

**IN THE HON'BLE COURT OF DISTRICT & SESSION JUDGE,
AREA**

Civil Appeal No. _____ Of 2019

RMYAK & others

Appellants

Versus

KMA & others

Respondents

INDEX

<u>Sr. No.</u>	<u>Documents</u>	<u>Date</u>	<u>Annex</u>	<u>Pages</u>
1	Memo of Appeal			1-119
2	Memo of Plaint		A	121-181
3	Certified copy of Impugned Judgment	30.03.0000	B-1	183-227
4	Certified copy of Impugned Decree	30.03.0000	B-2	229-247
5	Certified copy of Power of Attorney		C	249-251
6	Certified copy of causelist dated 17.12.0000, witness SK's passport containing visa, exit / entry stamps		D-1 to D-3	253-257
7	Certified copy of the Application to the Chief Settlement Commissioner, Lahore	31.12.0000	E	259
8	Certified copy of the Appellant's application to E.D.O., Area a/w his and Mr SK's affidavit	30.01.0000	F-1 to F-3	261-265
9	Certified copy of the letter No. E.D.O. / Reh / (R) / - 00/- of 0000	00.04.0000	G	267
10	Certified copy of the Application to D.O. Revenue, Area	09.05.0000	H	269
11	Certified copies of Title Documents (Claim No. 00):- (i) Naqal Fard Haqiat; (ii) Register Haqdaran Arazi (iii) PTK No. 00 (iv) Deh Form VII; (v) Provisional Slip (vi) Final allotment Certificate		I-1 I-2 I-3 I-4 I-5 I-6	271 273 275 277 279 281

12	<p>Certified copies of Title Documents (Claim No. 00):-</p> <p>(i) Naqal Fard Haqiat; (ii) Register Haqdaran Arazi;</p> <p>(iii) RL II; (iv) Certificate (Deh Zairpir);</p> <p>(v) Mutation Order No. ARM/ 00 (vi) PTK No. 00 (Deh BL); (vii) Certificate (Deh BL Tapa Werato);</p> <p>(viii) Mutation Order No. ARM/ 00; (ix) PTK No. 00 (DehPorath); (x) PTK No. 00 (Deh Lutni); (xi) PTK of Nos. 00, 00 and 00; (xii) Mutation order No. 00; (xiii) Provisional Slip; (xiv) Certificate No. 00; and (xv) PTK No. 00 and 00 (Dehs Band and Khanot)</p>		<p>J-1 J-2</p> <p>J-3 J-4</p> <p>J-5</p> <p>J-6</p> <p>J-7</p> <p>J-8</p> <p>J-9</p> <p>J-10</p> <p>J-11</p> <p>J-12</p> <p>J-13 J-00</p> <p>J-15</p>	<p>283-285 287</p> <p>289 291</p> <p>293</p> <p>295</p> <p>297</p> <p>299</p> <p>301</p> <p>303</p> <p>305</p> <p>307</p> <p>309 311</p> <p>313</p>
13	Certified copies of two applications of Respondent No.1(f) under Order 7, Rule 11, CPC		K-1 & K-2	315-323
14	Respondent No. 1(f)'s Examination-in-Chief		K-3	325
15	Respondent No. 1(f)'s Cross-Examination		K-4	327-331
16	Banking Court's Order	29.10.0000	K-5	333
17	Examination-in-Chief / Cross-Examination of the two witnesses of Respondent No. 1(f)		K-6 & K-7	335-337
18	<p>Statement filed by Respondent No. 1(f) a/w two annex:-</p> <p>(i) A page of "Biographical Encyclopedia of Pak." (ii) Shijra / Family tree of grandfather of</p>		K-8 K-9	339 341

