

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

**R.A No.55 of 2008**

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Date

Order with signature of Judge  
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**Present: Mr. Justice Nazar Akbar**

**Applicant :** **Mst. Asma Khatoon**  
**through Mr. H. A. Rahmani, advocate.**

**Respondent No.1:** **Mohammad Ahmed (Deceased) through**  
**LRs.**

**Respondent No.2:** **Mst. Halima Ahmed both respondents**  
**No.1 & 2 through Mr. Khwaja Naveed**  
**Ahmed, Advocate.**

**Respondent No.3:** **Muhammad Aslam Shah Khan**  
**(None present).**

**Date of hearing :** **01.11.2016**

**Decided on :** **23.11.2016**

**JUDGMENT**

**NAZAR AKBAR, J:-** This revision is directed against the judgment dated **27.02.2008** whereby IInd Addl. District Judge, Karachi Central allowed Civil Appeal **No.34 of 2006**, filed by the respondents No.1 and 2 and reversed the judgment & decree dated **25.02.2006** and **06.03.2006** in Civil Suit **No.39/1993** passed by VIth Sr. Civil Judge, Karachi Central, in favour of the applicant.

2. Briefly stated the facts of the case are that the applicant entered into an agreement to sell dated **05.7.1983** with the father and attorney of respondent No.1 for the purchase of two adjacent shops on the ground floor of building constructed on Plot No.BS-31, Block-1, Federal B Area, Bazar-e-Faisal, Karachi for a total sale consideration of Rs.80,000/- free from all encumbrances, liens and charges. As per clause 4 of said sale agreement the said shops at the time of agreement were under the tenancy of Mulla Restaurant as such the said tenancy was attorned in favour of vendee/applicant. The said restaurant was being run by respondent No.1 and

subsequently by the father-in-law of respondent No.2. The agreed monthly rent was Rs.2,000/- only from October, 1983. Respondent No.3 had also given sub-power to respondent No.2. Respondent No.1 was the real uncle of applicant. The relation between respondent No.1 and mother of applicant were strained. Therefore, upon insistence of respondent No.2, the respondent No.3 paid a sum of Rs.200,000/- towards the rent for the period from October, 1983 to October, 1991. The Applicant in token of having received the amount signed a typed receipt brought by Respondent No.1. The power of attorney of Respondent No.1 was cancelled through publication and notice to said attorney. The father of respondent No.1 former attorney died in December, 1992 so applicant's husband visited respondent No.1 and asked him to arrange for a proper conveyance deed in favour of applicant. At that time he revealed that respondent No.2 has got the shops transferred in her name. Therefore, the applicant filed suit for Declaration/Cancellation/Possession/Injunction and Damages and prayed for judgment and decree as under:-

i. That the Hon'ble Court will be pleased to hold and declare that the alleged sale deed made by the defendant No.1 in favour of his wife defendant No.2 was done fraudulently, without knowledge, consent and approval of the plaintiff nor any sale consideration was received by her and therefore, the same is liable to be cancelled holding thereon that the right and interest of the plaintiff in and over the subject matter of the shops Nos.24 and 25 in Bazar-e-Faisal, situated on Plot of land bearing No.BS-31, in Block No.I, Federal B Area, Karachi stand in the plaintiff's name without any encumbrances thereon.

ia. That this Hon'ble Court may be pleased to hold and declare that the purported declaration of oral gift dated 24.12.1991 in respect of the aforesaid shop premises No.A-24 & A-25 purportedly in favour of defendant No.1(d) is illegal, unauthorized, invalid, void ab-initio and the same is liable to be ignored or alternatively it may be ordered to be cancelled and annulled with such consequent or other direction as this Hon'ble Court may deem just and proper.

ii. That the defendants in general and defendants No.1 and 2 in particular are restrained permanently from questioning the right, title and interest of the plaintiff in respect of the aforementioned shops or transferring or parting possession to someone else under the false sale made between themselves.

iii. The defendants No.1 and 2 are jointly and severally liable to pay compensation by way of damages for wrongful occupation of the shop @ Rs.500/- per day till delivery of the possession to the plaintiff.

iv. The defendants No.1 and 2 are liable to be removed from the shops premises and vacant possession delivered to the plaintiff.

v. That the defendant No.3 is called upon to execute the sale deed in favour of the plaintiff having received full consideration of the shops failing which the Nazir of this Court be authorized to execute the sale deed in favour of the plaintiff on behalf of the defendant No.3.

vi. To pass any other order or orders that may be conducive for the dispensation of justice.

vii. Award the cost of the suit against the defendant.

