

## IN THE HIGH COURT OF SINDH AT KARACHI

Present:  
Mr. Justice Muhammad Shafi Siddiqui  
Mr. Justice Omar Sial

High Court Appeal No.129 of 2021

Mst. Raeesa Begum & others  
Versus  
Mst. Zubaida Idrees & others

Date of Hearing: 06.03.2024

Appellants: Through Mr. S. Fazal-ur-Rehman Advocate

Respondents No.1: Through M/s. Muhammad Idrees and Masood Khan Ghory Advocates

Respondent No.3: Through Mr. Muzammil Saleem Advocate.

### **J U D G M E N T**

Muhammad Shafi Siddiqui, J.- This appeal is arisen out of judgment and decree dated 21.06.2021 and 26.06.2021 respectively passed in suit No.1418 of 2010 filed by respondent No.1 against appellant and respondents No.2 and 3 who were plaintiff and defendants No.1 and 2 in the suit.

2. Brief facts of the case are that respondent No.1 filed suit for administration, declaration, partition/possession, appointment of Receiver, Cancellation/Revocation of Hiba/Gift, mesne profit and permanent injunction in respect of a house constructed on Plot No.10, Row no.21, Sub-Block-C, Block-V, Nazimabad, Karachi, (the subject property). It is claimed by the respondent No.1 (plaintiff) that the subject property was owned by her father Abdul Rahim who died on 07.06.1980 and she being one of the daughters/legal heirs of deceased is entitled to her share in the subject property, amongst other legal heirs and/or their offspring who were arrayed as defendants i.e. appellant and respondents No.2 and 3.

3. On service of notices separate written statements were filed on behalf of appellants/legal heirs, one jointly by defendants No.14, 17 and 18 and the other by defendant No.15. However, contents of both the written statements are same/copied. In the written statements these defendants/appellants have taken the plea that in his life time deceased Abdul Rahim in his life time has distributed his properties amongst all the legal heirs in terms of family settlement and hence nothing was left to be distributed/administered. In respect of the subject property they have taken the plea that it was gifted to defendant No.13 (the appellant/answering defendants) and in lieu thereof husband of the appellant Abdul Rasheed paid handsome amount to the daughters/legal heirs of the deceased including the plaintiff/ respondent No.1 however the subject property could not be transferred in the name of Abdul Rasheed and/or his legal heirs.

4. Defendants No.2, 3, and 5 to 12 (defendant No.2/respondent No.3) have also filed their joint written statement. They have more or less supported the case of the plaintiffs. They have also stated in their written statement that the subject property was owned by the deceased and thus claim themselves to be the co-owners of the subject property as well. They have denied any gift being executed in favour of the appellant/defendant No.3 and/or any family settlement.

5. Out of the pleadings of the parties following issues were framed on 25.10.2017:-

1. Whether the Suit is not maintainable in law?
2. Whether the Suit is time barred?
3. Whether, under any family settlement/arrangement, the Property bearing No.21/10, V/C, Naziamabad, Karachi, was gifted by the Abdul Rahim to his son late Abdul Rasheed, in his life time?
4. Whether, under any family settlement/arrangement, the Property bearing No.D-149/5, F.B Area, Karachi, was transferred by late Abdul Rahim, in the name of his son late Abdul Aziz?

5. Whether late Abdul Rasheed, under the direction of late Abdul Rahim, gave due legal shares of Plaintiff and Defendant No1?
6. Whether property bearing No.D-149/5, F.B Area, Karachi, was purchased directly by the Abdul Aziz, from its owner Mst. Rabia Khatoon and subsequently it has been gifted to his sons Defendant Nos.3, 5, 6, 7, 8, 11 and 12?
7. Whether the Plaintiff served the Defendants Nos.13 to 18 with notices for settlement of the suit property?
8. Whether the Defendants Nos.14 and 15 are solely keeping documents and physical possession of the suit property unauthorizedly and illegally?
9. Whether the parties are entitled to Judgment and Decree against the defendant Nos.14 and 15 for the amount of mesne profit at the rate of Rs.60,000/- per month from June 1980 till the filing of this suit?
10. Whether the Suit Property is liable to be auctioned and the sale proceeds are to be distributed among the parties concerned?
11. Whether the plaintiff is entitled to the relief(s) as prayed?
12. What should the decree be?

6. Plaintiff/respondent No.1 in order to prove her case has examined plaintiff No.1(i) Muhammad Idrees who filed his affidavit-in-evidence and was duly cross examined. On the other hand on defendants' side (appellant/defendant No.3) defendant No.3(ii) Tariq Rasheed examined himself and also produced two witnesses Dw-2 Muhammad Ziauddin and DW-3 Muhammad Iqbal. They were also duly cross examined. On defendant No.2's side only a statement annexing therewith certain documents was filed whereas no one had come forward to contest the suit on behalf of defendant No.1.

