JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Regular Second Appeal no.7 of 2026
Aslam Khan and another
versus
Taleem ul Quran ul Kareem, and others

Appellants by:	M/s Ans Mashood and Usama Bin Abbas, advocates
Appellant no.1:	Aslam Khan in person
Appellant no.2:	Alqari Anas Khalil (through video link)
Respondents 3 to 6:	Noman Sadiq, Ahtesham Sadiq, Adel Khaleel Alqari and Zuhair Khalil Alqari (through video link)
Date of decision:	**03.06.2026**

Sardar Ejaz Ishaq Khan, J:- This second appeal is from the first appellate judgment and decree dated 27.02.2026, upholding the dismissal of the plaintiffs' suit under section 92 CPC for Court's permission to sell trust property.

2 The appellants are the Trustees of "Taleem Ul Quran Ul Kareem Trust" (the "Trust")), registered under the *Islamabad Capital Territory Trust Act of 2020* (the "Trust Act"). The late Mr. Alqari Khalil was the author of the Trust, registered originally on 22.05.1997, under the erstwhile Trusts Act of 1872[1]. He was the father and predecessor-in-interest of the appellants no.2, 3 and 4, who are 3 amongst the 6 Trustees. On the author's application, the then President of Pakistan issued a directive to the Capital Development Authority (CDA) for allocation, at normal price, of a plot of land to the author for the purpose of establishing a religious educational institution. The record depicts that the author paid the 'normal price' - circa 8 lac Rupees in 1997 - to the CDA, whereupon he was allotted plot no. 72, Sector H-8, Islamabad (the "Plot"). The CDA issued the allotment letter dated 26.05.1998 for setting up an institution for teaching Quran, whereby the Plot was leased for 33 years, renewable for two further terms of same duration. Clause 9 of the allotment letter contained a restriction on sale of the Plot without the permission of CDA, a point to which this judgment will return later.

[1] The plaint provided the particulars of registration with the sub-registrar (U) Islamabad at No.1491, Book No. 1, Volume No. 915 having its duplicate copy pasted at Additional Book No. I. Volume No. 915 on Butts 107 to 111.

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3 The donations to the Trust did not materialize as expected. The Trust could not construct an educational institution on the Plot due to lack of funds. The author passed away. The allotment of the Plot devolved on the author's heirs. The heirs got the lease renewed on 24.05.2023 until 2055, on payment of circa Rs.15 million to the CDA out of their own pockets.

4 The Trust Act of 2020 repealed the Trusts Act of 1872, and required all existing trusts to be re-registered while ensuring compliance with the new legislation. The Trust got re-registered vide the Trust Deed dated 17.07.2023. The objects of the Trust are stated in the Trust Deed as follows:

> 2.1. To advance the education of Holy Quran, General Education and Education of Medical Sciences
>
> 2.2. To advance Hifz, Tajweed and Qirrat of Holy Quran to the Muslim Children
>
> 2.3. To establish and maintain a Library
>
> 2.4. To establish a printing press for the publication of Holy Quran and other related books
>
> 2.5. To promote the religious acquaintance through audio and video recordings of the Holy Quran
>
> 2.6. To build refresher courses, seminars etc. on different fields of Islamic learning
>
> 2.7. To promulgate and promote Arabic Language
>
> 2.8. To act for training of qualified teachers and scholars
>
> 2.9. To establish and maintain a dispensary for the needy and poor
>
> 2.10. To construct and maintain suitable residences and hostel for the trustees, other persons and employees working with the Trust and for children studying there.

5 The nexus of the Plot with the objects of the Trust appears in clause 1.2 of the Trust Deed, which reads as follows:

> That a mardassa, Islamic school and college will be constructed over the said plot of land which will be used for purpose of Islamic, general and medical science education of muslim children.

6 Remaining wanting in resources, but keen to carry out the purposes of the Trust, the Trustees resolved to sell the Plot, expectant that the sale proceeds will suffice for the Trustees to acquire other land and still be left with a surplus for construction and operating expenses of the charity. They filed a suit under section 92(1)(f) of the Code of Civil Procedure, 1908, praying for the Court's permission to "…*sell the trust property, namely, the*

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leasehold interest of the Trust…and use the sale proceeds to fulfill the objects of the Trust." The plaint also averred that the proposed sale was in consonance with the *cy-pres* doctrine of the common law.

