.3, and Nazim-ud-Din. The Civil Courts in the suit, filed by the respondents, seeking declaration of their title on the basis of PTD, issued in their favour, had no jurisdiction to hold such transfer as void, because the property was non-evacuee and, therefore, its treatment and transfer to the petitioners could not be made.....Even if the property had been erroneously treated and transferred as evacuee, their right in the property, stood extinguished and they had no legitimate title, which could be passed onto Abdul Rashid by way of gift, from whom, respondents No.2 and 3 could acquired a lawful title, by stepping into the shoes of the original owners.....It has been settled till now that, where the property had been treated and transferred as an evacuee property, even if erroneously, and the non-evacuee owners did not seek their remedy under the law in force at the relevant time, their title to such property stood extinguished and they could not assert their right of ownership before the

Civil Court, after the repeal of the evacuee/settlement law, on account of lack of jurisdiction.”

As regards the question raised by the learned counsel for the appellants that Ms. Patinger had not challenged the PTDs in favour of the appellant during her lifetime, therefore, no *locus standi* shall pass on, the judgments reported as **Abdul Haq and another Vs. Mst. Surrya Begum and others (2002 SCMR 1330)** and **Noor Din and another Vs. Additional District Judge, Lahore and others (2014 SCMR 513)** are relevant. This aspect of the matter has to be viewed in light of the conduct of lady Patinger because she had lived for about 33 years and despite that had never ever asserted herself to be the owner of the suit property. Obviously in such circumstances her conduct would prove that she was not claiming the ownership of the property and, therefore, was estopped in terms of Article 114 of the Qanoon-e-Shahadat Order, 1984. Consequently, no valid *locus standi* would pass on to her son for claiming ownership and thus son could not have passed a valid title in favour of respondent No.2. As far as the effect of the consent decree dated 10.6.1979 is concerned, suffice it to say that such decree in terms of Section 43 of the Specific Relief Act would only be binding *inter se* the parties i.e. the respondent and his father and would have no legal significance to affect and prejudice the rights of a third person. In the above context, the judgment reported as **Muhammad Iqbal and others Vs. Khair Din through L.Rs. and others (2014 SCMR 33)** is of relevance. These aspects have not been taken into account by the courts below who have only decided the matter on the basis that the sale deed by Ms. Patinger in favour of Dr. Dewan Chand has not been produced.

Suffice it to say that per the PTDs issued in favour of appellants, and the order passed by Iqbal Ahmed Khan dated 20.12.1959, the property was transferred to the appellants.

5. It may not be out of place to mention here that with regard to whether the sale was made by lady Patinger in favour Dr. Dewan Chand, the following was admitted by PW-1 when questioned by the respondents' side:-

"یہ درست ہے کہ بیلن کھترائن نے اپنی زندگی میں ہم سے
کبھی جائیداد متنازعہ کو کلیم نہ کیا تھا اور نہ ہی کوئی نوٹس
وغیرہ دیا تھا"

Further when father of respondent No.1 appeared as DW-1, he in categorical terms mentioned that he was out of the sub-continent for a considerable period and has no knowledge about the dealing of the property. He unequivocally mentioned that "مجھے حالات جائیداد
متنازعہ سے لے کر 1946 تک کا علم نہ تھا کیونکہ میں باہر تھا" As far as respondent No.1 is concerned, he also could not have any knowledge regarding whatever had happened during 1940 to 1946 because according to him he was born on 21.7.1945 and was too young to know. It is not his case that his mother had ever apprised him that she had inducted the appellants as licensees in the property, however, it is also significant to mention that in his cross-examination he has deposed as under:-

"فہیم الدین اور اختر وغیرہ قابض تھے ان کے علاوہ بقیہ نام معلوم نہ
ہیں رجسٹری کے بعد 5 ماہ کے بعد مجھے ان قابضین کا پتہ چلا تھا
مجھے کوئی علم نہ ہے کہ کس حیثیت سے قابض تھے۔ ہم نے صرف
فہیم دین کے خلاف درخواست بے دخلی دائر کی تھی میں نے یہ
درخواست بے دخلی کسی کو contract پر نہ دی تھی میں خود پیروی
کرتا تھا تعمیل فہیم الدین بذریعہ عدالت ہوئی تھی اب فہیم الدین مر چکا
ہے کب فوت ہوا علم نہ ہے نہ غلط ہے جب تعمیل بے دخلی میں ہوئی
تو فہیم دین مر چکا تھا"

We are not persuaded that on account of non-production of said sale deed or any other record from the Settlement Department except PTDs which have been proved to have been genuinely issued, the appellants are not able to prove their ownership, because the respondents had never challenged the genuineness of the PTDs and therefore, the same have not been in dispute. It is not the case of the respondent that those are forged and fabricated documents. If the other record is not available with the Settlement Department, no prejudice can be caused to the appellants. Thus from the totality of the facts, we are of the view that the property in question was sold by Ms. Patinger in favour of Dr. Dewan Chand; the name of the purchaser was duly reflected in the record of the Municipal Corporation; lady Patinger never paid property tax till the date she remained alive; she never even contacted the appellants for the purposes of seeking the possession of the property or asserting herself to be the owner; she had also not been registered as an owner with the relevant tax authorities; she in her lifetime had never challenged the PTDs in favour of the appellants or sought the eviction of the appellants from the property and it is not expected of a property owner to allow strangers to use or reside in his/her property without any compensation for such a long period of time and not seek their eviction or assert his/her rights over the property; consent decree was procured by respondent No.1 in a strange and surreptitious manner which otherwise is not binding upon the present appellants; immediately after the decree having been obtained, the property was allegedly sold to respondent No.2 and he in a dubious manner procured the eviction order against the appellants and

tried to take over the possession of the property but having failed in that regard subsequently withdrew the eviction application as well.

6. Thus we find that since the learned courts below failed to consider these aspects of the matter, the judgments impugned cannot be sustained, which are hereby set aside and by allowing the application of the appellants under Section 12(2) CPC, the suit of the respondent is dismissed, as there shall be no fruitful purpose served to allow revival of the suit and order for the retrial as all the issues between the parties have been settled in the proceedings under Section 12(2) CPC. Besides, as the decree dated 10.6.1979 in favour of respondent is being set aside, the sale deed made by him on the basis of above in favour of respondent No.2 has lost its validity and efficacy as well. In terms of the above, this appeal is allowed and the impugned orders/judgments are set aside.

JUDGE

JUDGE

Islamabad, the
1st October, 2014
Not Approved For Reporting
Waqas Naseer/*