3. Respondents No.1 and 2 filed their joint written statement and contended that applicant is the daughter of elder brother of respondent No.1 who was partner of respondent No.1 in the business alongwith Mst. Nargis Bano and Mst. Sultana Begum. The partnership was dissolved on 15.4.1961. In 1977 respondent No.1 called the applicant, her brother Muhammad Abid and her mother Mst. Gulzar Begum at his house as the respondent No.1 had no issue and was going on long march in Religious Tehrik. At the time of sale agreement Muhammad Younus Shah Khan and his son Muhammad Aslam Shah Khan the owner/lessee of constructed plot No.SB-31, Block-I, Federal B Area, Karachi had no permission to execute the sub-lease, however, later on they got permission to execute sub-lease but they demanded additional amount of Rs.50,000/- for each shop to execute sub-lease. The respondent No.1 was running the Mulla

Restaurant. The father of applicant worked on commission in said restaurant. It was denied that agreed rent was Rs.2,000/- per month. Mst. Nargis Bano also purchased adjacent shop No.A-22 and A-23, Ground Flor, Bazar-e-Faisal, Karachi. The applicant purchased shops No.A-24 and A-25. Mst Nargis Bano was running Mulla Restaurant in all the four shop as proprietor. Later on its name was changed as New Mulla Restaurant. Mst. Nargis Bano was the sister of applicant's father and Mst. Nargis Banio before purchase of shop No.A-22 and A-23 was paying rent of all the four shops including No.A-24 and A-25 in the name of Mulla Restaurant at Rs.900/- per month. When Mst. Nargis Bano purchased the shops No.A-22 and A-23 then she was paying rent at Rs.450/- per month for shops No.A-24 and A-25. On 29.12.1979 Muhammad Abid brother of applicant and Mst. Nargis Bano entered into partnership in the firm new restaurant which was being run in the above four shops but on 30.6.1980 the partnership was dissolved in 1980 and Mst. Nargis Bano continued the business as proprietor of New Mulla Restaurant till 16.12.1991 when she sold the shops No.A-22 and A-23 to respondent No.2 and handed over possession of shop No.A-22, A-23, A-24 and A-25 to respondent No.2. Mst. Nargis Bano was tenant of shops No.A-24, A-25 at Rs.450/- per month. The applicant has not given any power of attorney to respondent No.1 so the question of cancellation does not arise. Respondent No.1 on 22.10.1991 paid to applicant as entire consideration for purchase of shops No.A-24 and A-25 Bazar-e-Faisal, Block-I, Federal B Area, Karachi and the applicant acknowledged the payment and executed the receipt dated 22.10.1991. Respondent No.1 was not tenant but New Mulla Restaurant was tenant and Mst. Nargis Bano was its proprietor. The rent of both the shops was Rs.450/- per month. Mst. Nargis Bano

sold shop No.A-22 and A-23 to respondent No.2. The possession of shops was with Mst. Nargis Bano who has handed over the possession to respondent No.2 as the guardian of her minor daughters Baby Sania Ahmed and Baby Seema Ahmed. The respondent No.1 as sub-attorney and with the consent of respondent No.2 by declaration of oral gift dated 24.12.1991 gifted the shops A-24 and A-25 Bazar-e-Faisal, Federal B Area, Karachi to Saima Ahmed minor daughter of respondent No.1 and Mst. Haleema Ahmed the respondent No.2 accepted the gift on her behalf. Similarly respondent No.1 as sub-attorney and with the consent of the respondent No.2 by declaration of oral gift dated 24.12.1991 gifted shops No.A-22 and A-23, Bazar-e-Faisal Federal B Area, Karachi to Seema Ahmed, minor daughter of respondent No.1 and Mst. Haleema Ahmed, respondent No.2 who accepted the gift on her behalf.

