

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Muhammad Shafi Siddiqui, C.J
Mr. Justice Jawad Akbar Sarwana.

High Court Appeal No.63 of 2017

Azhar Saeed Farooqui
Versus
Anwar Saeed Farooqui and others
.....

***Date of hearing:* 05.12.2024**

***Date of Decision:* 12.12.2024**

Mr. Shahenshah Hussain, Advocate for appellants.
None present for Respondents.
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J U D G M E N T

Muhammad Shafi Siddiqui, C.J.- Appellant Azhar Saeed Farooqui and his brother Anwar Saeed Farooqui (*Respondent No.4*) had filed a suit bearing No.277/1992 for Declaration, Administration and Accounts against their three brothers and mother.

2. Brief facts to understand the controversy are that the Appellant and Respondents are the successors-in-interest of one late Saeed Ahmed Farooqui. At the time of his death, Saeed Ahmed Farooqui was owner of property being residential plot No.C-8, Block-17, F.B Area, Karachi [*the suit property*]. The said plot, on which subsequently a house was constructed, was claimed to have been purchased by the Appellant/Plaintiff No.1 from KDA in August, 1961 in the name of his father and the first installment was paid by him, whereas, the remaining three installments were paid by the deceased father himself. Saeed Ahmed Farooqui died on 25.09.1981 at the age of 80 years and the parties inherited the suit property as his legal heirs which has since been jointly owned and possessed by them as co-sharers. The suit property continued in the name of deceased in

the record of rights of KDA. It is claimed that the share of Plaintiffs and Defendants No.1 to 3/Respondents No.1 to 3 (*five brothers*) in the property according to Fiqah-e-Hanfia is 7/40 and share of their mother (*defendant No.4*) is 5/40. In November, 1991, per pleadings, the plaintiffs (*Appellant and Respondent No.4*) decided not to keep the suit property joint and asked the Defendants/ Respondents No.1 and 2 for its partition and for accounts of rent and profits received, but they refused and disclosed about the oral gift of the suit property to them and given the Plaintiffs a photo copy of an affidavit dated 24.05.1980 of the deceased father registered in the office of Sub-Registrar. The Plaintiffs vehemently denied the said gift on the grounds that the deceased continued to reside in the suit property and reserved his right of residence therein so that possession was not delivered as required under the law; no declaration was made by the deceased and no mutation was effected on the basis of the alleged gift in the record of KDA. Plaintiffs claimed that the deceased on coming to know of the precept of the holy Prophet (PBUH) against gift to one son which does injustice to other sons, revoked/cancelled/abrogated the gift and destroyed the original of the said affidavit. The Plaintiffs then filed the aforesaid suit with the following prayer:-

- (a) *Declaration that they are owners of 14/40 share in the property in suit namely plot No.C-8, Block-17, F.B Area, Scheme No.16, Karachi;*
- (b) *Rendition of account by defendants 1 and 2 of the usufruct of the property in suit enjoyed by them and for a decree for the amount found due to the plaintiffs;*
- (c) *Administration and distribution of the property in suit and its usufruct, rent and profits among the heirs of late Saeed Ahmed Farooqui;*
- (d) *Any other or further relief or reliefs which this Hon'ble Court may consider just and proper in the circumstances of the case.*

3. Notices and summons were issued. Respondents No.1 and 2/ Defendants No.1 and 2 filed their written statement wherein they have stated that their father Saeed Ahmed Farooqui was the owner of the suit property and in the year 1980 had transferred the suit property in their names by way of a registered gift. They have denied that the appellant had purchased the suit property in the name of his father and first installment was paid by him. They stated that the transfer of the property in their names was attempted and some documents were prepared but for want of adequate funds, formal application could not be made and in the meantime, Respondent No.2 left for employment abroad and the matter of mutation was kept hanging. It was stated that their deceased father resided in the suit property for some time to supervise construction which was carried out by Defendant No.1 in December, 1980. The alleged no objection as to the management of the suit property was also denied. Defendants No.1 and 2 claimed that since the market value of the suit property has increased, the Plaintiffs changed their minds after death of their father in 1981. It was also denied that the tenant, who was inducted long ago, was an outsider rather he was their first cousin. The allegation of Plaintiffs being asked for partition of and for accounts was denied by stating that the property was in possession of Respondents No.1 and 2 since it was gifted to them. It was also denied that the deceased father revoked/abrogated the gift and destroyed the original; the original gift was kept with the mother of the parties, which was subsequently not traceable and their mother fell ill having brain hemorrhage on 06.01.1989 and expired.

