

Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

R.F.A. No.163/2013

Kaniz Fatima

Versus

Tamiz ul Haque & another

Appellant by : Barrister Faisal Iqbal, Advocate.
Barrister Salman Khan, Advocates.

Respondents by : Mr Amir Latif Gill, Advocate.
Mr Rizwan Ahmed, Advocate.
Mr Muhammad Anwar Dar, Advocate.
Syed Javed Akbar Shah, Advocate.
Mr Abdul Razzaq, Director (EM-I), CDA.

Dates of Hearing : **17-02-2023**

Arbab Muhammad Tahir, J.- This Regular First Appeal is directed against judgment and decree, dated 03-07-2013, passed by the learned Civil Judge 1st Class (West), Islamabad, whereby the suit seeking specific performance instituted by the appellant has been dismissed.

2. The facts recapitulated from the available record are that Tameezul Haque son of Muhammad Safiullah/defendant No.1 (the "**Owner**") is the owner of House No.6, Street No.64, Sector F-8/4, Islamabad (the "**Property**"). As per conveyance deed, dated 07-10-1991, the Owner is allottee of the Property since 22-03-1966. The Property remained the subject matter of litigations at various forums. The Property was earlier notified as "abandoned property" under the Abandoned Properties (Taking Over and Management) Act, 1975 and subsequently de-notified on 13-04-1977. The property was later rented to one Akbar Alam, who firstly tried to reopen the

concluded proceedings under the Abandoned Properties (Taking Over and Management) Act, 1976, and secondly claimed ownership of the Property. However, the issue relating to "abandoned property" was ultimately resolved in favour of the Owner by the Supreme Court vide order, dated 21-10-2010 passed in Civil Appeal No.1027/2009. In respect of the other disputes i.e. litigations with *Akbar Alam*, the Owner had to enter into a compromise deed dated 18-03-1997, with him.

Kaniz Fatima widow of *Anwarul Haque*, sister-in-law of the Owner (the "**Appellant**") instituted a suit for specific performance of sale agreements/contract dated 24-05-1993 and 07-10-2009, declaration, permanent and mandatory injunctions in respect of the Property against the Owner on 12.09.2011. The Appellant asserted her claim on the basis of agreement to sell dated 24-05-1993 and sale agreement dated 07-10-2009 (the "*Agreements*"). The Owner did not join the proceedings during trial, therefore, he was proceeded against ex-parte, whereas, the Capital Development Authority/defendant No.2 (the "*CDA*") contested the suit. The learned trial court vide order, dated 19-07-2012, framed the following issues:-

1. *Whether the plaintiff entered into agreement/contract dated 24.5.1993 and agreement/contract dated 07.10.2009 regarding house No.6, street No.64, Islamabad with the defendant No.1? OPP*
2. *Whether the defendant No.1 has received lump sum sale consideration from the plaintiff and defendant No.1 refused to transfer the suit house in the name of the plaintiff? OPP*
3. *Whether the defendants are bent upon to transfer the suit house in the name of someone else except the plaintiff illegally and unlawfully? OPP*
4. *Whether the plaintiff has come to court with unclean hands? OPD*
5. *Whether the plaintiff has no cause of action to file instant suit? OPD*
6. *Whether the suit of the plaintiff is false, frivolous and vexatious, hence answering defendant is entitled to get special costs U/S 35-A CPC? OPD*

7. Relief.

3. The Appellant/plaintiff produced three witnesses i.e. *Muhammad Imran Irshad* (PW-1), *Alama Azfar* (PW-2) and *Muhammad Faisal Saeed* (PW-3) whereas, *Adil Hussain*, an official of the CDA, deposed as DW-1. The Appellant/plaintiff adduced the following document in support of her claim:-

