

Judgment sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 242 of 2020

Present

Mr. Justice Muhammad Jaffer Raza

M/s Malik Textile Industries Pvt. Ltd. Plaintiff.

Versus

Syed Muhammad Hanif Jaffery & others..... Defendants

Mr. Muhammad Salim Thepdawala, Advocate for the Plaintiff

a/w Mr. Khadim Hussain Metlo Advocate.

None for the Defendants.

Date of Hearing: 27.02.2025

Date of announcement: 27.02.2025

J U D G M E N T

MUHAMMAD JAFFER RAZA – J : The Plaintiff has filed the instant suit with the following prayers:

- (a) To declare that the following Conveyance Deed and Declaration of Oral Gift (annexure "P/2" & "P/3" hereto) are liable to be Cancelled in the Records of Official defendant No.6 to 8 in light of the said judgment dated 17.08.1999, passed in High Court Suit No. 112/1978
 - i. Conveyance Deed bearing Registration No. 1616 Pages 111 to 114, volume No 762. Book No. 1, dated 25.03.1978 Registered with the Sub-Registrar, T-Division VII. Karachi (annexure "P/2" hereto).
 - ii. Declaration of Oral Gift bearing Registration No 978 Book No I dated 04-04-1987 Sub-Registrar T-Div-VII Karachi, M.F Plot No. Roll No 292, dated 07-04-1987 Photo Registrar Karachi (annexure "P/3" hereto).
- (b) To direct the defendant No.6, 7 & 8, to Mark Cancellation of annexure P/2 & P/3, in their record, under intimation to this Hon'ble Court, original whereof will be provided by the Plaintiff.
- (c) To grant permanent injunction to restrain the Defendant No. 6 to 8 to issue the Certified True Copies of the cancelled annexure P/2 &

P/3, to defendant No.1 to 5 or anybody else on their behalves, in any manner whatsoever.

- (d) To grant permanent injunction to restrain the Defendant No. 1 to 5 their respective legal heirs, successors, attorneys, and any other person(s) on their behalves from utilizing the Certified Copies of the Cancelled annexure P/2 & P/3, in any manner whatsoever
- (e) Any other, further, better relief or reliefs which this Honourable Court may deem fit and proper in the circumstances of the case.
- (f) Cost of the suit may also be granted.

2. After filing of above suit, summons were issued to the last known address of the Defendants and after repeated notices and summons the service was held good against Defendants 6 to 8 on 11.08.2020 and against the remaining Defendants 1 to 5 service was held good on 21.10.2021. Thereafter on 22.11.2021 order was passed against the Defendants declaring them ex-parte and the Plaintiff was directed to file affidavit-in-ex-parte proof. Learned Commissioner was appointed vide order dated 02.11.2023 to record evidence of the Plaintiff.

3. After recording evidence, the learned Commissioner filed his report on 27.11.2023 which was taken on record vide order dated 30.01.2024.

4. Brief facts of the case are that the Plaintiff had purchased the subject property bearing Industrial Plot No.L-30, situated in Block-22, K.D.A. Scheme No.16, Federal “B” Area, Karachi, admeasuring 10233.53 square yards or thereabout with constructions thereon present market value where of is more than 200.00 Million (**‘Suit Property’**) from Defendant No.1 through an Agreement to Sell dated 08.11.1974. Subsequently Defendants 1 and 2 in collusion and connivance with each other executed a Conveyance Deed dated 25.03.1978 (Exhibit PW-1/4) in favour of Defendant No.2 for the suit property and the Defendant No.2 on the basis of the above-mentioned Conveyance Deed, executed an Oral Gift dated 04.03.1987 (Exhibit PW-1/5) in favour of Defendants 3 to 5. It is pertinent to mention here that physical possession of the suit property was at all material times with the Plaintiff.

5. The Plaintiff had earlier filed a suit bearing No.112/1978 before this Court for specific performance in respect of the suit property. Thereafter the Defendant No.2 also filed a suit bearing No.443/1981 for possession of the suit property. Finally, a common judgment (Exhibit PW-1/6) and decree (Exhibit PW-1/7) dated 17.08.1999

was passed whereby suit No.112/1978 filed by the Plaintiff was decreed in his favour and suit No.443/1981 filed by Defendant No.2 for possession of the suit property was dismissed.

