

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

**Suit No. 1450 of 2008**

**Ajaz Khan through  
Attorney Muhammad Akram ----- Plaintiff**

**Versus**

**Amjad Khan & another ----- Defendant**

**Suit No. 1245 of 2008**

**Amjad Khan ----- Plaintiff**

**Versus**

**Ajaz Khan & Others ----- Defendant**

**Date of hearing: 07-02-2017**

**Date of judgment: 21.03.2017**

**Plaintiff: Through Mr. Zaheerul Hassan Minhas  
Advocate.**

**Defendant: Through Mr. Shafi Muhammadi Advocate.**

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

**Muhammad Junaid Ghaffar, J.** These are two consolidated Suits wherein, two real brothers are in dispute regarding property bearing Plot No. 70, Sector 7-A, Korangi Township, Karachi. Suit No. 1245/2008 has been filed by one brother namely Amjad Khan against his another brother namely Ajaz Khan as well as brothers, sisters and mother, whereas, Suit No. 1450/2008 has been filed by Ajaz Khan against his brother Amjad Khan and his wife. The precise controversy amongst these brothers is in respect of the property in question. For convenience Mr. Ajaz Khan is being referred as **Plaintiff** hereinafter, whereas, Mr. Amjad Khan would be referred as **Defendant** hereinafter.

2. The Defendant has filed its Suit No. 1245/2008 for Declaration, Possession, Permanent Injunction, Cancellation and Damages and primarily he seeks cancellation of an alleged Gift Deed dated 11.11.1993 and the subsequent mutation of the property in question in favour of Plaintiff. The Plaintiff's case in his Suit bearing No. 1450/2008 is for Declaration, Possession and Mesne Profits and he primarily seeks a Declaration that he is the absolute owner of the property in question and further he seeks ejection of the Defendant from the portion of the property in question as the license and the permission granted to him stands expired.

3. It appears that the Plaintiff prior to these proceedings also filed a Suit bearing No. 1169/2007 against one Sultan Ahmed Khan and police officials for Declaration and Mandatory Injunction as according to the Plaintiff he was being dispossessed from the property in that Suit. The Defendant filed an application under Order 1 Rule 10 CPC and became a party; however, subsequently, the said Suit was withdrawn by the Plaintiff by filing an application under Order 23 Rule 1 CPC and vide order dated 04.03.2008 he was permitted to withdraw the Suit with the permission to file afresh. Through his Suit No. 1245/2008 the Defendant seeks the following relief(s):-

- “(a) Declare that the property in dispute always remained and is in possession of the Plaintiff. This possession was never parted by the Plaintiff and that, it could not be gifted to Defendant No. 1 on account of this legal and Islamic position that possession is the most important ingredient of gift and, thus, the so-called gift deed has no legal value.
- (b) Declare that the Defendant No. 1 had never been in possession of the property except the portion containing tannery machinery which was taken over by Defendant No. 1 by force on 20<sup>th</sup> July 2007 and was rented out to a stranger and another portion to a hired lady and her husband under the garb of status quo order dated 16<sup>th</sup> July 2007 issued by this Hon'ble court.
- (c) Declare that the so-called gift deed dated 11<sup>th</sup> November 1993 alleged to have been executed by Ch. Sardar Khan in favour of Defendant No. 1 is forged document having no sanctity, illegal, unlawful documents and is liable to be cancelled, so it be cancelled and decree of its cancellation may be passed.
- (d) Declare that mutation done by Defendant No. 8 on 19-05-2007 in favour of Defendant No. 1 is illegal, based on fraud and forgery and is also liable to be cancelled. Hence, it be cancelled and decree of its cancellation may be passed.
- (e) Declare that the portion taken over by force by Defendant No. 1 on 20<sup>th</sup> July 2007, in violation of the Court order dated 16.07-2007 and in possession of a tenant and a portion in possession of a hired lady and her husband are liable to be restored to the Plaintiff, and orders for restoration of possession to the Plaintiff.
- (f) For recovery of Rs. 20 Millions to Plaintiff as damages for assassinating the character of Plaintiff, loss of reputation, harassment mental torture against Defendant No. 1.

