

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Suit No.1456 of 2006

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

Plaintiff : Sabira Khatoon,
Through Mr. Qamar Ahmed Shaikh,
advocate.

Defendant No.1 : Fateh Muhammad
Defendant No.2 : Anwer Muhammad
Defendant No.3 : Muhammad Iqbal
Defendant No.4 : Muhammad Siddiqs
Defendant No.5 : Muhammad Younus
Defendant No.6 : Nisar Ahmed
Through Syed Abdul Rauf, advocate.

Date of hearing : 22.11.2017

Decided on : 05.12.2017

JUDGMENT

NAZAR AKBAR, J. Plaintiff had filed this suit for partition, permanent injunction and cancellation of documents.

2. Brief facts of the case are that Plaintiff and defendants are the daughter and sons of Haji Ahmed Dawood and his wife Mst. Amina Khatoon who died on **02.2.2006**, and **31.7.2006** respectively. Beside the plaintiff and defendants, their deceased parents were also survived by four daughters namely (i) Mst. Rabia Khatoon (ii) Mst. Salama Khatoon (iii) Mst. Badrun (iv) Mst. Rubina. The plaintiff claimed that at the time of death of Haji Ahmed and Amina Khatoon, they left two immoveable properties namely:-

- 1) House No.D-224, Block-4, Federal "B" Area, Karachi Scheme NO.16.
- 2) Plot No.G/1, Survey No.121, Sheet No.01-6, Old Survey No.A-2/6, Old Town Quarters, Karachi.

After some time from the death of her parents the plaintiff came to know that the defendants have illegally, unauthorisedly managed and fabricated forged documents, and on the basis of the same they are going to sell or transfer or dispose of or usurp the above said heritage of the deceased father and mother of the parties. Therefore, she lodged complaint before the various competent authorities and finally sent a legal notice, dated **23.8.2006**, to the defendants, wherein she claimed her share by inheritance in the properties left behind by her parents. Instead of replying the legal notice or acting according to law of inheritance and doing any lawful, the defendants started harassing and threatening the plaintiff for dire consequence.

3. The Plaintiff further averred that as per disclosures by the defendants the said properties were gifted to them by the parents. The first gift deed between Ahmed Dawood and Fateh and other in respect of House No.D-224, Block-4, Federal "B" Area, Karachi Scheme No.16, was registered at Sr. No.06 dated 01.01.2005, M.F Roll No.3480 dated 24.01.2005 and the second gift between Mrs. Amina Bai and Fateh Muhammad and others in respect of Plot No.G/1, Survey No.121, Sheet No.01-6, Old Survey No.A-2/6, Old Town Quarters, Karachi was registered at Sr.No.5344 on 31.12.2004 and M.F Roll No.U-2206/2264 dated 14.01.2005 with Sub-Registrar T-Division I-B, Karachi. It is averred that the gifts deeds were obtained by use of force upon late Haji Ahmed, father of the parties, who received injuries on the internal parts of the body. It is also urged that there is no concept of 'Aaq' in Law and the defendants got published such bogus Aaqnama in the newspaper dated **04.02.2005** in Qaumi Akhbar and dated **06.02.2005** in daily newspaper as per cutting filed. Learned

counsel for the plaintiff contends that these gifts deeds have been obtained by the defendants on the basis of fraud, misrepresentation of facts under pressure or any other illegal way and therefore, these are forged and fabricated documents which are liable to be cancelled. Therefore, plaintiff is left with no alternative but to approach this Hon'ble Court.

4. Defendants filed their written statement wherein they took preliminary legal objections that the suit is not maintainable in terms of Sections 42, 54, 56 and 39 of Specific Relief Act, and plaintiff has no locus standi, legal character and legal right vested to file the present suit and plaint is liable to be rejected under Order VII Rule 11 CPC. The defendants have denied all the claim of the plaintiff. It is urged that parents of the parties gifted the property to the defendants and such deed were duly registered. However, after written statement was filed, the plaintiff moved an application for amendment of the pleadings and his application under Order VI Rule 17 CPC (CMA # 2825/2007) along-with two other applications viz; application under Order XXXIX Rule 1 & 2 CPC (CMA # 8465/2006) and an application under Order VII Rule 11 CPC (CMA # No.2295/2017) were listed for hearing on 24.11.2008. The case was also listed for framing of **issues** on the same date. This Court disposed of the three applications and treated the suit as suit for partition in respect of the estate left by the deceased parents Haji Ahmed and Mst. Amina Khatoon on **24.11.2008** passed the following orders. The relevant part of the order is reproduced as under:-

