

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

Suit No. Nil (-2033) of 2023

Jamil-Ur-Rehman & others.....Plaintiffs

Versus

Shahida Khatoon & others.....Defendants

Muhammad Asghar Awan, along with Harchand Rai,
Advocates, for the Plaintiff.

Abdul Moiz Jafri, Advocate, for the Defendant No. 1

Zohaib Hussain Jagirani, for the Defendant No. 2

Dates of hearing : 22.02.2024 and 07.03.2024

ORDER

YOUSUF ALI SAYEED, J. – The protagonists to the suit are siblings inter se, espousing rival claims to an immovable property measuring 1506 square yards, bearing No. 301/7A, Street No.23, Block 3, Delhi Mercantile Cooperative Housing Society, Karachi (the “**Suit Property**”), which had been allotted by the aforementioned Society to their late mother, Mst. Saeeda Khatoon (the “**Deceased**”), with a Form “A” Sub-License being executed in her favour on 30.09.1980, whereafter a double storey bungalow was constructed by her thereupon.

2. Presently, the Suit Property apparently stands gifted by the Deceased to the Defendants Nos. 1 and 2, with a Declaration of Oral Gift dated 28.10.2009 having been executed by her and registered at No. 1744 of Book No.1 by the Sub-Registrar III, Gulshan-e-Iqbal Town, Karachi with M.F. Roll No. 5024 (the “**Gift**”), as per which a 60% share is shown to vest with the Defendant No.1 and the remaining 40% with the Defendant No.2.

3. Thereafter, the mutation of the Suit Property was carried out in their names in the records of the Society, with an Allotment Letter dated 16.04.2015 having been issued evincing the admission of the Defendants Nos. 1 and 2 as its members in place of the Deceased, with joint possession thereof having remained with them since virtually the time of the Gift.

4. The Plaintiffs, who are seven other children of the Deceased, have instituted this Suit for purpose of impugning the Gift as having been obtained through fraud and undue influence, so as to seek its cancellation and assert a share in the Suit Property as her heirs. The case set up by them is encapsulated in paragraphs 7 to 11 of their plaint, which read as follows:

“7. That, it is pertinent to mention here that the deceased namely **SAEEDA KHATOON** W/o Khalil-ur-Rehman in her life time wanted to distribute shares to all legal heirs according to Muhammadan law but due to ill health she executed Irrevocable General Power of attorney dated 21/01/1997, in favour of her legal heir No.05/Plaintiff No.3, duly registered by Sub-Registrar T Div.-II-A bearing Registration No.63, in respect of her immovable property mentioned above, whereby she nominated her son Mr. Sultan Rehman S/o Khalil-ur-Rehman as authorized & responsible individual to sell the suit property and distribute the shares among all the legal heirs subsequently.

8. That, despite the clear existence and validity of the afore mentioned Irrevocable General Power of Attorney, a disturbing turn of events unfolded, Defendants No.1 & 2 have taken advantage of the deceased mother's vulnerable state due to her illness. With apparent malafide intentions and ulterior motives, they manipulated and persuaded her into signing a Gift Deed on the ominous date of October 28, 2009. This Gift Deed pertained to her immovable suit property, a significant and valuable asset.

9. That, it is crucial to underscore the circumstances under which such Gift Deed was obtained secretly with fraudulently manner by the Defendants No.1 & 2, therefore they had not shared with the rest of legal heirs of both deceased/Plaintiff. It is submitted that the Defendant No.1 & 2 are accused for conducting their motives in secrecy and deliberately withhold such information from the plaintiffs/other legal heirs. The clandestine nature of this transaction raises grave concerns about the integrity of the

process at a time when the deceased mother was undoubtedly facing health challenges and was potentially incapable of fully grasp the implications of the Gift Deed, whereas the defendants No.1 & 2 have exploited her vulnerability for their personal gain which raises questions about the ethics and morality of Defendant No.1 & 2 actions, as well as their commitment with the other legal heirs of the deceased/Plaintiffs, from such alleged acts of Defendant No.1 & 2, it is clearly proved that how to deprive the other legal heirs from their respective share from the suit property.

10. That, by orchestrating the signing of the Gift Deed without the knowledge or consent of the plaintiffs, the defendants No.1 & 2 have violated the very essence of family trust and unity, such actions are have been manifested from the beginning till now, as they wanted to deprive the other legal heirs of their rightful share in the suit property.

