

ORDER SHEET

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

R. A. No. S – 160 of 2010

R. A. No. S – 161 of 2010

R. A. No. S – 162 of 2010

R. A. No. S – 164 of 2010

Date of hearing	Order with signature of Judge
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Hearing of case

1. For hearing of main case
2. For hearing of CMA No.528/2010

14-12-2020

Mr. Sikandar Ali Junejo, Advocate for the applicants.
Mr. Tariq G. Hanif Mangi, Advocate for respondent No.1.
Mr. Ahmed Ali Shahani, Assistant Advocate General Sindh.

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All these four matters arise out of proceedings wherein although different proceedings were initiated by the respective parties, they all relate the same subject properties and questions as such are addressed by this single order.

2. The background of the matters being that two properties were the subject of these proceedings; one bearing City Survey No. B-3251/1 and the other bearing City Survey No. B-3253/2. The first property was in ownership of late Hashmatullah who is said to have gifted the same to his wife Mst. Shabiran, whereas, the other property was directly gifted by late Hashmatullah to one of his son Muhammad Azam. The gifts in the matters were registered in nature and the learned trial Court as well as the learned appellate Court had appreciated the said element which was though challenged by the plaintiffs in the matter to have been acquired by fraud / misrepresentation were not entertained as the same are said to not proved. The stand before the learned trial Court as well as before the learned appellate Court present on part of the done and one sister (supporting him) was that the exclusive entertainment available to Muhammad Azam was on account of his good conduct with the parents, whereas, the deprived legal heirs in these matters were not having good

conduct with their parents. The said exclusion was said to have been proved by the applicants by deposition of the said sisters.

3. Learned counsel for the applicants has contended that one of the marginal witnesses in the matter had turned hostile and as such his examination-in-chief was conducted again, and that the other elements required for a valid gift were not proved. That the gifts though through the registered documents cannot be claimed having any legal right. Whereas, learned counsel for the respondent contends that the applicants have not brought up all the documents in the matter, and that the applicants having failed to prove any element that would bring the case within the ambit of allegations made in the pleadings as such the same disentitles them from the relief. It is also contended that the private respondents have proved their case of entitlement, and as such these concurrent findings cannot be disturbed.

4. Having heard the learned counsels and gone through the record, it may be observed that in the close relationship of the family, allegations and counter allegations are made, to which nothing but personal evidence can bring out the actuality. However, as to the entitle of gift which disinherits some of the legal heirs, the Courts have always been very cautious to observe that the element / reasons of disentitlement which must be present. This aspect is at time ensured if possible in cases where they are witnesses to the gift. As the element of couple / exclusive ownership required ingredient of a valid gift is very difficult to determine between the family members living together, it can also be considered whether said gift was ever proclaimed against the entertainment and use of the subject property by the other legal heirs in order to ensure that the subject gift was not kept hidden till the required time carry the disturbance to the element of limitation. Irrespectively, the private respondents though have alleged that the disobedient conduct present on part of the applicants was the reason of their being disentitled, the said scenario is

found unavailable against exclusion of the sisters present. The benefit not going to the sisters irrespective to the support present on part of one remains a missing piece to the scenario not looked into by the learned Courts below.

5. The important dates in the matter are also found relevant wherein the first gift was made in the year 1973; the second gift was made in the October 1995, whereas, the death of the father took place in 1998 and that of the mother in 2011 along with the challenge of the gift said to have been made on her part, causing a position whereby it can be even said that the mother herself never treated the subject property as is presented by the respondents. Irrespectively, the exclusion of few of the legal heirs as is being called up by the respondents to be believed is not found qualifying to the alleged disobedience as being the reason of disinheriting them. The element not qualifying to disinheritance as such arising entitles the present applicants to the legal share of inheritance. This element of common sense liable to be applied that is otherwise called the judicial sense being found missing in the impugned orders; the said impugned orders cannot sustain. It is required on part of the Presiding Officer to not only apply the legal knowledge but also to apply reasoning so that judgments which are liable to be entertained in law are not violating common sense. For the forgiven reasons, these revision applications are accepted, the impugned orders are set aside and it is ordered that the gifts in the matter are liable to be set aside.

Matter stands **disposed of** in the above terms. Office is directed to place a signed copy of this order in the captioned connected revision applications.

Abdul Basit

J U D G E