

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 1188 of 2021

[Sadia Siddiqui and others *versus* Adnan Andalaib Siddiqui and others]

and

Suit No.1189of 2021

[Captain Adnan Andalib Siddiqui and others *versus* Mrs. Shahnaz Hyder and others]

- Date of hearing : 02.06.2022, 22.08.2022 and 02.09.2022.
- Date of Announcement : 24.10.2022.
- Plaintiffs : Sadia Siddiqui and others, through M/s. Arshad Tayebally and Farjad Ali Khan, Advocates (in Suit No.1188 of 2021).
- Defendant No.1 : Adnan Andalaib Siddiqui, through M/s. Muhammad Haseeb Jamali, Usman Tariq, Muzzamil Hussain Jalbani, Ahmed Khan Khaskheli and Sajid Ali, Advocates (in Suit No.1188 of 2021).
- Defendant No.2 : Shahnaz Hyder, through M/s. Muhammad Ali Lakhani and Mujtaba Sohail Raja, Advocates (in Suit No.1188 of 2021).
-
- Plaintiffs : Captain Adnan Andalib Siddiqui and others, through M/s. Muhammad Haseeb Jamali, Usman Tariq, Muzzamil Hussain Jalbani, Ahmed Khan Khaskheli and Sajid Ali, Advocates (in Suit No.1189 of 2021).
- Defendant No.1 : Mrs. Shahnaz Hyder, through M/s. Muhammad Ali Lakhani and Mujtaba Sohail Raja, Advocates (in Suit No.1189 of 2021).
- Official Defendants : Province of Sindh and others, through Mr. Mehran Khan, Assistant Advocate General Sindh.

Case law relied upon by Plaintiffs' Counsel (in Suit No.1188 of 2021)

1. 2021 S C M R 1986
[Khalid Hussain and others *versus* Nazir Ahmad ad others];
2. 2008 S C M R 236
[Mrs. Anis Haider and others *versus* S. Amir Haider and others];
3. 2001 S C M R 953
[Muhammad Altaf and others *versus* Abdur Rehman Khan and others];

4. P L D 2016 Sindh 26
[*Shahzad and another versus IVth Additional District Judge, Karachi (East) and 5 others*];
5. 2022 C L C 920
[*Munawar Ali and others versus Umar Daraz and others*];
6. 1994 S C M R 818
[*Mst. Shumal Begum versus Mst. Gulzar Begum and 3 others*];
7. P L D 2008 Supreme Court 389
[*Muhammad Ashraf and 2 others versus Muhammad Malik and 2 others*];
8. 2016 S C M R 1781
[*Mst. Naila Kausar and another versus Sardar Muhammad Bakhs and others*];
9. 1987 S C M R 1403
[*Maulvi Abdullah and others versus Abdul Aziz and others*];
10. P L D 1998 Karachi 291
[*Abdul Sattar Dadabhoy and another versus The Honorary Secretary, Pakistan Employees Cooperative Housing Society, Karachi and another*];
and
11. 2020 S C M R 276
[*Muhammad Sarwar versus Mumtaz Bibi and others*].

Case law relied upon by Plaintiffs' Counsel (in Suit No.1189 of 2021)

1. 2006 S C M R 489
[*Abdul Waheed versus Mst. Ramzanu and others*];
2. P L D 2013 Peshawar 1
[*Mst. Hussan Jamala and another versus Government of Khyber Pukhtunkhwa through Secretary, Home and Tribal Affairs, Peshawar*];
3. 2021 S C M R 1298
[*Ijaz Bashir Qureshi versus Sham-un-Nisa Qureshi and others*];
4. 2021 C L C 1102
[*Ali Gohar and another versus Abdullah Mallah and 5 others*];
5. 2011 Y L R 1473
[*Rana Imran and another versus Fahad Noor Khan and 2 others*];
6. 2019 Y L R 1055
[*Aamir Hameed and another versus Messrs Aloo and Manocher Dinshaw Charitable Trust, through one of the four trustees and 14 others*]; and
7. 2021 S C M R 743
[*Syed Ahmad versus Ali Akbar and others*].

