

IN THE HIGH COURT OF SINDH AT KARACHI

High Court Appeal No.17 of 2014
[Nasreen Yousuf versus Aijaz Safdar Kiyani and others]

Present:
Mr. Muhammad Faisal Kamal Alam, J.
Ms. Sana Akram Minhas, J.

Dates of hearing : 15.12.2025 and 17.12.2025.

Date of Rehearing : 11.05.2026.

Appellant : Nasreen Yousuf, through M/s. Abdul Wahab Baloch and Ahmed Ali, Advocates.

Respondent No.1 : Aijaz Safdar Kiyani.
Nemo.

Respondent No.2 : Mst. Riaz Bibi, through M/s. Shafaat Nabi Khan Sherwani and Humaira Baig, Advocates.

Respondent No.3 : Sub-Registrar "T" Division, DHA, Karachi, through Barrister Sandeep Malani, AAG and Ms. Deeba Ali Jaffri, Assistant A.G. Sindh

JUDGMENT

Muhammad Faisal Kamal Alam, J: The Appellant has challenged the Judgment dated 24.12.2013 and Decree dated 06.05.2016 whereby Suit No.560 of 2000 [**the Suit**], filed by the present Appellant, was dismissed.

2. It is necessary to highlight the relationship between the Parties hereto. The Appellant / Plaintiff (Nasreen Yousuf) is the real sister of the Respondent No.1 (Aijaz Sardar Kiyani); whereas, the Respondent No.2 (Mst. Riaz Bibi), is the wife of Jameel Akhtar Kiyani [**JAK**] – the latter was the real maternal uncle of the Appellant and Respondent No.1. The Respondent No.3 is the concerned Sub-Registrar and is a formal Party.

3. The subject matter of the Suit and this Appeal is a built-up Property No.6-C, Sunset Boulevard, Defence Housing Authority [**the Subject Property**].

4. Prayer Clause of the Suit is reproduced as under_

“It is, therefore, prayed that this Hon’ble Court may be pleased to pass Judgment and Decree under: -

- (a) Declare that the alleged gift in respect of building No.6-C, Sunset Boulevard, Phase-II, Defence Housing Authority, Karachi, made by Defendant No.1 in favour of Defendant No.2 on 10th February, 1992, is illegal, incompetent, immoral and result of fraud, coercion and misrepresentation and therefore nullity in the eye of law;*
- (b) Declare that the document purported to be declaration of oral gift registered on 10.02.1992 at MF Roll No.1544 dated 24.02.1992 in the office of the Defendant No.3 is a fraud in fact and in law. The same is illegal, immoral and incompetent and therefore does not confer any right or title in respect of the property in question on Defendant No.2 and therefore, cancel it being nullity in law:*
- (c) Permanent injunction, restraining the Defendants, their servants, agents and / or any other person claiming through or under them from acting on the alleged oral gift made on 18.02.1992 and subsequent registration of declaration of said gift made by Defendant No.1 in favour of Defendant No.2 in respect of Building No.C-6, Sunset Boulevard, Phase II, DHA, Karachi;*
- (d) Alternatively decree for Rs.10 million against Defendant No.2 as and by way of damages being the present market value of the property and the rents and other benefits received as well as for mental and physical torture.*
- (e) Any other relief or reliefs which this Hon’ble Court may deem fit and proper under the circumstances of the case.*
- (f) Cost of the suit be awarded.”*

5. The above Suit was contested only by the Respondent No.2 through her Written Statement.

6. On the basis of pleadings, the following Issues were settled and evidence was led_

“1 Whether the Suit is barred by limitation?

- 2. Whether the amount of the sale consideration in respect of the property bearing No.6-C, Sunset Boulevard, Phase-II, Defence Housing Authority, Karachi, was paid by the plaintiff to Mst. Kaneez Aysa and the defendant No.1 was appointed as an attorney as nominee of the plaintiff to finalize the sale transaction?*

3. *Whether the defendant No.2 directly purchased the property out of her own sources from Mst. Kaneez Aysha? If so its effect?*
4. *Whether the declaration of oral gift registered on 10.02.1992 at MF Foll No.1544 dated 24.02.1992 by the defendant No.1 in his favour of the defendant No.2 is void and illegal? If so its effect?*
5. *Who is entitled to receive rent?*
6. *What should the Judgment and decree be?"*

7. On behalf of the Appellant, her husband, namely, Muhammad Yousuf Busal and Witness Sardar Muhammad Zulfiqar Khan [Advocate] led the evidence, whereas, the Respondent No.2 (Riaz Bibi) examined herself and her Witness Muhammad Arif Malik, who was in the real estate business.