The perusal of the pleadings' reveals that the suit pertaining to the administration, partition is sought in the property, preliminary decree is ordered to be drawn under Order 21 Rule 13 CPC consequent thereof the Nazir is directed to record the evidence of the parties for

final adjudication of the dispute within four months and submit his report. Nazir's fee is fixed at Rs.10,000/-, which shall be borne by the parties equally. Orders accordingly. Till such time final decree is drawn, the parties are restrained from creating any third party interest in the disputed property.

5. Pursuant to the above order, a preliminary decree dated 29.11.2008 was prepared, which is available on record and evidence was recorded by the Nazir. From 10.2.2012 both the learned counsel for the parties have been raising a question that evidence was recoded without framing of issues. Nazir after holding an inquiry as required in terms of preliminary decree under Order XX Rule 13 CPC did not point out any dispute. However, he submitted the evidence recorded by him, therefore, both the parties claimed that issue has to determine. In view of the circumstances, after perusing record and going through the pleadings, by consent of both the parties following sole issue was framed on **22.11.2017** and the arguments were also heard.

Whether the gift deeds executed by the parents in favour of the defendants was forged, fabricated and executed under duress or under pressure and, therefore, the same were not valid gift deeds?

6. The burden of proof of the sole issue was on the plaintiff to establish that how the gift deeds executed by the deceased parents were executed by them under duress and pressure. Plaintiff in her evidence has failed to establish any of the grounds advanced by her in her plaint or affidavit-in-evidence. Learned counsel for the plaintiff has contended that at the time of execution of gift deed the parents of the plaintiff and the defendants were suffering from serious illness and they were on bed but no evidence is on record to support his contention. Learned counsel for the plaintiff further stated that there had been a dispute between plaintiff and her

parents therefore, they had persuaded her parents to publish **Aaqnama** in newspaper dated 4.2.2005 in Qaumi Akhbar, and by pronouncing of Aaqnama Plaintiff cannot be excluded from inheritance, therefore, plaintiff is also entitled for the share in the property of her deceased parent.

7. In rebuttal the defendants counsel argued that the gift deed were executed at the time when both parents were in perfect health, fully conscious and capable understanding whatever they were doing. In this context he has referred to the date of execution of gift deeds and the dates of death of the executants. The first Gift Deed (Ex.D/1/1) was executed on **01.1.2005** and 2nd Gift Deed was executed on **31.12.2004** (Ex.D-1/1-A). The executants of first Gift Deed (Ex.D-1/1) Ahmed Dawood had died on **2.2.2006** and the Executant of 2nd Gift Deed (DW-1/A) namely Mst. Amna Khatoon had died on **31.7.2006**. Therefore, they were in their full senses at the time of gift. He has further contended that it was not only the plaintiff and defendants, the Donors, (Haji Ahmed Dawood and Mst. Amna Khatoon) were also survived by four others daughters namely Mst. Rabia Khatoon, Mst. Salma Khatoon, Mst. Badrun Khatoon and Mst. Rubina Khatoon. Had the Gift Deeds been executed under pressure or without freewill of the executants the other four daughters should have also claimed their share in the said two properties. One of the sisters Mst. Rabia Khatoon, had appeared in the witness box. She was the eldest daughter and she was upset with the frivolous litigation in the family. She has voluntarily requested the Court to appear in the witness box out of turn on account of her old age. She was even subjected to the cross-examination by the counsel to the plaintiff and she has fully corroborated the execution of the gift deeds without any coercion

and pressure. The Sub-Registrar Saddar Town and Sub-Registrar Gulberg Town had appeared in the witness box to testify that the executions of the two different gift deeds in respect of the 2 different properties was proper and lawful and duly recorded in their office. They have also supported execution of documents on the basis of record. Both the Gift deeds bears even the signature of the witnesses. Learned counsel for the plaintiff has not been able to refer any piece of evidence that supports the possibility of use of undue influence or coercion to acquire gift of the suit properties. Therefore, sole issue in this case is answered in **negative**. Consequently the suit is dismissed.

J U D G E

Karachi,
Dated: 05.12.2017

SM