

**IN THE HIGH COURT OF SINDH
AT KARACHI**

SUIT NO. 267 OF 1997

Plaintiff : Muhammad Khalid, through Mr. Anwer Hussain, Advocate

Defendants. : Mst. Mehmooda Khanum & Others, through Mr. Mansoorul Arfeen, Advocate

Date of hearing : 03.09.2018

ORDER

YOUSUF ALI SAYEED, J - In terms of this Suit, the Plaintiff seeks administration of the estate of Haji Abdul Wadood (the “**Deceased**”), and in terms of the Plaint has identified various properties said to have been held benami by the parties to the Suit on behalf of the Deceased as well as certain businesses carried on under partnerships in which the Deceased is said to have had an interest.

2. By way of final relief, the Plaintiff has prayed, inter alia, that it be declared that the identified properties were held benami and that the Deceased was the real owner thereof, and that accounts also be rendered in relation to the partnership ventures.
3. On 31.08.1999 the following issues, as proposed on behalf of the parties, were adopted:
 - (i) Whether late Haji Abdul Wadood had purchased the properties mentioned in the plaint out of his own funds or assets in his own name and are the Defendants or any one of the benami in respect of all or any of the properties mentioned in the plaint? If so to what effect?
 - (ii) Whether Defendants have been doing business in various partnerships with different partners out of the funds of the deceased Abdul Wadood. If so to what effect?

- (iii) Whether Defendants Nos.2 and 3 through misrepresentation and fraud got and executed a registered deed of confirmation of oral gifts by deceased father in the name of and favour of Defendants Nos.8 and 9 in respect of the property mentioned in para (6) of the plaint? If so, to what effect?
- (iv) Whether deceased father was not mentally fit and capable of understanding the execution of said alleged oral gift deed?
- (v) Whether the plaintiff is entitled for the, relief(s) as claimed by him in the clause and to what extent?
- (vi) What should the decree be?"

4. Thereafter, on 28.03.2000, by consent, a Commissioner was appointed for recording evidence in the matter. However, as no progress was made in that regard, the appointment came to be recalled on 10.02.2003, when it was ordered that the Suit be put up for evidence in Court as per number. Subsequently, on 05.09.2007, following some amendment in pleadings, the following additional issue was framed:

"Whether the Plaintiff has removed surreptitiously printed and gray cloth 400,000 yards from the godown No.2, Al-Hilal Chambers, Muljee Street, Kharadar, Karachi, and has not accounted for the same?"

5. The matter then came to be fixed in Court for evidence firstly on 10.10.2008, and on several further dates thereafter without any headway being made. Finally, on 26.09.2017, by consent a Commissioner was again appointed for recording evidence in the matter, and the Suit is apparently pending at that very stage.
6. It is in this backdrop and subsequent to such developments that an Application under Order 7, Rule 11 CPC (CMA 15391/17) has been filed on behalf of the Defendants seeking rejection of the plaint, and is the Application presently under consideration.

7. Pressing the said Application, learned counsel for the Defendants submitted that the plaint was liable to be rejected as the suit was barred by limitation. In this regard, he pointed out that the final relief sought in terms of Prayer (b) of the plaint was that a gift of an immovable property made by the Deceased in favour of the Defendants Nos. 8 and 9 be declared void and be set aside and submitted that such prayer could not be advanced within the scope of an administration suit as the Defendants Nos. 8 and 9 were admittedly the sisters-in law of the Plaintiff, hence were not the heirs of the Deceased. In support of such contention reliance was placed on a judgment of a learned Division Bench of this Court in the case reported as Muhammad Zahid though Legal Heirs v. Mst. Ghazala Zakir and 7 others PLD 2011 Karachi 83. It was submitted that the Suit was therefore to be regarded as an ordinary suit, hence was barred by limitation in as much as the same had been instituted on 11.03.1997 whereas the Deceased had expired on 19.10.1992. Accordingly, it was sought that the plaint be rejected.

8. In response, it was pointed out by learned counsel for the Plaintiff that the scope of the Suit was not merely confined to the property subject to Prayer (b), as in terms of the plaint a case had also been set in respect of other properties and further prayers advanced accordingly. It was submitted that even if one of the prayers was beyond the framework of an administration suit or barred by limitation, the plaint could not be rejected when the other prayers were maintainable and merited trial. On this basis, it was submitted that the Application for rejection was vexatious and misconceived. He submitted that sole purpose of the Application was to impede adjudication of the main case, and prayed that the Application be dismissed.

9. From a perusal of the plaint and consideration of the issues framed for determination, as aforementioned, it is apparent that the scope of the dispute transcends the one property that is the subject of Prayer (b), and extends to other properties and business interests said to be those of the Deceased, as are the subject of further prayers. As such, the case advanced in terms of the Application under reference is evidently misconceived, it being well settled that a plaint cannot be rejected piecemeal.

10. Accordingly, the Application under reference is hereby dismissed, with no order as to costs.

JUDGE