

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Civil Revision Application No.63 of 2018

Date Order with signature of Judge

Present: Mr. Justice Nazar Akbar

Applicant No.1 : Sohail-ur-Rehman
Applicant No.2 : Jawaid-ur-Rehman
Applicant No.3 : Mst. Faiza Begum
Applicant No.4 : Mst. Kehkashan
 Mr. Syd Abdul Waheed, advocate.

Versus

Respondent No.1 : Mst. Yasmeen Begum (present in person).
Respondent No.2 : Salman Ahmed.
Respondent No.3 : Usman-ur-Rehman.
Respondent No.4 : Kamran-ur-Rehman.
Respondent No.5 : Mst. Sadia Begum.

Respondent No.6 : The Deputy Director Land KMC.
Respondent No.7 : The Sub Registrar "E" Division.

Date of hearing : **24.12.2018**

Date of judgment : **10.01.2019**

JUDGMENT

NAZAR AKBAR, J:- This Revision Application is directed against the concurrent findings. The III-Senior Civil Judge, Central Karachi by Order dated **25.7.2016** allowed an application under **Order VII Rule 11 CPC** filed by Respondents No.1 to 5 in Civil Suit No.323/2015 and on an appeal No.132/2016 preferred by the applicants the VI-Additional District Judge, Central Karachi by judgment dated **10.4.2018** has also dismissed appeal and the findings of the trial Court has been maintained.

2. To be very precise, the facts of the case are that applicants have filed Civil Suit for declaration, permanent injunction, partition

and cancellation of documents against the Respondents stating therein that Mst. Fatima Bai (mother of applicants) was an owner of House No.65/23 "B" Area Liaquatabad Karachi (the suit property). The father of applicants had died in the year **1964**. Their mother Fatima Bai had been living in the suit property with her children namely the present applicants and late Nawab-ur-Rehman (husband of Respondent No.1 and father of Respondents No.2 to 5). On **22.5.1995** said Fatima Bai also died and on **12.5.2002** Nawab-ur-Rehman (brother of the applicants) has also died. It was averred that widow of Nawab-ur-Rehman, (Respondent No.1) filed **SMA No.508/2004** and obtained Letter of Administration in respect of the suit property on the ground the same was gifted to the deceased by Mst. Ftima Bai. The applicants claim that the gift as well as SMA has been fraudulently obtained by Respondent No.1, therefore, the applicants have filed the said suit for cancellation of gift deed and other instruments.

3. Respondent No.1, after service of notice, filed her written statement wherein she denied all the allegations. She also filed an application under **Order VII Rule 11 CPC** for rejection of plaint on the ground that the suit filed by the applicants was hopelessly time barred. The said application was contested by the applicants and ultimately, after hearing both the parties, the said application was allowed by the trial Court by Order dated **25.7.2016** and the plaint was rejected with observations that suit appears to be barred by law of limitation. Applicants preferred civil appeal No. **132/2016** challenging the Order of rejection of plaint before VI-Additional District Judge, Central Karachi. Their appeal was also dismissed by judgment dated **10.04.2018**. Therefore, the applicants have preferred

the instant Revision Application against concurrent dismissal of their suit by the two Courts.

5. I have heard learned counsel for the applicants and perused the record as well as written arguments submitted by the respective parties.

6. Learned counsel for the applicants in brief arguments submitted in writing has challenged the gift deed in respect of the suit property from various dimensions and prayed to declare it as null and void. The respondents have also supplied copy of their comprehensive written statement/objection to civil revision application in which each and every detail of previous litigation between the same parties have been mentioned. The counsel for the applicants has not even mentioned the litigation between their step brother and the respondent in which they were also party from day one and it has been contested upto Supreme Court. The applicants in their Suit No. **323 of 2015** after 32 years have challenged a registered gift deed which was executed in the year **1982** whereby the suit property was transferred to Nawab-ur-Rehman. The said gift deed was registered in presence of applicant No. 2 namely Jawaid-ur-Rehman, who has signed the same as witness before the Sub-Registrar at the time of registration of gift deed. The said gift deed was first challenged by one Fazl-ur-Rehman, step brother of the applicant in the Suit No. **976/2006** and all the present applicants were also party in the said suit. The gift deed dated **15.09.1982** executed by Mst. Fatima Bai in favour of Nawab-ur-Rehman in presence of applicant No.2 was the subject matter of the said suit. The suit was dismissed, though the appeal against the dismissal of the suit bearing **Civil Appeal No. 81/2007** was allowed, but the said

order in appeal was challenged by the present respondents in Civil **Revision Application No.57/2009** before this Court. In that Civil Revision, the present applicants were also party as Respondents No. 10 to 14 and the said revision application was allowed where the judgment and decree of dismissal of suit No. **972/2006** was restored and appellate order was set aside. An appeal was preferred against the decision in the Revision Application No. **57/2009** before Hon'ble Supreme Court bearing Civil Petition for Leave to Appeal No. **540-K of 2015**, which was dismissed by order dated **09.09.2016**. The present applicants were aware of the fact that the gift deed dated **15.09.1982** was executed by the real owner of the suit property in favour of the predecessor in interest of the respondents. However, the need to file frivolous suit in 2015 was badly felt by the present applicants when the respondents/owner of the suit property namely the respondents No. 1 to 5 filed suit No. **242/2014** for recovery of possession of suit property, mesne profit and permanent injunction against the applicants. **Suit No.242/2014** has been decreed against the applicants. The applicants, during the proceedings of suit No.**242/2014**, have filed suit No. **323/2015** repeating the same prayer which was prayer in Suit No. **976/2006** filed by one of their step brother Fazl-ur-Rehman. All the above facts are available on record which have been disputed by the applicants.

7. In view of the above facts, the decision of the two Courts dismissing the suit of the plaintiff not only on account of being hopelessly time barred but also on the ground of Res-judicata does not call for any interference, therefore, the instant Revision Application is dismissed.

Karachi
Dated:10.01.2019
Ayaz Gul/P.A

JUDGE