

Judgment sheet

**IN THE HIGH COURT OF SINDH AT KARACHI**

**Present**

**Mr. Justice Muhammad Jaffer Raza**

**Civil Revision Application No. 17 of 2024**

Anwar Kamal Pasha ..... Applicants.

Versus

Mst. Aziza Jalil (since deceased)

Through her legal heirs & others ..... Respondents

Date of hearing : 21.04.2025 & 29.04.2025.

Date of judgment : 27.05.2025.

Mr. Munawar Hussain, Advocate for the Applicants.

Khawaja Rauf Ahmed, Advocate for the legal heirs of Respondent No.1.

Mr. Muhammad Aqil Zaidi, Advocate for Respondent No.4.

**J U D G E M E N T**

**MUHAMMAD JAFFER RAZA-J**: The instant Civil Revision Application has been filed impugning the judgment dated 03.11.2023 passed in Civil Appeal No.149/2023. The above noted Civil Appeal was filed against the order dated 06.07.2023 passed in Civil Suit 1451/2022.

2. Brief facts of the case are that the above-mentioned suit was filed by the legal heirs of Respondent No.1 with the following prayers:-

- “1. To Pass Judgment & Decree for Partition and Administration and distribution of the respective Immovable Property Shares in favour of the Plaintiff(s) (deceased mother), and rest of all the remaining Legal Heirs including these Three (03) Defendant(s) No.1,2 & 3 of the above said Deceased in the above said Immovable Suit Property, a Residential House (Ground Plus 03-Floors), Constructed on Plot No.28/41, Sector 3-D, Measuring 133 Square Yards, Nazimabad No.03, Near Abbasi Shaheed Hospital, Karachi and if the above said

- Immovable Suit Property. If the said Immovable Suit Property is not partition able /distributed alternatively the Nazir of this Honourable Court may be appointed to take the Possession of the said Immovable Suit Property and Sell Out the same in Open Auction and pay respective Immovable Suit Property Shares to the Plaintiff(s) (deceased mother) and rest of all the remaining Legal Heirs and the Defendant(s) No.1, 2 & 3 of the Deceased as well through this Honourable Court.
2. To Declared the Cancellation of the fake, bogus, fabricated Immovable Suit Property Document(s) like Declaration & Confirmation of Oral Gift issued by the Defendant No.05 the concern Sub-Registrar, Central Record, Karachi as well as the Transfer/Mutation Order issued by the Defendant No.06 the concern City District Government, Karachi (Karachi Development Authority), Land Management Department, Nazimabad Branch, Karachi in favour of the above said Defendant(s) No.1,2 & 3, and also direct the concern authorities with immediately Cancel the same.
  3. To Pass an Order/Judgment against the above said Defendant(s) No.1,2 & 3 to Deposit all the Original Title Documents (Complete Chain of Documents) of the abovesaid Immovable Suit Property before the Nazir of this Honourable Court, due to their illegal and unlawful act for transferring the bogus Declaration & Confirmation of Oral Gift as well as the Transfer/Mutation Order in their favour from the concern authorities depriving the rights of all the daughters from their respective legal share of the Immovable Suit Property.
  4. To Grant Permanent Injunction against the above said Defendant(s) No.1,2 & 3, restraining them, their executants, administrators, attorney(s), legal heirs, subordinates, and any other person(s) acting on their behalf from transferring, alienating, disposing of, selling in any manner whatsoever to the above said Immovable Suit Property, till the final disposal of the Case, except with due Course of Law.

5. To direct the above said Defendant(s) No.1,2 & 3 to Pay an amount of Rs.15,000,000/- (Rupees: Fifteen Million Only) as a Damages as mentioned in Para No.06, as due to the tyrant act of the above said Defendant(s) No.1, 2 & 3 not only towards the Plaintiff(s) due to the illegal and unlawful act of the above said Defendant(s) No.1, 2 & 3, not only towards the Plaintiff(s) due to the illegal and unlawful act of the above said Defendant(s) No. 1, 2 & 3, the Plaintiff(s) have suffered their valuable time, respect and honoured in the society.
6. To direct the above said Defendant(s) No.1,2 & 3 to Pay the Plaintiff(s), legally entitled to Claim his legal share from a Total Mense Profit amount of Rs.8,163,600/- (Rupees: Eight Million One Hundred Sixty Three Thousand Six Hundred Only), from the date of 01-08-2003 as the illegal and unlawful transfer of the above said Immovable Suit Property through fake, bogus, fabricated Property documents like Declaration & Confirmation of Oral Gift issued by the Defendant No.05 the concern Sub-Registrar, Central Record. Karachi as well as the Transfer/Mutation Order issued by the Defendant No.06 the City District Government, Karachi (Karachi Development Authority), Land Management Department, Nazimabad Branch, Karachi in favour of the above said Defendant(s) No.1,2 & 3,
7. To direct the above said Defendant(s) No.1,2 & 3 to Pay an amount of Rs.500,000/- (Rupees: Five Hundred Thousand Only) as Legal Professional Fees to their Counsel and an amount of Rs.100,000/- (Rupees: One Hundred Thousand Only) as other Miscellaneous Expenses, till the Trial Court including the Court Fees of the Suit. The Total amount of Rs.600,000/- (Rupees: Six Hundred Thousand Only) of both of the Civil Suits No.296/2022 and also now filing of this Fresh Civil Suit for Declaration, Cancellation, Administration, Partition and Permanent Injunction before this Honourable Court.
8. Any other relief which this Honourable Court may deem fit in the circumstances of this matter.
9. Cost of the litigation to be paid to the Plaintiff(s).

