

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH AT KARACHI**

Suit No.169 of 2009

Date	Order with signature of Judge
------	-------------------------------

Plaintiffs: Syed Zafar Abbas Naqvi & others  
 through Mr. Shanshah Hussain,  
 Advocate.

Defendant No.1 Muhammad Laiq Khan through Mr.  
 Munir-uddin, Advocate.

Defendant No.2 City District Government through Mr.  
 Muhammad Idress Alvi, Advocate.

Defendant No.3. Miss. Rabab Laiq Khan through Mr.  
 Awais Jamal, Advocate. (absent)

-----

**JUDGMENT**

**NAZAR AKBAR, J.** This is a suit for administration, declaration and permanent injunction filed by the plaintiffs against the defendants in respect of the estate of deceased Dr. Jehan Ara Abbas.

2. The brief facts of the plaintiffs' case are that Dr. Jehan Ara Abbas daughter of late Syed Ghulam Abbas died in Aga Khan Hospital at Karachi on 18-12-2008 and she was buried at Khairpur. at the time of her death she was living with defendant No.1. The deceased was issueless and her legal heirs are defendant No.1 who is her husband and the

plaintiffs who are the sons and daughters of late Syed Shafiq Abbas Naqvi, who was her real brother. The deceased at the time of her death owned an immovable property bearing No.SC-3, situated in Block No. A, North Nazimabad, Karachi, a commercial market known as “Al-Abbas Market” consists of ground plus first floor (hereinafter called **“Al-Abbas Market”**) and the deceased also had two bank accounts, one in United Bank Limited Hussain D’Silva Branch and the other in National Bank of Pakistan I.I. Chundrigar Road Branch, Karachi. The deceased also owned a Suzuki Carry bearing Registration No.CB-7096 and jewelries, furniture and other household items, the details of which are with the defendant No.1 who took them under his custody after her death.

3. The defendant No.1 and 3 filed their written statement wherein they took preliminary legal objections that the suit is not maintainable and denied the claim of the plaintiff while claiming that the deceased Jehan Ara Abbas was not issueless and she had left two legal heirs i.e. defendant No.1 her husband and daughter Rabab, therefore, the claim of the plaintiffs as legal heir of the deceased Jehan Ara Abbas is denied. They further stated in their written statement that the deceased during her life time had transferred Al-Abbas Market through registered gift deed in favour of her husband /defendant No.1 and her daughter Miss. Rabab/defendant No.3 thus the suit is liable to be dismissed with cost. It is further pointed out by defendants No.1 and 3 that even mutation of Al-Abbas Market was

effected in their names by Dr. Jehan Ara Abbas in her life time. She had also filed a suit No.302/2005 in respect of her right of inheritance in commercial Plot No.SC-4, measuring 609.78 square yards situated in Scheme No.2, North Nazimabad, Karachi, which belongs to her deceased sister, Dr. Hussan Ara Abbas and in the said suit No.302/2005, the deceased had mentioned defendant No.3 as one of her legal heirs.

4. In view of the claim of defendant that the deceased had gifted Al-Abbas Market to defendant No.1 and 2 the plaintiffs sought amendment in the plaint to add prayer for declaration and cancellation of alleged gift deed. In the amended plaint, it was averred that the deceased Mst. Jehan Ara Abbas had never gifted her immovable property bearing No.SC-3, Block-A, North Nazimabad, Karachi, to Muhammad Laiq Khan and/or Miss. Rabab or anybody else. The alleged declaration of gift filed by defendant No.1 along with the written statement is bogus and forged. Moreover, Miss. Rabab is not daughter of Mrs. Jehan Ara Abbas and she has been falsely shown as her daughter.

5. The defendant No.2 filed written statement wherein different legal pleas were taken including suit is not maintainable, the relief claimed are barred under section 42 & 56 of the Specific Relief Act and no cause of action has accrued to the plaintiff against the answering defendant/CDGK.

6. This court from the pleadings of the parties on 03-06-2010, framed the following issues:-

### **ISSUES**

- 1) Whether the suit is maintainable under the law?
- 2) Whether the plaintiffs are the legal heirs of the deceased Mrs. Jehan Ara Abbas and are entitled to inherit properties?
- 3) Whether the deceased Mrs. Jehan Ara Abbas gifted her property bearing No.SC-3, Block-A, North Nazimabad, Karachi, to Defendant No.1 and Miss. Rabab?
- 4) Whether the declaration of gift relied upon by defendant No.1 is a forged and bogus document?
- 5) What should the decree be?

7. On the same date i.e. 03.06.2010, Ms. Sabiha Sanam, Advocate was appointed as Commissioner for recording evidence of the parties. The plaintiff No.1 has filed his affidavit in evidence as Ex.P-1/A, copy of complaint/application dated 30-04-2009 as Ex.P-1/B, statement of Laiq Khan dated 07-04-2009 as Ex.P-1/C, statement of Miss. Rabab Laiq Khan dated nil as Ex.P-1/D, report of Hajira Usman Inspector dated 27-04-2009 as Ex.P-1/E, final complain/application by Superintendent of Police dated 30-4-2009 at the time of closing the file as Ex.P-1/F, High Court order dated 29-10-2001, Succession Application No.03/2005 which was presented by Dr. Jehan-Ara-Abbas only affidavit as Ex.P-1/G, his father Mr. Shafeeq Abbas's original certificate of matriculation examination 1948 dated 06-08-1995 as Ex.P-1/H and photo copies of four