Case law relied upon by Defendants' Counsel (in Suit No.1188 of 2021 for Defendant No.2 and in Suit No.1189 of 2021 for Defendant No.1)

1. Unreported Order dated 15.09.2021 passed by the Honourable Supreme Court of Pakistan in Civil Appeal No.221 of 2018;
2. Unreported Judgment dated 02.03.2022 passed by the Honourable Supreme Court of Pakistan in Civil Petition No.1998 of 2018;

3. 2018 C L D 585
[*Muhammad Khalid versus Muhammad Adnan Qureshi*];
4. P L D 2015 Sindh 360
[*Erum versus Mst. Ameena and 5 others*];
5. 2018 C L C 585
[*Muhammad Khalid versus Muhammad Adnan Qureshi*];
6. 2006 C L D 1
[*Mian Farooq Ahmad Sh. And others versus Privatization Commission and others*];
7. 2010 C L C 1666
[*Trustees of the Port of Karachi versus Karachi International Container Terminal Limited, (K.I.C.T.)*];
8. P L D 1991 Supreme Court 731
[*Federal Government of Pakistan versus Public at Large*];
9. 2021 S C M R 1298
[*Ijaz Bashir Qureshi versus Sham-un-Nisa Qureshi and others*];
10. 2019 Y L R 1700
[*Mrs. Naveen Irfan Puri through Attorney versus Mst. Shama Parveen and 3 others*]; and
11. P L D 2012 Supreme Court 247
[*Haji Abdul Karim and others versus Messrs Florida Builders (Pvt) Limited*].

Other Material

Black's Law Dictionary [Ninth Edition]
By Bryan A. Garner, Editor in Chief.

ORDER

Muhammad Faisal Kamal Alam, J:- Through this common order, two applications being C.M.A. No.9825 of 2021 (in Suit No.1188 of 2021) and 9822 of 2021 (in Suit No.1189 of 2021), filed under Order VII Rule 11 of Civil Procedure Code, 1908 (“CPC”), are decided.

2. Submissions of all the learned Advocates on Application(s) (*ibid*) filed by Defendant No.1, mother of Plaintiff in Suit No.1189 of 2021 and mother-in-law of Plaintiff in Suit No. 1188 of 2021, are heard and record considered.

3. Relevant facts for deciding the present Applications under Order VII Rule 11 of CPC (for rejection of complaints) in both the Suits are, that it is

stated by the above Defendant No.1-Mrs. Shahnaz Hyder (for the sake of reference be called “**Claimant**”) that the Property-C-6, Gizri Lane, Phase-IV, DHA, Karachi, measuring 1028 square yards, was exclusively allotted on the recommendation of Pakistan Air Force by the Defence Housing Authority to the Claimant, being the widow of Squadron Leader M.S. Alam Siddiqui, who sacrificed his life for the Country. Claimant has only permitted the Plaintiffs to reside in the above Suit Property, while retaining complete control over the Suit Property, being its exclusive owner.

4. Undisputedly, the Suit Property in due course of time was bifurcated and they are renumbered as C-6 and C/6-1, Gizri Lane, Phase-IV, DHA, Karachi, on the basis of an Irrevocable General Power of Attorney [**GPA**] bearing Registration number 645, **Annexure A/17,** of the Plaint of Suit No. 1189 of 2021, in favour of her son (Adnan Andalib).

It is averred by the Claimant that the above GPA was subsequently revoked and the alleged Oral Gift has no legal sanctity; *whereas*, the son and daughter-in-law (Plaintiffs of Suit No.1189 and 1188 of 2021, respectively), have averred that *firstly*, the GPA was unlawfully cancelled; *secondly*, in the intervening period half portion of suit property was orally gifted to the above daughter-in-law (Sadia Siddiqui), therefore, valuable rights and interest have accrued in favour of the said Sadia Siddiqui and other Plaintiffs, that is, her children, who are grand-children of the Claimant.