3. Thereafter, the Applicants preferred an application under Order VII Rule 11 CPC and the same was allowed vide order dated 06.07.2023 and the plaint filed by the legal heirs of Respondent No.1 was rejected. Thereafter, the legal heirs of Respondent No.1 filed the above noted Civil Appeal which was allowed vide Impugned judgment dated 03.11.2023 and the suit was remanded back to the Trial Court, with the direction to decide the matter afresh on merits after affording both parties the opportunity to lead their respective evidence.

4. Learned counsel for the Applicants has argued that his application under Order VII Rule 11 CPC was correctly allowed by the learned Trial Court as the Suit preferred by the legal heirs of Respondent No.1 was not maintainable and barred under the law of Limitation. Learned counsel has stated that they are the owners of the subject property vide registered Gift Deed dated 23.07.2003 and the above noted suit was filed in the year 2022, seeking cancellation of the above-mentioned Gift Deed. Learned counsel has stated that the suit property was mutated in the name of the Applicants and the plaint, as framed, does not disclose a cause of action against the present Applicants. He has stated that deceased mother of Respondent No.1 namely Mst. Mehfooza Begum (**“the Donor”**) was the owner of the suit property and she gifted the same to the Applicants by oral declaration of Gift Deed dated 23.07.2003. Subsequently, as noted above, the suit property was mutated in the name of the Applicants. Learned counsel has stated that the said Donor was the grandmother of the legal heirs of Respondent No.1. It is further contended by the learned counsel that the Donor was alive till the year 2019 and never sought to challenge the said Gift Deed. He has further clarified that the Donor was alive for sixteen (16) years after the execution of the said gift, as noted above, and never challenged the same. He has further argued that the Donor’s daughter, Appellant’s sister and Respondent No.1, Mst. Aziza Jalil expired in the year 2008 i.e. five (05) years after the registration of the Gift Deed and even she, during her lifetime, did not challenge the same. He has averred that the Respondent No.1 was well aware of the execution of the above noted Gift Deed and the grandchildren of the Donor

have approached the Court seeking cancellation of the said Gift Deed after approximately twenty (20) years. He has further contended that the said gift, as noted above, was never challenged by the mother i.e. Respondent No.1 or by their grandmother who was also the Donor. He has prayed that the instant Civil Revision Application may be allowed and the plaint of the suit filed by the legal heirs of the Respondent No.1 may be rejected under the provision of Order VII Rule 11 CPC.

5. Conversely, learned counsel for the legal heirs of Respondent No.1 has argued that the present legal heirs of the Respondent No.1, did not know and were not in knowledge regarding execution of the said Gift Deed. He has stated that earlier they filed Civil Suit bearing No.296/2022 for Administration and Partition of the subject property. The said suit was filed on the premise that the subject property was owned by their grandmother/ Donor. After filing of the above suit, written statement was filed by the present Applicants. It is contended that it was for the first time upon filing of the said written statement, that legal heirs of the Respondent No.1 came into the knowledge about the execution of the Gift Deed, after which the above noted suit was filed. Learned counsel has argued that time for the purpose of limitation will be computed from the date of knowledge, which according to the learned counsel was only after filing of written statement of the Applicants in suit No.296/2022, which was subsequently withdrawn with permission to file afresh vide order dated 12.09.2022. Learned counsel has stated that the Donor was 70 years of age and no other family member was aware of the said Gift Deed which shows surreptitious manner in which the said Gift Deed was “obtained” from the Donor. He lastly contended that he may be allowed to lead evidence in the matter and the strength of his claim or lack of, is not a ground for rejection of the plaint.