photographs of deceased with plaintiff's father as Ex.P-1/J. Pw-2 Dr. Khalid Mehmood as Ex.P/K-1 has appeared before the commissioner for his evidence. The Pw-3 Miss. Hajra Usman as Ex.P/L-1, summon as Ex.P/L-2. She produced complaint as Ex.P/L-3, photo copy of statement of Mr. Laiq Khan as Ex.P/L-4, photo copy of statement of Miss. Rabab as Ex.P/L-5, photo copy of statement of Zaffar Abbas as Ex.P/L-6, photo copy of statement of Muhammad Ali as Ex.P/L-7, photo copy of statement of tenant Muhammad Bashir as Ex.P/L-8, photo copy of statement of tenant Muhammad Abbas as Ex.P/L-9, photo copy of tenant Khalid Bashir as Ex.P/L-10, copy of statement of tenant Nazirullah as Ex.P/L/11, copy of statement of tenant Miss. Shaheen Saleem as ex.P/L/12, photo copy of statement of tenant Mazhar Ali as Ex.P/L/-13, photo copy of statement of tenant Zareen Khalid as Ex./P/L-14, photo copy of application presented by Zaffar Abbas Naqvi before S.P. Police as Ex.P/L-15, photo copy report as Ex.P/L/16 and photo copy of complaint/application as Ex.P/L/17. All the witnesses of the plaintiffs were cross examined by defence counsel and learned counsel for the plaintiffs closed their side for evidence on **30-10-2014**.

8. The defendant No.1 has filed his affidavit in evidence as Ex.D/1-a. He produced gift deed as Ex.D/1-b (Original seen and returned) and photo copy of mutation as Ex.D/1-c (Original seen and returned). The defendant No.3 filed her affidavit in evidence as Ex.D/w-3a and she produced

photo copies attached therein. The plaintiffs' counsel cross examined both the defendants No.1 and 3 and their counsel closed the side of defendants for evidence on 28-03-2013.

9. I have heard learned counsel for the parties at length and perused the record. My findings on the above issues with reasons thereon are as under:-

### **FINDINGS**

Issue No.1)	In affirmative.
Issue No.2)	In affirmative.
Issue No.3)	In negative
Issue No.4)	In affirmative.
Issue No.5)	Suit decreed.

### **REASONS**

#### **Issues No.1&2)**

10. Learned counsel for the plaintiffs has contended that the defendants No.1 & 3 have failed to establish their claim of inheritance for Mst. Rabab as daughter of deceased Dr. Jehan Ara Abbas. Learned counsel pointed out that the defendant No.1 has categorically admitted in his cross examination as follows:-

“it is correct to suggest that no adoption deed has been made for the adoption of Miss. Rubab. It is correct to suggest that we have no issue out of our wedlock with Dr. Jahan Ara Abbas. I do not remember name of actual parents of Miss. Rubab.”

Once it is admitted by the defendant No.1 that defendant No.3 was not born from the wedlock of defendant No.1 and the deceased, the question of right of inheritance for defendant No.3 does not arise. It is not disputed by the defendants that the plaintiffs do not fall within the category of legal heirs of deceased Dr. Jehan Ara Abbas. Their plea was that the defendant No.3 was daughter of the deceased and she has excluded the plaintiff from the category of legal heirs of deceased. However, once it is proved that defendant No.3 was not legal heir of Dr. Jehan Ara Abbas and she was issue less, the plaintiffs have right of inheritance alongwith the defendant No.1. Therefore, they are entitled to bring a suit for administration of estate of the deceased Dr. Jehan Ara Abbas. Thus both these issues are answered in affirmative.

#### **Issues No.3&4**

11. The defendants have setup plea of gift of only one property bearing No.SC-3, Block-A, North Nazimabad, Karachi i.e. Al-Abbas Market in favour of defendant No.1 & 3 to defeat the right of inheritance accrued to the plaintiffs in respect of the said property on the death of Dr. Jehan Ara Abbas. These issues are interconnected, hence discussed together. The dispute is about the gift deed allegedly executed by the deceased Jehan Ara Abbas, therefore, the burden to prove these issues lies upon defendants No.1 and 3 being the beneficiaries of the gift deed. Learned counsel for the

defendants No.1 has conceded that the defendants No.1 and 3 have failed to prove the gift deed in accordance with Article 79 of the Qanun-e-Shahadat Order, 1984. No explanation has been offered that why none of the attesting witnesses was produced to confirm the contents and the execution of the gift deed. The plaintiffs' claim was that the forged and fabricated gift deed was prepared to misappropriate the major part of the legacy of deceased Dr. Jehan Ara Abbas i.e. Al-Abbas Market, comprising of around 20 shops on the ground floor and the first floor premises. The defendants' failure to prove execution of gift in accordance with Qanun-e-Shahadat has rendered the gift deed ineffective and unenforceable against the plaintiffs' claim, therefore, Issue No.3 is answered in negative and consequently Issue No.4 is answered in affirmative.

#### **Issue No.5**

In view of findings on Issues No.1 to 4, I am of the considered view that the plaintiffs are entitled for the legacy of Dr. Jehan Ara Abbas in accordance with their personal law and Sharia and the defendant No.3 is not entitled for any claim, therefore, the suit is decreed as prayed. The parties are to bear their own costs.

JUDGE

*Karachi*

*Dated:*\_\_\_\_\_

*M. Tahir*