- (g) Grant permanent injunction by restraining Defendant No. 1, in particular and other blood related Defendants their agents, sons, employees and person (s) in general working on their behalf from transferring the portion of the property taken over by force under the garb of status-quo or creating third party interest in the suit property in any manner whatsoever.
- (h) Cost of the suit.
- (i) Any other relief(s) which deemed fit and proper by this Hon'ble Court."

4. Whereas, through Suit No. 1450/2008 the Plaintiff has sought the following relief(s):-

- (A) To Hold and Declare that Plaintiff is absolute, owner of the property in Industrial Plot No. 70, Sector 7-A, Korangi Township Karachi measuring 4833.33 square yards by virtue of registered documents mentioned in and attached with the memo of plaint.
- (B) To hold and declare that after revocation of license / permission by the Plaintiff; Defendants, or anybody acting in their name or on their behalf; have no right to occupy the two rooms measuring 8X12 feet situated in Industrial Plot No. 70, Sector 7-A, Korangi Township Karachi; or any part thereof.
- (C) To direct the Defendants or anybody acting in their name or on their behalf; to vacate the two rooms measuring 8X12 feet situated in Industrial Plot No. 70, Sector 7-A, Korangi Township Karachi occupied by the under the cover of Order dated 06-02-2008 passed in Suit No. 1169/2007 and handover the same to the Plaintiff;
- (D) To permanent restrain the Defendants, their employees, agents, attorneys or anybody acting on their behalf from illegally occupying the Suit property beyond NAZIR report or dispossessing the Plaintiff from the Suit Property or taking any action detrimental to proprietary rights of the Plaintiff or interfering with the title or possession or position of the property in any manner whatsoever.
- (E) To direct the Defendants to pay a sum of Rs. 50,000/- per month as mesne profits from 06-02-2008 till actual handing over of the possession of the Plaintiff.
- (F) Cost of the suit and any other relief which this Honourable Court deems fit in the circumstances is also solicited."

5. After filing of written statements and consolidation of both these Suits on 05.03.2010 the following issues are settled:-

- "1) Whether Suit No. 1450/2008 is not maintainable after the withdrawal of Suit No. 1169/2007?
- 2) Whether Defendant No. 1 had contributed any amount with his father Ch. Sardar Khan to purchase the Suit Property?

- 3) Whether Gift Deed in dispute had any legal status or has no legal value according to law of Shariat?
- 4) Whether Plaintiff in Suit No. 1450/2008 had always or ever been in possession of the Suit Property and whether Defendants had never been in possession of the Suit Property?
- 5) Whether the Plaintiff in Suit No. 1245/2008 has any right or interest in the Suit Property? If yes, then is he entitled to retain possession of the portion of Suit property or restoration of portion of the Suit property allegedly taken by force by Defendant No. 1?
- 6) Whether the Plaintiff in Suit No. 1450/2008 is entitled to claim mesne profits? If yes, what is the quantum of mesne profits?
- 7) Whether Plaintiff in Suit No. 1245/2008 is entitled to recovery any sum on account of damages as prayed by him?
- 8) Whether the parties in both Suits are entitled to their respective relief(s)?
- 9) Whether the Gift Deed in dispute is a forged document having no legal sanctity and is liable to be cancelled with decree of its cancellation to be passed by the Court?
- 10) Whether portion of the property in dispute with Defendant No. 1 in Suit No. 1450/2008 was taken over by him by force on 20<sup>th</sup> July 2007 under the garb of status-quo dated 16<sup>th</sup> July, 1977 in Suit No. 1169/2007?
- 11) Whether the mutation done by Defendant No. 8 on 19/5/2007 in favour of Defendant No. 1 in Suit No. 1245/2008 is illegal, based on fraud and forgery? If yes, what is its effect.
- 12) To what relief, if any, the parties are entitled to?"