6. It is evident from the perusal of the said judgment that the Conveyance Deed dated 25.03.1978 and subsequent declaration of Oral Gift dated 04.03.1987 were declared as null and void. However, no cancellation thereof was made. Relevant part of the said judgment dated 17.08.1999 is reproduced below:

“Para 29 ISSUE NO.13:

The upshot of the above discussion is that Suit No. 112/78 is decreed as under:

- a) The Defendants No.1 & 2 jointly and/or severally are directed to perform specifically the agreements dated 08.11.1974, 9.11.1974, 08.1.1975 and 15.3.1975 and register the sale deed in favour of the Plaintiff before the Registrar of Sub-Registrar transferring and conveying the Industrial Plot bearing No.L-30, Situated at Block 22, of K.D.A. Scheme No 16-B. Federal "B" Area, Karachi measuring 10,233 free from all encumbrances including the claim of Defendants No 3 and 4.*
- b) In case of failure of the Defendants No. 1 and 2 to comply with the above directions the Nazir of this Court to directed to execute and register the sale deed in respect of the said property in favour of the Plaintiff subject to the Plaintiff's depositing a sum of Rs.761,638.00 with the Nazir towards payment of Income Tax and wealth Tax dues of the Defendants No. 3 and 4 payable by the defendant No.1 out of which Rs.170,000.00 will be adjusted against the balance sale consideration payable by the Plaintiff to the defendant No.1 under the Sale Agreements and thereafter the attachment of the Income Tax Department of the sold property shall stand vacated*
- c) a mandatory injunction is granted against the Defendants No.1 and 2 directing them, jointly and/or severally to deliver to the Plaintiff original title deeds of the said property held by them or any of them and on their failure to do so the Nazir of this Court is directed to apply and obtain certified true copies thereof from the Karachi Development Authority and deliver the same to the Plaintiff.*

PARA-30. SUIT NO.443/81.

The Plaintiff died in the Suit on 29.09.1995 and thereafter Court ordered on 15.11.1995 for amending the plaint by bringing the legal heirs on record. No amended plaint was filled but the legal heirs of the defendant No.2 in Suit No.112/78 moved a C.M.A.

No.2212/99 under Section 10 C.P.C. read with Section 151 C.P.C. for dismissal of Suit No.443/81 on the ground that the same having been abated. This application kept pending and no order have been passed thereon. In view of the decree passed in Suit No.112/78 the Suit No 443/81 is dismissed and the CMA. No 2212/99 is disposed off accordingly.

7. Thereafter Defendants 1 to 5 have challenged the above-mentioned judgment and decree 17.08.1999 by filing five separate High Court Appeals bearing Nos.43/2000 (Exhibit PW-1/8), 44/2000 (Exhibit PW-1/9), 45/2000 (Exhibit PW-1/10), 121/2000 (Exhibit PW-1/11) and 170/2000 (Exhibit PW-1/12). Subsequently all the Appeals were withdrawn unconditionally by the said Defendants on 23.06.2000 with a clear statement that the said Defendants have surrendered their all claims in favour of the Plaintiff in respect of the suit property.

8. Thereafter upon withdrawal of all the aforesaid Appeals the said Defendants handed over the original Conveyance Deed and Declaration of Oral Gift to the Plaintiff. However, as has been pointed out earlier, no cancellation was made thereof in the record of Defendant No.2.

9. It is argued by learned counsel for the Plaintiff that the Plaintiff came to know through some brokers of the vicinity that Defendants 3 to 5 have obtained the certified copies of the above-mentioned Conveyance Deed and Oral Gift along with fake Search Certificate and making attempts to sell the suit property on the basis thereof. The Plaintiff immediately served legal notices dated 06.01.2018 (Exhibit PW-1/15 and Exhibit PW-1/16) to Defendants 6 to 8 annexing therewith copy of the judgment and decree as well as the Sale Deed of the suit property executed in favour of the Plaintiff. The Plaintiff also sent a letter dated 01.02.2018 (Exhibit PW-1/14) to the concerned Sub-Registrar and Photo Registrar to restrain the Defendants from executing any documents pertaining to the suit property.

