

THE HIGH COURT OF SINDH, KARACHI

Suit No. 810 of 2015

[Mrs. Aroosa Iqbal Siddiqui versus Yousuf Qamar Siddiqui & Others]

Plaintiff : Mrs. Aroosa Iqbal Siddiqui through Mr. Mirza Shaharyar, Advocate.

Defendant No.1 : Yousuf Qamar Siddiqui through Mr. Zahid Hamid, Advocate.

Defendants 2-7 : Nemo.

Date of hearing : 08-02-2022

Date of decision : 16-09-2022

ORDER

Adnan Iqbal Chaudhry J. - CMA No. 2771 of 2016 is filed by the Defendant No.1 under Order VII Rule 11 CPC praying for rejection of the plaint on the ground that the suit is barred by *res judicata*.

2. The Plaintiff is the widow of Iqbal Zafar Siddiqui who was the son of Zakia Begum and Basheer Ahmed Siddiqui. The suit is essentially for cancellation of a registered gift deed dated 09-07-2004 executed by Zakia Begum to gift the suit house to her son, the Defendant No.1, the brother of the Plaintiff's late husband.

3. The Plaintiff avers that the suit house was held by Zakia Begum as *benamidar* of Basheer Ahmed Siddiqui, and on the latter's demise it had devolved on all his legal heirs which included the Plaintiff's husband, Iqbal Zafar Siddiqui, but the Defendant No.1 manipulated the impugned gift deed to claim the suit house as his exclusive property; that Zakia Begum had disputed the gift deed during her lifetime and for cancellation of the same she had also filed Suit No. 871/2006 before the Senior Civil Judge, Karachi East; however, due to ill health, she could not pursue the suit which was dismissed for non-prosecution; that Zakia Begum eventually passed away on 24-02-2008; that the Plaintiff's husband, Iqbal Zafar Siddiqui, who

also inherited from Zakia Begum, he passed away on 27-12-2014, whereafter the Plaintiff was allegedly dispossessed from the suit house by the Defendant No.1; hence the instant suit by the Plaintiff as the widow and legal heir of Iqbal Zafar Siddiqui.

4. Heard the learned counsel. Along with his written statement the Defendant No.1 has filed copies of previous legal proceedings which reveal the following:

(i) Earlier, Suit No. 871/2006 had been filed by Zakia Begum against the Defendant No.1 for cancellation of the same registered gift deed dated 09-07-2004 contending that her signatures thereupon had been obtained by the Defendant No.1 with fraud. After Zakia Begum's demise, her other legal heirs, including the Plaintiff's husband, Iqbal Zafar Siddiqui, were impleaded as co-plaintiffs. However, on their persistent failure to lead evidence, Suit No. 871/2006 was dismissed on 23-11-2010 under Order XVII Rule 3 CPC.

(ii) The dismissal of Suit No. 871/2006 was appealed by the legal heirs of Zakia Begum, including the Plaintiff's husband, before the III-Additional District Judge, Karachi East by Civil Appeal No. 146/2011. That appeal was dismissed as time-barred by judgment dated 17-01-2013. Second Appeal No. 20/2013 before this Court was also dismissed by judgment dated 16-04-2013; and against that, CPLA No. 301-K/2013 was moved before the Supreme Court which too was dismissed by order dated 27-02-2014.

5. The above events are borne from judicial record which was not disputed by learned counsel from the Plaintiff. In any case, the law as it stands today is that for the purposes of Order VII Rule 11 CPC, the Court can, in addition to the plaint, also look at other material on the record.¹

¹ *S.M. Shafi Ahmed Zaidi v. Malik Hassan Ali Khan* (2002 SCMR 338); and *Abdul Karim v. Florida Builders (Pvt.) Ltd.* (PLD 2012 SC 247).

6. As narrated above, the suit is essentially for cancellation of the registered gift deed dated 09-07-2004 alleging that the donee thereof, the Defendant No.1, had obtained the same by manipulating and defrauding the donor, Zakia Begum. As apparent from the record, Zakia Begum herself had filed Suit No. 871/2006 for the same relief during her lifetime, and after her death, her legal heirs including the Plaintiff's husband, had succeeded her as plaintiffs of that suit pursuant to Order XXII Rule 3 CPC. However, that suit was dismissed under Order XVII Rule 3 CPC for failure to lead evidence, and such dismissal was maintained up to the Supreme Court.

7. In *Shahid Hussain v. Lahore Municipal Corporation* (PLD 1981 SC 474) the Supreme Court held that an order dismissing a suit under Order XVII Rule 3 CPC would be deemed to be a judgment on the merits and hence would operate as *res judicata* between the parties barring a fresh suit on the same controversy. Thus, the dismissal of Suit No. 871/2006 as aforesaid, barred any fresh suit by the Plaintiff's husband on the same cause of action. Apparently, the Plaintiff seems to be of the view that the demise of her husband gives her a fresh cause of action. That is clearly a misconception. Section 11 CPC, which embodies the rule of *res judicata*, extends that rule also to parties who claim under the parties to the previous suit. The instant suit is therefore barred by section 11 CPC. Resultantly, the plaint is rejected under Order VII Rule 11 CPC.

JUDGE

Karachi
Dated: 16-09-2022