1. Affidavit, dated 04-09-2012 (Exh.P1) (i.e. *Ex-in-Chief of PW-1*).
2. Special Power of Attorney, dated 24-08-2012 (Exh.P2)
3. Agreement to sell dated 24-05-1993 (Exh.P-3)
4. Receipt of Payment dated 24-05-1993 (Exh.P4)
5. Sale Agreement, dated 07-10-2009 (Exh.P5)
6. Receipt of payment dated 07-10-2009 (Exh.P6)
7. Compromise Deed (Exh.P7) (*executed by the Owner with Akbar Alam*)
8. Copy of judgment of the august Supreme Court in Civil Appeal No.1027/2009 (Exh.P8) (*in matter relating to abandoned property*)
9. Affidavit dated 13-10-2012 (Exh.P9) (i.e. *Ex-in-Chief of PW-2*).
10. Affidavit dated 13-10-2012 (Exh.P-10) (i.e. *Ex-in-Chief of PW-3*).

4. The learned trial court, after recording pro and contra evidence of the Appellant and CDA and affording an opportunity of hearing to the parties, dismissed the suit of the plaintiff/Appellant vide the impugned judgment and decree, dated 03-07-2013, impugned through the instant appeal.

5. The learned counsel for the appellant argued that; the ownership of the Owner in respect of the Property is undisputed; the evidence led by Appellant/plaintiff is un-rebutted; the impugned judgment and decree are result of misreading and non-reading of evidence; that the learned trial court erred in concluding that the witnesses have deposed that the signatures were made with one and the same pen; the findings of the learned trial court are based on surmises and conjectures; section 53-A of the Transfer of Property

Act, 1882 declares the agreements as exempted from registration under the Registration Act, 1908 wherein possession has been handed over to the purchaser as part performance; the CDA was a proforma party and could not have contested the suit; the CDA was not supposed to be an adverse party, hence not entitled to cross-examine the witness of the Appellant; the fact that the Owner preferred not to contest the suit lends support to the case of the Appellant; non-appearance of the stamp vendors in support of the claim of Appellant is not fatal; that attorney of the Appellant (PW-1) appeared and duly testified the relevant facts on oath on behalf of the Appellant; nothing has been placed on record to show that the Owner has passed away and that the alleged legal heirs are entitled to contest the claim of the Appellant; the alleged legal heirs of the Owner have not yet approached the court of plenary jurisdiction to get themselves declared as such; this Court cannot issue a declaration with regard to inheritance and entitlement of heirs in appeal summarily; this Court without framing of issues and recording of evidence cannot address any additional question in appeal; reliance has been placed on the case of "*Mst. Jameela Akhter v. Public-at-Large*" [2002 SCMR 1544], "*Muhammad Amir v. Khan Babadur and another*" [PLD 1996 SC 267], "*Khalid Hussain and others v. Nazir Ahmed and others*" [2121 SCMR 1986], "*Mst. Shahnaz Begum and others v. Additional District Judge and others*" [PLD 2021 Lahore 69], "*Narayana Bharatigal Alias v. Ittuli amma and Ors.*" [AIR 1918 Madras 1103], "*Inayat ur Rehman and others v. Shah Jehan and others*" [2014 YLR 1978], "*Rehana Ahson and another v. Zulfiqar Mohammad*" [2021 CLC Sindh 901].

6. The learned counsel for the CDA has argued that; as per available record the Property is still owned and possessed by the Owner; the learned trial court has correctly appreciated the evidence; the Appellant did not enter the witness box; the agreements and the receipts are unregistered; the agreements and receipts were tendered in evidence by PW-1 who is a stranger; his statement is not admissible in evidence.