6. Learned Counsel for the Plaintiff has contended that insofar as maintainability of Suit No. 1450 is concerned, such objection is misconceived for the reason that the Court through order dated 04.03.2008 while allowing the withdrawal of the Suit under Order 23 Rule 1 CPC categorically permitted the Plaintiff to file a fresh Suit. Therefore, per learned Counsel the objection so raised by the Defendant cannot be sustained. He has further contended that the property in question was purchased in the father's name out of the funds of the Plaintiff; and therefore, the deceased father in his lifetime gifted the same through a registered document to which all the legal heirs except the Defendant had consented. He has referred to the no objection given by all the legal heirs in favour of the Plaintiff. Per learned Counsel, the delay in mutating the property in question as contended on behalf of the Defendant is not fatal to the case of the Plaintiff for the reason that it was not required during such period. According to the leaned Counsel since a registered document exists in favour of the Plaintiff and the challenge to such registered document has gone unsuccessful; therefore, the Defendant has no case. Learned Counsel has also

referred to Nazir's report dated 19.07.2007 in Suit No. 1169/2007 and has contended that the possession was found to be with the Plaintiff, except certain portion of the plot in question, wherein, with the permission of the Plaintiff the Defendant and his workers were found in possession. He has also referred to affidavits filed by the other brothers and sisters wherein, it has been stated that the property in question was gifted by their father during his lifetime and possession was also handed over to the Plaintiff. Learned Counsel has also referred to the Gift Deed in question as well as subsequent mutation by KDA in favour of the Plaintiff and has prayed that Plaintiff's Suit be decreed, whereas, Suit of Defendant be dismissed.

7. On the other hand, learned Counsel for the Defendant has contended that instant Suit is barred in law as earlier the Plaintiff filed another Suit bearing No. 1169/2007 which was withdrawn under Order 23 Rule 1 CPC which requires an unconditional withdrawal, therefore, Suit No. 1450 is not maintainable. He has further submitted that moreover, the Suit was withdrawn without presence and permission of the Defendant and therefore, such withdrawal order with the permission to file a fresh Suit was not lawful; hence, Suit No.1450 is liable to be dismissed. Per learned Counsel the Nazir's report as above confirms that Defendant was in possession of the property in question and therefore, one of the most important and valid ingredients of a valid gift i.e. transfer of possession is not fully satisfied; hence, the Gift Deed in question is invalid. Learned Counsel has also referred to HCA No. 88/2008 which was filed against the order of withdrawal of Suit No. 1169/2007 with permission to file afresh and has contended that an order dated 18.02.2009 was passed in that Appeal which requires this Court to first decide as to whether the Suit of the Plaintiff is maintainable or not. For such proposition, he has relied upon the cases reported as *Mrs. Rafiqah Iqbal Ahmed and another V. Muhammad Ali Hyder (1984 CLC 2886)*, *Dr. Raza Muhammad Khan V. Principal Ayub Medical College Abbottabad and 3 others (2004 CLC 1511)*, *Muhammad Yousaf and another V. Additional District Judge, Attock and others (1992 MLD 856)*, *Muhammad Musa Ansari and another V. Gul Sahib Jan Khattak and others (1993 CLC 1776)*, *Ahmad Din and 3 other V. Town Committee, Dipalpur (1972 SCMR 205)* and *Nazir Mooraj V. Muhammad Sultan Khan (PLD 1966 Karachi 356)*. Per learned Counsel according to the Plaintiff's case the alleged Gift Deed was registered in the year 1993, whereas, the alleged mutation was affected somewhere in 2007 which does not prove the bonafides of the Plaintiff. He has contended that all these documents are forged and manipulated, whereas, the property in question still belongs to the deceased father and there was no contribution of the Plaintiff insofar as the purchase of the property and running of the family business is concerned. According to the learned Counsel, the three ingredients of a valid gift are missing, whereas, the Defendant has been shown in possession as reflected

in the Nazir report. He has further contended that the Plaintiff rests its case on the No objection allegedly given by the other legal heirs and submits that the property was mutated on 29.05.2007, whereas, the alleged no objection certificates were given or executed on 23.06.2007. Per learned Counsel even if any gift was executed by the late father, there is no justification on record either in the pleadings or in the evidence that as to why it was suppressed till the year 2007 when mutation was affected. Learned Counsel has also relied upon the cases reported as *Sher Muhammad and 2 others V. The State (PLD 2001 SC 540)*, *Muhammad Aslam V. Muhammad Zafar and 2 others (PLD 1992 SC 1)*, *Muhammad Hussain and others V. Dr. Zahoor Alam (2010 SCMR 286)*, *Riaz Hussain and others V. Muhammad Akbar and others (2003 SCMR 181)*, *Haji Muhammad Jan V. Mst. Bibi Nosha and others (2011 YLR 82)*, *Ghulam Haider V. Ghulam Rasool and others (2003 SCMR 1289)*, *Sultan Ahmed Siddiqui and 12 others V. Province of Sindh and 3 others (2012 CLC 154)* and *Muhammad Shafi & 2 others V. Mst. Walayat Begum (PLD 1987 AJ&K 85)*.

