

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

Suit No.442 of 2017

DATE	ORDER WITH SIGNATURES OF JUDGE(S)
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- For orders as to non-maintainability of this suit, in obedience of this Court's order dated 28.02.2017

27.8.2018

Counsel called absent. This Court on numerous occasions has called upon the counsel for plaintiff to satisfy this Court as to the very maintainability and despite giving number of opportunities, the counsel for the plaintiff has failed to do so, even on 03.4.2017 he sought time to address this question, while he was called absent on 17.4.2017 as well as today.

In the circumstances, the question as to the maintainability through Order dated 28.02.2017 remain unanswered. Resultantly, the instant Suit along with listed applications is dismissed for non-prosecution.

J U D G E

Late Diary
(27.08.2018)

Mr. Farhan Zia Abrar, Advocate for the Plaintiff

By my earlier order of today when the counsel was called absent, for the reasons mentioned in the foregoing I dismissed the suit on account of non-prosecution as failing to satisfy the question of maintainability by the learned counsel. In the later part of the day the counsel appeared in the Court and tendered apology and submitted that he was ready to answer the question of maintainability, on which I heard the counsel by recalling the earlier order.

By way of brief facts, the counsel stated the suit property was purchased by the Plaintiff alongwith Defendant through Conveyance Deed attached at Page-31 dated 26.03.1978. The counsel further submits that an FIR was filed

against the Plaintiff in Custom Offences, where, as per Page-81 the subject property was put to public auction. To circumvent the said process of law the counsel candidly admits that Plaintiff recorded/registered a declaration of Oral Gift dated 25.04.1981 as per Annexure-D, where Plaintiff gifted his share in the property to his brother (Defendant). Afterwards, the attachment order in respect of the property was withdrawn through the instrument attached as Annexure-G, whereafter per counsel, by a Deed of Revocation dated 07.05.1986 as per Annexure-H (an unregistered document), Plaintiff revoked the earlier Gift Deed, thereafter per counsel, as per Annexure-I the Plaintiff and Defendant mortgaged the property with a Bank. It is next contended that the mortgage was settled and the property was redeemed however no document to substantiate this fact has been provided. Be that as it may, Court was next informed that through Annexure-J the Defendant appointed his son Yasir Harvi through the General Power of Attorney dated 20.12.2010. The counsel states that throughout this period the Plaintiff was in possession of the property and was aggrieved from the legal notice attached as Annexure-K through which the Plaintiff was advised to handover possession of the property to the Defendant on the basis of the Gift Deed mentioned hereinabove. Under these circumstances, the instant suit for declaration and cancellation of the said Oral Gift dated 24.05.1981 was filed, which met with the initial objection as to the very maintainability since every instrument needed to be cancelled is to be seen from the eyes of Article 91 of the Limitation Act, 1908 for which a period of 3 years from the date of the fact entitling the claimant to institute the suit is provided. Per counsel, the Gift Deed was an inherently void document because at no point in time possession of the property was handed over to the Defendant and this suit ought to be treated under Article 120 of the Limitation Act, which gives period of 6 years from the date when the right to sue accrues, which per counsel, accrued on 15.12.2016 when the aforementioned legal notice was received from the Defendant. He placed reliance on PLD 1964 SC 143 in support of his arguments that cases where

the gift deed is inherently void and defective, the limitation would not run under Article 91 of the Limitation Act, 1908.

Heard the counsel and reviewed the record.

Admittedly, the Plaintiff's claim to the property does not extend beyond 50% share which he transferred to his brother through a registered declaration of the Oral Gift dated 25.04.1981. It is evident that the scheme cooked up by the Plaintiff to save his 50% share from the legal process of auction itself is mischievous. It is interesting to observe that Plaintiff admits having entered into a void Gift Deed by his own admission by not handing over the possession. Be that as it may, the revocation not being a registered instrument and the cancellation of a Gift Deed after a lapse of about 37 years, particularly when the Plaintiff had its knowledge as he himself created the said instrument to avoid the legal process has no merit. The cited case of PLD 1964 SC 143 where an allegation was made on the Gift Deed being forged and fake being not the case at hand, would be of no relief to the Plaintiff, as in the instant case no such claim could be made by the Plaintiff who admittedly on his free will signed the said gift deed and he was aware of its execution and choose to come to the Court after the lapse of 37 years for its cancellation is clearly hit by Article 91 of the Limitation Act, 1908. I do not concur with the arguments of the counsel that infact the cause of action arose on 15.12.2016 when legal notice was received by the Plaintiff as in all fairness he should have divested himself off his entire rights and privileges to the extent of his 50% share in the property after the signing of the gift deed. The case of the Plaintiff is marred with numerous illegalities, from the point of obstruction of justice to forcefully use of the property without consent of its owner clearly disentitles him for any relief, I, therefore reject the plaint as it is seriously barred by limitation, as well as on account of serious vacuum of any legit cause of action.

JUDGE