

**ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

R.A.No. 122 of 2014

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on CMA 826/2017.
2. For hearing of CMA 1207/2017.
3. For hearing of main case.

28.02.2019.

Ms. Musrat Shaheen, Advocate for applicant.

Mr. Shamsuddin Memon, Advocate for respondent No.1.

Mr. Wali Muhammad Jamari, Assistant A.G.

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Mr. Amir Ali Memon, states that since he has been superseded by Mr. Muhammad Hanif Shaikh, therefore, his name be deleted from the file cover. Order accordingly.

Despite two opportunities, the counsel for the applicant states that she is still not prepared to proceed with her case. Learned counsel for the respondent No.1 states that on the basis of an unregistered declaration of gift deed, the applicant is continuously enjoying possession of the lower portion of respondent's house whereas the appellate court in a very mythological manner, after considering the evidence, reached to the conclusion that the alleged gift was a fraudulent and void document, hence the question of limitation did not arise, thus the suit dismissed by the trial Court on the point of limitation was not so barred by law, and in this regard placed reliance on the case reported as 1986 SCMR 1238.

In view of the above, there appears no reasonable ground to differ from the findings given by the learned appellate Court where the

appellate Court recorded the following reasons to reach to a just conclusion:-

” The record shows that the respondent No.01 during cross-examination admitted that the appellant is an illiterate lady. The alleged declaration of gift deed is produced at Exh.70 and it appears that the same does not mention the names of witnesses in whose presence the appellant had allegedly gifted the suit property and executed the alleged declaration of gift deed does not mention the NIC number of appellant nor the appellant is identified by any of her nor or close relative. It appears that the appellant is identified by Mr. Anis-ur-Rehman Advocate. It further appears that the respondent of this case has neither summoned nor examined said identified or appellant Mr. anis-ur-Rehman Advocate. The witness namely Muhammad Ashraf examined by the respondent No.01 that he is not witness of alleged gift. The D.W Muhammad Rafique during cross-examination admitted that he is giving evidence on the instruction of respondent No.01. This clearly suggest that he had no personal knowledge of the case but has deposed at the instruction and instance of respondent No.01, hence the evidence of this witness cannot be considered as trustworthy. The respondent No.01 during cross-examination admitted that her mother had not sent notice to tenants regarding alleged gift. The respondent No.1 has also admitted that the appellant had got faith upon her. She denied that she and Mr. Anis-ur-Rehman advocate brought stamp paper typed in English and got signature of appellant on the pretext of execution of power of attorney. She admitted that the appellant is household lady and is uneducated. She deposed that she did not remember the names of witnesses of alleged gift. She has admitted that her mother file written statement in F.C.S. No.332 of 1993 which was written in English. She denied that the said written statement was prepared at her instructions. She is admitted that plaintiff/appellant is in possession of suit property. This clearly suggest that the possession of suit property was not physical handed over to the respondent No.01, hence in my humble view the alleged gift remained incomplete on this score also. She admitted that she is residing at Karachi. She has admitted her mother had lodged FIR against her.

From the material available on record it appears that the appellant is a household lady and illiterate and uneducated lady. It appears that the alleged gift deed does not show the prior to obtained signature of appellant on alleged gift deed the contents of the same were read over and explained to her in the language which she understood. It further appears that the appellant/donor was also not identified by any of her close or near relative nor any attesting witnesses is mentioned in the alleged gift deed.

In a case law reported in **AIR 1925 PC-204**

“It has been observed that the parties to prove the state of the sellers mind or the parties who setup and rely on the deed. They must satisfied the court that the deed in his plaint to and understood by the parties thus under disability either before execution or after it under circumstances

which establish adoption of it with full knowledge and comprehension.

In another case law reported in **2002 CLC Lahore Page 1102** the Honourable High Court of Lahore has been pleased to observe as follows:-

“It is admitted fact that Mst. Mukhtiaran Bibi was parda-nasheen and illiterate lady who had allegedly executed power of attorney and agreement of sale in favour of the petitioner. It is settled law that whereas document is allegedly executed by illiterate person / Parda-observing lady the beneficiaries of the document are bound to establish by highly satisfactory and strong evidence that not only the document was executed by such illiterate person / parda-observing lady but also such illiterate person had fully understood the contents of documents as per principle lay-down by the privy council in Mst.Fareed-un-Nisa case AIR 1925 PC-205. It is also settled principle law that it is duty of beneficiary that the document was executed by Parda-Nasheen lady having independent advise at the time of execution of the documents in question.”

In another case law reported in **PLD 1965 Dacca Page No.531**, it has been observed that transaction with the illiterate lady ---- court must be satisfied that document was actually executed by her with full understanding of her own act, that she has full knowledge of the nature and transaction and that she had independent disinterested advise.

In view of the above discussion I am of the humble view that the alleged gift is fraudulent and void document. Admittedly, when the document is valid, then the question of limitation in such case, the suit will not be barred by law of limitation. Reliance can be placed on 1986 SCMR 1238. Hence in the present alleged gift is found to be valid and fraudulent, therefore, in my humble view that the law of limitation will not hit in the present case.

In view of the above circumstances I find that the learned trial court has not proper appreciated the evidence adduced by the plaintiff as well as the relevant law and committed illegality and irregularity in passing impugned judgment and decree. I, therefore, answer point No.01 in the affirmative.

Point No.02

In view of my findings on point No.01, the impugned judgment and decree are hereby set-aside and the suit of the appellant is decreed as prayed with no order as to costs. The appeal in hand stands allowed. There will be no order as to costs.”

Neither any illegality nor irregularity in the impugned judgment and decree has come on the surface. A perusal of the judgment of the appellate Court shows that it is well reasoned, within four corners of law and passed after considering the evidence available on the record. In

the given circumstances, this revision application is dismissed along with the pending applications.

JUDGE

Tufail/PA