

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S – 88 of 2006

Ali Gohar and others v. Madarsa Ashrafia through its Muhtumim

Date of hearing: **14-02-2022**

Date of decision: **14-02-2022**

M/s Bhajandas Tejwani and Manoj Kumar Tejwani, Advocates for the Applicants.

M/s Abdul Naeem and Faisal Naeem, Advocates for the Respondent.

Mr. Ahmed Ali Shahani, Assistant Advocate General Sindh.

.....

J U D G M E N T

Muhammad Junaid Ghaffar, J. – Through this Civil Revision Application, the Applicants have impugned judgment and decree dated 03-04-2006 passed by the 2nd Additional District Judge, Sukkur in Civil Appeal No.44 of 2000, whereby while dismissing the Appeal, judgment and decree dated 30-09-2000 and 06-10-2000, respectively, passed by the 2nd Senior Civil Judge, Sukkur in F. C. Suit No.97 of 1988 has been maintained, through which the Suit of the Respondent was decreed.

2. Learned Counsel for the Applicants has contended that both the Courts below have failed to appreciate the evidence on record; that the gift deed in question was never proved in accordance with law as no independent witness was examined; whereas, the witnesses who were examined, were interested witnesses; hence, cannot be relied upon; that the possession admittedly remained with the Applicants, and even after filing of this Revision Application, the Applicants remained in possession, but subsequently, by illegal means and adoption of coercive measures, it has been taken over through the Executing Court; that the property was owned by the deceased father of the Applicants and was held in his wife's name as a *benami*, therefore, both the Courts below have failed to arrive at a just and fair conclusion, hence, this Revision Application merits consideration. In support, he has relied upon *Muhammad Haroon v. Province of Sindh through Secretary (L.U.) Board of Revenue, Hyderabad and 4 others* (2020 YLR 408), *Mujeeb-ur-Rehman v. Mst. Rehana Bibi through Attorney and 8 others* (2020 YLR 722), *Mst. Zenab Bibi v. Ahmad*

Yar (2020 CLC Note 1), Syed Tabassam Hussain Shah v. Sakina Bibi through Special Attorney and 2 others (2020 YLR Note 32), Abdul Rehman v. Mst. Majeedan Bibi alias Majeedan (2017 SCMR 1110), Baja through L.Rs. and others v. Mst. Bakhan and others (2015 SCMR 1704), Mian Allah Ditta through L.Rs. v. Mst. Sakina Bibi and others (2013 SCMR 868), Ghulam Farid and another v. Sher Rehman through LR.s. (2016 SCMR 862), Phul Peer Shah v. Hafeez Fatima (2016 SCMR 1225), 2014 SCMR 1469, Khawas Khan through Legal Heirs v. Sabir Hussain Shah and others (2004 SCMR 1259), Muhammad Tufail and 4 others v. Akbar Ali and 4 others (2004 SCMR 1370), Abdul Hameed through L.Rs. and others v. Shamasuddin and others (PLD 2008 Supreme Court 140), Faiz Muhammad through Legal Representatives and others v. Mst. Khurshid Bibi (PLD 2009 Lahore 41), Ghulam Muhammad v. Farooq Ahmed and others (2002 SCMR 1801), Khawas Khan through Legal Heirs v. Sabir Hussain Shah and others (2004 SCMR 1259), Muhammad Tufail and 4 others v. Akbar Ali and 4 others (2004 SCMR 1370), P.M. Amer v. Qabool Muhammad Shah and 4 others (1999 SCMR 1049), Ghulam Ali and 2 others v. Mst. Ghulam Sarwar Naqvi (PLD 1990 Supreme Court 1), Sikandar Hayat and others v. Mst. Inayat Khatoon and others (2004 MLD 1827), M. Anwar Qureshi v. Jamiluddin Farooqi and 5 others (2007 MLD 1192), Mst. Saadia v. Mst. Gul Bibi (2016 SCMR 662), Mst. Naqina Begum v. Mst. Tahzim Akhtar and others (2009 SCMR 623), Mst. Rasheeda Bibi and others v. Mukhtar Ahmad and others (2008 SCMR 1384), Bilal Hussain Shah and another v. Dilawar Shah (PLD 2018 Supreme Court 698), Gul Bahadur and others v. Gul Akbar and another (2012 YLR 542) and Nazir Ahmad (deceased) through Legal Heirs v. Muhammad Rafique and 4 others (2016 MLD 1926).