6. In rebuttal learned counsel for the Applicants has stated that no ground has been taken by the learned counsel for Respondent No.1 that the Donor was unwell. He has further stated that another legal heir/daughter of the Donor namely Mst. Aneesa Jamal is alive and no suit has been filed on her behalf. The said legal heir has only been called as witness before the learned Trial Court in the above noted suit. Learned counsel has lastly argued that even if the Gift Deed is cancelled, the legal

heirs of Respondent No.1 will not be entitled to any share as they are the sons and daughter of the Respondent No.1, who pre-deceased the Donor.

7. I have heard both the learned counsels and perused the record. It is trite law that the limitation period for filing a suit for declaration under Article 120 of the Limitation Act, 1908 (**“the Act”**) is six (06) years and for filing of suit for cancellation period of limitation under Article 91 of the Act is three (03) years. The relevant question for the purposes of present adjudication is the date from which the said time is to be computed i.e. date of knowledge and subsequent denial. It is well settled that under Order VII Rule 11 CPC it is primarily the contents of the plaint that have to be examined to determine whether the plaint is liable to be rejected. It is not the strength or weakness of the case presented.

8. I have examined the plaint filed in the above noted suit and more specifically examined paragraph 21 which reveals the cause of action in favour of the legal heirs of the Respondent No.1. It is evident from the bare perusal of the said paragraph and the plaint generally, that the date of knowledge allegedly, was the refusal to release the respective shares, if any, on 16.01.2022 and also when the written statement was filed in suit No.296/2022. There is no undisputed evidence put forward to show that the legal heirs Respondent No.1 had knowledge about the execution of the said Gift Deed and therefore the date of knowledge, in this respect, is a mixed question of law and fact, which can only be determined after recording of evidence. I concur with the findings of the learned Appellate Court and hold that the learned Trial Court should decide the matter afresh on merits after recording the evidence of the respective parties.

9. I do not wish to deliberate on the legal proposition as to whether the legal heirs of the pre-deceased are entitled inheritance under the Islamic Succession Law. I leave this question for the learned Trial Court to adjudicate. Any finding in this respect by me, may influence the judgment of the learned Trial Court. It is clear that the order of the learned Trial Court is beyond scope of Order VII Rule 11 CPC as

expounded in the case of **Haji Abdul Karim & other v. Florida Builders**

**(Private) Limited**<sup>1</sup>. Relevant parts of the judgment are reproduced below: -

*“12. After considering the ratio decidendi in the above cases, and bearing in mind the importance of Order VII, Rule 11, we think it may be helpful to formulate the guidelines for the interpretation thereof so as to facilitate the task of courts in construing the same.*

*Firstly, there can be little doubt that primacy, (but not necessarily exclusivity) is to be given to the contents of the plaint. However, this does not mean that the court is obligated to accept each and every averment contained therein as being true. Indeed, the language of Order VII, Rule 11 contains no such provision that the plaint must be deemed to contain the whole truth and nothing but the truth. On the contrary, it leaves the power of the court, which is inherent in every court of justice and equity to decide or not a suit is barred by any law for the time being in force completely intact. The only requirement is that the court must examine the statements in the plaint prior to taking a decision.*

*Secondly, it is also equally clear, by necessary inference, that the contents of the written statement are not to be examined and put in juxtaposition with the plaint in order to determine whether the averments of the plaint are correct or incorrect. In other words the court is not to decide whether the plaint is right or the written statement is right. That is an exercise which can only be carried out if a suit is to proceed in the normal course and after the recording of evidence. In Order VII, Rule 11 cases the question is not the credibility of the plaintiff versus the defendant. It is something completely different, namely, does the plaint appear to be barred by law.*

*Thirdly, and it is important to stress this point, in carrying out an analysis of the averments contained in the plaint the court is not denuded of its normal judicial power. It is not obligated to accept as correct any manifestly self-contradictory or wholly absurd statements. The court has been given wide powers under the relevant provisions of the Qanun-e-Shahadat. It has a judicial discretion and it is also entitled to make the presumptions set out, for example in Article 129 which enable it to presume the existence of certain facts. It follows from the above, therefore, that if an averment contained in the plaint is to be rejected, perhaps on the basis of the documents appended to the plaint, or the admitted documents, or the position which is beyond any doubt, this exercise has to be carried out not on the basis of the denials contained in the written statement which are not relevant, but in exercise of the judicial power of appraisal of the plaint.”(Emphasis added)*

10. In light of what is held above, the instant Civil Revision Application is dismissed. The learned Trial Court is directed to expeditiously proceed with the suit and decide the same on merits, in accordance with law, within a period of sixty (60) days from today. The learned Trial Court to submit report to this Court through MIT-II.

JUDGE

Nadeem Qureshi “PA”

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<sup>1</sup> PLD 2012 Supreme Court 247.