8. I have heard both the learned Counsel and perused the record as well as the evidence so led on behalf of the parties. My issue wise findings are as under:-

ISSUE NO. 1.

9. Insofar as the issue regarding maintainability of the Suit of Plaintiff bearing No. 1450 is concerned, it appears that prior to this Suit the Plaintiff had filed Suit No. 1169/2007 against one Sultan Ahmed Khan and others wherein, subsequently the present Defendant and others were also joined. Subsequently, the Plaintiff filed CMA No. 1711/2008 under Order 23 Rule 1 CPC and vide order dated 04.03.2008 the Plaintiff was permitted to withdraw his Suit with a permission to file a fresh one. The order reads as under:-

“Mr. Zaheer Minhas, Advocate wants to withdraw this Suit as he wants to file a fresh one. He is allowed to file a fresh Suit, if he so desires. The Suit is dismissed as withdrawn. The Application is granted. However, the Order dated 6.2.2008 passed by my learned brother Nadeem Azhar Siddiqui, J., in respect of Defendant No. 4 and his workers shall remain intact.”

Though while passing the aforesaid order the Suit was permitted to be withdrawn with a permission to file a fresh one; however, the order dated 06.02.2008 passed in the Suit whereby, the Defendant was protected with his possession as reported by the Nazir while inspecting the Suit plot was kept intact which perhaps, in view of withdrawal and dismissal of the Suit was not appropriate and was neither required. Nonetheless, since a categorical order was passed by permitting withdrawal of the Suit along with a

permission to file a fresh one, I am of the view that the present Suit bearing No. 1450 is very much maintainable and cannot be dismissed on this ground. Moreover, the Defendant had also filed an Appeal against the said order but was unsuccessful and the Appeal was withdrawn with permission to agitate this aspect as an issue in the present proceedings. Accordingly, issue No. 1 is answered in negative.

ISSUE NO. 3, 9 & 11

10. All these issues are interlinked and are taken up together as they relate to the core dispute between the parties i.e. Gift Deed in question. It appears to be an admitted position that the property in question was admittedly owned by the late father on the basis of a Conveyance Deed dated 09.07.1983 executed in his favour by M/s Siddique Said Limited through its Managing Director Mohammad Siddique Jan. To that extent there appears to be no dispute; however, the Plaintiff's claim is that the same was gifted by the father on 16.05.1993 by way of pronouncement of Oral Gift, out of love and affection and Gift Deed was duly executed on 11.11.1993 in presence of witnesses namely Saleem Ahmed Siddique and Abid Baig, whereas, the Deed was duly registered. Thereafter, the property in question has been mutated in favour of the Plaintiff pursuant to the said registered Gift Deed on 29.05.2007. The Defendant has challenged the alleged Gift Deed on various grounds including but not limited to the fact that possession was never handed over to the Plaintiff. The other ground is that the mutation was allegedly affected after lapse of almost 14 years in the year 2007.

Since a challenge has been made to the alleged Gift Deed, I am of the view that the burden shifted on the Plaintiff to prove and satisfy that there was a valid Gift executed by the late father in the year 1993 who remained alive till 1998, whereas, the mutation was affected in the year 2007 and not during his lifetime. It further appears that though the Plaintiff has claimed that possession was also handed over to him on 16.05.1993 when the Oral Gift was made, however, for the first time in the year 2007 he filed a Suit bearing No. 1169/2007 against one alleged land grabber and various officials and obtained a status quo order and also sought inspection of the property in question. It is to be noted that it has come on record that when Suit No.1169/2007 was filed the Defendant was out of country. On 18.07.2007 the Nazir in compliance of the order of this Court dated 16.07.2007 carried out the inspection and submitted his report. The relevant portion reads as under:-