8. In a nutshell, the case of the Appellant, as per pleadings, is that she is a British national and used to visit Pakistan from time to time and stayed in the house of husband of Respondent No.2 (Jameel Akhter Kiyani, her maternal uncle). In 1989, she purchased a House No. 11/2, Khayaban-e-Shamsheer, DHA, Karachi [**the House Property**] from Respondent No.2 as the family of the Appellant was planning to shift to Karachi. In 1990, when the Appellant visited Karachi, she again stayed at the above residence where the Respondent No.1 was also staying. Maternal Uncle and Respondent No.1 persuaded the Appellant to invest in the real estate. Eventually, the Appellant agreed to purchase the Subject Property, and a meeting was arranged with her owner, namely, Mst. Kaneez Aysha wife of Atta-ur-Rehman [**the Owner**], who agreed to sell the Subject Property for a total sale consideration of Rupees one million. The sale price was arranged by the Appellant and paid to JAK, who made the payment to the above Owner and she executed an Irrevocable General Power of Attorney [**the GPA**]-**Exhibit D/3**, in favour of Respondent No.1 as nominee of the Appellant, *inter alia*, for supervising the affairs of the Subject Property,

including induction of tenant and collect rent. The Appellant also paid an additional amount of Rs.350,000/- towards repair and renovation of the Subject Property, to **JAK**, who was looking after the Subject Property as well as the above House Property, so also rendering the accounts of rent collected by him and Respondent No.1. Appellant visited the Subject Property a couple of times when she was in Karachi. The arrangement continued till June, 1999, when the Appellant visited Pakistan and serious disputes developed between the Parties hereto in respect of another plot situated in PECHS, as a result of which the private Respondent No.2 and her family members committed an armed dacoity and deprived the Appellant of US Dollars 122,400/-, and a criminal case was registered. The Appellant wanted to take over the affairs of the Subject Property but was shocked to learn that the Subject Property was / is owned by Respondent No.2. Upon inquiry, it transpired that Respondent No.1, in collusion with **JAK**, transferred the said Subject Property by way of an instrument, viz. 'DECLARATION AND CONFIRMATION OF ORAL GIFT IN RESPECT OF IMMOVEABLE PROPERTY' [**the impugned Gift**], in favour of Respondent No.2, and the same is registered in the Office of the Respondent No.3 on 10.02.1992 [**Exhibit D/4**]; the impugned Gift is dubious because it is made and registered on the same date. The Appellant was unable to locate the Respondent No.1 (her Brother), because he went into hiding and eventually came in contact on 18.08.1999 and informed the Appellant that he was threatened and forced to sign the impugned Gift in favour of Respondent No.2, whereafter the Respondent No.1 had to leave the residence of Respondent No.2 where he was earlier living.

9. Whereas, the Respondent No.2 has disputed the averments and stance of the Appellant in her pleadings, except, *inter alia*, that the House

Property as mentioned in the plaint was sold to the Appellant for sale consideration of Rupees 1.4 Million and possession along with the original document was handed over to the Appellant, and staying of Appellant at the residence of Respondent No.2 in the year 1990. According to the stance of Respondent No.2, she is the actual owner of the Subject Property, purchased for the sale price and from the Owner mentioned above, which she received from the Appellant after selling the above House Property to her; since she was not in Karachi at the relevant time, requested Respondent No.1 to request the Owner for execution of irrevocable general power of attorney, in favour of Respondent No.1. Categorically disputed the allegation of dacoity and states that a frivolous FIR was lodged against the Family of Respondent No.2 by the Appellant.

10. Mr. Abdul Wahab Baloch, Advocate, along with Mr. Ahmed Ali, Advocate, represented the Appellant and argued the matter. Contends that fraud was played upon the Appellant, as the entire sale price was paid by the Appellant through her maternal uncle, considering the relationship *inter se*, but, as the Appellant was an Overseas Pakistani, private Respondents took advantage of this fact; challenged the Judgment on the grounds mentioned in the Appeal; argues that onus was actually on the Respondent No.2 to prove the sale transaction as well as factum of gift in her favour, being the beneficiary of the gift and the Subject Property, which could not be proved, but was not taken into account in the impugned Judgment, which should be set at naught. It has been incorrectly held that the Appellant's Suit was time barred; because the Appellant came to know about the illegal Gift and purported transfer of Subject Property in favour of Respondent No.2 in the month of August, 1999 but could not file the Suit earlier because she was pursuing the Criminal Case registered against the

Respondent No.2. Argued that on the basis of above GPA, the impugned Gift could not have been made, as it violates terms of GPA and invalidates the impugned Gift, on the basis of which the Subject Property has been illegally transferred in favour of the Respondent No.2.

