

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

SUIT NO. 195 / 2013

DATE	ORDER WITH SIGNATURE OF JUDGE
------	-------------------------------

- 1) For hearing of CMA No. 1933/2013.
- 2) For hearing of CMA No. 7488/2013.
- 3) For hearing of CMA No. 7489/2013.
- 4) For hearing of CMA No. 8408/2013.
- 5) For hearing of CMA No. 8409/2014.
- 6) For hearing of CMA No. 584/2015.
- 7) For Ex-parte orders against Defendant No. 3.

27.04.2018.

Mr. Murtaza Wahab Advocate for Plaintiffs No. 3.
Plaintiff No.2 Hassan-uz-Zaman Iqbal Chisti in person.
Mr. Muhammad Akbar Advocate for Plaintiff No. 4.
Mr. Khawaja Shamsul Islam Advocate for Defendant No. 1.
Mr. Asif Rasheed Advocate for DHA.

This Suit has been filed for Cancellation of registered Gift Deed dated 21.12.2012, executed by the deceased Plaintiff Mrs. Suriya Iqbal Chishti in favour of Defendant No.1 Rubina Majidulla, who is her daughter. During pendency of these proceedings and after passing of a restraining order, not to create any third party interest, the then Plaintiff mother, has expired and now the three Plaintiffs as well as the Defendant No.1 are parties to the Suit in their capacity as legal heirs, whereas, the claim of Defendant No.1, being recipient of the Gift is also in field. The legal heirs were brought on record vide Order dated 13.03.2015, wherein, this fact has been recorded by the Court. This matter is pending since 2013, whereas, mostly on account of deceased Plaintiff and now the present Plaintiffs, the matter has not been finally proceeded and in fact there is also a change of stance amongst the Plaintiffs itself. Considering the facts as above, on 20.04.2018, the following order was passed:-

“To the proposal of the Counsel for Defendant No. 1 as well as Plaintiffs No. 1 & 2 that during pendency of these proceedings let the property in question be sold out and the sale proceeds be retained by the Nazir of this Court till pendency of this Suit, learned Counsel for Plaintiff No. 4 requests for time to seek instructions from his client. He is directed to come prepared with instructions otherwise, the property would be attached.

To come up on 27.04.2018. Interim order passed earlier to continue till the next date.”

Today, Counsel for Plaintiff No.4 submits that his instructions are to the effect that no consent can be given either for selling out the property in question or for attachment as the said Plaintiff is in possession and cannot be thrown out. He further submits that this is not a Suit for Administration nor for partition, and therefore, no such orders could be passed. Similarly Plaintiff No.2, husband of the deceased and father of Defendant No.1 is present in person and he has taken altogether a summersault by contending that he is owner of the property, and therefore, no orders could be passed nor he could be compelled to vacate the same. As to the Plaintiff No.3 and Defendant No.1, their joint stance is that without prejudice to the pendency of this Suit, since now all parties are legal heirs of the deceased, the property in question be sold and the amount be invested by the Nazir in some profit bearing instrument for its ultimate distribution.

I have heard all the learned Counsel as well as Plaintiff No.2 and perused the record. At the very outset, I had confronted the Plaintiff No.2 as well as Counsel for Plaintiff No.4 that as to why they are not agreeable to the proposal of Plaintiff No.3 and Defendant No.1 as this is the maximum they could now get out of these proceedings; as even if the Suit is decreed as prayed, the property in question would vest in the deceased mother and all legal heirs would be entitled to their shares according to Shariah. The stance taken by both these Plaintiffs is that they are in possession, and therefore, they ought not to be

dispossessed. I am afraid such line of arguments being misconceived cannot be appreciated by this Court as a balance has to be created. It is not in dispute that both of them are in possession to the exclusion of two other legal heirs i.e. Plaintiff No.3 and Defendant No.1. They are in an advantageous position as compared to these two other legal heirs, but this cannot be continued any more by this Court. Though this Suit was initially for cancellation of the Gift Deed, however, after demise of their mother, as stated, the maximum which now they can get is their share as per sharia only. The original Plaintiff is no more alive, whereas, the contents of the Plaint itself reflects that the allegation is not to the effect that the gift was not executed and registered by the deceased Plaintiff; but is only to the effect that she was coerced in transferring the property through Gift Deed to the exclusion of his two other sons. There is nothing more in the Plaint as to the non-validity of the Gift itself. In fact the Defendant No.1 is in possession of an instrument of Gift duly registered; and rather balance of convenience lies in her favour, but even then she has conceded, without prejudice, for selling of the property and investment of the amount with the Nazir of this Court.

In view of hereinabove facts and circumstances of this case, I am of the view that a balance has to be maintained and none of the legal heirs should be put into an advantageous position. Whereas, it may further be observed that insofar as Defendant No.1 is concerned, her share is not at all in dispute or is rather undisputed even by conduct and inheritance right of the Plaintiffs. She is the real daughter and such fact is not in denied; rather in Para-2 of the Plaint, it is stated "*that Defendant No.1 is the daughter of the Plaintiff and in that regard one of the legal heirs to the Plaintiff's property*". In fact it is the other way round as the claim and share of the Plaintiffs is still in dispute in view

of the existence of the Gift Deed, therefore, a Preliminary Decree must be passed in this matter.

In the circumstances, let a preliminary decree be passed in terms of Order XX Rule 18(2) CPC by appointing the Nazir as Administrator in respect of the property in question with the mandate to carry out the sale of the property firstly through private sale amongst the parties, if so desired, and if not, then through open auction subject to Rules, whereafter, the share to the extent of Defendant No.1, as per sharia be paid, and remaining share of other legal heirs be invested in some Government profit bearing instrument until further orders.

Nazir's Fees is tentatively fixed as per rules which shall be payable by all the parties to the extent of their respective shares. Such amount is to be paid out from the sale proceeds subsequently. However, publication charges and other costs are to be paid in advance by all according to their share.

Office is directed to prepare preliminary decree under Order XX Rule 18(2) CPC in the above terms. In view of above order, all listed applications stands disposed of.

J U D G E

Ayaz