	Appellant No. 1 i.e. QK		K-10	343
19	Certified copy of Application u/o 5 rule 20, CPC and the order passed thereon		L-1	345-349
20	Statement a/w two publications in Daily Ibrat and Daily Express		L-2 to L-4	351-357
21	Framed issues		M	359
22	Certified copy of Examination-in-Chief of Appellant No. 7		N-1	361-373
23	Certified copy of Cross-Examination of Appellant No. 7		N-2	375-377
24	Certified copy of P.W. No. 1 MAK's Examination-in-Chief / Cross-Examination		N-3	379
25	Certified copy of P.W. No.3 GS's Examination-in-Chief		N-4	381-385
26	Certified copy of P.W. No.4 FS's Examination-in-Chief / Cross-Examination		N-5	387
27	Certified copy of P.W. No.5 MA's Examination-in-Chief / Cross-Examination		N-6	389
00	Certified copy of P.W. No.6 SK's Examination-in-Chief / Cross-Examination		N-7	391-393
29	Certified copy of statement / Final Written Arguments	03.03.2019	O	395-527
30	Family flowchart of Appellants		P-1	529
31	Heirship certificate of Appellants		P-2	531

Area
Dated: 11th Month, 0000

ADVOCATE FOR THE APPELLANT

**IN THE HON'BLE COURT OF DISTRICT & SESSION JUDGE,
AREA**

Civil Appeal No. _____ Of 2019

In

FC Suit No. 00 of 0000

1. **RMYAK**
son of RAAK
Since deceased

2. **KHAK**
S/o. RMYAK
Since deceased

3. **MuN**
Wife of KHAK
Since deceased

4. **KAAK**
S/o. KHAK
Since deceased (died on 01.03.1976)

5. **AK**
Wife of KAAK
Since deceased (died on 11.11.0000)

6. **KKAK**
S/o. KAAK.
Flat No. 00, Second Floor, Plot No. 00-C,
Stadium Lane No. 0, xxx Market,
Phase x, D.H.A., Area.

7. **KMAK**
S/o. KAAK
House No. 00, B-0th Street, Off Place,
Phase x, D.H.A, Area.

8. **AF**
W/o. FS
House No. 00, B-0th Street, Off Place,
Phase 0, D.H.A, Area.

.....**APPELLANTS**

Versus

1. **KMA**
S/o. SK
Since deceased, through LR's:-

- 1-(a)** SB W/o. KMA
Since deceased through LR's No. 1(b); 1-(c);
1-(d) (i) and 1- (d)(ii).
- 1-(b)** NM s/o. KMA
Through Respondent No. 1-(f).
- 1-(c)** MA s/o. KMA
Through Respondent No. 1-(f).
- 1-(d)** M. d/o. KMA
Since deceased through LR's Nos. 1-(d) (i) and 1-(d) (ii).
1-(d) (i) xxx through Respondent No. 1-(f).
1-(d) (ii) xxx through Respondent No. 1-(f).
- 1-(e)** SB w/o. KMA
resident of House No. H-00-00/1, Giddu,
Area.
- 1-(f)** KJ s/o. KMA
resident of House No. H-00-00/0, Place,
Hussainabad, Area.

**APPEAL UNDER SECTION 96 & ORDER XLI OF CODE OF CIVIL
PROCEDURE, 1908 R/W ALL OTHER ENABLING PROVISIONS
OF LAW AGAINST JUDGMENT AND DECREE DATED 30.03.0000**

Respectfully Sheweth:

Being aggrieved by and dissatisfied with the Impugned Judgment and Decree dated 30.03.0000 passed in Suit No. 00/0000 (titled as *RMYAK & others vs. KMA & others*) whereby the learned Vth Senior Civil Judge, Area has dismissed the Appellants' suit, the Appellants prefer this Appeal on the following facts and grounds amongst others:

Certified copy of Memo of Complaint, certified copy of Impugned Judgment and Impugned Decree dated 30.03.0000 are attached as ANNEX A, B-1 and B-2 respectively.

FACTS

1. The instant appeal is filed by Appellant No. 7, for self and as brother / duly constituted attorney of Appellant Nos. 6 and 8.
2. The Appellant No.1 is the father of Appellant No. 2 and great grandfather of Appellant Nos. 6 to 8. The Appellant No. 2 is the father of Appellant No. 4 and grandfather of Appellant Nos. 6 to 8. The Appellant No. 4 is the father of Appellant Nos. 6 to 8. The Appellant No. 1, after migration from India, settled in

the Province of Sindh, at Area and Appellant No. 4 settled in the Province of Punjab, at Lahore.