11. The above line of arguments is controverted by Mr. Shafaat Nabi Khan Sherwani, Advocate, along with Ms. Humaira Baig, Advocate, representing the Respondent No.2; contends that the claim of the Appellant is not supported by the evidence; the testimony of the Appellant's Attorney is hearsay and self-contradictory; stance of the Appellant that the Subject Property was actually purchased from her funds and in fact is a benami, is misconceived in nature, because the ingredients of a benami transaction (ostensible owner) does not exist in the present case, in the light of numerous judicial pronouncements; conversely, the essential factors for a valid sale transaction have been proved in favour of the Respondent No.2.

12. Arguments heard, record perused.

Points for determination in this Appeal are as under_

- (i) ***Who is the actual Purchaser of the Subject Property; the Appellant or Respondent No.2?***
- (ii) ***Is the impugned Gift illegal and void ab-initio; so is the transfer of the Subject Property in favour of Respondent No.2 by Respondent No.1 on the basis of alleged Gift.***

13. The relevant documents produced and exhibited in the evidence are as follows_

- (i) The GPA given by the Owner (Kaneez Aysha – undisputed original owner) of the Subject Property in favour of Respondent No.1 (Ajaz Safdar Kiyani) produced by Respondent No.2 as

Exhibit-D/3. A photo copy is also produced by the Appellant's Attorney [Husband] in his evidence.

- (ii) Declaration of Oral Gift [the impugned Gift] dated 10.02.1992 bearing Registration No.615 as Exhibit D/4, produced by the Respondent No.2.
- (iii) The Pay Order dated 30.03.1991, for a sum of rupees one million in favour of the above Owner, Exhibit 9 [produced by the Respondent No.2].

14. Testimonies considered.

Muhammad Yousuf Busal, in his Affidavit-in-Evidence / Examination-in-Chief, reiterated the averments of the plaint. In particular, deposed that the Signatures of Sardar Muhammad Zulfiqar Khan, one of the Witnesses of the impugned Sale Agreement dated 30.03.1991 (Exhibit-13), is forged.

15. The above Witness (Muhammad Yousuf Busal) admitted in his cross-examination, that he was in Saudi Arabia in 1990 and his wife (Appellant/Plaintiff) did not bring any foreign currency when she came to Pakistan from the United Kingdom. Did not deny the suggestion that the sale consideration of Rupees One Million was paid to the Owner (Mst. Kaneez Aysha) by Respondent No.2 (Riaz Bibi) either by Pay Order or cash; nor denied [the suggestion] that the said amount was paid by Respondent No.2 "from her own account". Admitted that the said Witness was not in Pakistan at the time of sale. Acknowledged that the Respondent No.1 had executed the impugned Gift Deed on 10.02.1992 in favour of Respondent No.2 in respect of the Subject Property and on 30.04.1992 the Military Estate Office [**the MEO**] mutated the Subject Property in the

name of Respondent No.2 [Exhibit D-5]. Did not deny the suggestion that the Respondent No.2 had filed the Rent Proceedings against the tenant. Admitted that Plaintiff visited Pakistan in 1993 and 1999 and stayed at Karachi upto 31.05.2000. In 1993, she stayed at the residence of Respondent No.1 for about two weeks. To a question, he has admitted that at the time of signing of GPA (Exhibit-D/3) although he [the Witness / Attorney] **was not in Karachi, but the Plaintiff was;** while admitting the fact that the GPA (Exhibit D-3) was executed by Owner in favour of Respondent No.1, who in turn gifted the Subject Property to the Respondent No.2, which is subsequently mutated in the name of Respondent No.2, on 30.04.1992, by the MEO; he admitted that the impugned Sale Agreement dated 30.03.1991 (Exhibit-13) is between Owner (Mst. Kaneez Ayesha) and Respondent No.2. Admitted that no proof has been placed on record that payment of Rs.3,50,000/- (*Rupees three hundred fifty thousand only*) was made to Respondent No.1; however, voluntarily added that due to close relationship between the Parties, no documentary evidence of such payment can be produced.