7. Syed Javed Akbar Shah, ASC tendered appearance on behalf of the legal heirs of the Owner (though not party to the appeal). He preferred an application i.e. C.M.No.451/2020 to file his power of attorney on behalf of the legal heirs. He, however, was allowed to argue the appeal. He has argued that; the Appellant is reluctant to appear before the Court; the reply of the affidavit is no reply in the eye of law; the Appellant is the real widow of the Owner and despite knowledge that he has died the Appellant preferred not to implead the applicants as respondents; Bashir Ahmed son of Muhammad Ali is valid attorney of legal heirs of the Owner; reliance has been placed on Articles 46, 64 & 95 of the Qanoon-e-Shahadat Order, 1984; the statement of the attorney i.e. PW-1 is inadmissible in evidence; the attorney was required to give evidence to the extent of his personal knowledge; in fact the attorney was stranger to the transaction, relevant facts and even the *lis* in hand; the suit was not filed through the attorney; the appeal has been filed with considerable delay; the appeal is liable to be dismissed solely being barred by limitation; the Appellant never remained in possession of the Property; in fact the agreements were executed at Karachi and the Appellant asserts that on the same day possession was handed over to her, which is impossible and does not appeal to common prudence; there was no justification as to why the appellant did not enter the witness box and instead deputed an attorney to depose on her behalf; the signatures of the Owner on the documents are not genuine; the agreements are fake; the stamp vendors and the notary public did not enter the witness box; the onus to prove her claim was on the Appellant and she miserably failed to discharge her onus; the instant appeal as well as the civil suit before the trial court were not filed by the Appellant rather filed and pursued by irrelevant persons for ulterior motives and extraneous considerations; there is no proof as to how the Appellant managed the huge amount of sale consideration in cash; the Appellant could not show on the basis of record that she had

disposed-of any property or had withdrawn the amount from a bank account or had borrowed the amount from anyone; the sale consideration is not sufficient; the case is based on false and forged documents; reliance has been placed on the cases of "*Syed Haji Abdul Wahid and another v. Syed Sirajuddin*" [1998 SCMR 2296], "*Mst. Shahnaz Akhtar and another v. Syed Ehsan ur Rehman and others*" [2022 SCMR 1398], "*Aki Habara Electric Corporation (Pte.) Ltd. V. Hyper Magnetic Industries (Pvt.) Limited through Chief Executive/Director/Secretary*" [PLD 2003 Karachi 420], "*Muhammad Aslam v. Mst. Gulraj Begum*" [1989 SCMR 1], "*Shah Nawaz and another v. Nawab Khan*" [PLD 1976 SC 767], "*Mst. Asma Naz v. Muhammad Younas Qureshi*" [2003 YLR Lahore 587], "*Lal Baz and another v. Gulab represented by Legal Heirs*" [1989 CLC Lahore 8], "*Mst. Rasul Bibi v. Qadar Dad and another*" [1991 MLD Lahore 2008], "*Mulchand Hemraj v. Jairamdas Chaturbhuj and others*" [AIR 1935 Bombay 287].

8. Heard. Record perused.

9. The questions of law which have emerged from the arguments of the learned counsels, *(i)* whether the unregistered agreements (Exh.P-3 and Exh.P-5) confer any legal right on the plaintiff/Appellant; *(ii)* whether section 53-A of the Transfer of Property Act, 1882 (**Act of 1882**) exempts any document from mandatory registration under the Registration Act, 1908 (**Registration Act**) and, *(iii)* the extent and admissibility of the evidence recorded on behalf of a principal by a person holding power of attorney.

10. I shall first answer the question, whether the unregistered agreements (Exh.P-3 and Exh.P-5) confer any right on the plaintiff/Appellant and in this regard section 54 of the Act of 1882 and section 49 of the Registration Act are relevant, which are reproduced below.-

Sec. 54, Transfer of Property Act, 1882

"54. Sale defined. 'Sale' is a transfer of ownership in exchange for a price paid or promised or part paid and part promised.

Sale how made. Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

Sec. 49, Registration Act, 1908

"49. Effect of non-registration of documents required to be registered. No document required to be registered under this Act or under any earlier law providing for or relating to registration of documents shall

- (a) operate to create, declare, assign, limit or extinguish, whether in present or in future any right, title or interest, whether vested or contingent to or in immovable property or
- (b) confer any power to adopt, unless it has been registered."