3. Before partition of the subcontinent, the ancestors (including Appellant No. 1) of the Appellant Nos. 6 to 8 used to live in the Alwar State of India. They migrated from India to Pakistan in the year 1947. For present purposes, it is pertinent to highlight that Appellant No. 1 is an evacuee and original / rightful claimant of the evacuee property allotted against verified claim numbers 00 and 00. Both the said claim numbers were verified in the name of Appellant No. 1.
4. That Respondent Nos. 1 and 2 are the fraudulent beneficiaries who acquired the allotment of property (against claim numbers 00 and 00 both verified and belong solely and exclusively to Appellant No. 1) in their names fraudulently, illegally, unlawfully and with full active connivance of the revenue officials. Since both deceased now, their legal heirs have been impleaded as parties. Respondent No. 3 is the wife of SK (brother of Appellant No. 1) and mother of Respondent Nos. 1 and 2. Respondent Nos. 4 to 94 are the occupants / purchasers of the subject property falling in Taluka MR.
5. Appellant No. 7 is an Advocate of High Court practicing at Area as an associate counsel with M/s XX & Company, Advocates. One of the many oldest clients of the said Law Firm is M/s Company & Weaving Mills Ltd.
6. That one Mr. SK s/o BK is working at M/s Company & Weaving Mills Ltd. as one of its Directors. He shares very close personal and professional relationship with not only the Managing Partners of M/s XX & Company but also with the Appellant No. 7.
7. On 17.12.0000, Mr. SK and the Appellant No. 7 were present in the High Court of Sindh to attend their respective matters before the Division Bench comprising of Mr. Justice MMM and Mr. Justice NNN. During their meeting in High Court, Mr. SK informed the Appellant No. 7 about his visit to Rampur, U.P, India to see his relatives. He told Appellant No. 7 that during his stay in India, he alongwith his host were one day watching television drama on the life and history of Maharaja Prithvi Raj Chauhan aired by Star Plus Channel when during discussions his host namely SN s/o SAA informed him that his father SAA personally knew the descendants of Maharaja Prithviraj Chauhan namely one RMYAK (i.e. the Appellant No. 1) who had rural as well as urban properties in the Alwar State of India. Since in the past, on many occasions, the Appellant No. 7 had informed Mr. SK that he was the descendant of Maharaja Prithviraj Chauhan, the latter asked him as to how can he be the descendant of such a famous historical figure considering that he is merely doing a regular job to provide for his family and more importantly that, as per his host's information, how come Appellant No. 1 is actually the descendant of the Maharaja? To this question, the Appellant No. 7 informed him that he is the great grandson of Appellant No. 1 and, hence, this is why he is one of the descendants of Maharaja Prithviraj Chauhan

Certified copy of Causelist dated 17.12.0000 and certified copy of SK's passport containing visa, exit and entry stamps are attached as ANNEX _____ respectively.

8. That in pursuance of the above said information, the Appellant No. 7 visited Lahore and filed Application dated 31.12.0000 in the office of learned Chief Settlement Commissioner, Board of Revenue, Lahore requesting therein to trace out the record of the properties of late Appellant No. 1.

Certified copy of the Application dated 31.12.0000 to the Chief Settlement Commissioner, Lahore is attached as ANNEX.

9. That the learned Chief Settlement Commissioner was pleased to mark the Appellant's application to the learned Secretary (S&R), Board of Revenue, Lahore for report, in result whereof the Appellant No. 7 was verbally informed that the following record, regarding properties of Appellant No. 1, was available in the record, received from India, of displaced persons of the Alwar State of India:

S.No.	Claim Nos.	Bighas	Previous Mozas	Had Bast Nos.
1.	00	569-11	Nagla Balayya	00
2.	00	1508-00	Bawad	00
3.	00	884-00	Hada Heri	00
4.	00	1363-00	Mundawar	00

The Appellant No. 7 was also informed that the above mentioned claims of Appellant No. 1 were sent to Area District for the allotment of land.

10. That on the basis of verbal information received from Lahore regarding the above mentioned four claims of late Appellant No. 1, the Appellant No. 7 filed Application dated 30.01.0000 alongwith his and Mr. SK's affidavit in the office of the learned E.D.O (Revenue) Area to trace out and provide complete information regarding the land allotted on the above mentioned four claims of Appellant No. 1.