3. On the other hand, Respondent's Counsel has opposed this Revision Application by stating that the two Courts below have arrived at a correct decision; that the Suit for possession was filed by the Respondent on 16-05-1988, and written statement was filed on 12-01-1989, wherein there was no plea of any *benami* ownership of the property; that much belatedly, another suit for declaration / *benami* was filed on 10-09-1989; that the Applicants are not legal heirs of Khursheed Begum, the owner of the property; hence, they have no right to sue or defend any such dispute; that Khursheed Begum was alive till 30-03-1988 and she never challenged the gift deed in question executed in 1981; that a stranger cannot challenge the gift deed in question. In support, he has relied upon Shahriyar Ali Patudi

and 3 others v. Messers Deeora Furnishers (PLD 1985 Karachi 47), Habibullahjan and others v. M. Hassan Khan and others (1991 MLD 25), Ahmad Yar and another v. Muhammad Aslam (1981 CLC 527), Rahim Dad and 3 others v. Abdul Kareem and 3 others (1992 MLD 2111), Auqaf Department v. Javed Shuja and others (1995 CLC 1173), Muhammad Ali and 25 others v. Hassan Muhammad and 6 others (PLD 1994 Supreme Court 245), Binyameen and 3 others v. Chaudhry Hakim and another (1996 SCMR 336), Rahat Mahmood v. Tariq Rashid and another (PLD 1993 Karachi 648), Amanul Mulk v. Mian Ghafoor-ur-Rehman and others (1997 SCMR 1796), Mira Khan v. Ghulam Farooq and others (1988 SCMR 1765), Syed Ghulam Mustafa Shah and another v. Syed Muhammad Hussain Shah and 2 others (PLD 1993 Karachi 369), Syed Akhtar Hussain Zaidi v. Muhammad Yaqinuddin (1988 SCMR 753), Major (Retd.) Syed Baqar Hussain Shah v. Mst. Rashida Begum (1992 MLD 2515), Sar Anjam v. Abdul Raziq (1999 SCMR 2167), Major Amir Muhammad Khan v. Dr. Faqir Muhammad and others (1983 CLC 1173), Mst. Roshi and others v. Mst. Fateh and others (1982 SCMR 542) and Muhammad Iftikhar v. Nazakat Ali (2010 SCMR 1868).

4. I have heard both the learned Counsel and perused the record.

5. It appears that this Revision is in respect of a Suit for possession filed by the Respondent, and the Respondent's claim is that the Suit property, which was owned by Khursheed Begum, was given to the Respondent by way of a gift dated 25-11-1981. The suit was contested by the present Applicants and they filed their written statement, and admittedly, at that point of time their defence was that the gift deed is forged and fabricated; that Khursheed Begum never executed the gift deed in favour of the Respondent; that the gift deed does not bear the thumb mark of Khursheed Begum; that the same was attested purportedly by interested parties; that the possession of the property has always remained with the Applicants, and in addition to these assertions, further pleas were also raised but admittedly, no assertion was made regarding ownership of Khursheed Begum as being a *benamidar*. It is only, after the Applicants filed their own suit subsequently, for declaration and benami, that this objection was raised. Admittedly, they are not legal heirs of Mst. Khursheed Begum as she was the second wife of their father and their step mother. It has also come on record and which has not been disputed before the Courts below; nor before this Court, that there is an admission on the part of the Applicants

that the property was gifted by their father to his second wife Mst. Khursheed Begum due to *love and affection*. It would be advantageous to refer to the said observations in the judgment of the Trial Court, which reads as under:

“I have considered carefully the submissions submitted by the learned counsel for both the parties, perused the evidence adduced by the parties and case law cited at bar by the learned Counsel for both parties. Perusal of R and Ps show that the defendants have taken plea that the gift deed was not executed by the deceased Khurshid Begum. The defendants have adduced evidence that possession was also not delivered by the deceased Khurshid Begum to the plaintiff Madersia Ashrafia. The defendants have produced rent agreement through witness Ali Gohar at Ex.125. Perusal of it shows that which does not bear the signature or thumb impression mark of the executant. So also perusal of the same further shows that substance of the same was written with different ink and different hand and names of the witnesses were written with different pen. Perusal of lease agreement purported to have been executed in between Mst. Khurshid Begum and one Akhtar Ali shows that number of shop viz C-105/2000 was written in the same with different type writer after removing the word already written in the same. So also the defendants have failed to examine the tenant namely Anwar Ali who had retained/occupied the disputed premises in capacity of tenant. The contents of the document viz gift deed produced at Ex.29 show that possession was delivered to the plaintiff by Mst. Khurshid Begum through gift deed. The boundaries of the suit property are mentioned in the gift deed. The gift deed is supported by the donee and attesting witnesses. The plaintiff has produced list of articles lying in the disputed house which were also gifted by Mst. Khurshid Begum.

It is worth to mention here that defendants on the one hand had taken plea that gift deed was not executed by Mst. Khurshid Begum. On the other hand they have deposed through their witness Ali Gohar who is defendant in this suit that property was given by his father to his mother in Kabina. Defendants have produced true copy of IInd Class Civil Suit NO.27 of 1988 Re. Ali Gohar and others Vs. Muhammad Qasim in which plaintiffs who are defendants in the suit had stated in para NO.4 of the plaint which reads as under:-

“That due to love and affection late Rasool Bux Soomro had gifted his house NO.C-105/2000 Military Quarter Sukkur to his second Wife namely Mst. Khurshid Begum.”

So also they have stated in para NO.3 of the plaint of said suit which is also re-produced as under: -

“That both the Wives of late Rasool Bux were residing separately i.e Wife NO.1 at the address given above and second wife at C-105/200 Military Quarter Sukkur.”

The defendants have not produced the allotment order of disputed house in favour of Mst. Khurshid Begum or any receipt of

payment of sale consideration amount that allotment price was paid by Rasool Bux or any gift deed regarding gift of suit house by Rasool Bux in favour of Mst. Khurshid Begum.

Since the defendants have failed to discharge the burden to prove that the gift deed in favour of the plaintiff is forged and fictitious and fraudulent document. I have therefore, come to the conclusion that Mst. Khurshid Begum had executed gift deed in favour of the plaintiff. Issue answered accordingly in the negative.”

6. Perusal of the aforesaid findings clearly reflects that the stance of the Applicants is not consistent; rather they have taken contradictory pleas, which do not support their case. The Applicants' Counsel has made an attempt to dispute the gift deed; however, it is an admitted position that in this Suit for possession they cannot challenge the gift deed in question, and more so, when they themselves had never taken such a plea in their written statement; nor they had filed any counter claim as to the very ownership of Khursheed Begum. Once they admit, as above, that the property was gifted by their father to Mst. Khursheed Begum, their step mother; then retaining possession of the same merely on the ground that now their stance is that the property in the name of Khursheed Begum was a *benami* cannot be accepted. Other than this, they have not been able to justify holding possession of the property except that they were living in the property since long. Lastly, until they had any declaration of *benami* in their favor (which they have also failed to obtain in their Suit), they have no lawful justification to challenge the gift deed and retain possession of the property which was never owned by them independently.

7. In view of hereinabove facts and circumstances of this case, it appears that both the Courts below have arrived at a fair and just conclusion and have appreciated the evidence on record; whereas, even otherwise, the concurrent findings of the two Courts below are not to be disturbed ordinarily and the Applicants have not been able to place on record any material so as to justify their possession; hence, the Civil Revision Application in hand does not merit any consideration and was, therefore, **dismissed** by means of a short order in the earlier part of the day and these are the reasons thereof.

J U D G E

Abdul Basit