

THE HIGH COURT OF SINDH KARACHI

Present:

Mr. Justice Adnan Iqbal Chaudhry &
Mr. Justice Abdul Mobeen Lakho.

High Court Appeal No. 12 of 2023

[Mst. Zainab and others v. Mazharullah Khan and others]

Appellants : (1) Mst. Zainab (2) Mst. Dilbari (**since deceased**) through legal heirs, Rais Ahmed and others (3) Mst. Aisha, all through M/s. Mukesh Kumar Khatri and Muhammad Aslam, Advocates.

Respondents 1-5 : Mazharullah Khan and others through Mr. Fahim Ali Memon, Advocate.

Respondents 6, 7, 8 & 11 : Province of Sindh and others through Mr. Naeem Akhtar Talpur, Additional Advocate General Sindh.

Respondents 9-10 : Nemo.

Date of hearing : 21-10-2024

Date of order : 24-10-2024

ORDER

Adnan Iqbal Chaudhry J. - This High Court Appeal is from judgment and decree dated 08-03-2022 whereby a learned single Judge of this Court decreed Suit No. 2025/2017 filed by the Respondents 1 to 5 (plaintiffs) against the Appellants (defendants 1 to 3) *inter alia* for cancellation of two registered gift deeds dated 04-11-2013 executed by late Rashida Begum, the grandmother of the Respondents 1 to 5, to transfer 50% of a house in PECHS, Karachi to the Appellant No.1, and the other 50% to the mother of the Appellants 2(i) to 2(x), both of whom were employed as maids to look after Rashida Begum in her old age while the Respondents 1 to 5 resided abroad.

2. The finding in the impugned judgment is that in 1983 Rashida Begum had gifted the house to her daughter, Raffat Sultana, the mother of the Respondents 1 to 5, and therefore she was not owner of said house in 2013 when she purportedly executed gift deeds in favour of the Appellants 1 and 2. Learned counsel for the Appellants was unable to show us any document to contradict such finding.

3. Be that as it may, the principal objection to the appeal is that it is time-barred by 285 days (nearly 10 months). The Appellants have moved CMA No. 196/2023 under section 5 of the Limitation Act, 1908 to condone such delay.

4. Though the decree is *ex-parte*, it is not because the Appellants were not aware of the suit. The impugned judgment records that a *vakalatnama* had been filed on their behalf, but then no written statement was filed. The suit was also made known to the Appellants as plaintiffs of another Suit No. 1109/2017 by way of a written statement filed by the Respondent No.2 in that suit on 17-03-2018. Even in para-5 of the memo of this appeal, the Appellants acknowledge that they had received summons of the subject suit.

5. The sole ground taken by the Appellants for condoning delay is that the defendant No.2, namely Mst. Dilbari [mother of the Appellants 2(i) to 2(x)] had passed away. But, admittedly, she passed away on 04-04-2021 when the suit was pending. In view of Order XXII Rule 4(3) CPC, a decree could nonetheless be passed against her if no intimation of death was given to the Court. That being said, the death of the defendant No.2 is no ground to condone delay in filing appeal by her legal heirs when it is not their case that they were unaware of the decree. The Appellant No.1, who is also one of the legal heirs of the defendant No.2, was a separate defendant in the suit as a donee of one of the gift deeds. She was clearly aware of the decree, but she too does not give any explanation for the delay of 10 months in filing the appeal.

5. In view of the foregoing, where the Appellants have not pleaded a sufficient cause for not preferring the appeal within limitation, the application under section 5 of the Limitation Act, 1908 (CMA No. 196/2023) is dismissed. Resultantly, the appeal is dismissed as time-barred.

JUDGE

JUDGE

*SHABAN**