7 However, the learned civil Court dismissed the suit on a rather flimsy ground, namely, that the Trustees hadn't provided an NOC from the Building Control Directorate of CDA, which was required in terms of the lease renewal letter of CDA dated 24.05.2023, and that, for that reason the Trustees had failed to "prove their case". The first appellate Court also got rid of this case by holding that the original allotment letter was not produced, even though no one contested the copy. The appellants sought to produce a CDA-attested copy, but the application was rejected stating that the Court had become functus officio after rendering the first appellate judgment. Those were rather strange reasons, to say the least, because, this being a non-contentious suit, the Court could always have directed the plaintiffs to produce the requisite documents instead of dismissing the suit and the appeal. In any event, the said documents weren't even necessary, as the plaintiffs had maintained throughout that they would approach the CDA for its consents and NOCs once the Court's permission to sell was granted. The question before both the Courts was the permission to sell the Plot in terms of section 92 CPC, and not whether the plaintiffs had to prove their title thereto, which, on a balance of probabilities, was demonstrated anyway given the most recent renewal letter by the CDA in May 2023, the authenticity of which was not doubted by the first appellate Court. Now that a regular second appeal is admitted on the scope of section 92 CPC, the powers of this second appellate Court are the same as the powers of the Court of first instance and the first appellate Court under section 107 read with Order XLI rule 33 of the Code. An attested copy of the allotment letter and the CDA's renewal letter are now part of the record.

8 Section 92(1) of the CPC reads as follows:

> **92. Public charities.**— (1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate General, or two or more persons having an interest in the trust and having obtained the leave of the Court, may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the Provincial Government within the local limits of whose jurisdiction the

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> whole or any part of the subject-matter of the trust is situate, to obtain a decree —
> (a) removing any trustee ;
> (b) appointing a new trustee ;
> (c) vesting any property in a trustee;
> (d) directing accounts and inquiries ;
> (e) declaring what proportion of the trust-property or of the interest therein shall be allocated to any particular object of the trust;
> (f) authorising the whole or any part of the trust-property to be let, sold, mortgaged or exchanged ;
> (g) settling a scheme ; or
> (h) granting such further or other relief as the nature of the case may require.

9 Section 92(1) CPC is couched in the broadest of terms. Where the power of sale of trust property is not authorized per the deed of trust, it can be permitted by the Court under section 92(1)(f) CPC. In either case, the proceeds of sale are to be applied to the objects of the trust stated in the deed of trust, and cannot be applied to any other purpose. If the proceeds of sale (or the trust property) cannot be applied to the objects of the trust, they can be applied cy-pres by order of the Court. Cy-pres is a common law doctrine. It enables the modification of the objects of the trust by the Court 'as nearly as possible' to the objects originally stated, in order to prevent the failure of a charitable trust. Cy-pres is a French word meaning 'as near as possible'. Section 92(1)(g) caters for cy-pres, by enabling the Court to settle a scheme in relation to the trust. While applying this doctrine in *Kandawalla Trust through Trustees and another vs The State (2013 MLD 640),* the Sind High Court observed as follows:

> Halsbury's Laws of England, (4th Edition, Vol.5 page 430, paragraph 696) explains cypres in the words that where a clear charitable intention is expressed, it will not be permitted to fail because the mode as specified cannot be executed but the law will substitute another mode cypres as near as possible to the mode specified by the donor. An application cypres results from the exercise of the court's ordinary jurisdiction to administer a charitable trust of which the particular mode of application has not been defined by the donor. Where he has in fact prescribed a particular mode of application and that mode is incapable of being performed, but he had a charitable intention which transcended the particular mode of application prescribed, the court, in the exercise of this jurisdiction, can carry out the charitable intention as though the particular direction had not been expressed at all.