5. Mr. Muhammad Ali Lakhani, Advocate, has argued that both the Plaintiffs have no legal character to institute their respective suits as the Suit Property, which admittedly (originally) a 1000 Square Yards Plot bearing No.C-6, Gizri Lane, was allotted to Claimant upon representation made by her along with other widows of those Pilots,

who sacrificed their lives for this Country. He has referred to the Letter of July, 1966, and the Allotment Order of 28.10.1966 (*at page-103*) in support of his arguments. Contended that General Power of Attorney relied upon by Plaintiffs in favour of son (Plaintiff of Suit No.1189 of 2021) was for limited purpose as Claimant was residing outside Pakistan, but the same was revoked by the Claimant vide another registered instrument of 09.01.2015; besides, the same was also revoked by the Plaintiff son himself, vide Instrument dated 03.08.1995 (*at pages-373 and 377 of the Court's file*). He has argued that the Written Statement of Claimant also contains a Counter Claim, but that does not mean that both plaints of the suits cannot be rejected, because it is by now a settled rule that since plaint and a counter claim are separable, thus, the Counter Claim will survive even if the plaint is rejected. He further contended that in any event, Claimant's son grossly misused the General Power of Attorney and gifted a portion of the Suit Property to his first wife, which is void *ab initio*, because it is also an established principle [as discussed in the cited Decisions, mentioned in the opening Part of this Order], that in present nature of cases, an attorney cannot alienate the subject matter of the gift, without the permission of the Principal (in the present case the Claimant), unless the General Power of Attorney is coupled with interest in terms of Section 202 of the Contract Act, 1872, which is not the present case.

6. Mr. Arshad Tayebally, Advocate, along with Mr. Farjad Ali Khan, and Mr. Muhammad Haseeb Jamali, Advocates, appearing for the respective Plaintiffs, have controverted the arguments of Claimant's Advocate. Main line of the argument is that the Suit Property was given as compensation to the family of Shaheed Father (above named) and not only to Claimant and thus it is to be considered as inheritance of the deceased father. Contended that exercising power under the GPA got the suit

property bifurcated from the Defence Housing Authority after following the due process and the same was later gifted to his first wife, that is, Plaintiff of Suit No.1188 of 2021 (Ms. Sadia Siddiqui), in which she is residing with her children, that is, grandchildren of Claimant. Plaintiffs' Advocate has referred to paragraphs-29/A to 29/C of the plaint (of Suit No.1189 of 2021), to categorically refute the stance of Claimant / Defendant, that Irrevocable General Power of Attorney dated 01.12.1994 was subsequently itself revoked by the son of Claimant (that is, by the Plaintiff – Captain Adnan himself) while stating that the Document (*Annexure 'D-10'*) is a forged document as admittedly the Suit Property is in DHA, that is, District South of Karachi, *whereas*, the said document was fraudulently registered with the Sub-Registrar of Gulshan-e-Iqbal. Similarly, it is contended that the Claimant has purportedly revoked the General Power of Attorney and the document itself states that it was done on 09.01.2015 [**Annexure D/11 of Written Statement and Counter Claim of Claimant**], when the said General Power of Attorney had been acted upon and valuable rights and interest have accrued in favour of both the Plaintiffs and particularly Plaintiff of Suit No.1188 of 2021 (that is the daughter-in-law of the Claimant), as half portion of the property was gifted to her and possession was delivered, wherein, she and her children are still residing. To the arguments of the Defendants, that no registered document with regard to gift has been placed on record by both Plaintiffs, it is stated that since the gift is a HIBA under the Muslim Law, it does not compulsorily requires registration as basic ingredients of gift are existing in the present case. Both learned Advocates for Plaintiffs have referred to various precedents, which are mentioned herein-above.

