

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

IInd Appeal No.223 of 2024

Date	Order with Signature of Judge
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Mst. Shahzadi Bano and others.....Appellants

Versus

Jawaid AhmedRespondent

Date of hearing :28.04.2025

Date of Announcement :29.05.2025

M/s. Muhammad Ajmal Awan & Muhammad Amir Malik,
Advocate for the Appellants.

Mr. Abdul Latif Leghari, Advocate for the Respondent.

J U D G E M E N T

1. Instant IInd Appeal has been preferred by the Appellants against the Impugned judgment and decree dated 06.07.2024 passed by the Additional District Judge-V, (MCAC), Karachi, in Civil Appeal No.68 of 2022. The said Civil Appeal emanated from the judgment and decree of the trial Court dated 22.01.2022 and 25.01.2023 in Suit No.1692/2020, preferred by the Respondent. Brief facts of the case are that the Respondent filed the above-mentioned Suit with the following prayers: -

- “(a) To direct the defendant to handover the peaceful physical possession of House No.232/232-A, Sheet No.1, Muhammad Mustafa Colony, section 11-1/2, admeasuring 60 yards each to the plaintiff.
- (b) To grant relief of permanent injunction thereby restraining the defendant, his men, agents working with him and under his instruction from creating third party interest in respect of the subject property during the pendency of this suit.
- (c) To grant mesne profit at the rate of Rs.15000/ per month from 24.09.2017 as the possession of the defendant over the subject property is illegal, unwarranted and against the spirit of law and as such he is duty bound to pay the compensation as arrayed for.
- (d) Cost of this suit be granted.

2. The learned trial Court after framing the issues and recording of evidence of the respective parties, decreed the Suit of the Respondent vide judgment and decree dated 22.01.2022 and 25.01.2023 respectively, wherein directions were given to the Appellants to handover the vacant peaceful possession of the suit property and pay mesne profit for three years prior to filing of the suit, till the delivery of possession of the suit property. Thereafter, the Appellants filed the above-mentioned Civil Appeal, which was dismissed vide Impugned judgment and decree dated 06.07.2024 and 10.07.2024 respectively. Learned counsel has impugned the concurrent findings of the courts below.

3. Learned counsel for the Appellants has contended that the Respondents have no title documents of the said property and the gift on the basis of which the above-mentioned Suit was filed for possession, is defective, as the ingredients of a valid gift have not been proved by the Respondent. Learned counsel has further contended that the judgments of the both Courts below require interference of this Court as the same are a result of misreading and non-reading of evidence. Further, it was argued, that the learned trial Court and the Appellate Court have erred as the Appellants are in possession of the subject property and the possession may not be disturbed. Lastly, he has prayed that instant IInd Appeal may be allowed and the Appellants may be allowed to retain the possession of the subject property.

4. Conversely, learned counsel for the Respondent has argued that the Respondent is the owner of the subject property. The title of the Respondent emanates from Mst. Zareena Khatoon who was the owner of the Subject property by virtue of Lease Deeds dated 03.12.2011. Thereafter, the said Mst. Zareena Khatoon executed General Power of Attorneys dated 12.06.2013 in favour of Mst. Ishrat Jawaaid, who is the wife of the Respondent. Upon the execution of the same, Mst. Ishrat

Jawaid gifted the Subject Property to the Respondent vide registered Declaration of Gift dated 30.10.2013. Learned counsel has submitted that the Appellants being close relatives of the Respondent were allowed to use the subject property for a limited period of time. It was argued that despite the fact that the Respondent is the owner of the property in question, the Appellants are enjoying the possession of the same. He has further argued that the instant IInd Appeal warrants no consideration as no misreading and non-reading of evidence is present in the circumstances of the instant case. He has further argued that scope of Section 100 CPC is restricted and therefore, instant IInd Appeal is liable to be dismissed.

5. I have heard both the learned counsels for the parties and perused the record. It transpired during the course of hearing of the instant IInd Appeal, that the Appellants had earlier had filed a Suit for declaration and permanent injunction, bearing Suit No.528/2013. The said Suit was filed on the basis of alleged Gift executed by one Muhammad Usman in favour of the Appellants. The learned trial Court in above noted suit was pleased to dismiss the same vide judgment dated 16.01.2018. Thereafter, the Appellants filed Civil Appeal No.133/2018 and the same was also dismissed vide judgment of the learned Appellate Court dated 07.09.2021. Thereafter, the record does not reflect the pendency of any subsequent appeal and the respective judgment emanating from the Suit mentioned in the instant paragraph, attained finality.

6. Reverting to the instant appeal before me, it is evident from the perusal of the Impugned judgment and decree that there is a registered lease deed in favour of the Respondent. It is also pertinent to mention that the present Appellants whilst vehemently arguing that the Gift deed, by virtue of which the Respondent became the owner of the property, is defective, never filed a suit for cancellation of such Gift. I have also perused the record in Suit No.528/2013, wherein, no prayer has been

made for the cancellation of the above noted Gift deed in favour of the Respondent. Even otherwise, the Gift was not challenged either by the Donor or the legal heirs of the Donor and in that respect the learned trial Court correctly held that the Appellants are strangers to the said Gift and therefore, cannot question the validity of the same. Furthermore, it is imperative to note that the subject suit filed by the Respondent was only for possession and no prayer for declaration of title was sought.

7. The scope of IInd appeal under Section 100 is restricted and there must be compelling grounds for interfering with concurrent findings of the Courts below. Recently the Honourable Supreme Court in the case of **Faqir Syed Anwaruddin versus Syed Raza Haider and others**¹ expounded the principles governing Section 100 CPC and held as under: -

“It is settled law that concurrent findings are not interfered with under section 100 of the C.P.C. unless the lower courts have misread the evidence on record, or may have ignored a material piece of evidence on record through perverse appreciation of evidence. It is also settled law that reappraisal of evidence on record by the second appellate court is not permissible while exercising jurisdiction under section 100 of the C.P.C. The High Court had rightly dismissed the regular second appeals filed by the defendants on the touchstone of the aforementioned principles.”

8. In light of what has been discussed above, it is held that the instant IInd Appeal is without merit. The learned counsel for the Appellant has failed to make out a case for interference. Instant appeal is dismissed with no order as to cost.

Judge

Nadeem

¹ PLD 2025 Supreme Court 31