

Order Sheet

IN THE HIGH COURT OF SINDH, KARACHI

IInd Appeal No. 84 of 2025*[Mst. Shahana v. Mehmood Ali]*

Appellant Through M/s. Muhammad Jamshaid Arshad and
Ghalib Hussain, Advocates.

Date of Hearing & Order 07.03.2025

ARSHAD HUSSAIN KHAN, J. The appellant through instant second appeal has challenged the concurrent findings of the court below and sought relief as follows:

“It is most respectfully prayed by the above named Appellant that this Honourable Court may kindly be pleased to call for R & P of Suit No. 812/2018 & 2016/2018 from the Court of Learned X Senior Civil Judge/Assistant Sessions Judge, Karachi (East) and Civil Appeal No. 202/2023 from the Court of learned IXTH Additional District & Sessions Judge, Karachi (East) and re-call and set-aside the impugned Judgment and Decree dated: 12-02-2025 passed by the Learned Appellate Court and Consolidated Judgment & decree dated 31-05-2023 passed by the Learned Trial Court and decree the Suit No. 812/2018 filed by the Appellant and dismiss the suit No. 2016/2018 of the Respondents in accordance with law”.

2. From perusal of the record, it reveals that the appellant/ plaintiff-Mst. Shahana filed civil suit No.812/2018, before Xth Sr. Civil Judge Karachi [East] for **Possession under Section 9 of the Specific Relief Act & Permanent Injunction**, with the following prayers:

- a) Direct the Defendants to handover the vacant & peaceful possession of suit property i.e. Quarter/House constructed on Plot No. 67/9, Area 4-D, Landhi Township, Karachi (E), measuring 80 sq. yards to the Plaintiff forthwith without fail.
- b) To restrain the defendants their agents, co-agents representatives, relatives, servants, employees or any other person or persons claiming through or under them from damaging the suit property and also from creating third party interest in any manner over the suit property i.e. Quarter/House constructed on Plot No. 67/9, Area 4-D, Landhi Township, Karachi (E), measuring 80 sq. yards in any manner without adopting due process of law.
- c) Cost of the Suit.
- d) Any other relief or relieves, which this Honourble Court may deem fit and proper under the circumstances of the case.

After admission of the aforesaid suit, summons were issued against the defendant and it has come on record that the defendant who was father of the plaintiff had also filed a **counter civil suit bearing No.2016 of 2018 for Cancellation of Documents and Permanent Injunction**, which was subsequently consolidated with the leading civil suit No.812 of 2018. However, Mehmood Ali, the plaintiff of consolidated in his suit No.2016 of 2018 has prayed as under :

- a) To cancel declaration and confirmation of oral gift of immovable property dated 15th November 2014, i.e. in respect of House No.67/9, Area 4-D, Landhi No.4, Karachi.
- b) To cancel the Gift Deed dated 24/09/2015, transfer/mutation by or oral gift, regularization of Quarter No.67, Sector 4-D, Landhi Township, Karachi, in the name of plaintiff.
- c) Grant the cost of the Suit.
- d) Any other relief this Honourble Court deem fit and proper under the circumstances of the case.

The trial court after framing of the consolidated issues and recording of the evidence as well as hearing of learned counsel for the parties, has passed the following order, **vide order of the trial court dated 31.05.2023.**

“In sequel to the above discussion at above issues, I am of the view that plaintiff of leading suit has miserably failed to prove her case, therefore the leading suit of plaintiff bearing No.812 of 2018 is dismissed with no order as to cost. As far as the consolidated suit No.2018 of 2018 is concerned, the same stands disposed of in the following terms.

- (i) The plaintiff and the defendants No.2 to 7 are declared as the surviving legal heirs of the deceased Mehmood Ali son of Late Muhammad Wali and are entitled for their share as per sharia from the suit property viz. Quarter / House constructed on Plot No.67/9, Area 4-D, Landhi Township, Karachi, admeasuring 80 square yards.
- (ii) Nazir of District Court, Karachi, East is appointed as commissioner and his Fee is fixed at Rs.10,000/-, which shall be paid by the parties equally.
- (iii) The Nazir is directed to issue letter to the concerned department for cancellation of registered gift deed dated 15.04.2014, as the same has no value in the eyes of law. The unregistered gift deed dated 29.09.2015 has also no any value in the eyes of law as such the same also stands cancelled.
- (iv) The Nazir is directed first to verify the ownership of documents/suit property i.e. suit property viz. Quarter / House constructed on Plot No.67/9, Area 4-D, Landhi Township, Karachi, admeasuring 80 square yards.