11. It has been observed by the august Supreme Court in *Muhammad Iqbal's*¹ case that "when questioned as to what is sale and how a sale is made, though the provisions of section 54 of the Transfer of Property Act, 1882 (the Act) have been read, but learned counsel has not been able to establish if the property could at all be sold in favour of Allah Rakha through an unregistered agreement to sell. It is also mandated in the second part of section 54 of the Act that such an agreement would not confer any right to the property. Moreover the provisions of section 49 of the Registration Act, 1908 read with section 17 of the Act also come in the way of the appellants as the agreement to sell of the property would not confer any title in favour of Allah Rakha allegedly executed by Barkat Ali which could further confer any rights in the immovable property unto the appellants". In the instance case, the documents tendered in evidence by the plaintiff/Appellant, particularly Exh.P-3 and Exh.P-5, are admittedly unregistered. Section 23 of the Registration Act, 1908

¹ "Muhammad Iqbal and others Vs. Mst. Baseerat and others" [2017 SCMR 367].

prohibits registration of a document required under the law to be registered after four months of its execution. In the case in hand, the plaintiff/Appellant has pleaded that possession of the Property was handed over to her by the defendant/Owner on 07-10-2009. The period stipulated in section 23 was to lapse on 07-02-2010. The plaintiff did not produce any evidence that she insisted for compliance with section 23 of the Registration Act, 1908 in respect of any of the agreements (Exh.P3 and Exh.P-5). The plaintiff/Appellant could not prove on the basis of evidence that there was any legal encumbrance in registration of agreements (Exh.P3 and Exh.P-5). The documents (Exh.P-3 and Exh.P-5) being unregistered as mandated under section 54 of the Act of 1882 read with section 17 of the Registration Act, cannot operate to create, declare, assign, limit or extinguish, whether in present or in future any right, title or interest, whether vested or contingent to or in immoveable property under section 49 of the Registration Act.

12. Now I will advert to the second question, whether section 53-A of the Transfer of Property Act, 1882 can cover the lapse of non-registration of a document as mandated under the Registration Act. The Supreme Court of India in *Shrimant Shamrao Suryavanshi's*² case has explained the reason behind the insertion of section 53-A in the Act of 1882 as *"When the Transfer of Property Act was enacted, Section 53-A did not find place in it. In the absence of Section 53-A, there arose difference of opinion between various courts in India as regards the application of English doctrine of part performance of contract as it was then prevailing in England. Since there was a difference of opinion on question of the application of English equitable doctrine of part performance in various courts of India, the Govt. of India resolved to set up a Special Committee for making recommendations amongst others whether the British equitable doctrine of part performance be extended in India also. The Special*

² *Shrimant Shamrao Suryavanshi and another vs. Pralhad Bhairoba Suryavanshi (D) by Lrs. & Ors*" [2002(2) ALL MR 267 (S.C.) = 2002(3) SCC 676]

Committee was of the view that an illiterate or ignorant buyer who had partly performed his part of contract required statutory protection. The Committee was of the further view that where a transferee in good faith takes lawful instrument i.e. a written contract would be executed by the transferor takes possession over the property, the equity demanded that the transferee should not be treated as trespasser by the transferor and subsequently evict him through process of law in the absence of lawful transfer instrument..... In that view of the matter, Section 53-A is required to be interpreted in the light of the recommendation of Special Committee's report and aims, objects contained in amending Act 1929 of the Act and specially when Section 53-A itself does not put any restriction to plea taken in defence by a transferee to protect his possession under Section 53-A even if the period of limitation to bring a suit for specific performance has expired".

13. It is, therefore, obvious that the purpose of inserting section 53-A in the Act of 1882 was to protect a party to an agreement, who in part performance of the agreement has been put in possession of the property and subsequently could not initiate legal action to make the title perfect. Section 53-A of the Act of 1882 is a defence of the party in possession of the property, in the proceedings ensued against it for "trespass", or "other consequences of possession" and protects him from "being removed from the possession without resorting to the process of law". It is the period during which the said party remained in possession of the property that is protected under section 53-A even if the agreement is unregistered. Section 53-A, therefore, can be used as a "shield" in the given circumstances and not as a "sword" to defeat the mandatory provisions of the Registration Act. Section 53-A of the Act of 1882, therefore, is not an exemption from the provision of the Registration Act.