Certified copy of the Appellant's Application dated 30.01.0000 along with his and Mr. SK's Affidavit are attached as ANNEX respectively.

11. That after a handful of reminder applications, the learned EDO (Revenue), Area vide his letter dated 00.04.0000 informed the Appellant No. 7 that two claim files of Appellant No. 1 were lying in his office regarding properties allotted in his name in Dehs ML, TH and other Dehs of Taluka Area and in Dehs SK, RK and other Dehs in Taluka HL.

Certified copy of the letter No. EDO/Reh/(R)/-00/- of 0000 dated 00.04.0000 is attached as ANNEX.

12. That the learned EDO (Revenue) Area did not mention any details of the property in question in his letter dated 00.04.0000. In absence of the particulars / details of the property in question, no action could be taken in tracing out the property in question. In the light of the above mentioned letter given by the learned EDO., the Appellant No. 7 filed Application dated 09.05.0000 addressed to the learned D.O. (Revenue) Area to provide certified copies of the complete claim files of late Appellant No. 1.

Certified copy of the Application dated 09.05.0000 is attached as ANNEX.

13. That, at last, after various applications / visits to the revenue department, the Appellant No. 7 got certified copies of the documents in August, 0000. The certified copies contained details of the property stated in paragraph Nos. 8 and 10 above. From the perusal of the said copies, the Appellant No. 7 came to know for the first time that:
- (i) Appellant No. 1 was owner of immovable property in the Alwar State of India at the time of migration.
 - (ii) After migration to Pakistan, the Appellant No. 1 filed his Claim Form providing therein all the relevant details about the property solely owned and abandoned by him in India at the time of migration.
 - (iii) His claim was registered and subsequently verified in 1960. It is pertinent to state here that for verification purposes, the practice was that special jamabandis received from India in 1947 were relied upon.
 - (iv) The two claim numbers against which the property was allotted were 00 and 00 respectively.
 - (v) two claim numbers that are 00 and 00 were confirmed/verified solely and exclusively in the name of Appellant No. 1 RMYAK for the purposes of allotment of property as compensation in Pakistan in lieu of property abandoned by him in India of which he was the sole owner at the time of migration.
 - (vi) That, however, the documents revealed that the **Respondent No. 1 KMA s/o SK** obtained its allotment in his name unlawfully, illegally, fraudulently and with the active connivance of the revenue officials.
14. That, however, the learned trial court judge dismissed the Appellants / Plaintiffs' suit.
15. The Appellants now respectfully assail the Impugned Judgment / Decree dated 30.03.0000 of the learned judge, on grounds, *inter alia*, as under:-

GROUND

- A. The Impugned Judgment and Decree is bad in law and facts. The reasons given for the dismissal of suit are nothing but a consequence of non-reading, misconstruing and misreading of the relevant material on record.
- B. That the main plank of the learned Civil Judge on which he dismissed the suit was that the Appellants could not prove their pedigree / family tree. However, the learned judge miserably failed to realize that the issue of pedigree was an admitted fact that had not been disputed / denied / controverted by the Respondents. When the Respondents themselves are not disputing the pedigree as proved by the Appellants then how come the learned civil judge not only refuses to accept it but dismisses the entire suit of the Appellants on this score. This is a clear cut case of non-reading of evidence / pleadings on record.
- C. Further, and even more importantly but without prejudice to the above, the Respondent No. 1(f) has submitted a Statement dated 29.03.0000 before the Trial Court along with which he has brought on record family tree / pedigree of the

grandfather of Appellant No.1 i.e. one QK. The said pedigree / family tree is materially and essentially the same when compared with the family tree / pedigree of Appellants as the grandfather of Respondent No. 1(f) was the younger brother of Appellant No. 1. The learned judge has miserably failed to realize that the Respondents have not only never disputed the pedigree of the Appellants but, by submitting the said family tree themselves, have expressly admitted / confirmed the pedigree of the Appellants as provided and proved by them. This is a blatant case of non-reading of material evidence on record. The Impugned Order is liable to be set aside on this ground alone.