4. The parties then proposed the issues and by order dated 21.04.1996 following six issues proposed by the plaintiffs were framed:-

1. *Whether the property in dispute was purchased by Plaintiff No.1 in the name of his father late Saeed Ahmed Farooqui and the first installment of the price was paid by him? If so, its effect?*
2. *Whether the gift made by the deceased in favour of the defendants 1 and 2 was a valid one?*
3. *Whether it was in the knowledge of the plaintiffs for the last about 11 years that the property in dispute has already been transferred by way of gift to the defendants No.1 and 2? If so, its effect?*
4. *Whether in or about November, 1991 the plaintiffs asked the defendants 1 and 2 for partition of the property in dispute and for accounts of its usufruct?*
5. *Whether the gift of the disputed property to the defendants 1 and 2 had been revoked by the deceased Saeed Ahmed Farooqui and the original document of gift had been destroyed by him?*
6. *What should the decree be?*

5. The impugned judgment shows that the learned Single Judge, while writing judgment, to avoid repetition, has recast/reframed the following four issues:-

1. *Whether the property in dispute was purchased by plaintiff No.1 in the name of his father late Saeed Ahmed Farooqui and the first installment of the price was paid by him? If so, its effect?*
2. *Whether the gift made by the deceased in favour of the defendants 1 and 2 was a valid one? If so whether the same was had been revoked by the donor and the original document had been destroyed by him?*
3. *Whether it was in the knowledge of the plaintiffs for the last about 11 years that the property in dispute has already been transferred by way of gift to the defendants No.1 & 2 and for the first time in November, 1991 the plaintiff asked for partition & accounts? If so, its effect?*
4. *What should the decree be?*

6. List of witnesses and list of documents were filed by the Plaintiffs and Respondents No.1 and 2. In support of his case, the Appellant (*Plaintiff No.1*) examined himself and also Assistant Director, KDA and they were cross-examined by the counsel for

Respondents No.1 and 2. On the other hand Respondents No.1 and 2/Defendants No.1 and 2 examined themselves and also a witness namely Irfan-ul-Haq, who was said to be a tenant in the suit property. They were also subjected to cross-examination.

7. After hearing the parties, the suit was dismissed by the learned Single Judge vide Judgment dated 05.12.2016, hence the Appellant (*Plaintiff No.1*) filed the instant appeal. Record reflects that during pendency of this appeal, the Appellant expired and his legal heirs were brought on record.

8. On the basis of these facts and circumstances, we have heard learned counsel for the Appellant and perused the material available on record. No one has appeared on behalf of Respondents.

9. The primary points for consideration being one whether the suit was barred by limitation and No.2 whether the registered instrument being gift in favour of respondents being lawful or was otherwise proved to be an outcome of fraud or misrepresentation. It is discovered on the basis of record that the gift was made on 24.05.1980 and was also registered on the same day. The act of "registration" itself is a knowledge of all concerned. The suit was filed on 02.04.1992 after almost 12 years of the registration of the gift.

10. Article-91 of the Limitation Act is in respect of cancelation of an instrument and the time of three years would trigger when the facts entitling the plaintiff to have the instrument cancelled became known to him. It was apparently known to the appellant when it was registered on 24.05.1980. The other aspect of the matter is that despite having knowledge of the registration of the gift in respect of the property in question, the prayer of the suit which was essentially

for the declaration, administration and account was silent; the appellant/plaintiffs have not prayed at all as to the effect of registration of the gift deed whereby a title was being conveyed and enjoyed by the Respondents.

11. Qamar Saeed Farooqui/ Respondent No.2 was the owner by virtue of a registered gift. The importance of a registered instrument cannot be ignored by virtue of Article-92 of the Qanun-e-Shahadat Order, 1984. In addition to Article-92, Article-85 also come in support thereof which provides that a public document such as a registered document, the execution whereof is not disputed and being a public document, has its binding effect.

12. The arguments of Mr. Shahenshah Hussain that the burden to prove the registration is with the Respondents is apparently misconceived in the light of Mst. Nazeeran case¹. The said judgment has elaborately discussed the principle of burden in civil proceedings which is to be decided on the basis of preponderance of evidence. The court also discussed the legal and evidential burden and the legal burden would always remain on the Plaintiff for the proof of any assertion and the evidential burden would shift to the defendant of the suit if there is an initial discharge of such burden by the Plaintiff. Nothing in support of assertion as to any fraud committed by the donor in favour of donee, was established by producing or summoning any witness or any document. A document duly registered by the authority/sub-registrar becomes a legal document that carries presumption as to the genuineness and correctness under the law. Since it is a registered instrument with the Sub-Registrar, Article-129 of the Qanun-e-Shahadat Order, 1984 would

¹ 2024 SCMR 1271 [Mst. Nazeeran and others v. Ali Bux and others].

also come in support that such judicial and official acts in the registration of the instrument would have been done regularly and the act was performed lawfully, unless otherwise established. The case of Mst. Nazeeran referred above also highlights the effect of registration and the effect of Article-85 and 129 of the Qanun-e-Shahadat Order, 1984.

13. Similar are the findings in the case of Uzma Naz², which in para-17 discussed the presumption of genuineness and authenticity to the officials in terms of Article-90, 92 and 93 besides Article-129(e) of the Qanun-e-Shahadat Order, 1984. The case of Mst. Bhalan³ also provides a similar understanding of law that a presumption of truth is associated with the sale/conveyance deed which is duly registered under the Registration Act, 1908. Nothing was produced in rebuttal of such registration to dispel the presumption attached.

14. In view of the above facts and the law discussed, it appears that the appeal has no merit and is accordingly dismissed.

Dated: -12.12.2024

CHIEF JUSTICE

JUDGE

Ayaz Gul

² 2023 MLD 1222 [Uzma Naz and others v. The Director General Rangers Sindh and others].

³ 2024 MLD 1160 [Mst. Bhalan and 4 others v. Muhammad Asif Sakaria and 5 others].