14. The last legal question is, extent and admissibility of the evidence/statement of a witness (*power of attorney holder/agent*) who appears as witness to testify facts, which are in personal knowledge of another person i.e. principal. The Supreme Court of India has dealt with a similar question in *Man Kaur's*³ case, wherein it was held that "*Order III, Rules 1 and 2 CPC, empowers the holder of power of attorney to "act" on behalf of the principal. In our view the word "acts" employed in Order III, Rules 1 and 2 CPC, confines only in respect of "acts" done by the power of attorney holder in exercise of power granted by the instrument. The term "acts" would not include deposing in place and instead of the principal. In other words, if the power of attorney holder has rendered some "acts" in pursuance of power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter which only the principal can have a personal knowledge and in respect of which the principal is entitled to be cross-examined*". In this case the Supreme Court of India, after examining the relevant provisions and precedent law had summarized the following principles relating to evidence of the power of attorney holder.-

- a) *An attorney holder who has signed the plaint and instituted the suit, but has no personal knowledge of the transaction can only give formal evidence about the validity of the power of attorney and the filing of the suit.*
- b) *If the attorney holder has done any act or handled any transactions, in pursuance of the power of attorney granted by the principal, he may be examined as a witness to prove those acts or transactions. If the attorney holder alone has personal knowledge of such acts and transactions and not the principal, the attorney holder shall be examined, if those acts and transactions have to be proved.*

³ *Maan Kaur (Dead) by LRs Vs. Hartar Singh Sangha*, 2010 ALL SCR 2511=(2010) 10 SCC 512

- c) *The attorney holder cannot depose or give evidence in place of his principal for the acts done by the principal or transactions or dealings of the principal, of which principal alone has personal knowledge.*
- d) *Where the principal at no point of time had personally handled or dealt with or participated in the transaction and has no personal knowledge of the transaction, and where the entire transaction has been handled by an attorney holder, necessarily the attorney holder alone can give evidence in regard to the transaction. This frequently happens in case of principals carrying on business through authorized managers/attorney holders or persons residing abroad managing their affairs through their attorney holders.*
- e) *Where the entire transaction has been conducted through a particular attorney holder, the principal has to examine that attorney holder to prove the transaction, and not a different or subsequent attorney holder.*
- f) *Where different attorney holders had dealt with the matter at different stages of the transaction, if evidence has to be led as to what transpired at those different stages, all the attorney holders will have to be examined.*
- g) *Where the law requires or contemplated the plaintiff or other party to a proceeding, to establish or prove something with reference to his 'state of mind' or 'conduct', normally the person concerned alone has to give evidence and not an attorney holder. A landlord who seeks eviction of his tenant, on the ground of his 'bona fide' need and a purchaser seeking specific performance who has to show his 'readiness and willingness' fall under this category. There is however a recognized exception to this requirement. Where all the affairs of a party are completely managed, transacted and looked after by an attorney (who may happen to be a close family member), it may be possible to accept the evidence of such attorney even with reference to bona fides or 'readiness and willingness'. Examples of such attorney holders are a husband/wife exclusively managing the affairs of his/her spouse, a son/daughter exclusively managing the affairs of an old and infirm parent, a father/mother exclusively managing the affairs of a son/daughter living abroad.*

15. In the case in hand, Appellant herself filed the suit, however, she did not enter the witness box. Instead, one *Muhammad Imran Irshad* entered the witness box as PW-1 on the strength of a power of attorney (Exh.P-2) and recorded his statement on behalf of the Appellant. The said *Muhammad Imran Irshad* never remained associated with the transaction in dispute in relation to the Property. He is not a marginal witness to the agreements (Exh.P-3 and Exh.P-5) or the receipts (Exh.P-4 and Exh.P-6). He was never personally present when the deal was struck between the parties. In short, nothing deposed by him as PW-1 was within his personal knowledge nor such acts were done by him either independently or pursuant to a power of attorney. He testified the facts which were exclusively in the personal knowledge of the Appellant/plaintiff. He admittedly did nothing as attorney of the Appellant in relation to the Property. He himself never witnessed anything during the long episode as asserted by the Appellant/plaintiff which commenced from 1993 and concluded in 2009. In the facts and circumstances of the case in hand, PW-1 is an alien and stranger to the transaction, therefore, his statement is neither admissible nor can be relied upon.