- D. The learned judge has misconstrued Article 113 of Qanun-e-Shahadat Order, 1984 which clearly and unambiguously says that any fact which, by any rule or law, is deemed to be admitted need not be proved. The Respondent No. 1(f) has not only never denied the pedigree / family tree of the Appellants but even went to the extent of expressly admitting it when he submitted the family tree of the grandfather of Appellant No. 1 i.e. Rao Qalandar Khan. The said reasoning of the learned judge underpinning dismissal of the suit militates against common sense interpretation and jurisprudence of Article 113 of Qanun-e-Shahadat Order, 1984.
- E. The learned judge has failed to take into account long settled law that where the contents of plaint are not specifically denied, the same are deemed to be admitted. The Respondent No. 1(f) neither denied the pedigree of the Appellants, the family flow chart, Heirship Certificate annexed with the plaint nor has he ever refuted / denied / controverted, *inter alia*, the various allegations of fraud levelled and proved against him and his ancestors. The said respondent did not even refute / deny / controvert the contents of the Application submitted by Appellant No. 7 for obtaining *Fatwa* on the issue of inheritance. In the said Application, the Appellant No. 7 had elaborately detailed therein the family tree of the contesting Appellant Nos. 6 to 8 all the way upto the Appellant No. 1.
- F. The learned Civil Judge, *inter alia*, has gone on length to highlight how the Appellants could not validly prove the Heirship Certificate annexed with the plaint. However, he failed to appreciate that the Appellant No. 7, in order to prove the pedigree of the Appellants / contents of the said Heirship Certificate / family flow chart, examined three witnesses out of which two witnesses, namely Mujahid Ali Khan and Munawwar Ali also happen to be blood relatives of the Appellants and the contesting Respondent No. 1(f).
- G. That Appellant / Plaintiff's Witness No. 1 namely Mujahid Ali Khan was examined to prove the pedigree / family tree of the contesting Appellant Nos. 6 to 8 and their link with the Appellant No. 1. The learned Civil Judge ruled out the Examination-in-Chief and Cross Examination of the said witness primarily on the ground that his evidence is hearsay. The learned Civil Judge has miserably failed to realize that in his entire evidence, the only piece of hearsay evidence is his statement that Appellant / Plaintiff No. 1 belonged to Alwar State of India which according to him was told to him by his mother. The manner in which the entire pedigree has been rendered valueless is beyond logic and common sense. It is nothing but a clear cut case of misreading of evidence.
- H. Without prejudice to the immediately preceding ground, it is only natural that it is only our parents who inform us and make us aware about our relatives and about their families. Hence, the testimony of the PW No. 1 to prove the pedigree / relationship of present Appellants with Appellant No. 1 could not have been ruled out on such basis alone.
- I. That another reason for dismissing the Plaintiff Witness No. 1's evidence is due to the fact that on the day of Cross Examination, the said witness could not recall the date, month or year in which in the Appellant No. 1 expired. It is humbly submitted that it was extremely bizarre, unnatural, against all common sense and logic for the learned Civil Judge to expect a 70 year old man to remember the

year of death of Appellant No. 1 considering that the Appellant No. 1 passed away almost 60 years ago.