11. That, from such situation created by the defendant No.1 & 2, has caused significant distress among the other legal heirs / plaintiffs and further demands by conducting a transparent or fair thorough examination by this Honorable Court pass a preliminary decree in the interest of justice. It is/was established that the Defendant No.1 & 2 with their ill-gotten motives at the time when deceased mother **75 years old Lady** was lying on bed due to her ill and got her / deceased mother signatures/thumb impression without consent & under duress on the Gift Deed, and same registered before the Defendant No.4, it is managed by the Defendant No.1 & 2 intentionally to deprive the other legal heirs / plaintiffs from their legal shares, whereas the defendant No.1&2 were remained silent and did not disclose about 14 years about such alleged managed Gift Deed and after the death of mother & father the plaintiff approached to the Defendant No.1 & 2 and requested to sale out suit property regarding distribution of shares amongst the legal heirs of deceased mother but the Defendant No.1 & 2 kept the plaintiffs on promise that they both are not well off therefore they are residing at deceased mother suit property and due to economic condition of country the value of suit property has been decreased, so waiting for suitable time. In the month of May, 2023 the plaintiffs once again requested the Defendant No.1 & 2 that handover photo copy of documents of suit property as we may sale such suit property regarding their share, then the Defendant No.1 & 2 showed photocopy of Gift Deed dated 28/10/2009 to plaintiffs and they become very astonished that how Defendant No.1 & 2 managed with forged & fake signatures of deceased mother, keep it secretly about 14 years and never ever disclosed with the plaintiffs nor showed such documents to the plaintiffs.

5. The Defendant No.1 has opposed the claim of the Plaintiffs while asserting the validity of the Gift, coupled with the mutation shown to have been carried out in the in the records of the Society, with an Allotment Letter dated 16.04.2015 having been issued evincing her admission and that of the Defendant No. 2 as its members in place of the Deceased, and it being averred that they have remained in joint possession of the Suit Property since virtually the time of the Gift. However, it has been also pleaded that a recent breakdown in relations between them attributed to oppressive behavior on the part of the Defendant No.2 has sown discord and given rise to a serious apprehension of dispossession at his hands, necessitating Suit No. 1685 of 2023 for declaration, partition and permanent injunction, with the present Suit having been orchestrated as a countermeasure to blunt the same.
6. For his part, the Defendant No.2 has endorsed the case of the Plaintiffs, with the relevant excerpts from the written statement filed by him reading thus:

“3. That the contents of Para (8), (9) & (10) are not denied. It is submitted that the deceased father of the parties purchased open plot i.e. suit property bearing House No.301/7A, Block 3, Street No.23, D.M.C.H.S., Karachi, measuring 1506 Sq. Yards in the name of his wife/deceased mother of the legal heirs, in his lifetime as deceased mother was housewife, she has no source of income and deceased father constructed double story Bungalow over the plot of suit property, whereas all legal heirs of deceased resided jointly there and after their marriage, legal heirs moved from the suit property to their personal spaces with their spouses, whereas since the death of the deceased Mother, the Defendants No.1 & 2 are enjoying possession of “Suit Property” and still residing at the Suit property. it is further submitted that the deceased mother of plaintiff & defendant namely **SAEEDA KHATOON** W/o Khalil-ur-Rehman in her lifetime executed **Irrevocable Registered General Power of attorney dated 21/01/1997**, duly registered by Sub-Registrar T. Div-II-A bearing Registration No.63, in respect of her immovable property/suit property, whereby she nominated her son **Mr. Sultan Rehman** S/o Khalil-ur-Rehman (Plaintiff No.3) as authorized individual to sell the suit property and distribute the shares among all the legal heirs but defendant No.1 enticed the defendant

No.2 into getting their mother sign and register a Gift Deed **dated 28/10/2009** discreetly, secretly and without knowledge of the all other legal heirs to devour the suit property for their personal gain, leaving their mother with the belief that she was actually signing the document for distributing shares to all the legal heirs. It is furthermore submitted that the Defendant No.2 agreed to illegal instigation of Defendant No.1, and has managed his mother to sign and register Gift Deed to have the whole suit property in their name as per 60/40 % share by misleading the facts and deceiving their mother as such the same has no value in the eyes of law and liable to be cancelled.

