

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Suit No.828 of 2017

Order with signature of Judge(s)

1. For orders on CMA No.12477/2017 (u/o VII Rule 11)
2. For hearing of CMA No.5229/2017 (u/o XXXIX Rules 1 & 2)
3. For orders on CMA No.887/2018 (u/o XXXIX Rules 1 & 2)

13.08.2018

Mr. S. Khizar Asker Zaidi, Advocate for the plaintiff
Mr. Bashir Ahmed, Advocate for defendants

1. The listed application (CMA No.12477 of 2017) has already been dismissed as not pressed vide order dated 19.09.2017.

2. The controversy in the matter pertains to ground floor and 3rd floor of a building constructed on Plot No.92, Keamari Township, Karachi, which the plaintiff claimed to have acquired through a Lease Deed reproduced at Page 15, which in material part on Page-17, provides that Mst. Zubaida Khanum widow of late Abdul Lateef was entitled to the said property through a declaration of Gift Deed dated 13.05.1968, a copy of the said gift deed is reproduced at Page-69 of the Written Statement filed by the counsel for the defendants, where the plaintiff has failed to produce the same alongwith the plaint.

Learned counsel for the plaintiff submits that having acquired title through the said gift deed, Mst. Zubaida Khanum by way of oral gift, which was later recorded into a registered document, a copy of which is available between Pages 45 to 47, gifted both these premises to the plaintiff, who admittedly was never put to possession of any of those properties. Through the instant application a prayer was made that the defendant No.1 be restrained to receive the monthly rent from defendant No.2 in respect of the ground floor premises. Worthwhile mentioning is the fact that the premises at 3rd floor have been in possession of the defendant No.1 all these times.

Learned counsel for defendant No.1 vehemently challenged the very legitimacy of the documents and in particular where it is contended by the

counsel for the plaintiff that the plaintiff's mother acquired title of the property through a gift deed, which is reproduced at Page-69 of the written statement, he read the contents of the said gift deed and said that while the document is dated 13.05.1968, the transfer letter mentioned bearing No.KYC12900 is dated 13.08.1968, which is subsequent to the date of the instant agreement thereby creating doubts as to the very legitimacy of the instant instrument.

Be that as it may, per counsel, the essential ingredient of very gift is the transfer of possession from donor to donee, which admittedly having not taken place, thus making the very gift deed void and unenforceable. He submits that infact the defendant No.1 who was married to the elder brother of the plaintiff had received 3rd floor by way of verbal family settlement after her husband's death and ground floor by way of a sale agreement, which are attached herewith. He submits that after the death of her late husband the plaintiff who apparently enjoys some influential position was able to engineer these documents. One can also not ignore the fact that lease deed reproduced at page-15 dated 22.06.2015 through Paragraph(i) at Page-19 attempts to sanction, renewal/transfer of the subject property for a period of 25 years from 13.05.1993 to 12.05.2018 only on 22.06.2015. Be that as it may, even that tenure has lapsed on 13.05.2018. He also draws Court's attention to Page 407, which is an application made under Section 15(2) of Sindh Rented Premises Ordinance, 1979 in R.C No.175 of 1985, where son of Haji Ghulam Muhammad the alleged donor sought eviction of Ghulam Muhammad, late husband of the defendant No.1 from the premises in question on account of delays in payments of rent as well as subletting. Per counsel, that matter was compromised, which led to a sale agreement between the parties dated 16.04.1992, a copy of which is reproduced at page 45 of the written statement. He further submits that the said defendant has filed the suit for Specific Performance of that agreement, which is pending before the VIth Senior Civil Judge, Karachi West bearing Suit

No.1117 of 2015. As a matter of fact in which proceedings the plaintiff has also been joined as a party.

Important factor that cannot be ignored is that the plaintiff while seeking a declaration in this case has not made the authority i.e. Karachi Port Trust (KPT) as a party, which would be custodian of all the records relating to the property in question, which deficiency was noted by the counsel for the plaintiff, who sought time to add KPT as well as Federation as party. Time is granted.

Residual effect of the above is that the plaintiff in my humble opinion has failed to convince this Court that he has any *prima facie* title in the property in question as the alleged gift document has so many doubts attached to it, no balance of inconvenience in his favour as he was never in possession of the properties nor will suffer irreparable losses. Thus failing all ingredients of Order XXXIX Rule 1 and 2 CPC. To the contrary, the defendant No.1, who has always been in possession of these properties as well as receiving rental proceeds of the property at ground floor but however vide this Court's order 07.04.2017 was restrained from receiving rents. Per counsel, this is a case of extreme hardship as she is a widow and survives on the rental income, making it to me a fit case of hardship and particularly when the case of the plaintiff has shadows of doubts on numerous accounts, I therefore dismiss the instant application under Order XXXIX Rule 1 & 2 and direct the Nazir to handover all the sums of rent deposited with him to defendant No.1 within seven days as well as direct that in future defendant No.2 to pay rentals to the defendant No.1.

3. Becomes infructuous in wake of above.

JUDGE