

**IN THE HIGH COURT OF SINDH, KARACHI**

**Suit No. 831 of 2012**

Plaintiff: Ms.Shehar Bano Ali  
Through Mr.Taha Ali Zai a/w S. Aminuddin,  
Advocates.

Defendants: Syed Mehdi Raza Ali & others  
Through Mr. Syed Haider Imam Rizvi and  
Mr.Tahmasp R. Razvi, Advocates.

**Suit No. 861 of 2012**

Plaintiffs: Ms.Shehar Bano Ali & another  
Through Mr. Syed Haider Imam Rizvi and  
Mr.Tahmasp R. Razvi, Advocates.

Defendants: Syed Mehdi Raza Ali & others  
Through Mr.Taha Ali Zai a/w S. Aminuddin,  
Advocates.

**Suit No. 1203 of 2012**

Plaintiffs: Syed Mehdi Raza Ali & others  
Through Mr.Taha Ali Zai a/w S. Aminuddin,  
Advocates.

Defendants: Ms.Shehar Bano Ali & others  
Through Mr. Syed Haider Imam Rizvi  
Mr.Farhat Ullah, Advocates.

**Date of Hearing: 25.05.2016**

**Date of Judgment: 20.07.2016**

**JUDGMENT:**

**MAHMOOD AHMED KHAN, J:**Suit No. 831/2012 is filed by Ms.Shehar Bano Ali daughter of late Syed Hadi Raza Ali against (1)Syed Mehdi Raza Ali son of late Syed Hamza Ali, (2)Ms.Sara Ali daughter of late Syed Hamza Ali (3)Ms.Farzana Ali daughter of late Syed Hamza Ali (4)Anwar Hamza Ali son of late Syed Hadi Raza Ali (5)Province of Sindh & (6)Military Estate Officer, for administration and permanent injunction, whereas Suit No.861/2012 is filed by Ms. Shehar Bano Ali and Mrs. Farida Hadi Raza Ali widow of late Syed Hadi Raza Ali against (1)Syed Mehdi

Raza Ali (2)Ms.Sara Ali (3)Ms.Farzana Ali & (4)Mr.Anwar Hamza Ali for administration and permanent injunction and the Suit No.1203/2012 is filed by (1)Syed Mehdi Raza Ali (2)Ms.Sara Ali (3)Ms.Farzana Ali & (4)Mr.Anwar Hamza Ali against (1)Ms.Shehar Bano Ali (2)Mrs.Farida Hadi Raza Ali and (3)Military Estate Officer, Karachi, for declaration and injunction.

2. All the said three cases relate to the same subject matter i.e. properties after the death of late Mrs.Anwar Hamza Ali professing *Fiq-e-Jafferia* and the parties except the official defendants are *inter-se* family members.

3. The background of the matter revolves around the assets of late Mrs. Anwar Hamza Ali wd/o Late Mr.Hamza Ali (standing in her name or since gifted/alleged to be gifted) being property Nos.239, 239/I and 239/II, Staff Lines, Fatima Jinnah Road/Raja Gazanfiar Ali Road, Karachi, the parties disputing apart from the applicability of Section 4 of Muslim Family Laws Ordinance, a gift for 50% of the property No.239 said to have been made by the late owner to Syed Mehdi Raza Ali (the living son), whereas for the property 239/I, the dispute is limited to the inheritance available. For the property No. 239/II the dispute seems to have been given up as such it is finally agreed to between the parties that the said two properties stand as follows:

Property No.239/I: Syed Hadi Raza Ali, Syed Mehdi Raza Ali and Ms.Sara Rizvi.

Property No.239/II: Syed Mehdi Raza Ali and Ms.Farzana Hamza Ali.

4. It is to be observed that admittedly Syed Hadi Raza Ali expired on 11.05.1992 and was succeeded by his mother Late Mrs.Anwar Hamza Ali, widow Mst. Farida Hadi Raza Ali, son Syed Anwar Hamza Ali and daughter Shehar Bano Ali. The late Mrs. Anwar Hamza Ali expired on 18.06.2012 and was succeeded by the living son Syed Mehdi Raza Ali, daughters Ms.Sara Ali & Ms.Farzana Ali, the availability of succession to the children of deceased son Syed Hadi Raza Ali i.e. son Syed Anwar Hamza Ali and daughter Ms.Shehar Bano Ali is being contested. Only the two female members of the family of Late Syed Haid Raza Ali i.e. widow Mst.Farida Hadi Raza Ali & the daughter Shehar Bano Ali contest a gift said to have been made for 50% of the property No.239 (the only property of the as such standing in her name) to her living son Syed Mehdi Raza Ali. The two other properties baring Nos.239/I and 239/II at the time of her death not standing in her name.