16. The plaintiff/Appellant could also not establish from record the cash payment of sale consideration. She could not prove as to how the cash was managed, from which bank account the cash was withdrawn, the statement of such bank account or the sale of any kind of asset, the proceeds of which, was paid to the defendant/Owner in cash. The plaintiff/Appellant did not adduce in evidence any title documents in respect of the Property that were handed over to her alongwith possession of the Property. The plaintiff/Appellant claims to have executed agreement to sell dated 24-05-1993 (Exh.P3) and sale agreement, dated 07-09-2009 (Exh.P5) with the defendant/Owner. The reasons for delay in execution of the sale agreement (Exh.P5) i.e. after 17 years from the date of initial agreement to sell (Exh.P-3), the pendency of the proceedings before the august Supreme Court and the fact that the Property was not in possession of the Owner in the

meantime, have not been mentioned in both the agreements i.e. Exh.P-3 and Exh.P-5. The plaintiff/Appellant did not advance any cogent evidence to show that she insisted for transfer of ownership of the Property. The plaintiff had tendered in evidence the judgment of the august Supreme Court dated 21-10-2010 passed in Civil Appeal No.1027 of 2009 (Exh.P8). However, both the Agreements are silent with regard to the proceedings conducted under the Abandoned Property (Taking Over and Management) Act, 1975. The suit was filed by the plaintiff/Appellant herself. However, she did not enter the witness box; instead her attorney *Muhammad Imran Irshad* (PW-1) appeared and deposed on her behalf, which statement being made by an alien and stranger is neither admissible nor reliable. In the given circumstances, the essential elements of a valid contract i.e. *free consent* of the defendant/Owner for execution of the agreements and payment of "*consideration*", remained unproved.

17. The agreement to sell (Exh.P3) and sale agreement (Exh.P5) are unregistered documents. The person who had notarized the agreements also did not enter the witness box. The date on which the agreements were notarized have also not been mentioned. The mode of issuance of stamp papers for both the agreements is doubtful. The stamp papers are not properly endorsed by the stamp vendor. The purpose for which the stamp papers were issued, has not been mentioned. The stamp vendors were not produced as witness to depose in her favour of by the plaintiff/Appellant. The agreements are silent with regard to the agreed mode of payment. As per statement of Adil Hussain (DW-1) the Property is in the name of respondent/defendant/Owner. Even in the absence of evidence to the contrary, in order to get a judgment as to her legal rights, the plaintiff/Appellant was burdened with onus under Article 117 of the Qanoon-e-Shahadat Order, 1984 to prove on the basis of unimpeachable evidence that such right legally existed in her favour.

18. It is well established law that the remedy of specific performance is discretionary and cannot be claimed as of right⁴. The august Supreme Court in Liaqat Khan's⁵ case has held that *"the things as regards powers of the Court in exercising its discretion, become even more clear that there is no two plus two, equal to four formula available with any Court of law for this purpose, which can be applied through cut and paste device to all cases of such nature. Conversely, it will be the peculiar facts and circumstances of each case, particularly, the terms of the agreement between the parties, its language, their subsequent conduct and other surrounding circumstances which will enable the Court to decide whether the discretion in terms of section 22 (ibid) ought to be exercised in favour of specific performance or not"*. In Sheikh Akhtar Aziz's⁶ case, the Supreme Court has held that *"there is no cavil with the proposition that relief of specific performance is discretionary in nature and despite proof of an agreement to sell, exercise of discretion can be withheld if the Court considers that grant of such relief would be unfair or inequitable"*. A similar view has also been taken in the cases of Arif Shah⁷, Mussarat Shaukat⁸ and Rab Nawaz⁹.