4. Respondent No.3 had also contested the matter by filing his written statement wherein he has submitted that as per terms and conditions of agreement the late father of respondent No.3 hold liability to bear all expenses of sub-lease and made several requests to transfer the same in her name but the applicant paid no interest in this respect. All the sale consideration in respect of the subject properties were paid by respondent No.1. All the bills of property tax, water tax, KMc bills and maintenance charges have been paid by respondent No.3 since 1983 and the applicant did to pay the same inspite of several requests made to him. Learned trial court from the pleadings of the parties framed the following issues:-

1. Whether the subject matter of shops No.24 & 25 have been sold by the plaintiff to defendant No.1 or 2, if not what is its effect??

2. Whether the agreed rent of shops No.A/24 and A/25 was Rs.450/- per month and not Rs.2,000/- per month?
3. Whether the defendant No.1 was tenant of shops No.A-24 and A-25?
4. Whether the receipt of Rs,2,00,000/- (Rupees tow Lacs only) is the receipt for sale consideration or the payment for accumulated rent?
5. Whether the possession of the shops in suit was handed over by the plaintiff to defendants No.1 or 2. If not whether the possession of defendants No.1 and 2 is illegal?
6. Whether the plaintiff is entitled to vacant possession from the defendant No.1 or 2?
7. Whether the purported declaration of oral gift dated 24.12.1991 of the suit premises in favour of defendant No.1(d) is illegal and void, if so its effect?
8. Whether the defendant No.3 is liable to execute the sale deed in favour of the plaintiff or not?
9. What should the decree be and against whom?

5. The applicant examined herself by filing her affidavit-in-evidence she had also filed several documents alongwith her affidavit-in-evidence. Respondent No.2 was also examined by filing her affidavit-in-evidence and the witnesses were cross examined.

6. The suit filed by the applicant was decreed and the appeal preferred by the respondents No.1 and 2 against the said order has been allowed by the appellate court and this Revision is directed against the said order of appellate Court.

7. I have heard learned counsel for the applicant and for respondents No.1 and 2. I have also perused the record.

8. Learned counsel for the applicant has challenged the impugned appellate order and contended that the order is devoid of any reasoning. It does not fulfill the requirement of order 20 Rule 4(2)

CPC and therefore, the impugned order of appellate court deserved to be set aside. The learned counsel for the respondent after going through the shortest possible order in an appeal has not been able to advance any ground to support the impugned judgment. It is so brief that it is worth reproduction hereunder:-

“To extract truth with good conscience the following questions/issues arose before this Court:-

Whether Plaintiff/Respondent No.1 filed a proper suit for specific performance against alleged Vendor/Respondent No.2 pursuant to Sale Agreement dated 05.7.1983 within the prescribed limitation?

Whether Respondent No.1 ever demanded rent or filed Rent proceedings against the alleged tenants in respect of shops in question?

On the basis of admitted record of the case and recorded evidence of the parties the answer of this Court is in negative against Respondents and in favour of Appellants. The appellants are in possession of title documents of the shops in question and they are in physical possession of the said shops and running business therein from day one.

The up shot of above discussion is that in the considered view of this Court the impugned Judgment and Decree are defective, not in consistence with the oral as well as documentary evidence of the parties available on the record/R&P. The learned trial Court has misread the evidence. Accordingly the impugned Judgment and Decree dated 25.2.2006 and 6.3.2006 passed in Civil Suit No.39 of 1993 are hereby set aside.”

9. The learned appellate Court has not advanced any reason at all nor referred to the evidence. The trial Court has framed 8 issues and discussed them in detail by referring to the documents. The appellate Court while reversing the same has not pointed out that on what basis the appellate Court has reached to the conclusion mentioned above. The judgment does not reflect application of judicial mind to the facts and record and is also devoid of any reasoning, therefore, it is set aside and the Civil Appeal No.34/2006 is remanded to the

Court of IInd Additional District Judge, Central Karachi for fresh decision in accordance with the requirement of Order 20 Rule 4(2) CPC. It is pertinent to mention here that several documents were produced by the parties which must have been exhibited, therefor, the appellate Court while appreciating the finding of trial Court shall refer to the evidence for concurring or reversing the finding of trial Court as the case may be. The appellate Court has the power to reappraise evidence. The parties are directed to appear before the appellate Court on **30.11.2016** positively and court motion notice shall not be issued. The appellate Court is directed to dispose of this appeal within 2 months on merit after proper hearing and in case no assistance is provided by the counsel within two months, the Court should examine and peruse the record decide the appeal through comprehensive judgment.

**J U D G E**

Karachi  
Dated: 23.11.2016.

Ayaz Gul