- J. That negation of the Plaintiff Witness No. 1's testimony by the learned Civil Judge on the basis that he couldn't recall the year in which Appellant / Plaintiff No. 1 passed away is also against the ratio of the august Supreme Court in *Abdul Ghaffar v. Kallu reported in 0000 SCMR 452*.
- K. That, without prejudice to the above, on page 23 para (B) of the Impugned Judgment, another reason has been attributed for negating the testimony of the Plaintiff Witness No. 1 which is that: "While appreciating evidence of PW Mujahid Ali Khan, it revealed that, he has no personal knowledge relating to the pedigree of Plaintiffs.....". Bare perusal of the Examination-in-Chief and Cross Examination of the said witness would reveal that no where has the said witness stated / admitted that he has no personal knowledge about the pedigree of Appellants. Such a finding is figment of the learned Civil Judges' own mind which has absolutely no basis whatsoever. As a matter of fact, the said witness clearly stated in his cross examination that he is blood relative of both the Appellants and the Respondent / Defendant No. 1(f). It is common practice / custom in our homeland (and other Asian countries) that a person who is blood relative of both the Appellants and the Respondents is naturally expected to be aware about the pedigree about the parties. For the learned Judge to assume otherwise is absolutely absurd.
- L. The learned Civil Judge has failed to realize that the said Plaintiff Witness No. 1 is not an ordinary witness; he happens to be blood relative of both the Plaintiffs and the Respondent No. 1(f). Hence, in these circumstances, his testimony relating to the pedigree of the appellants / plaintiffs could not have been brushed aside lightly.
- M. That the learned Civil Judge has also rejected the evidence of P.W. No. 4 FS, who too was examined to prove the pedigree of the Plaintiffs. The only basis for rejecting his evidence was that he too did not know the father's name of Appellant No. 1 or that he was the adopted son. Clearly, as highlighted above, such a basis for negation of a witnesses' testimony is against the ratio of the august Supreme Court in *Abdul Ghaffoor v. Kallu reported in 0000 SCMR 452*.
- N. Further, and without prejudice to the immediately preceding paragraph, the learned Judge also failed to appreciate that the family of the said witness had close personal ties with the family of the Appellant No. 1 since before partition. Hence, in the given circumstances, his evidence could not have been lightly negated.
- O. That the learned Judge has also dismissed the suit primarily for the reason that the suit is incompetent as, according to him, the Respondent / Defendant Nos. 4 to 94 were not properly served notices informing them about the impending suit. Such a finding is perverse, contrary to law and contrary to facts.
- P. That the learned Judge has failed to realize that the said respondents were served by way of publication in Daily Ibrat and Daily Express in pursuance to the Court's Order dated 09.07.0000.
- Q. The publication order was passed by the predecessor of the learned judge who passed the Impugned Judgment. The learned Judge who rendered the Impugned Judgment, insofar as issue of publication / service of notices is concerned, had clearly become *functus officio*. Hence, it was not legally permissible for the learned Judge to disagree with the mode of service ordered and held good by his predecessor.

- R. That the learned judge has noted in the Impugned Judgment that since valuable rights of Respondent Nos. 4 to 94 were involved, hence, they should have been properly served notices on their addresses. However, the learned judge failed to take into consideration the well-settled law that the concept of bona fide purchaser does not apply to evacuee property. In the instant case, the entire onus to justify fraudulent allotment of property in the names of Respondent Nos. 1 and 2 against the claim numbers 00 and 00 verified in the name of Appellant No. 1 is on their legal heirs (represented by Respondent No. 1(f)). From the bare facts, it is apparent that even if all the said respondents cause an appearance before this Hon'ble Court (or had done so before the trial court) they still would have depended and relied upon the defense / justification provided by the Respondent No. 1(f) and as such would have no independent role to play.
- S. That since the dispute is in relation to the evacuee property to which the concept of bona fide purchaser does not apply, the learned Judge failed to realize that by impleading each and every occupant / purchaser of the evacuee property as respondent the litigation will unnecessarily get prolonged for an indefinite time and focus from the main controversy and issues will get sidetracked.
- T. That the learned judge has also held that the suit is not maintainable owing to the fact that all the legal heirs of Respondent Nos. 1 and 2 have not been impleaded as party. The said legal heirs of Respondent Nos. 1 and 2 / Defendant Nos. 1 and 2 are given on page 2 of the Impugned Judgment. Such is the biggest indication of absolute non-reading of the relevant material on record. Such behavior of the learned judge should not only be deprecated but also be reprimanded and the Impugned Judgment be set aside on this ground alone.
- U. The finding that the suit is time barred is nothing but in complete derogation of section 24-A of the General Clauses Act, 1897 which mandates that proper reasoning should be given for each and every finding.
- V. That the Appellants crave permission to raise or urge any other ground at the time of hearing of this Appeal.

PRAYER

It is, therefore, humbly prayed that this Hon'ble Court may kindly be pleased to:

- (a) set aside the Impugned Judgment dated 30.03.0000 passed by the learned Vth Senior Civil Judge, Area in FC Suit 00 of 0000;
- (b) permanently and pending disposal of the main appeal suspend the operation of the Impugned Judgment;

VERIFICATION

I, KMAK S/o. KAAK, Muslim, adult, residing at Area, do hereby state on oath that whatever has been stated above is true and correct to the best of my knowledge and belief.

DEPONENT