19. The evidence brought on record does not discharge the burden of proof as to existence of a relationship of seller and purchaser between the parties. The plaintiff/Appellant failed to make out a case for grant of the discretionary equitable relief of specific performance. The impugned judgment and decree, therefore, do not call for interference.

20. For what has been discussed above, the instant appeal is without merit and is, therefore, accordingly **dismissed.**

⁴ Muhammad Riaz Hussain v. Zahoor Ul Hassan (2021 SCMR 431)

⁵ Liaqat Khan v. Falak Sher (PLD 2014 SC 506)

⁶ Sheikh Akhtar Aziz v. Mst. Shabnam Begum and others (2019 SCMR 524)

⁷ Arif Shah v. Abdul Hakeem Qureshi (PLD 1991 SC 905)

⁸ Mussarat Shaukat Ali v. Safia Khatoon (1994 SCMR 2189)

⁹ Rab Nawaz v. Mustaqeem Khan (1999 SCMR 1362)

21. Before parting, this Court considers it appropriate to record its observation regarding conduct of the parties during proceedings. The questions, whether the Owner has died and whether he is survived by heirs, are unresolved. During the proceedings, the applicants have filed an application i.e. C.M. No.451/2020 for filing of *wakalatnama* of *Syed Javed Akbar Shah*, ASC on their behalf. They claim to be legal heirs of the Owner. The applicants i.e. *Marium Gulshan Haque*, *Saleha Khanum* have leveled serious allegations. They have not approached the court of competent jurisdiction to get themselves declared as legal heirs of the Owner. The question whether they are all the legal heirs of the Owner and resolution of their *inter-se* disputes, warrants a full-fledged trial, for which they will be at liberty to approach the court of competent jurisdiction.

22. The learned counsel for parties in their written arguments and the CDA in its written report have highlighted instances whereby many persons have attempted to grab the Property through various modes. I am of the considered opinion that in a situation like this, it is the duty of the Court to invoke the provisions of Article 24 of the Constitution of Islamic Republic of Pakistan, 1973 to remove the illegal occupant and handover it to the state to protect the immovable property. It is indeed the duty of the State to protect all such properties of the citizens in terms of Article 24 of the Constitution of Islamic Republic of Pakistan, 1973 and takeover possession of such property under Article 24 clause 3(b) and (d) of the Constitution of 1973 for a limited period to protect it for the benefit of its Owner. Therefore, keeping in view of the facts of the case in hand that the plaintiff/Appellant has unlawfully occupied suit property of a citizen whose whereabouts are not immediately traceable and the property is at risk of loss or damage by the plaintiff/Appellant, therefore, to protect the Property from further damage as an immediate measure, the CDA is directed to depute responsible official to visit the suit property within 48 hours and take photographs from inside the suit premises to preserve the

status of the fitting and fixtures of the suit property. The CDA shall takeover possession of the suit property from the plaintiff/Appellant within 15 days and ensure that all the dues of electricity and sui-gas bills/charges are cleared by the occupant. In case of any resistance or if the suit property is found locked the CDA is authorized to remove locks and prepare an inventory of all the items lying therein and place his locks and seal on each door of the suit property. The area police should also be informed in advance so that if police aid is needed, it should be available readily and no fresh order to break open the locks or police force to evict the plaintiff from the suit property is required. The CDA is directed to take-over the Property by making proper arrangements to preserve it from any damage. These are interim arrangements to protect and preserve the Property from any damage. The CDA is directed not to change the title of the Property till the legal heirs of the Owner declare themselves as such from the Court of competent jurisdiction. The legal heirs, declared as such by a competent court, shall be free to obtain possession and exercise their ownership rights in respect of the Property. The CDA shall hold and freeze the Property for a period of three years, or till a date the legal heirs get themselves declared as legal heirs of the Owner from a competent Court, whichever is earlier. In case no one on the basis of a valid legal document claims the Property after three years, then the CDA shall proceed under Article 172 of the Constitution in respect of the Property. The office is directed to transmit a copy of this order to the Chairman, CDA for compliance.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in the open Court on 20.03.2023.

JUDGE

Approved for reporting.