

IN THE HIGH COURT OF SINDH AT KARACHI

**Suit No.1047 of 2011**

Plaintiff : Mst. Parveen Jamal Hassan  
Through Mr. Mumtaz Ali Khan Deshmuk  
Advocate.

Defendant No.1 : Mushtaq-ur-Rehman  
Through Mr. Muhammad Junaid Aziz,  
Advocate, (absent)

Defendant No.2 : Zia-ur-Rehman (absent).

Defendant No.3 : Rizwan-ur-Rehman  
Through Mr. Mohammad Qaiser Qureshi  
Advocate, (absent).

Defendant No.4 : Mst. Zareen Ishaque (absent),

Date of hearing : 12.02.2015.

For Final Arguments.

**JUDGMENT**

**NAZAR AKBAR, J.** Heard learned counsel for the Plaintiff and perused record with his assistance.

This suit was initially filed on **8.4.2009** as succession petition under **Section 278** of the Succession Act, 1925, for grant of Letter of Administration in respect of an immovable property of deceased Fatima Begum bearing Plot No.11, Row No.2, Sub-Block 'D' in Block No.II, Nazimabad, Karachi admeasuring 216 sq. yard, who has been survived by three sons and two daughters. The petition was supported with "no objection" affidavits of three of the legal heirs.

However, one legal heir namely Mr. Rizwan-ur-Rehman, through attorney filed his caveat under **Section 284** of the Succession Act, 1925, claiming that the deceased had orally gifted her sole property to him. Therefore, on his objection by order of the Court dated **08.08.2011** the succession petition was registered as suit No.1047/2011. The memo of succession petition and caveat were to be treated as plaint and written statement in terms of **Rule 413** of S.C.C.R. and following issues were framed by consent of the petitioner/Plaintiff and objector/caveator/Defendant.

- i. Whether property bearing Plot No.11 Row No.2, Sub-Block-D, Block No.II, measuring 216 sq. yards, Nazimabad, Karachi, is the estate left behind by the deceased mother Mst. Fatima Begum and all the legal heirs are entitled to have their share as per their entitlement?
- ii. Whether property bearing Plot No.11, Row No.2, Sub-Block-D, Block No.II, measuring 216 sq.yards, Nazimabad, Karachi, was gifted out by the deceased mother in her lifetime to the objector Rizwan-ur-Rehman?
- iii. Whether Declaration of Gift, allegedly made by the mother in the name of Rizwan-ur-Rehman, is a genuine document?
- iv. What should the decree be?

Evidence of the parties was ordered to be recorded through commission. The burden of proof of **issue No.1** was on the petitioner. Before Commissioner for recording evidence petitioner, Mst. Parveen Jamal Hasan, appeared and she corroborated each and every statement

made in the succession petition. In support of her case Plaintiff also produced two witnesses namely Zubair Ahmed Rajput and Rizwan-ul-Hasan and both confirmed the contents of the succession petition. The other legal heirs namely Mushtaq-ur-Rehman, Zia-ur-Rehman and Zareen Ishaque have also sworn their respective affidavit in support of succession petition. In cross examination, the statement of witnesses remained unshaken. The plaintiff and other legal heirs successfully proved their case that they are entitle to their respective share in the suit property according to Mohammadan Law. The burden was shifted on the Caveator/defendant to disprove the claim of other legal heir by positive and cogent evidence in support of his claim that the deceased has gifted the suit property to him.

The burden of proof of **issue No.2 and 3** was on the Caveator/defendant. The Caveator/defendant has failed to come in the witness box to prove his claim of oral gift of the property in dispute. He has also failed to caste any doubt on the evidence led by the Plaintiff and her witnesses in support of her claim of seeking of letter of administration of the property of the deceased. The caveator has not disputed the relationship of the petitioners and the other legal heirs with the deceased Mst. Fatima Begum that she has been survived by legal heirs mentioned in para-3 of their petition / suit. Only objection raised by the Caveator/ Defendant was oral gift but neither he came in

the witness box nor produce gift nor produce any witness to confirm the contents of declaration oral gift in favour of the Caveator.

In view of the above, facts and circumstances, the caveat filed by the Caveator/objector on **07.08.2009** stand dismissed and the petitioner's suit is decree as prayed. The office is directed to issue decree of Letter of Administration in Form No.32 of the Sindh Chief Court Rules (O.S.).

JUDGE

Karachi.

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