

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Suit No.768 of 2016

DATE

ORDER WITH SIGNATURE OF JUDGE

1. For orders on CMA No.3429/17.
2. For hearing of CMA No.12960/17.
3. For hearing of CMA No.12961/17.
4. For hearing of CMA No.11963/16.
5. For hearing of CMA No.5143/16.

25.01.2018

Mr. Abdul Qadir Mirza, Advocate for Plaintiff.
 Mr. Zia Ahmed Awan, Advocate for Defendant No.1.
 Mr. Jaffar Raza, Advocate for Intervenor.
 Mr. Abdullah Munshi, Advocate for Defendant No.6.

5. Through this application under Order 39 Rules 1 & 2 CPC, the Plaintiff seeks restraining order against Defendants particularly Defendant No.1 from transferring or alienating properties bearing (i) Plot No.20-A, Sunset Street, Phase-II-Extn., DHA, Karachi measuring 2000 Sq. Yds. with construction of Basement & Double Storey Bungalow thereon, situated in Pakistan Defence Officers Housing Authority, Karachi and (ii) Office bearing No.05/17 (509) measuring 560 Sq. Ft. Kashif Centre, situated on main Shahrah-e-Faisal, Karachi.

Learned Counsel for the Plaintiff submits that through instant Suit, the Plaintiff has challenged and impugned two purported Gift Deeds and mutation/transfer of the properties in question as according to the learned Counsel the same were never executed by the deceased father of the Plaintiff in favour of Defendant No.1 (second wife / step mother of plaintiff) and these are forged and fabricated documents. Learned Counsel has referred to a Settlement Document dated 27.03.2016, which according to the learned Counsel was agreed upon between the parties for distribution of the estate of the deceased father but while signing the same, the Plaintiff had reserved his right to claim his legal share in any other asset of the deceased. He submits that the properties still belong to the deceased father and Plaintiff is entitled for his share. Learned Counsel has referred to Sale Agreement dated 21.01.2016 entered into by Defendant No.1 with some buyers and submits that the signatures of the deceased father as a witness is completely different from the signatures on the alleged Gift Deed, and therefore, this establishes the fraud committed by

Defendant No.1, whereas, a private forensic report also support this stance. He further submits that his father never disclosed any such Gift, which even otherwise he could not have made to the exclusion of other legal heirs including the Plaintiff. He also submits that even the official departments including Military Estate Office and Cantonment Board have connived with Defendant No.1 in entertaining the Gift Deed and transfer of the property in question. In support he has relied upon **1999 SCMR 1245** (*Abdul Majeed and 6 others v. Muhammad Subhan and 2 others*), **2006 SCMR 1144** (*Abdul Ghafoor and others v. Mukhtar Ahmad Khan and others*), **PLD 1950 Peshawar 45** (*Sardar Ahmed Khan and others v. Mst. Zamroot Jan*) and **2002 YLR 1320** (*Muhammad Iqbal and 9 others v. Muhammad Rafique*)

Learned Counsel for Defendant No.1 submits that the transfers have been affected by DHA, Military Estate Office and Cantonment Board and they follow a very strict and stringent method for affecting a transfer, and therefore the Plaintiff's allegations are false. Learned Counsel has referred to Para-167 of the Muhammadan Law and submit that a registered Gift Deed is in existence and same cannot be revoked in a manner as contended on behalf of the Plaintiff. He further submits that neither Registrar concerned has been made a party nor a notice has been issued to the Cantonment Board, and therefore, instant Suit is otherwise incompetent. He further submits that the Plaintiff was not in good terms with the deceased father, who was annoyed during his life time and had, therefore, gifted the properties in question, whereas, instant proceedings have been brought to black mail with malafide intentions and to extort money. In support he has relied upon **2016 YLR 2087** (*Farida Gul Agha and others v. Saeeda Bano Ahmed and others*) and **AIR 1964 Rajistan 250** (*Mahboob Khan and others v. Hakim Abdul Rahim*)

Counsel for Defendant No.2, who is grandmother of Plaintiff submits that Defendant No.2 is entitled for her share according to Shariah as and when the estate is distributed. He further submits that the Defendant No.2 has not been given her share as per settlement reached between the parties.