4. That the contents of Para (11) as framed are not denied. It is submitted that the Defendant No.2 on the instigation of the defendant No.1 has managed to get the sign of their late mother on the Gift Deed by taken advantage of her illness, even they were aware to the fact that the other legal heirs have their legal share in the suit property, but the greediness of the defendant No.1 made the defendant No.2 to proceed towards manage the Gift Deed with malafide intentions & ulterior motive just to usurp the share of other legal heirs as such the defendant No.1 & the defendant No.2 are not the real owners of the suit property. It is furthermore submitted that the whole process of execution of the alleged Gift Deed were bogus and establish the malafide of the defendant No.1 towards the distribution of the share amongst all legal heirs, as such said Gift Deed is liable to be cancelled as the suit property was purchased by the deceased father of the legal heirs in the name on their mother in his life time and shall distribute according to Mohammadan Law and the Defendant No.2 have no Objection if this Hon'ble Court may pass the preliminary decree in the interest of Justice.

7. The interlocutory applications pending within that framework are:

- (a) CMA No. 15765/2023, under Order 39 Rules 1 & 2 CPC, whereby the Claimants have sought to restrain the Defendants Nos. 1 and 2 from alienating the Suit Property; and
- (b) CMA No. 19222/2023, under Order 7 Rule 11 CPC, whereby the Defendant No.1 has sought that the plaint be rejected.

8. Proceeding on those Applications, learned counsel appearing on behalf of the Plaintiffs argued that the Gift had been obtained by the Defendants Nos. 1 and 2 through undue influence, under a cloak of secrecy. However, other than the written statement of the

Defendant No.2, neither he nor counsel for the Defendant No.2 were unable to point out any material to indicate *prima facie* that the Deceased or her husband had been in a vulnerable state at the relevant time or otherwise build on the argument in any meaningful manner, but merely fell back on their pleadings, as aforementioned.

9. Conversely, learned counsel for the Defendant No.1 argued that the instrument of Gift had been lawfully executed by the Deceased of her own accord whist of sound mind, without any undue influence, duress or coercion and, had then been registered for good measure, hence validly conferred title of the Subject Property on the parties. He submitted that contention of the Plaintiffs and Defendant No.2 that the Deceased was ill and in a vulnerable state at the time of execution of the Gift was false, and was belied by the fact that the Deceased had herself appeared before the Registrar with along with both beneficiaries to have the same registered. Moreover, the husband of the Deceased (i.e. the father of the parties), namely the late Khalil-ur-Rehman, was one of the witnesses to the Gift. Per learned counsel, such facts and circumstances demonstrated that the Gift was not one that had been obtained in secrecy and completely dispelled the version of the Interveners and showed that they had concocted a false narrative in an attempt usurp the Suit Property. He submitted that the Plaintiffs and Defendant No.2 had connived so as to advance a grossly exaggerated case as to the Deceased being of ill-health at the time of execution of the Gift Deed, whereas she had very much been in her senses and had in fact lived on for approximately eight years thereafter without challenging its validity or calling for its revocation, and her husband had also lived on for approximately nine years after the execution of the Gift Deed, without raising any challenge in the matter. Furthermore, with reference to CMA No. 19222/2023, he argued that the Suit was barred by limitation in terms of Section 3 of the Limitation Act 1908, read with Article 91 of the First Schedule to that enactment.

10. Having heard the arguments, it merits consideration that the Plaintiffs have made an assertion of fraud and undue influence without any material being shown to support the same. That assertion is also of a vague and general nature, with nothing discernible having been placed on record by them or the Defendant No.2 to even suggest at this stage that either the Deceased or her husband were of feeble mind or otherwise labouring under any impairment at the time of the Gift. As such, it falls to be considered that such an assertion is not sufficient of itself to vitiate a registered instrument, which carries a presumption of correctness and legitimacy, hence no case for placing a clog on the rights flowing therefrom stands made out. Be that as it may, while it may be that the Suit would fail in the event of the failure on the part of the Plaintiffs to satisfactorily prove their claim, that does not mean that the same ought not to be allowed to proceed, as Article 91 is predicated on the element of knowledge of the instrument sought to be cancelled, hence entails a mixed question of law and fact, with the Plaintiffs claiming to have firstly come to know of the Gift shortly prior to filing the Suit. As such, the point may best be decided following evidence, upon an issue being framed in that regard.

11. In view of the foregoing, CMA Nos. 15765/2023 and 19222/2023 both stand dismissed.

JUDGE