

IN THE HIGH COURT OF SINDH AT KARACHI**Suit No. 1768 of 2015****Liaquat Mohiuddin ----- Plaintiff****Versus****Inayat Mohiuddin & others ----- Defendants****Date of hearing: 06.12.2017.****Date of judgment: 22.12.2017.****Plaintiff: Through Mr. S. Hassan Ali Advocate.****Defendants: Through Izhar Alam Farooqui Advocate.****J U D G M E N T**

Muhammad Junaid Ghaffar, J. This is a Suit for Cancellation of Documents, Declaration and Permanent Injunction and precisely, the Plaintiff seeks Cancellation of Gift Deed dated 9.7.2013 and the Gift Mutation / Transfer of the property dated 8.10.2013 in the record of Defendant No. ("Society"). The Plaintiff claims to be owner of a House constructed on Plot No.A-196/1, Block 8, Karachi Administration Employees Cooperative Housing Society Limited, Karachi (Suit property). It is stated that when the Plaintiff in connection with some important matter paid a visit to the office of Defendant No.2, he was informed that the Suit property has been mutated / transferred on 8.10.2013 in the name of Defendant No.1 (his son) on the basis of impugned Gift Deed dated 9.7.2013. On this the Defendant No.2's office was requested to explain as to how such a mutation has been affected, but such request

was declined however, a copy of Gift / Mutation was provided to him. Thereafter, the Plaintiff found that the title documents of the Suit property are missing and then the Plaintiff obtained a certified copy from the office of Micro Filming Unit Registration Department. It is the case of the Plaintiff that the Gift Deed is a result of fraud and based on deceptive methods adopted by Defendant No. 1 hence, instant Suit.

2. After issuance of summons written statements were filed and the following issues were settled on 30.01.2017:-

- “1) Whether the Plaintiff has not executed the Gift Deed dated 09.07.2013?
- 2) Whether the mutation was effected lawfully in the record of Karachi Administration Employees Housing Society?
- 3) What should the decree be?”

3. Evidence was recorded through commission. The Plaintiff led its evidence through attorney as PW-1 namely Firasat Mohiuddin and so also PW-2 Mst. Farhat Fatima, PW-3 Mst. Nusrat Fatima and PW-4 Mst. Rahat Khanum whereas, Defendant No. 1 led his evidence by entering into the witness box.

4. Learned Counsel for the Plaintiff has contended that all along the Plaintiff remained in possession, therefore, the Gift was never complete; that there exists no justifiable reason for the Plaintiff to Gift the property in question to one of his sons excluding the others; that the tax of the property as well as utility bills are being paid by the Plaintiff; that all the witnesses have come before the Court and have denied the execution of any such Gift; that there is no question of any love and affection for which the Gift could have been made in this manner; that the Defendant has failed to lead the evidence through attesting witnesses of the Gift Deed and therefore, its authenticity is doubtful as if it was never

executed; that the onus shifted to the Defendant to prove his case; that the Plaintiff who is alleged to have executed the Gift Deed has filed instant Suit by himself and therefore, the averments of the Plaintiff are to be put on a higher pedestal. In support he has relied upon ***Abdul Rehman V. Mst. Majeedan Bibi @ Majeedan (2017 SCMR 1110), Mst. Nagina Begum V. Mst. Tahzim Akhtar and others (2009 SCMR 623), Muhammad Ejaz and 2 others V. Mst. Khalida Awan and another (2010 SCMR 342), Khaliqdad Khan and others V. Mst. Zeenat Khatoon and others (2010 SCMR 1370), Mian Ghayassuddin and others V. Mst. Hidayatun Nisa and others (2011 SCMR 803), Noor Muhammad and others V. Mst. Azmat-e-Bibi (2012 SCMR 1373), Allah Ditta and other V. Manak @ Muhammad Siddique and others (2017 SCMR 402), Rahim ullah and 8 others V. Muhammad Siddique and 9 others (2011 CLC 275), Mst. Zeenat Bibi V. Muhammad Younus and others (2011 YLR 1789), Mst. Mughlani Bibi and others V. Muhammad Mansha and others(2012 CLC 1651), Muhammad Akram Khan V. Muhammad Iqbal Khan and 4 others (2012 CLC 1690), Mst. Hameedan Bibi and another V. Muhammad Sharif (2017 YLR 399), Isfiaan Haider V. Muhammad Hussain and 2 others (2017 CLC 352), Habibullah Khan and another V. Mst. Bibi Amina and 2 others (2017 CLC 458) and Mst. Inayatun Rehman through L.Rs. and others V. Mst. Anwaar Saeed Begum and 7 others (2017 YLR 2406).***