7. After taking into account the evidence that was led, the learned Single Judge decreed the suit via impugned judgment in terms whereof all the legal heirs were held to be entitled to their lawful share in subject property.

8. We have heard the learned counsel appearing for the parties and perused material available on record.

9. Admittedly there is no controversy as to the legal heirs of the deceased. All are the legal heirs of the deceased and the dispute in between the parties in the instant suit is only to the extent of one property i.e. subject property, though appellant has pointed out a property in his written statement that, according to the appellant, was given to defendant No.2/respondent No.3 in lieu of share of the estate of the deceased.

10. It is also an admitted position that initially the subject property was owned by the deceased, as is evident from the "Lease of Land in Nazimabad" Annexure P-12 to the plaint, hence the moot question would be at the time of death of the deceased who was the owner of the subject property. Since appellant has taken the plea that in view of some family settlement and/or gift in the life time of the deceased, she has become the owner of the subject property, entire burden rests with her to prove such assertion.

11. Perusal of record reveals that the appellants have not taken a consistent plea and have made false attempt to twist the fact in a manner that may tilt the case in their favour. They have pleaded that the subject property was gifted but also in the same breath asserted that they have paid certain amounts in lieu of some family settlement, which is an attempt to create a plea/stand that other legal heirs have relinquished their shares. However, they have failed in all their attempts while they recorded their evidence.

12. First plea of the appellants is that there was a family settlement. In that regard appellants have not been able to show any documentary proof or evidence. Furthermore, they have claimed that in pursuance of such settlement their father has paid certain amounts to

other legal heirs but have not been able as to how and in what manner has he paid such amounts and to whom and at what rate/consideration.

13. Secondly, the appellants have stated that the property was gifted to them/their father. This plea itself goes against them when they assert that their father had paid certain amounts in lieu of family settlement. It is a settled principle that the gift is always an outcome of love and affection and the payment of any consideration to that effect would make it otherwise.

14. Thirdly, the appellants have taken a plea that a property of Federal B. Area was given to defendant No.2 (Sh. Aziz) in lieu of family settlement. This plea is also without any evidence, either oral or documentary, on the part of the appellants. The appellants' witness in his affidavit-in-evidence has stated that this property was purchased by the deceased Abdul Rahim from its original owner namely Mst. Rabia through general Power of Attorney but he has not produced such title documents whereas the document (Assignment of Lease Hold Rights) that is produced by the defendant No.2 shows the vendor Mst. Rabia and vendee Shaikh Abdul Aziz. There is no mention of deceased Abdul Rahim as a buyer or seller. Though no one was examined on behalf of defendant No.2/respondent No.3 but they have filed written statement and so also filed a statement before the commissioner for recoding the evidence. Their stand is that this property has never been in the name of deceased Abdul Rahim. This defendant has filed title documents in respect of the Federal B. Area property. Originally it was leased out in 1966 by the KDA and on 10.02.1967 it was purchased by defendant No.2 through assignment of lease hold rights, duly registered followed by registered gift of August, 1999. The deceased Abdul Rahim died in the year 1980 whereas the defendant No.2 purchased this property long before i.e. about 23 years earlier whereas the gift was executed in the

year 1999 i.e. after 19 years of the death of the deceased. If we compare these registered documents of 1967 and 1997 with the evidence of the appellants, the inference will be against the appellants as they have not been able to produce any confidence inspiring evidence.

15. A glance over the evidence of the appellants would also reveal that on one hand they have not produced any document to strengthen their assertions and on the other hand during cross-examination appellant's witness has specifically stated that "I do not know if plot No.21/10, 5-C, Nazimabad, Karachi (subject property), was allotted to late Abdul Rahim." As regards gifting the property, he has stated that in the written statement the property in question was stated to be gifted to Abdul Aziz but voluntarily says it was gifted to Abdul Rasheed. He has also stated in his cross-examination that he or his father had not taken any steps in pursuance of the gift. The evidence produced by the appellants were hearsay and the witnesses were unable to support the case of the appellants, particularly when it is weighed and compared with the evidence as produced by plaintiff/respondent No.1, orally as well as documentary.

16. In view of above, we are of the view that the appellants have failed to prove their entitlement over the subject property and the impugned judgment does not call for any interference hence instant High Court Appeal is dismissed.

17. Above are the reasons of our short order dated 06.03.2024 whereby<sup>2</sup> appeal was dismissed.

Dated:

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