Applying the cy-pres doctrine, the Court in *Kandawalla* allowed an application under section 92 CPC and, despite a clause restricting amalgamation of the trust, ordered for that trust to be amalgamated into

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another with similar objects, on finding that the former trust was no longer capable of precise execution for the benefit of young parsis only but could be applied for the same objects for a wider class regardless of the ethnic or religious affiliations.

10 There is much discussion in common law treatises on the law of charities when the cy-pres doctrine is to be applied and when not. The general position is well summarised in Corpus Juris Secundum, 1991 Edition, 14 C.J.S § 37- §45, with the extracts therefrom relevant to this case reproduced below:

> § 37. Judicial Cy-Pres Doctrine
>
> - Cy-pres is the doctrine that equity will, when a charity is impossible, inexpedient, or impracticable of fulfillment, substitute another charitable object which approaches the original purpose as closely as possible.
> - The doctrine is one of construction and not of administration, the construction not being the result of an arbitrary power exercised in disregard of the donor's wishes for the public benefit, but being based on a judicial finding of his intention as applied to new conditions.
>
> § 39. Impracticability
>
> - The impracticability must relate to the purpose of the trust and not merely to its method of administration. A purpose becomes impracticable when the application of property to such purpose would not accomplish the general charitable intention of the settlor.
>
> § 44. Manner of Application
>
> - Cy-pres should be applied so as to effectuate the donor's wishes as nearly as possible, and can be applied only where the donor's intent can be accomplished in a manner closely related to the original plan.

11 Section 92 CPC releases the Court from the confines of the common law where the application of the cy-pres doctrine and the permission to sell the trust property can became exclusive of each other, a point that is illustrated by the Court of Appeal's judgment in *Oldham Borough Council vs Attorney-General [1993] Ch 210*. Section 92 CPC places no such embargo, and the Court can settle a scheme for the trust under sub-clause (g) while granting the permission of sale under sub-clause (f), and can grant further relief under sub-clause (h). Where the legislation permits the Court a greater latitude, we ought not put the shackles back by considering ourselves bound by the restrictions imported from the common law.

12 In the instant case, there is neither any express power of sale conferred on the trustees in the Trust Deed nor is there any restriction on sale.

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Addressing the question of power of sale of trustees of a public charity, the Sindh High Court held in *Messrs Muhammad Ismail vs Messrs Sir Jahangir Kothari Trust (2011 CLC 1847)* as follows:

> It follows from the foregoing that the trustees of a public charitable trust do have the power, subject always to the terms of the trust itself and to section 92 (as explained above), to alienate, sell or dispose of the trust property. Of course, if on the basis of the objective test noted above, it is concluded that they ought to have obtained the directions of the court under section 92, and they fail to do so, then any sale or other alienation by them would be liable to be set aside. If, however, the matter does not come within the scope of the section as so applied, then the action taken by the trustees would be well within their powers. Of course, it would in all cases be open to the trustees to approach the court, and they may well be advised to do so by way of abundant caution.

13 The question then becomes whether the Plot in question is so integral to the Trust that it is impossible to carry out the objectives of the Trust on any other land, a question whose answer turns on the language of the objects of the Trust stated in the Trust Deed. If the answer is in the negative, the law will not let the settlor's charitable intention fail by withholding the permission to sell the trust property. An insightful analysis of these points is contained in the judgment of the Court of Appeal of England in *Oldham Borough Council vs Attorney-General [1993] Ch 210*. The Council held land "*upon trust to preserve and manage the same at all times hereafter as playing fields for the benefit and enjoyment of*" local inhabitants. The Council wanted to sell the land to developers and use the proceeds to buy other land with better facilities. The Court of Appeal held that the Council's proposal did not invoke an alteration of the original purposes of the charitable gift. The Court of Appeal held that donated land would be essential to a charity's purposes where the qualities of the property the subject of the gift: "*... are themselves the factors which make the purposes of the gift charitable, e.g., where there is a trust to retain for the public benefit a particular house once owned by a particular historical figure, or a particular building for its architectural merit, or a particular area of land of outstanding beauty. In such cases, sale of the house, building or land would necessitate an alteration of the original charitable purposes and, therefore, a cyprès scheme because, after a sale, the proceeds or any property acquired with the proceeds could not possibly be applied for the original charitable purpose."* The following excerpts from *Oldham* shed light on the points under discussion in this judgment:

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> It is not in doubt, as a general proposition, that charitable trustees who hold land as part of the permanent endowment of a charity, or land which has been occupied for the purposes of the charity, have power to sell that land with the consent of the court…
>
> The Court of Chancery had a general jurisdiction, as incidental to the administration of a charity estate, to alienate charity property where the court clearly saw that the alienation was for the charity's benefit and advantage.