16. The other Witness is Sardar Muhammad Zulfiqar Khan (Exhibit-11). In his Affidavit-in-Evidence corroborated the stance of Plaintiff, *inter alia*, that his signature on the disputed Sale Agreement dated 30.03.1991 (Exhibit-13) as Witness No.2 is forged and fabricated. In his cross-examination, reiterated about the above fact. Acknowledged the fact that he also appeared as a witness of the Appellant in some other cases. Deposed that **JAK** received an amount of Rs.500,000/- (*Rupees five hundred thousand only*) from the

said witness in respect of a Flat in the Subject Property, but the said witness came to know that the Owner of the Subject Property is Respondent No.1. Has stated that in lieu of Rs.500,000/- (*Rupees five hundred thousand only*) paid in the year 1994 to **JAK**, a Gift Deed was signed by Respondent No.2 in respect of a Flat in the Subject Property, possession whereof was given to the said witness, but later he was dispossessed in the year 1991. An apparent contradiction in his cross-examination exists, when he deposed that he stayed in the Flat from 1992 to 1996.

17. In the evidence, the Respondent No.2 reiterated her stance of the Written Statement, *inter alia*, that she is the genuine purchaser of the Subject Property for a sale price of Rupees One Million, paid to the Owner, through Pay Order No.74313 dated 30.03.1991 drawn on United Bank Limited [Exhibit 9]; this sale deal was done through Mr. Malik Arif (DW-2). The Owner handed over the ownership documents / record to her [Respondent No.2]. Besides the aforementioned Exhibits / Documents as mentioned in the foregoing paragraphs, the Respondent No.2 (Mst. Riaz Bibi) in her testimony, also produced, Mutation Letter dated 30.04.1992 [Exhibit D-5], issued by the MEO in respect of the Subject Property, showing the name of the Respondent No.2 as Owner; deposed that the property documents were received from the original Owner, including_

- (i) “C” Lease which is a title document for a commercial property [Exhibit D/20].
- (ii) Approved Building Plan [Exhibit D/15] and other ancillary documents which are exhaustively mentioned in Paragraph-7 of the impugned Judgment and were never disputed either in the Appeal or in arguments.

18. In her cross-examination, she reiterated the genuineness of the sale transaction between the Owner (Kaneez Ayesha) and herself. Deposed that she received all the property documents from the above erstwhile owner and not Respondent No.1. Denied the suggestion that the above GPA (Exhibit D-3) was executed in favour of Respondent No.1 on the request of the Appellant and reiterated her stance as mentioned in the averments. Denied the suggestion that either the impugned Gift Deed or the above Property Documents were executed or obtained by or from the Respondent No.1 under coercion.

19. The other defence witness (Arif Malik) has corroborated the evidence of Riaz Bibi. In his cross-examination, he was consistent that the Subject Property was purchased by Respondent No.2 and he put his signature on the Sale Agreement, but not as a witness. Reiterated that the Subject Property was purchased through him. Has denied the suggestion that the sale consideration was paid by the Appellant. Corroborated the factum about execution of impugned Gift Deed (Exhibit D-4).

20. **Conclusion.**

- i- Although it is a general rule so also argued by the Appellant's Counsel, that the onus is on the beneficiary of an instrument, in particular, a Gift Deed, to prove that the document is a valid instrument by virtue of which the property is transferred to him / her, which onus the Respondent No.2 has failed to discharge; in view of the above discussed testimonies, this argument is not tenable, because, in the present dispute, the validity of gift is not the sole question, but the same is to be considered in the perspective of the overall

sale transaction, between the Owner and the Respondent No.2. Since, undisputedly, the sale transaction is preceded by the execution of the impugned Gift, therefore, in fact the onus is on the Appellant to prove her claim that the Subject Property had to be sold to her [the Appellant] and not to the Respondent No.2. The Appellant / Plaintiff not only could not prove that the sale transaction between the Respondent No.2 and the Owner of the Subject Property was illegal, rather, the claim is disproved from the contradictory evidence of the Appellant's attorney [husband], *inter alia*, when he has not disputed **payment of sale price by the Respondent No.2 to the Owner through the afore-referred Pay Order [Exhibit 9]** drawn on United Bank Limited. Thus, all the ingredients of a valid sale of property exist in the present case, that is, a willing seller (i.e. above Owner), Purchaser (i.e. the Respondent No.2) and the proven sale consideration of Rupees One Million.