5. For convenience of understanding and according to the contestation before this Court, the parties in the matter are being divided between two groups; one comprising of Ms.Shehar Bano Ali and Mrs. Farida Hadi Raza Ali, daughter and widow of late Syed Hadi Raza Ali (hereinafter referred to as plaintiffs) and Syed Mehdi Raza Ali, Ms.Sara Ali, Ms.Farzana Ali, son and daughters of late Syed Hamza Ali and Mrs. Anwar Hamza Ali respectively and

Mr.Anwar Hamza Ali son of Late Syed Hadi Raza Ali (hereinafter referred to as defendants).

6. By consent of the learned counsels representing the said parties and the parties present, initially the matter was considered for final disposal with one issue i.e. *Whether the assets are to be divided in accordance with the Sharia or under the Muslim Family Laws Ordinance?* however the two sides had further reconsidered and as such finally it was agreed that the following would be the consent issues by the parties as proposed by them and so recorded by order dated 27.04.2016:

- (i). Whether the 50% share of Property No.239 Staff Lines, Karachi was lawfully gifted to Syed Mehdi Raza Ali in terms of Gift Deed dated 6.2.2010?
- (ii). Whether the (Late) Mrs. Anwar Hamza Ali/Female Deceased inherited from the estate of Syed Hadi Raza Ali/Male Deceased during her lifetime? Whether the plaintiffs Nos. 1 to 4 and defendants No.1 & 2 would be entitled to that share of their Deceased mother? If so to what extent?
- (iii). Whether the shares of the properties would be distributed in accordance with Sharia or Muslim Family Law Ordinance, 1961?

7. One of the plaintiffs namely Ms.Shehar Bano Ali got examined herself only whereas for the defendants Mrs.Farzana Ali wife of Mr.Jawaid Junaid, Mr.Umar Shahid Hamid son of late Mr.M.Shahid Hamid and Mr.Ghulam Murtaza-Advocate son of

Mr.Haji Yar Mohammad were got examined by way of affidavits-in-evidence by the defendants.

8. Learned counsel for the plaintiffs contends that the element of gift deed has not been got proved by the defendants, the same is not registered. That according to witness of the document the gift had been made on account of looking after the members of the family and not love and affection and that this said consideration has not been established. It is also contended that the required conditions have not been proved and that said gift was never mutated in the office of the concerned authorities, the same has been made out as counter blast to proceedings initiated by the plaintiffs. That the deceased was an educated lady and used to signing, whereas on the alleged gift deed thumb impression is present. It is further contended that the rent was received by the deceased till her death and as such the gift cannot be entertained. The learned counsel also challenges the requirement of witnesses in the matter. The learned counsel lastly contended that the document of gift has not been exhibited and as such the same need no consideration. In respect of the inheritance, the learned counsel contends that the plaintiffs are entitled to their shares in accordance with the Muslim Family Law Ordinance, 1961, as the order of Federal Shariat Court stands suspended by the Hon'ble Supreme Court, Shariat Appellate Bench. The learned counsel for the plaintiffs relies upon the case reported cases 2016 SCMR Page 662 (Mst. Saadia vs. Gul Bibi) and 2005 SCMR Page 1595 (Mst. Bhaggay

Bibi versus Mst. Razia Bibi), 2003 SCMR Page 286 (Muhammad Bakhsh versus Ellahi Bukhsh), 2002 SCMR Page 426 (Muhammad Ali versus Muhammad Ramzan), 1987 SCMR Page 1403 (Abdullah versus Abdul Aziz), PLD 2015 S.C. Page 187 (Farzand Ali versus Khuda Bakhsh), PLD 2000 FSC Page-1 (Ghulam Asghar versus State, Allah Rakah & another versus Federation of Pakistan), PLD 2003 S.C. Page 475 (Fazeelat Jan versus Sikandar), PLD 1990 S.C. Page 1051 (Zaina versus Kamal Khan), PLD 1975 S.C. Page 624 (Hamida Begum versus Murad Begum) and PLD 1962 West Pakistan, Karachi Page 409 (Sheikh Muhammad Obaid versus Muhammad Rafi Qureshi).

Learned counsel for the defendants at the inception offers the original gift deed to be taken on record/exhibited and further contends that the document of gift has/is always available before the Court, the offer to exhibit the said gift deed is opposed by the other side. It is further contended by the learned counsel that the element of gift has been proved by the witnesses who have not been shaken in the cross-examination and that the plaintiffs cannot call for said gift being registered gift as the gift entitling their predecessor-in-interest is also of similar nature. The learned counsel relies upon (i) 2008 SCMR Page 1639 (Nazir Ahmad versus Muzaffar Hussain), (ii) 2005 SCMR Page 564 (Allah Dad versus Dhuman Khan), and (iii) portion of Book "Tauzihul Masaail", Mutabiq Fatawa by Aaqae Haaj Syed Ali Hussaini Sestani (R.A.),

latest up-to-date 2015 Edition, Pages 422 and 423, alongwith Article 17 of the Qanun-e-Shahadat Order, 1984.

Both the learned counsels during the course of arguments agree that the deceased (Late) Mrs. Anwar Hamza Ali was also having bank account which is also likely to be considered according to the principle of inheritance determined.

9. My findings to the said issues with the added issue, are as under and thereafter the reasons of the same;

Issue No.(iv) what should the decree be ?