5. On the other hand, Learned Counsel for the Defendant No.1 has contended that the Plaintiff has failed to come into the witness box to lead his own evidence; that he is still available and therefore, the evidence of PWs is hearsay and cannot be relied upon; that the PWs have not led any evidence which could be termed as confidence inspiring,

rather they have shown ignorance in respect of very basics facts; that the property in question was always owned by the Defendant No.1 who himself had earlier gifted the same to his father, and thereafter, the father has returned the same through Gift under challenge; that the witnesses who have come before this Court are all interested witnesses as they are legal heirs of the Plaintiff and have stated before the Court that they want their share from the property; that PW-3 was put a specific question who has clearly stated that no fraud is alleged against Defendant No.1; that the objection of possession is also misconceived as the Plaintiff is the father and was always permitted to remain in the property by Defendant No. 1 and out of love and affection he was also permitted to collect rent; that the allotment order from the very beginning was issued by Defendant No. 2 in the name of Defendant No. 1; that the construction was carried out and receipts have also been annexed; that the Plaintiff has not been able to justify as to how he owned the property as it was admittedly gifted by Defendant No. 1.

6. I have heard both the learned Counsel and perused the record including the evidence led by the parties. The facts have already been briefly discussed and precisely the case of the Plaintiff is that no Gift was ever made to Defendant No. 1 and it has been prayed for cancellation of the alleged Gift Deed dated 09.07.2013. The Plaintiff has also prayed that the mutation recorded with Defendant No. 2 on the basis of such Gift Deed may also be cancelled. However, the Plaintiff has not made any effort to call any witness from the Defendant No. 2 so as to suggest that no Gift was ever executed nor mutation was recorded. It further appears that the Plaintiff has not come into the witness box to say that he never gifted the property in question. Though he is an old man but it has not been explained as to why no effort was made to get his evidence recorded

through commission if so, warranted. The first witness who is the attorney of the Plaintiff i.e. PW-1 *Firasat Mohiuddin* (another son) has come into the witness box and to a question he has replied that, *“It is correct to suggest that the Plaintiff had not spoken false and he has not come in the witness box. Therefore, I have taken the Power of Attorney.”* He has further replied to a question that, *“The plot in question was purchased by my father. The original document of the Suit plot is with my father. The document of the Suit plot is in the name of my father since beginning. It is correct to suggest that I have not filed any documents of the plot in question with the affidavit in evidence as well as plaint.”* To another question he says that, *“It is correct to suggest that the loan was taken of the Suit plot from HBFC and on the basis of the loan the construction was made of the Suit plot. The loan of the HBFC was taken by the Plaintiff in his name. It is incorrect to suggest that the loan of HBFC was taken by the Defendant No. 1 and the plot in question is also in the name of the Defendant No. 1.”* After having said so, again a question was put to him and he says that *“I do not know who get the loan from the HBFC and the approved of the building plan is in the name of the Defendant No. 1 granted by the Karachi Building Control Authority.”* Again he was put a question and he says that, *“I do not know the Defendant No. 1 had gifted the Suit property to the Plaintiff. It is correct to suggest that the Defendant No. 1 gifted the Suit plot to my father and my father has gifted the Suit plot to the Defendant No. 1. It is incorrect to suggest that I am residing the Suit plot / building since long. It is correct to suggest that my father Plaintiff is member of the Managing Committee of the Society since long and mutation of the Suit property was completed by the Defendant / Plaintiff in favour of the Defendant No. 1. It is correct to suggest that the Gift Deed was executed in the office of the Sub-Registrar East. It is correct to suggest that the property in question is in the name of the Defendant No. 1. **The present Suit was filed for the share of the other legal heirs.”***

7. After going through the above evidence led by PW-1 as an attorney of the Plaintiff, it appears that the attorney of the Plaintiff is not aware either of the facts of the case or has not gone through the contents of the plaint. He has come in the witness box as an attorney of the Plaintiff and he is supposed to know what the Plaintiff has stated in the plaint and orally informed him to tell the Court as his attorney. However, the entire evidence reproduced hereinabove reflects that time and again he has given contradictory answers. Once he says that the property was owned by the Plaintiff and at the same time he confirms that the property was gifted by Defendant No. 1 to his father who has then gifted the Suit plot to Defendant No. 1. He then says that present Suit was filed for the share of other legal heirs, whereas, the Plaintiff in his plaint has not averred a single word to that effect. In fact the Plaintiff could not have come to the Court for seeking share of legal heirs or his other children.