- (v) Check the record of NADRA as to legal heirs of deceased Mehmood Ali son of Late Muhammad Wali then make it partition amongst all the legal heirs/parties (or any other legal heirs if found through NADRA) according to their share and if the partition is not possible then to initiate Private Auction proceedings amongst the legal heirs in accordance with law for distribution of shares amongst all the Legal Heirs of deceased as per Section 3 of Partition Act, 1893, which provides the Procedure when Sharer undertakes to Buy;
- (vi) If the legal heirs fail to buy the suit property in private auction then the Nazir is directed to put the suit property to Public Auction at that time, if the parties/legal heir willing to purchase the suit property at highest rate then the same may be sold out to him/her and the share amount shall be distributed amongst all the legal heirs in accordance with Muhammadan Law”.

The said order of the trial court was assailed before IXth Additional District Judge Karachi [East] in Civil Appeal No.202 of 2023, which was dismissed and the judgment of the trial court was maintained, vide order of the appellate court dated **12.02.2025**. The appellant has challenged the above concurrent findings in the present appeal.

3. Learned counsel for the appellant, inter alia, has contended that the impugned judgments and decrees are illegal and ab-initio under the law as both the courts below have failed to decide the issues in accordance with evidence available on the record. He has further contended that the impugned judgments are bad on law and facts. It is contended that the courts below while passing the impugned judgments have failed to take into consideration the registered documents i.e. Gift Deed and Mutation in favour of the appellant. It is contended that the impugned judgments suffer from serious legal infirmities, misreading and non-reading of the material evidence and documents on the record; he has contended that the courts below have failed to apply their judicial mind while passing the impugned judgments and decrees. Lastly, he has argued that the impugned judgments and decrees are liable to be set aside being arbitrary and unwarranted by law.

4. I have heard the arguments advanced by learned counsel for the appellant and have also perused the record.

Precisely, the claim of the appellant / plaintiff in suit No.812/2018 was based on the declaration and confirmation of the oral gift of immovable property whereas in the evidence she has failed to prove the execution of the said gift in her favour by his father. Resultantly, the suit was dismissed by the trial court with detailed reasoning. The said

findings of the fact was subsequently upheld by the appellate court in Civil Appeal No.202 of 2023 through the judgment dated 12.02.2025, which is impugned in the present appeal.

5. This Second Appeal has been filed under Sections 100 C.P.C. Under Section 100 of the Code of Civil Procedure 1908 CPC a second appeal to the High Court lies only on any of the following grounds: (a) the decision being contrary to law or usage having the force of law; (b) the decision having failed to determine some material issue of law or usage having the force of law; and (c) a substantial error or defect in the procedure provided by CPC or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon merits. In the instant matter, none of the aforesaid grounds is attracted.

6. It is also well settled law that concurrent findings of facts by the courts below cannot be disturbed by the High Court in second appeal, unless the courts below while recording the findings of fact have either misread the evidence or have ignored the material piece of evidence¹.

7. Learned counsel for the appellant has not been able to point out any misreading or non-reading of evidence by the courts below, or any illegality or infirmity and/or anything contrary to law or to some usage having the force of law in the impugned judgments. Hence, after carefully examining the judgments of the two courts below, I am of the considered view that the same are based on proper appreciation of the evidence and sound reasoning. Consequently, the concurrent findings of both the courts below do not require any interference by this Court as such the present appeal is dismissed in limine.

JUDGE

*Jamil**

¹ *Keramat Ali and another v. Muhammad Yunus Haji and another* (PLD 1963 SC 191), *Phatana v. Mst. Wasai and another* (PLD 1965 SC 134) and *Haji Muhammad Din v. Malik Muhammad Abdullah* (PLD 1994 SC 291).