- "3) The plot bearing No. 70-A, Sector No. 7-A, Korangi Township, Karachi is measuring about 4833.33 Square Yards and bounded with boundary walls and has only one access through main iron gate where a board fixed under the name and style of "SAMJAD" was affixed. In the said plot one shed having approximately 1600 Square Yards measurement situated on

Northern side where machines of **Tannery Plant is fixed which was found old and rusty and is not in working condition.** Inside the said shed bags of Volcanic Ash were also lying there which were imported by the Plaintiff **as informed by Plaintiff.** In one portion of said shed there were approximately 150 Sheep Wool Bales were lying. **On enquiry the Plaintiff informed that he has imported from abroad.**

- 4) In-front of shed, there is a small Office Block. In one small room there were sewing machines lying. Nobody was present in that room. Adjacent to said room, there was another room where the Manager of the Plaintiff sits for booking, but at the time inspection, he was not present in his office/said room. Adjacent to said manager room, there is another room where the one Office Table and Computer were lying there.
- 5) Along with the main gate, on the left side there was a small room measuring about 8' X 12' having two portions, in room three persons were busy in sewing clothes. In other portion there were two persons and on young boy who was busy in making Leather Bags which Plaintiff informed that they are working for his brother Amjad Ali Khan to whom he has allowed to use this portion to work without any consideration. On the right side of the plot in question there is a Chowkidar room where the Chowkidars of Plaintiff were present." (Emphasis supplied wherever needed)

11. Perusal of the aforesaid report reflects that the entire facts narrated by the Nazir are either at the pointation of the Plaintiff or are attributed towards him; however, the report reflects that at least the entire possession of the Suit plot was not with the Plaintiff. In fact the Defendant through its workers was also found in joint possession. It further appears that thereafter, the Defendant being aggrieved by such status quo order in the Suit contended before the Court that on the basis of such order he is being dispossessed, and on 06.02.2008 an order was passed by the Court on the basis of Nazir's report and the relevant findings reads as under:-

"From the perusal of Nazir report it appears that at the factory premises signboard has been fixed under the name and style of SAMJAD. It also appears that some workers of the Defendant No. 4 are working in the said factory from which it can be said that in the day of inspection the Defendant No. 4 was found in possession of a portion of the premises and under the garb of status quo order he and his workers cannot be stopped to enter into the premises.

In view of the above position, I direct the Plaintiff not to restrain the Defendant No. 4 and his workers from entering into the factory premises."

12. The aforesaid position clearly reflects that insofar as the possession is concerned, the same was not with the Plaintiff exclusively, whereas, the Defendant was also found in possession. Though the Plaintiff has claimed in the plaint as well as in the evidence that such possession of the Defendant was on the basis of a license / permission which stands



expired; and therefore, the Defendant be ejected. However, nothing has been substantially brought on record so as to suggest that Defendant's possession was as a licensee. No independent witness has been examined to that effect including the Chowkidar or anyone else through whom the Plaintiff was claiming the exclusive possession of the property in question. Time and again it has been the case of the Plaintiff that the property in question was in his possession, but none of the Security Guards or Chowkidars was examined to support such contention. In his cross examination the plaintiffs' Attorney says that "**There was one chowkidar of the Plaintiff on the suit plot and his name Imraze Khan. I can produce the said Imraze Khan in support of my contention. It is incorrect to suggest that neither I can produce the said chowkidar nor there was any chowkidar of this name**". This piece of evidence does not support the plaintiff's case as no effort was made to examine the guards or chowkidars. Therefore, the most important ingredient of handing over possession of the property through the Gift Deed appears to be lacking.

