

IN THE HIGH COURT OF SINDH AT KARACHI

Before:
Ahmed Ali M. Shaikh, CJ
Yousuf Ali Sayeed, J

CP No.D-6547 of 2021

Syed Muhammad Ali aka Munu V Syed Ahmed Jawad and others

Fresh Case

1. For orders on office objection
2. For orders on CMA No.27972/2021 (exemption)
3. For orders on CMA No.29977/2021 (stay)
4. For hearing of main case.

Petitioner through Mr. Shamshad Ali Qureshi, Advocate.

Date of hearing 24.12.2021

ORDER

AHMED ALI M. SHAIKH, CJ.- Petitioner invoking the jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, has assailed the order dated 30.09.2021 passed by the learned District and Sessions Judge/Model Civil Appellate Court, Malir, Karachi, in Civil Revision No.08 of 2021, affirming the order dated 24.10.2020 passed by the learned 1st Senior Civil Judge/Assistant Sessions Judge, Malir, in Civil Suit No.1052 of 2018, rejecting an Application under Order VII Rule 11 CPC filed by him.

2. Briefly, facts of the case are that Respondent No.1 filed Civil Suit No.1052 of 2018 against the Petitioner and others seeking declaration, cancellation of gift deed and permanent injunction. The Petitioner/Defendant No.1 filed an application under Order VII Rule 11 CPC seeking rejection of plaint, which was dismissed by the trial Court vide order dated 24.10.2020. Later, the Petitioner preferred Civil Revision which also met with the same fate. It is worthwhile to mention here that prior to aforesaid civil suit, the Petitioner has also filed a civil suit bearing No.167 of 2017, against the Respondent No.1 and others seeking administration of estates left by his sister Mrs. Aliya Jawad, including house bearing No.C-35 Billys Home, Johar Complex, University Road, Karachi.

3. Learned counsel submits that the subject gift deed dated 04.05.2007, had been executed by late Syed Hassan Jawad in favour of his wife Mrs. Aliya Jawad in respect of property bearing No.C-35, Billys Homes, Johar Complex, University Road, Karachi, in accordance with law. He submitted that the plaint of suit filed by the Respondent No.1 challenging the gift deed was liable to be rejected as it was filed after eleven years of the execution of the gift deed. He further submitted that even otherwise, the Respondent No.1 did not raise any objection during the life time of the donor and donee and after demise of the donee in the year 2016 challenged the very execution of the gift deed. He next submitted that the Courts have failed to comprehend that under Article 91 of the Limitation Act, the period for filing a suit seeking cancellation an instrument is three years, as such, the plaint being time barred is liable to be rejected. Per counsel, the civil suit No.1052 of 2018, filed by the Respondent No.1, is nothing but a counterblast of earlier suit filed by the Petitioner with sole object to linger on and multiply the proceedings.

4. We have considered the submissions put-forth by learned Counsel and with his able assistance perused the material available on record. Admittedly, late Syed Hasan Jawad died issueless and Petitioner, claiming to be real brother and legal heir of late Mrs. Aliya Jawad, filed Civil Suit No.167 of 2017 for administration of property left by her. The Respondent No.1 also filed Civil Suit bearing No.1052 of 2018 against the Petitioner and others, inter alia, alleging that the gift deed dated 04.05.2007 was never signed by the late Syed Jawad Hasan, who died on 06.05.2007 and it contained only his thumb impression, which too was surreptitiously obtained during his protracted ailment. As to the submission that suit filed by the Respondent No.1 was hit by limitation in terms of Article 91 of the Limitation Act, suffice it to say that the period of limitation is reckoned from the date when the specific fact of execution of gift deed had become known to the Plaintiff. In this regard, the Respondent No.1/Plaintiff in paragraph No.13 of the plaint has explained the date when the cause of action accrued to him to file the instant suit. The said paragraph is reproduced hereunder:-

“13. That the cause of action for the instant suit arose when Civil Suit No.167/2017 was filed by defendant No.1 and again on _____,

through service process of Civil Suit No.167/2017; whereby plaintiff became known about the process of registration of Declaration of Gift Deed and is continue day to day within the local limited of PS Sachal which comes within the jurisdiction of this Honourable Court.”

5. Additionally, from the above, it appears that the question of limitation in the matter viz. as to when it was dawned upon the Respondent No.1 that the subject gift deed in favour of Mrs. Aliya Jawad was executed, whether collusively and fraudulently or otherwise, is a mixed question of fact and law, and in likewise circumstances provision of Order VII Rule 11 CPC cannot be invoked and proper course for the Court, as also observed by the fora below, is to frame an issue on such question and decide the same on merits in light of the evidence adduced at trial.

6. Yet there is another aspect of the case viz. in what capacity Mst. Aliya Jawad widow of Syed Hasan Jawad, was occupying the subject immovable property. In this regard, the Respondent No.1/Plaintiff alongwith his civil suit has filed a photocopy of handwritten Will in Urdu of late Syed Hasan Jawad (copy available on record). Perusal of the said Will reveals that deceased Syed Hasan Jawad son of Dr. Syed Mansoor Hussain, brother of the Respondent No.1, executed the same on 06.05.2006, inter alia, narrating therein that after his death, Mrs. Aliya Jawad, his wife, can live in the subject property, rent out the same, etc. however, after her (death) the said property shall be returned/devolved upon his brother and sisters (clause 2 of the Will). On the one hand, the Petitioner filed civil suit for administration on the basis of the gift deed executed in favour of his late sister Mrs. Aliya Jawad while on the other the Respondent No.1 approached the civil Court for its cancellation and also brought on record a Will purportedly signed by deceased Syed Hasan Jawad, a year before his death. In this view of the matter, the disputed questions raised in the suit either of reckoning of the limitation period or authenticity of the gift deed/Will cannot be resolved without framing of proper issues and recording evidence and the plaint could not be rejected.

In view of the foregoing, we do not find any merit in the Petition, which is accordingly dismissed alongwith pending misc. applications.

Chief Justice

Judge