- ii- The assertion of Respondent No.2 in her evidence, about obtaining the entire documents relating to the ownership of the Subject Property, as mentioned in the foregoing paragraphs, could not be contradicted in the cross-examination, again proves that the entire transaction was concluded between the Owner and the Respondent No.2, in accordance with law.
- iii- The factum of execution of registered GPA [Exhibit D-3] by the said **Owner** in favour of Respondent No.1 is not in dispute; however, the stance of the Appellant is, that the GPA was executed for the benefit of the Appellant [*paragraph 8 of the Plaint*]. On the basis of the above GPA the Respondent No.1 transferred the Subject Property in favour of Respondent No.2 by

way of the impugned Gift. The Appellant's Attorney has been unable to prove the claim, that the above GPA was executed as nominee of the Appellant, *inter alia*, because the terms of the GPA belie the claim of the Appellant, and in terms of Article 103 of the Evidence Law, i.e. *Qanoon-e-Shahadat Order, 1984*, the undisputed documentary evidence excludes the oral deposition of the Appellant side. Additionally and **interestingly**, the Appellant has not questioned the said GPA or any other document in her Suit, except the impugned Gift.

- iv- It is correctly decided in the impugned Judgment, that the Appellant did not take any step to call her real brother/ Respondent No.1 to testify in Court to corroborate the claim of the Appellant, in particular, that the said Respondent No.1 was coerced to execute the impugned Gift in favour of Respondent No.2. In addition to this, the Appellant could have summoned the Owner to give the evidence about the overall sale transaction, in order to prove the claim of the Appellant, that she was the actual beneficiary of the sale transaction and the Subject Property. Non-summoning of the above two relevant persons, who could have easily helped the Appellant to prove her case, is also adversely affected by well-established doctrine of **best rule evidence**, developed by the Superior Courts, which is envisaged in Article 129, clause [g] of the (*Qanoon-e-Shahadat Order, 1984*), that is, *“that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it”*. Applying this Rule to the present controversy would mean, that had the Owner and Respondent No.1 appeared as witnesses, they would have testified against the Appellant.

- v- In view of the above, we agree, as held in the impugned Judgment, validating the impugned Gift and distinguishing the Case Law cited by the Appellant's Legal Team (in Suit Proceeding), that the impugned Gift was never challenged by the Principal, that is, the Owner of the Subject Property. Not only this, but the evidence that has brought on record, favours the evidence of Respondent No.2, about her effective control over the Subject Property, inter alia, mutation in the Official Record [as mentioned supra], receiving rentals and pursuing matters against tenants as the owner / landlady of the Subject Property.
- vi- The deposition of the other witness of the Appellant (above named Sardar Muhammad Zulfiqar Khan) is *ex-facie* contradictory and cannot be relied upon. His statement that his signature as Witness No.2 on the above Sale Agreement is forged, is hardly of any significance, because, *firstly*, the sale transaction between the Owner and the Respondent No.2 has been independently proven through the registered documents / instruments, viz. GPA and the Gift Document (*supra*); *secondly*, the said witness himself admitted that one of the Flats in the Subject Property was given by the Respondent No.2, from where he was dispossessed, which means that the Respondent No.2 was effectively controlling the affairs of the Subject Property, as stated in the foregoing Paragraphs; *thirdly*, the Pleint of the Appellant's Suit has not pleaded the fact about any forgery of the Sale Agreement, and thus the evidence cannot be led beyond the pleadings; *fourthly*, the said Sale Agreement has not been disputed in the testimony of the Appellant's Attorney.

21. The arguments of Appellant's Counsel about decreeing the Suit beyond the Prayer Clause and questioning the authenticity of the Gift, as it was impounded in the impugned Judgment, are of no consequence, because it was done due to insufficient stamp duty, but it has not been declared invalid (*ab-initio*), and rightly so; the impugned Judgment has been handed down after the detailed evaluation of the testimonies and record, and thus is neither beyond the pleadings nor Prayer Clause of the Suit.

22. The Points for Determination in this Appeal are answered as follows:

- i- the actual Purchaser and subsequent owner of the Subject Property is the Respondent No.2.
- ii- the impugned Gift is lawfully made and the transfer of the Subject Property in favour of the Respondent No.2 by Respondent No.1 on the basis of the impugned Gift is a lawful transaction.

23. The upshot of the above discussion is that the impugned Judgment does not suffer from any illegality, justifying interference at the Appellate stage. Consequently, this Appeal is dismissed.

JUDGE

JUDGE

Karachi

Dated : 18.05.2026

M.Javaid PA