13. It further appears that the Plaintiff has also relied upon certain No objections as well as affidavits given by the other brothers, sisters and mother in his favour. However, on perusal thereof, it reflects that the property in question was mutated on 29.05.2007 on the basis of alleged Gift Deed dated 11.11.1993, whereas, the No objection certificate is dated 23.06.2007 i.e. subsequent to the alleged mutation, hence of no help. It further appears that none of them have come forward to lead any evidence in support of the Plaintiff, whereas, admittedly they reside out of Pakistan and therefore, the No objection certificates which have also been notarized in Pakistan cannot be admitted as a valid piece of evidence. It further appears that the Plaintiff himself has failed to come in the witness box, and has led his evidence through an attorney who is also holding Power of Attorneys from other brothers and sisters and then again the said Power of Attorneys are merely notarized by a solicitor in United Kingdom and none of them is attested by the respective Consulate General or the High Commission of Pakistan in U.K. In the circumstances, the Court cannot exclusively consider either the No objection certificates or the Power of Attorneys on the basis of which the Plaintiff seeks support of his other brothers and sisters vis-à-vis. the Gift Deed in question. It has also come on record through Plaintiff's evidence that when the alleged No Objections were given and signed, the executants were not in Karachi, whereas, the discrepancy of dates in the mutation and the No Objection Certificate has been admitted by the plaintiff's witness when he responds that "**It is correct that the legal heirs have stated in Ex.P/11 that they had said and subscribe their hands at Karachi on 23.06.2007 but they were not present on the said date in Karachi.** Voluntarily says that all the legal heirs have been permanently settled in London and they have sent the NOC from London. It is correct that the Plaintiff was given No Objection to get the property mutated in his name". He again says that "**I see the Ex. P/10 according to which mutation of registered of**

**gift deed was done on 29.05.2007. The date of NOC of the legal heirs is 23.06.2007**". He again responds that "**It is correct that the documents regarding No objection of legal heirs contained the word at Karachi on this 23.06.2007. It is correct that on the said these legal heirs who had signed this document were not in Karachi but they were in London**".

14. The plaintiffs entire case rests on the Gift Deed which according to the plaintiff is a registered document, hence must be accepted as it has a sanctity attached to it. Notwithstanding that this argument is fallacious and misconceived, even otherwise the plaintiff never made any effort to prove the Gift Deed as a valid piece of evidence as required under the Qanoon-e-Shahadat Order, 1984, more specifically as required under Article 79 *ibid*, which provides that if a document is required by law to be attested, it shall not be used as evidence until two attesting witnesses at least have been called for the purpose of proving its execution, if there be two attesting witnesses alive, and subject to the process of the Court and capable of giving evidence. Since the document i.e. the Gift Deed is under challenge, it was incumbent upon the Plaintiff to prove it through evidence of the attesting witnesses and nothing prevented the plaintiff to do so, as the law also caters for a situation to enforce their attendance through Courts. The Plaintiff's Attorney in his cross examination states that "**I see the gift deed which mentioning the name of the witness as Saleem Ahmed Siddique and Abid Beg. Voluntarily says Saleem Ahmed Siddique is an advocate who prepared the gift deed in dispute. I cannot point out the address of the witness on the gift deed**". This again demolishes the case of Plaintiff, instead of any support.

15. Merely for the fact that the alleged Gift Deed is a registered document by itself is not enough to discharge the burden which lay on the plaintiff. The plaintiff is otherwise required to prove the same in accordance with the mandate of law. It is not that everything which is registered, and on the basis of which even if a mutation is found in the records of the Revenue Authorities, must be invariably accepted as correct without passing the litmus test of proving the same as provided in law. It is settled proposition of law, that a registered document by itself without being proved as to its execution and the authenticity of the transaction covered by it would not *ipso facto* confer any right or title if the same is under challenge. The Hon'ble Supreme Court in the case of ***Abdul Majeed v. Muhammad Subhan*** (**1999 SCMR 1245**) has been pleased to observe as under;

11. "The Learned Counsel further argued that the registered sale-deed, mutation and Revenue Record are admissible in evidence and as the plea of the appellant finds support from all these documents, therefore, the High Court was not correct in discarding them. He referred to several cases to support his viewpoint. This is a sweeping and very wide argument and it is not so that everything which finds mention in the registered deed or Revenue Record must invariably be accepted without proof of their execution, genuineness and authenticity. It is axiomatic principle of law that a registered deed by itself, without proof of the

execution and the genuineness of the transaction covered by it, would not confer any right. Similarly, a mutation although acted upon in Revenue Record, would not by its own force be sufficient to prove the genuineness of the transaction to which it purports unless the genuineness of the transaction is proved. There is no cavil with the proposition that these documents being part of public record are admissible in evidence but they by their own force would not prove the genuineness and execution of that to which they relate unless the transaction covered by them is substantiated from independent and reliable source. Admissibility is to be distinguished from proof required by law for determining the execution and genuineness of document.....”