Learned Counsel for Cantonment Board submits that they have affected transfer including DHA and Military Estate Office on the basis of proper Gift Deed and documents, which were presented with these authorities and therefore the allegation that they have connived with Defendant No.1 and her deceased husband is baseless and without any supporting material on record. He has further referred to Para-167 of the Muhammadan Law and submits that till such time the Gift Deed is revoked, the Donee is entitled to enjoy all rights in the

property. He has relied upon (1919) ILR 41 Allahabad 534 (Tabeya Bibi v. Wali Bandi Bibi), 50 IC 919 (Musammat Wali Bandi Bibi v. Misammat Tabeya Bibi), (1924) ILR 46 Allahabad 260 (Mulani v. Maula Baksh), 78 IC 222 (Mulani v. Maula Baksh), and PLD 1977 Lahore 1347 (Muhammad Akram v. Kaka).

I have heard all the learned Counsel and perused the record. As discussed hereinabove, this is a Suit, whereby, the Plaintiff seeks cancellation of the instrument of declaration of Oral Gift dated 30.06.2015 and the consequent transfer of the Suit properties in favour of Defendant No.1 by the deceased father of the Plaintiff and husband of Defendant No.1. It is the case of the Plaintiff that in the Settlement Agreement these two properties have been purposely left out by the step mother of the Plaintiff and while acknowledging the settlement, the Plaintiff had reserved its right for his share as a Legal Heir in the estate of the deceased father, which is not part of the Settlement Agreement. However, to this I had confronted the learned Counsel that as to whether at the time of Settlement Agreement, the Plaintiff was in knowledge that his deceased father owned two Suit Properties, to which the learned Counsel answered in the affirmative. When the Settlement Agreement and its acknowledgment are perused, it appears that the Plaintiff has not specifically stated the description of these two properties though according to the learned Counsel it was within the knowledge of the Plaintiff that these two properties were owned by the deceased. The objection, if any, is generalized in nature and it does not appeal to a prudent mind that when a person is entering into a Settlement in respect of various assets and properties of his deceased father, why at that time, there was no specific mention of these properties. This creates a serious doubt on the bonafides of the Plaintiff.

Learned Counsel has also submitted that the deceased father was a sick person as he had Alzheimer disease and therefore both these purported Gifts were obtained forcibly or with forged signatures. Learned Counsel was confronted to refer to any medical history of the Plaintiff's father to that effect, to which again the learned Counsel was unable to refer to any document on record.

The alleged Gift Deed in respect of Property No.(i) has been duly executed and registered before the concerned Registrar much prior in date and at the relevant time the deceased father was alive. All along it has been in the knowledge of the Plaintiff that his father owned this property as well (until he gifted the same). After execution of the Gift Deed, proper mutation has been

affected in the records of DHA, Military Estate Office and Cantonment Board, whereas, it is an admitted position that these authorities execute transfers after having followed a very strict procedure, which also includes presence of the parties i.e. Donor and the Donee. At this stage of the proceedings, since there is no contrary material on record, it cannot be presumed that the Gift Deed in respect of Property No.(i) is forged and fabricated as evidence is yet to be led by the parties. On mere assertion of the Plaintiff no restraining orders could be passed when the Plaintiff has failed to bring on record any supporting material.

Insofar as, the second property is concerned, the same as per record was mutated in the name of Defendant No.1 somewhere in 2013. Counsel for the Cantonment Board has affirmed that such transfer was affected in the record on the basis of oral declaration of Gift and they stand by to such transfer. Again nothing has been brought on record so as to suggest that the said property was not gifted by the deceased father of the Plaintiff to his wife/Defendant No.1.

Since this is only an injunctive stage, and any conclusive finding as to the current status of the Gift and the enjoyment of property by defendant No.1, may affect the case of the parties at trial, therefore, I have not discussed and dilated upon the provisions of Para 167 of the Muhammadan Law, otherwise, the same also yields in favor of defendant No.1 at this stage of the proceedings. Notwithstanding, this is a case, where the evidence has to be led as the Plaintiff has not been able to come before the Court with any cogent and justifiable reason not to permit Defendant No.1 to enjoy the benefit of a Gift Deed.

Insofar as the case law relied upon by the learned Counsel for the Plaintiff is concerned, it may be observed that this is only the stage of injunction, whereas, two Judgments of the Honourable Supreme Court as relied upon are in respect of a case, wherein, evidence had already been led by the parties. In the instant matter, the Plaintiff has not been able to fulfill three ingredients for getting a favourable injunction i.e. prima-facie, balance of convenience and irreparable loss.

In view of such circumstances, in the earlier part of the day, I had dismissed the application listed at Serial No.5, and these are the reasons thereof.

J U D G E

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