14 A read through the Trust Deed shows that the Plot in the instant case, vis-à-vis the objects of the Trust, does not carry any qualities or characteristics that make its retention indispensable to the objects of the Trust.

15 The Trustees' power of sale is also found in the Islamabad Capital Territory Trusts Act, 2020, section 21 whereof provides:

> 21. Legal arrangement for holding the property. — A trust may hold immovable and movable property under its name, or may sell or dispose of the property being held by it. Such sale and purchase shall be the responsibility of the trustee.

16 Vide order dated 12.05.2026, the appellants were directed to revert with a scheme for the realization of the objects of the Trust post-sale of the Plot. That scheme was reviewed, and is set out below with modifications this Court regards as essential to ensure (i) the original intention of the author of the Trust being realized as nearly as possible, (ii) minimizing dissipation of the funds representing the sale proceeds, and (iii) oversight by a public office holder.

17 Accordingly, this appeal is **allowed**. Under section 92(1)(f) CPC, the Trustees are authorized to sell the Plot, subject to and in accordance with the following directions passed under section 92(1)(g) and (h) CPC.

A) CDA's Consent

Within thirty (30) days of the date of this judgment, the Trustees shall apply to CDA:

i) for its consent to sell the Plot, which shall not be withheld or denied unreasonably by the CDA,

ii) to change the land use (for fetching a higher price), which shall not be withheld or denied unreasonably by the CDA,

iii) for determination of conversion charges, transfer fees and dues; and

iv) for the issue of all required NOCs.

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B) Sale of Plot

Within 6 months of CDA's approvals, the Plot will be put to sale by auction after and subject to the following steps taken by the Trustees:

i) independent valuation of the Plot from a valuer approved by the Pakistan Bankers Association,

ii) public marketing of the Plot for at least sixty (60) days,

iii) the reserve price shall not be less than 80% of the valuation, unless approved otherwise by the Court, and

iv) the highest compliant offer shall be accepted, unless approved otherwise by the Court.

C) Application of the Sale Proceeds

i) The sale proceeds shall be deposited in a Trust account operated jointly by at least two Trustees.

ii) Within 6 months of the sale of the Plot, the Trustees shall purchase a suitable piece of land, utilizing at least 25% of the sale proceeds, and shall utilize at least another 25% of the proceeds to commence and complete construction of such facilities as will further one or more objects of the Trust.

D) Objects of the Trust

The proceeds of sale shall be applied exclusively towards one or more objects of the Trust enumerated in clause 2 of the Trust Deed.

E) Sustainable Income Model

Approximately 50% (+/- 10%) of net sale proceeds shall remain preserved as permanent capital, to be invested only in:

- Government securities;
- National Savings instruments;
- Islamic Sukuk;
- Scheduled bank deposits; and
- Low to medium risk mutual funds, rated "A" by a credit rating agency approved by the Securities and Exchange Commission of Pakistan, but excluding high-risk equity investments.

Provided that, no more than 15% of the permanent capital shall be invested in a single category of investment aforesaid.

F) Continuing Jurisdiction

i) The Islamabad High Court shall retain supervisory jurisdiction on the implementation of these directions.

ii) The Trust shall submit annual progress reports and audited accounts to the Advocate General, who shall bring any matter of concern to the Court.

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iii) The Trustees may approach the Court again on encountering any difficulties in the implementation of these directions or for further directions or appropriate orders.

(Sardar Ejaz Ishaq Khan)
Judge

Announced in open Court on **09.07.2026**.

Judge

Approved for reporting.

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