FINDINGS:

- Issue No. (i): Positive.
- Issue No. (ii): Positive.
- Issue No. (iii): Positive for inheritance according to Muslim Family Laws Ordinance, 1961.
- Issue No.(iv): Preliminary decree be issued

10. (i). *Whether the 50% share of Property No.239 Staff Lines, Karachi was lawfully gifted to Syed Mehdi Raza Ali in terms of Gift Deed dated 6.2.2010?*

The fact of gift being made is supported by two witnesses and also by the evidence of the learned Advocate who has drafted the same. The plaintiffs, who have challenged the said gift, have failed to bring forward any material except for an oral ascertain made by the witness who was herself not present during the specific/specified time as coming out in the evidence, her statement as such can at best be termed as her version and does qualify as

evidence and not inspiring confidence. The doctrine of gift even otherwise not mandatorily requiring a written instrument/ registration as such and irrespective the said Gift Deed which disputed in substance and not in its form not being exhibited. The substance of the matter and opportunity to challenge the same being always open and clear to the parties irrespective to non production the issue is proved and as such the findings to that effect are found positive. The other contentions as raised on part of the plaintiffs being not supported by the evidence not appreciated.

11. The issues No.(ii)& (iii) are taken up together;

*(ii) Whether the (Late) Mrs. Anwar Hamza Ali/Female Deceased inherited from the estate of Syed HadiRaza Ali/Male Deceased during her lifetime? Whether the plaintiffs Nos. 1 to 4 and defendants No.1 & 2 would be entitled to that share of their Deceased mother? If so to what extent?*

*(iii) Whether the shares of the properties would be distributed in accordance with Sharia or Muslim Family Law Ordinance, 1961?*

It is be observed that the inheritance of a Muslim opens up at the time of her/his death, the actual distribution/acquisition of benefit required to be also made forthwith may fallow subsequently. It is matter of admitted record that late Syed Hadi Raza Ali expired before Mrs.Anwar Hamza Ali as such the mother inherited her share from the property of the deceased son, whereas under the benefit still available under Sec.4 of the Muslim Family Law Ordinance, 1961 the son and daughter of late Syed Hadi Raza Ali stands entitled in accordingly as though he was alive on the death of Late Mrs.Anwar Hamza Ali despite the brake of chain of decent according to their share from the share of their father. This aspect though declared repugnant by the Federal Shariat Court in



the judgment reported as PLD 2000 FSC-I – Allah Rakha versus Federation of Pakistan, but since the same stands suspended as such cannot be called for in support by the defendants.

12. *Issue No.(iv) What should the decree be ?*

For the reasons as given forth it is as such held for the respective properties as under;

- i. 50% of the property bearing No.239 to be considered in ownership of Syed Mehdi Raza Ali being gifted and for the balance 50% the same is inherited/shared by two sons Late Syed Haidi Raza Ali and Syed Mehdi Raza Ali along with daughters Ms.Farzana Hamza Ali and Ms.Sara Rizvi according to their shares respectively. The share of Late Syed Haidi Raza Ali to be shared by his son Syed Anwar Hamza Ali and daughter Shehar Bano Ali only as though he was alive according to their respective shares.
- ii. Property No.239/I standing in the name of Syed Mehdi Raza Ali, Ms.Sara Rizvi and Late Syed Hadi Raza Ali. The 33.33% ownership of Late Syed Hadi Raza Ali on his death having been devolved upon his legal heirs, being mother Late Mrs.Anwar Hamza Ali, widow Mst.Farida Hadi Raza Ali, son Syed Anwar Hamza Ali and daughter Ms.Shehar Bano Ali stands inherited according to their respective shares. The said share of Late Mrs.Anwar Hamza Ali on her death devolving upon her two sons Late Syed Haidi Raza Ali (as though he was alive) and Syed Mehdi Raza Ali along with the two daughters Ms.Farzana Hamza Ali and Ms.Sara Rizvi. The share of Late Syed Haidi Raza Ali to be shared by his son Syed Anwar Hamza Ali and daughter Shehar Bano Ali according to their respective shares.
- iii. Property No.239/II stands in the names of Syed Mehdi Raza Ali and Ms.Farzana Hamza Ali.

Let a preliminary decree accordingly be prepared for the said two of the subject properties bearing Nos. 239 and 239/I, Staff Lines, Fatima Jinnah Road/Raja Gazanfiar Ali Road, Karachi only, to be sold for the best possible price available by the Nazir of this Court through open auction, all the said legal heirs shall be entitled to not only match the highest offer/bid available, they can if required/contest between them self to improve the same and as such exercise a first choice to the highest price available and in case of their failure, the properties be sold to the bidder/s and the proceeds thereof be divided among the family members in accordance with their respective shares. Inquiry as such to made for any movable assets including bank accounts standing in name of he deceased Late Mrs.Anwar Hamza Ali to be dealt accordingly. The said three suits with the pending applications stands decreed/disposed of accordingly.

J U D G E

Asif