16. Similarly, the Hon’ble Supreme Court in the case of ***Rab Nawaz and others V. Ghulam Rasool (2014 SCMR 1181)***, while dealing a case on a more or less similar factual plane has been pleased to observe as follows:

9. Another reason militating against the validity of the gift is want of delivery of possession. The respondent made contradictory statements in this behalf. In the first instance while being examined-in-chief he stated that delivery of possession of the subject-matter of gift coincided with its declaration but in cross examination he changed his stance by stating that he has been in possession of the subject matter of the gift even before it. He made another somersault in his cross examination by stating that the sons and grandsons of the donor were occupying the property in their capacity as tenants. If, it was so, the evidence of adornment should have been brought on the record but that too is missing. Since the gift was challenged, the burden of proof lay on the donee to prove that all the essentials of the gift were fulfilled. The respondent with this quality of evidence cannot be said to have discharged this burden when one of the essentials of gift was not proved on the record. Therefore, we are constrained to hold that no valid gift was ever made in favour of the respondent. We, thus, don’t feel inclined to maintain the impugned finding. (Emphasis supplied)

17. In nutshell the evidence led by the Plaintiff is neither confidence inspiring, nor impressive enough so as to believe the plaintiff’s version. The witness has given contradictory and evasive answers and has not been able to discharge his burden regarding the validity of the Gift which after challenge by the Defendant lay on him. The Plaintiff was required to satisfy the Court in this regard and so also to discharge the burden that Gift was validly made by the father during his lifetime to the exclusion of defendant and other legal heirs, notwithstanding the fact that the father remained alive for more than 4 years after executing the alleged Gift Deed, he did not transferred the Suit Property in favor of the plaintiff in his lifetime.

It has also been argued as well as pleaded that it was the plaintiff’s money out of which the Suit property was purchased as the Plaintiff used to reside abroad, hence was transferred through a Gift. However, neither it has come on record by the Plaintiff’s evidence that the property in question was a Benami in his late father’s name nor any document has been brought on record to substantiate that he had any ownership in the business being carried on by the late father on the Suit plot. Again in his cross

examination the plaintiff's attorney states that "**Apparently there was no role of the Plaintiff in the partnership but it was family business in which the Plaintiff has its own role in spite of being minor. It is correct to suggest that I cannot produce the document relating to Income Tax, Sales Tax and all other Taxes, paid by the Plaintiff in respect of his business done by him after the death of his father from the property dispute but I can produce the same on the next date of hearing.** In the circumstances, I have not been able to convince myself that the Gift Deed in question was validly executed and therefore, the subsequent mutation in KDA record also cannot be sustained. Therefore, issue No. 3 is answered by holding that the Gift Deed has no legal effect or value and is a void document, whereas, issue No. 9 is answered in the affirmative by holding that the Gift Deed stands cancelled and similarly Issue No. 11 is answered in the affirmative and the effect is that there is no mutation on record which shall be deemed to be cancelled.

**ISSUE NO. 2, 4, 5, 6, 7, 8, AND 10**

18. In view of the findings with regard to issues No. 3, 9 and 11 as above, issue No. 2, 4, 5, 6, 7, 8, and 10 are not required to be answered.

**ISSUE NO. 12**

19. In view of hereinabove facts and circumstances of this case and the findings so recorded above, Suit No. 1450/2008 stands dismissed, whereas, Suit No. 1245/2008 is decreed to the extent of prayer clauses "c" and "d" with consequential benefits arising out therein. The Gift Deed is held not to be a valid Gift; therefore, the mutation dated 29.5.2007 stands cancelled as decreed hereinabove.

20. Suit No.1450/2008 is dismissed and Suit No.1245 of 2008 is decreed as above.

Dated: 21.03.2017

ARSHAD/

J U D G E