

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
Suit No. 2262 of 2018

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| Date | Order with Signature(s) of Judge(s) |
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- 1.For hearing of CMA No.16346/2018.
- 2.For hearing of CMA No.16347/2018.
- 3.For hearing of CMA No.16348/2018.
- 4.For hearing of CMA No.16349/2018.
- 5.For hearing of CMA No.2530/2019.

24.02.2021

Mr. S.M. Shujja, Advocate for plaintiffs.  
Mr. Muhammad Rahib Lakho, Advocate for defendants.

5. This is an application filed on behalf of the defendants, under Order VII, rule 11, C.P.C., seeking rejection of the plaint on the grounds of limitation and lacking of cause of action.

Learned counsel for defendants contends that the suit of the plaintiffs is barred under Article 91 of the Limitation Act, 1908; therefore, the plaint is liable to be rejected. He further contends that the suit property was lawfully owned by the defendants and their deceased brother, Mumtaz Siraj by virtue of Declaration and Confirmation of Oral Gift executed by mother of plaintiffs and defendants, namely, Mst. Akhtar Jehan Begum in their favour and the same was registered at No. 1485 on 13<sup>th</sup> May, 2011 with Sub-Registrar, Shah Faisal Town, Karachi, while their mother died on 25<sup>th</sup> December, 2012; hence, the plaintiffs have no cause of action to maintain this suit for partition, administration, distribution of shares, cancellation, declaration and permanent injunction; therefore, the plaint is liable to be rejected. In support of his contentions, learned counsel has relied upon the case of *Mst. Naseeban and others v. Maqbool Ahmed* (PLD 1987 Lahore 654) and *Pak American Commercial (Pvt.) Ltd. through Director v. Humayoun Latif and 7 others* (PLD 2008 Karachi 540).

On the other hand, learned counsel for the plaintiffs while opposing this application maintains that since 2009 Mst. Akhter Jehan was paralyzed and she was not enjoying good mental health; hence, the alleged Gift Deed being a fraudulent document is liable to be cancelled. He further maintains that the plaintiffs came into the knowledge of the alleged Gift Deed on 26<sup>th</sup> September, 2018 when the defendants refused to pay off their shares; therefore, the instant suit is within time and the plaintiffs have definite cause of action to maintain this suit.

Heard the learned counsel for the parties and perused the material available on record.

This is a suit for partition, administration, distribution of shares, cancellation, declaration and permanent injunction. The plaintiffs have not mentioned in the plaint the specific date when they came to know about execution of alleged Gift Deed. They have only stated that the cause of action accrued to them for filing of this suit on 26<sup>th</sup> September, 2018 when the defendants denied paying their shares, which fact alone leads to inference that they were aware of execution of alleged Gift Deed from date of its execution. It is also case of the plaintiffs that their deceased mother was suffering from paralysis; therefore, she was not in physical as well as mental capacity to execute the alleged Gift Deed; hence, the same is outcome of a fraud. However, no supporting document showing that the deceased mother of the plaintiffs and defendants was suffering from any disease since 2009 has been annexed with the memo of plaint. Under Article 91 of the Limitation Act, 1908 a suit seeking cancellation of an instrument can be instituted within a period of three years from the date the fact entitling the plaintiff to have the instrument cancelled or set aside become known to him. It is an admitted position that the alleged declaration and confirmation of oral gift was executed and registered at

No. 1485 on 13<sup>th</sup> May, 2011 with Sub-Registrar, Shah Faisal Town, Karachi, while the instant suit has been maintained by the plaintiffs on 15<sup>th</sup> November, 2018, after delay of about seven (7) years and five (5) months. Besides, no particulars with regard to alleged fraud as required by Order VI, rule 4, C.P.C. have been given in the plaint.

It is now well settled principles of law that for rejection of the plaint only the contents of memo of plaint are to be seen. From pleading of the parties it appears that the plaintiffs' suit is barred under limitation; hence, the plaint is rejected under Order VII, rule 11, C.P.C. with no order as to costs.

1to4. All these applications on being infructuous are also dismissed.

JUDGE

Athar Zai