

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT AT HYDERABAD**

R.A No. 163 of 2009

Applicant : Mst. Tasneem Akhtar through Mr. Ghulam Sarwar Qureshi, Advocate.

Respondent : Abdul Sattar through his LRs, through Mr. Arbab Ali Hakro, Advocate.

Date of Hearing : 22.02.2021, 01.03.2021 and 08.03.2021.

ORDER

YOUSUF ALI SAYEED, J. – The captioned Revision assails the concurrent findings of the fora below, commencing with the Judgment and Preliminary Decree dated 19.03.2002 of the learned 3rd Senior Civil Judge Hyderabad in F.C. Suit No.103 of 1986 (the “**Underlying Suit**”) and culminating in the Judgment and Decree dated 10.07.2009 of the learned 5th Additional District Judge Hyderabad in Civil Appeal No.143 of 2002 (the “**Subject Appeal**”) ensuing therefrom.

2. The contesting parties to the instant proceeding are the legal heirs of the original protagonists of the Underlying Suit, namely Abdul Sattar (“**AS**”) and Tasneem Akhtar (“**TA**”), who were the brother and daughter of the late Abdul Jabbar Khan (the “**Deceased**”), both of whom espoused rival claims to a property bearing Quarter No.20, Block B- Unit No.10 Shah Latifabad, Hyderabad (the “**Quarter**”) that had been allotted to him, with the claim of the former being based on a Will said to have been executed by the Deceased in his favour and that of the latter on an oral gift said to have been made by the Deceased in her favour in the year 1983, as subsequently recorded through a Gift Declaration dated 05.04.1984.

3. The Deceased apparently passed away on 13.06.1984, with a dispute then arising in respect of the Quarter as between AS and TA, with the former accordingly instituting the Underlying Suit so as to advance his claim, with it *inter alia* being sought that the trial Court be pleased to declare that the Gift Declaration was forged, that the Quarter had never been gifted to TA, and that AS was entitled thereto.

4. Of the issues framed by the trial Court, Issues Nos. 5, 6 and 8 are relevant for present purposes, being as follows:

“05. Whether on 12.06.1984 the deceased Abdul Jabbar Khan executed a “Will” in favour of the plaintiff in respect of the case property? If yes, what is its effect?

06. Whether the declaration of gift alleged to be attested on non-judicial stamp is void, in operative and was never executed by Abdul Jabbar Khan in favour of defendant in respect of Suit Property?

08. Whether the defendant is in possession of suit property gifted to her, within her own rights as exclusive owner by virtue of the gift since the life time of her father late Abdul Jabbar Khan?”

5. The learned trial Court decided Issues Nos. 5 and 8 in the negative whilst deciding Issue No.6 in the affirmative, thus determining that AS has failed to prove the execution of Will but that at the same time, the Gift relied upon by TA had also not been proven.

6. In making such a determination, the trial Court observed that TA had pleaded that the gift in her favour had been made orally in the year 1983, and was then recorded through a Gift Declaration dated 05.04.1984 witnessed by two persons, namely Dr. Iqbal Yazdani and Masood Ahmed Ansari, with her husband, Mashkoo Shad, also being present at the time, albeit not as a formal witness. In that

regard, the trial Court noted that the testimony of the one witness to the execution of the Declaration who had been produced, namely Dr. Iqbal Yazdani, was at variance with that of TA in material respects and that the so-called signature of the Deceased on the Declaration also appeared to be forged/fictitious. Furthermore, whilst two persons, namely Muhammad Mujtaba and Wahid Ali, had been stated by TA in her Affidavit-in-Evidence to have earlier witnessed the oral gift and were produced as witnesses in that regard, it was observed that such fact has not been mentioned in the written statement hence it appeared that those witnesses had subsequently been set up in in the matter. The relevant excerpt from the Judgment of the trial Court reads as follows:

“According to evidence of DW. Dr. Iqbal Yazdani the remaining two essential conditions of a valid gift are not proved because DW- Dr. Iqbal has specifically deposed that Mst. Tasneem Akhtar was not present at the time of execution of declaration of gift and the possession of suit property was never handed over in his presence to Mst. Tasneem Akhtar.

In order to prove oral gift made in the year 1983, the defendant examined DW- Wahid Ali and Muhammad Mujataba. The defendant as well as both above named witnesses have failed to depose that on which date and month deceased Abdul Jabbar orally gifted the suit property to the defendant. Though the defendant has mentioned the date of oral gift in her written statement as on 14.01.1983. From reading evidence of DW-Wahid Ali and DW- Muhammad Mujtaba it appears that they are setup witnesses, otherwise the defendant must have mentioned the names of the above witnesses in her written statement. DW Mashkoo Shad is highly interested witness and his evidence cannot be relied upon. It is further observed that why need arose to the defendant got execution the declaration of gift just two months prior to death of Abdul Jabbar Khan. During the course of arguments I have asked counsel for both parties to submit the National Identity Card of deceased Abdul Jabbar but both counsel have made excuse that the same is not available. It further strengthen my doubt regarding “Will” and “Declaration of gift” allegedly executed by Abdul Jabbar Khan. Fortunately admitted signature of deceased Abdul Jabbar Khan is available over allotment order produced by the defendant as Ex.D/5 and have compare the signature of Abdul Jabbar Khan over Ex.D/5 with his signature on declaration of gift as Ex.D/1 and found a lot of deference in between both signatures. Signature over Ex.D/1 has no fluency like signature over Ex.D/5 and appears to be forged fictitious.”

7. That being so, it was held that AS was entitled to a hereditary share in the Quarter and the Underlying Suit was preliminary decreed accordingly with a commissioner appointed for determining whether the Quarter was partitionable, and if not, that it be put to auction and the proceeds be distributed between the heirs in accordance with their respective shares. As it then transpired, the Appellate Court concurred with the foregoing assessment of the matter, with the Subject Appeal preferred by TA being dismissed.

8. It is well settled that the jurisdiction of this Court to interfere in revision is narrow, as interference would only be warranted on the ground that Courts below had assumed jurisdiction which did not vest in it, or had failed to exercise jurisdiction vested in it by law or that Courts below had acted with material irregularity affecting their jurisdiction in the case. As such, when there are concurrent findings of fact, as in the instant case the same are not to be lightly disturbed, unless while recording such findings the Courts below have either misread the evidence or ignored any material piece of evidence on record, or such findings are patently perverse. The same ought not to be disturbed simply because an alternate view may be possible on reinterpretation of the evidence. In this context reference can be made to the Judgment of the Honourable Supreme Court in the case reported as Haji Muhammad Din v. Malik Muhammad Abdullah PLD 1994 SC 291.

9. However, learned counsel for the Applicant was unable to demonstrate any misreading/non-reading of evidence or perversity in the findings of the fora below, and on the contrary, the view taken through the concurrent findings at hand appears a reasonable and sustainable one on the basis of the evidence, as referred.

10. In view of the foregoing, no case for interference stands made out through the Revision Application, which stands dismissed accordingly, with no order as to costs.

JUDGE