7. The undisputed facts are, that initially the property in question was a plot admeasuring 1028 yd., bearing No.C-6, which was subsequently

bifurcated into two plots, viz. C-6 and C-6/1. A General Power of Attorney bearing Registration No.645 was executed by Claimant in favour of her son [above named Plaintiff of Suit No.1189 of 2021], which Document is of 01.12.1994. What is disputed is the revocation of this General Power of Attorney by the son himself (as mentioned in the foregoing paragraphs) and subsequent revocation by the Claimant herself on 04.01.2015. There is substance in the arguments of Plaintiffs' counsel that the revocation allegedly done by the son (*Annexure D/10 at page 373 of the Court's file*) is done by the Sub-Registrar Gulshan Iqbal, that is, of District East, *whereas*, the property in question is in Defence Housing Authority, which is in the District South of Karachi. If this crucial fact is proved by the Plaintiffs during trial, then it will have serious consequences, including that for the Defendant – Claimant. Similarly, even if the subsequent revocation done by the Claimant herself is not disputed, which is of 09.01.2015, which means, that revocation of GPA [*ibid*] is done after 20 years from the date of the execution (of GPA), and in the intervening period, new and substantial developments have taken place, particularly the HIBA [as alleged] of portion of the Suit Property in favour of Plaintiff of Suit No.1188 of 2021 (Ms. Sadia Siddiqui, daughter-in-law of the Claimant) wherein, all the Plaintiffs of Suit No. 1188 of 2021 are residing [in possession].

8. Contents of the Irrevocable General Power of Attorney [*ibid*] has been perused in order to appreciate the arguments of the Defendant Claimant. **Clause 2** contains, *inter alia*, the authority to oral gift (Hiba), besides, power of disposition of the Suit Property. **Clause 11** contains the power, *inter alia*, for bifurcation of the Suit Property. *Prima facie*, it appears that the acts done by the son (Plaintiff in the Suit No.1189 of 2021) is not in excess of the authority given under the above registered instrument (Irrevocable General Power of Attorney). This aspect cannot be ignored, so

also laid down in the Cited Case Law [*supra*] that for a valid gift under the Muslim Law, a registration is not mandatory and an oral gift / Hiba is also acceptable and valid; here Plaintiff / son is purportedly a Donor, Plaintiff of Suit No.1188 of 2021 – daughter-in-law is the Donee, who is also in possession of the Suit Property. However, this is a tentative assessment and to prove this fact, or the assertion of Claimant, testimonies of the Parties and witnesses have to be recorded.

9. The other undisputed but crucial fact is that since decades both Plaintiffs and their families are residing in the Suit Property, although the lease is in the name of Claimant. It is to be determined through a proper trial that whether the Suit Property was given to the Claimant as her exclusive Property or the same was the compensation given to the Family of the above named Deceased, through his widow, viz. the Claimant, as children, including the above Son [Adnan Andalib] were minors [at the relevant time]. Considering the above discussion and the close relationship between the Parties hereto, that one Plaintiff is the real son of Claimant and the other one is the daughter-in-law, the cited case law by the Defendants' counsel, *particularly*, relating to the authority of an attorney for alienating or disposing or transferring the subject matter of General Power of Attorney to the next of kin, is distinguishable; *secondly*, in the cited Decisions the conclusion was arrived at after the parties [of the reported Decisions] have led the evidence, which in the present *Lis* is yet to be done. But, if at this stage, the Defendant Claimant is seeking the rejection of plaint, then, in view of *Khalid Hussain* case [*ibid*], onus is on Claimant to show that the above Irrevocable General Power of Attorney was properly revoked and all subsequent acts and deeds of Plaintiffs are void *ab initio*, which, however, the Claimant has failed to show.

10. Consequently, in view of the above discussion, both listed Applications are dismissed.

Judge

Karachi,
Dated: 24.10.2022.

Riaz / P.S.