

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

R.A. No. 344 of 2011.

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on CMA-1977 of 2017.
2. For orders on CMA-1974 of 2017.
3. For katcha peshi.
4. For hearing of CMA-No.1459 of 2017.

29.01.2018.

Mr. Rafique Ahmed, Advocate for the applicant.

Mr. Aqeel Ahmed Siddiqui, Advocate for respondent No.1.

Mr. Wali Muhammad Jamari, Assistant A.G.

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Learned counsel for the applicant states that the learned trial Court as well as learned appellate Court has failed to appreciate that the proceedings initiated by the private respondent No.1(3) were not only time barred, in absence of prayer for possession the same was liable to be dismissed. It is further contended on part of learned counsel for the applicant that the learned trial Court as well as learned appellate Court has also failed to appreciate that the documentary evidence brought forward by the respondent was subsequent to the gift deed and as such same was not applicable to be considered. It is also contended on part of learned counsel for the applicant that the mutation in the public record was a notice to public at large and as such the suit was time barred and that the superiority of documentary and oral evidence was not observed. Learned counsel for the applicant in support of his contention, relied upon the cases of **Wali Muhammad v. Mukhtar Hussain (1991 SCMR 224)**, **Muhammad Buta v. Habib Ahmad (PLD 1985 SC 153)**, **Mansab Ali v. Amir and 3 others (PLD 1971 SC 124)**, **Muhammad Iqbal through duly authorized Attorney v. Muhammad Ahmed Ramzani and 2 others (2014 CLC 1392)**.

2. On the other hand, learned counsel for the respondent has relied upon the impugned orders and further states that the said impugned orders are in accordance with the discussed material as brought forward. It is further contended on part of learned counsel for respondent No.1 that Article 91 of

the Limitation Act provided three years, was applicable in the matter as the fact came in the knowledge of the respondent in the year 2006 when the suit was filed and that he was dispossessed in the year 2005. He has relied upon the cases of **Muhammad Ashraf v. Khan Muhammad (1997 SCMR 1373)**, **Muhammad Ejaz v. Khalida Awan (2010 SCMR 342)**, **Nagina Begum v Tahzim Akhtar (2009 SCMR 623)**, **Ahmed Nawaz Khan v. Muhammad Jaffar Khan (2010 SCMR 984)** and **Muhammad Mukhtar v. Zubaida (2017 CLC 1731)**.

3. Learned AAG also supports the impugned orders and further contends that on account of the relationship limitation was not applicable in adversity to the claim of the respondent No.1.

4. In rebuttal, learned counsel for the applicant states that the suit was not valued for possession as the same would have made it liable for payment of Court fee stamps accordingly which is to be assessed on the basis of the relief claimed and that in the circumstances claimed the suit should have been filed for partition and possession. At this juncture, learned counsel for the applicant requires time for bringing formal documents of other proceedings between the parties in the matter.

5. Having heard the learned counsels and gone through the record with their assistance, time only for the purpose of bringing the documents as requested on part of learned counsel for the applicant is granted and the matter in the circumstances stands reserved for judgment. However, learned counsel for the applicant has three days' time to submit any document, if he so desired.

JUDGE

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