

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Suit No. 911 of 2016

Order with signature of Judge(s)

1. For hearing of CMA No.1410/2017 (u/o VII Rule 11)
2. For hearing of CMA No.6240/2016 (U/o XXXIX Rule 1 &2)
3. For examination of parties/settlement of Issues

29.08.2018

Mr. Zahoor Ahmed, Advocate for the plaintiffs
Mr. Shah Khalid, Advocate for Defendant Nos.1 to 4

1. This application is moved by the Defendant Nos.1 to 4 under Order VII Rule 11 CPC praying rejection of the plaint on the ground that the said property was already gifted by the deceased to the Defendant No.1 therefore the instant suit filed for administration, declaration, cancellation and partitioning of the same property is meritless.

Learned counsel for the Plaintiff by way of introduction has given facts of the case, according to which the deceased Abdul Salam who was born in the year 1928, died on 23.11.2012 and he had two wives. While the Plaintiffs are offsprings from the first wife, however the Defendant No.1 is the second wife and the remaining private defendants are her sons and daughter. Property in question is a residential Bungalow built on Plot No.15-D, PECHS Block-6, admeasuring 1,000 square yards ("the suit property"). Counsel for the Plaintiff submitted that the Gift Deed dated 28.03.2012, a copy of which is attached at Page-67 of the Written Statement, is a sham transaction executed particularly in the year 2012 when the deceased was 84 years old and the sole purpose of engineering the said document was to deprive the Plaintiffs from their lawful inheritance rights protected by sharia.

Learned counsel for Defendant Nos.1 to 4 stated that the Defendant No.1 was gifted with the said property through confirmation of declaration of Oral Gift, which was duly registered and stated that there are no merits in the instant suit as the property has already gotten mutated in the records of the relevant authorities in the name of the Defendant No.1.

Heard the counsel and perused the record.

Admittedly, Gift Deed dated 21.03.2012 does exist through which the deceased Abdul Salam had gifted this property to his wife namely Mrs. Bilquis Salam, however it could be noted that no reasons for such a Gift are described and in particular per last recital on the second page, the suit property is only gifted for the bonafide use of the donee (understandably in her life time only). As to the question of possession, there are rival claims, while the Plaintiffs are claiming that the property has been left abandoned, counsel for the Defendant Nos.1 to 4 states that his clients are in the constructive possession of the defendants, but all of whom however are residing abroad. Court is also informed that the said property was rented out to Textile Institute of Pakistan (TIP) up to 2016, however the same got vacated before the filing of the suit in the year 2016.

To me, the instant Gift Deed even if taken at its face value would only be construed to pass rights to the Defendant No.1 for the personal use of the property in her life time thus no rights could devolve to her children. No evidence has come to the Court that after the date of the Gift Deed, effective possession of the property was taken over by the donee, as by the admission of the counsel the property was rented out but by whom, it is not specified, nor the rent agreement is attached. The Gift Deed executed at the age of 84 just before the Donee's death also raises eyebrows. These are serious questions, which require adducing of evidence and could only be decided after full dressed trial.

In the circumstance at hand, I do not see any merit in the Order VII Rule 11 application, which is dismissed.

2. Adjourned, however till the next date of hearing parties to maintain status quo in respect of the suit property. To come up after two weeks.

JUDGE