10. Thereafter the Plaintiff approached the official Defendants for cancellation of the said documents, but said official Defendants refused on the premise that do not have the power or jurisdiction to cancel a registered instrument. The Plaintiff as a matter of abundant precaution issued public notice on 12.11.2019 in Daily "JANG" (Exhibit PW-1/17) and "DAWN" (Exhibit PW-1/18).

11. I have heard learned counsel for the Plaintiff and have examined the documents exhibited along with the affidavit-in-ex-parte proof. The Plaintiff only seeks cancellation of the Conveyance Deed and Declaration of Oral Gift which were earlier declared by this Court as ‘null’ and ‘void’ in suit Nos.112/1978 and suit No.443/1981. The only apprehension of the Plaintiff is misuse of the registered instruments. Therefore, the Plaintiff seeks cancellation of the said same under Section 39 of the Specific Relief Act 1877. The same is reproduced below for the sake of convenience: -

“39. When cancellation may be ordered. Any person against whom a written instrument is void or voidable, who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may sue to have it adjudged void or voidable; and the Court, may, in its discretion, so adjudge it and order it to be delivered up and cancelled. If the instrument has been registered under the Indian Registration Act, the Court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books and fact of its cancellation.”

11. There is no cavil to the fact that the earlier suit No.112/1978 and suit No.443/1981 had already declared the said instruments as null and void. Further, the Defendants 1 to 5 had themselves withdrawn their respective High Court Appeals as mentioned in paragraphs 7 and 8 above and consequently handed over the original Conveyance Deed and Declaration of Oral Gift to the Plaintiff. In a nutshell, the Plaintiff is the registered owner of the suit property and two other instruments are in the field, for which cancellation is sought by the Plaintiff.

12. In the case of **Mst. NAZEERAN and others Versus ALI BUX and others**¹ the Honourable Supreme Court of Pakistan in paragraph Number 13 held as under: -

“13. The standard of evidence required to discharge the initial burden depends on the facts and circumstances of each case. It cannot be said that it will be consistent in all situations. Sometimes, a simple denial is adequate to shift the burden to the opposite party, while at other times, material evidence is necessary for the same purpose. Therefore, the standard of evidence is not uniform when challenging a

¹ 2024 S C M R 1271

registered document as compared to challenging an unregistered document. It has been observed that in disputes relating to registered documents, a common misconception may arise when an executant attempts to dispute the validity of the document through mere denial. It is essential to emphasize that the act of registration is not a perfunctory formality but rather a deliberate and legally binding process. When a document is registered, it becomes an official record available to the public. This adds credibility to the authenticity and legal purpose of the transaction.

On the other hand, unregistered documents lack the same level of legal endorsement. While they may carry evidentiary weight, their value is inherently lessor as compared to the registered document. The absence of registration renders unregistered documents vulnerable to challenges regarding their authenticity and enforceability. Moreover, a document duly registered by the Registration Authority in accordance with the law becomes a legal document that carries a presumption as to the genuineness and correctness under Articles 85(5) and 129(e) of the Q.S.O. and which cannot be dispelled by an oral assertion that is insufficient to rebut the said presumption.” (Emphasis added)

13. The registered instrument in the name of the Plaintiff continues to hold the field, for which a presumption of genuineness will apply. The previous round of litigation already adjudicated the Conveyance Deed and Declaration of Oral Gift as “null and void”. Therefore, there is no impediment to decree the suit of the Plaintiff in respect of prayer clause (a), (b), (c) and (d).

The above are the reasons of short order dated 27.02.2025 whereby the suit of the Plaintiff was decreed as prayed in terms of prayer clause (a), (b), (c) and (d).

Office is directed to prepare the decree in favour of the Plaintiff in the above terms.

J U D G E

Nadeem Qureshi “PA”