8. Similarly, PW-2 Mst. Farhat Fatima (Daughter) has also entered the witness box and has also stated that we want the share of all the legal heirs, whereas, she has further stated that, *"She has come to know that the Suit property is in the name of the Defendant No. 1."* Similarly, PW-3 Mst. Nusrat Fatima (Daughter) has also said that *"present Suit is filed by my father without consent with me and other legal heirs. The Suit is filed for the share of all the legal heirs from the Suit property."* Similarly, Mst. Rahat Khanum the second wife of the Plaintiff while replying to a question has said that, *"I do not know whether the Gift Deed filed by the Plaintiff is false and who filed it. The preset case was filed for the share of the other legal heirs. It is incorrect to suggest that the plot in question was purchased by the Plaintiff. It is correct to suggest that the loan was taken by the Defendant No. 1 from HBFC."* She has further stated that, *"the plot in question is in the name of the Defendant No. 1."* She again says that, *"It is correct to suggest that the Plaintiff and the*

Defendant No. 1 were residing in the Suit property before my marriage. They never shifted from the Suit property. It is correct to suggest that I filed affidavit in evidence for the share of all the legal heirs. My husband used to walk and he is fit but he is weak. My husband (Plaintiff) can come to the Court for evidence but it will be difficult to climb the chair.” Again she replies that, *“I do not know whether any fraud was committed by the Defendant No. 1 for execution of the Gift Deed”*. She has also stated that I recognize the signatures of my husband on the Gift Deed.

An overall perusal of the evidence led on behalf of the Plaintiff clearly suggest that all have come before the Court as sons and daughters of the Plaintiff to claim their share in the property as legal heirs. Their primary object is nothing but their share. However, all of them have failed to lead any evidence to suggest that Plaintiff never executed the Gift Deed or it was a case of any fraud. The Plaintiff was not brought for evidence as according to Defendant No. 1 if he had come in the witness box, he would tell the truth and nothing else. Moreover, in such cases it is but necessary for the Plaintiff to come into the witness box and prove his claim as it is in respect of a document which apparently was executed by him, whereas, no fraud of whatsoever nature has been alleged on behalf of the Plaintiff. The Plaintiff also failed to bring any witness from Defendant No. 2 to suggest that no proper Gift was executed and the mutation was also a fraud. This could have been easily managed by the Plaintiff who admittedly remained an active Managing Committee Member of Defendant No.2. The record of Defendant No.2, if brought on record through a witness would have definitely supported the Plaintiffs case, if it were to be believed as true. This was never done whereas, even otherwise, the Plaintiff admittedly remained a member of the Defendant No. 2 Society and it is very difficult to believe that any fraud could have been committed in the record of the Society where he

was a member of the committee for so long. Moreover, it is admitted in the evidence that the plot was purchased by the Defendant No. 1, loan was obtained and construction was raised and was gifted by Defendant No. 1 to his father who in turn after passage of time returned the same to Defendant No. 1 through impugned Gift Deed. The Plaintiff's witnesses have admitted this fact in the cross examination. This leaves nothing more to decide. The evidence so led on behalf of the Plaintiff is neither confidence inspiring nor credible enough to grant any relief as prayed. The case law relied upon on behalf of the plaintiff is of no help due to peculiar facts of this case. The plea of not handing over possession to Defendant No.1, so as to complete the gift is also not convincing as firstly no evidence to that effect has come forward, on the contrary one of the witnesses has confirmed that they plaintiff and Defendant No.1 used to live jointly in the Suit property. Notwithstanding, it is the case of Defendant No.1 that he allowed his old father to live in the Suit property voluntarily.

9. In view of the above discussion, the issues are answered in the following terms:-

<u>ISSUE NO. 1</u>	Negative.
<u>ISSUE NO. 2</u>	Affirmative.
<u>ISSUE NO. 3</u>	Suit dismissed.

10. Accordingly, the Plaintiff's Suit is dismissed; however, with no orders as to cost.

Dated: 22.12.2017

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