

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.139 of 2003

[Shaheen Hayat Siddiqui and others v. Maraj Uddin and others]

Alongwith

Suit No.670 of 2006

[Ziauddin Qazi v. Mst. Shakeela Begum and others]

Date of Hearing : 23-08-2021
Date of Decision : 23-08-2021
Plaintiffs in Suit No.139/2003 : Through Ms. Lali Tabassum, Advocate
and defendants in Suit No.670/2006
Ziauddin Qazi, defendant No.5 : Through Syed Farha Anjum, Advocate
in Suit No.139/2003
and plaintiff in Suit No.670/2006
Rashid Ali, defendant No.4 in Suit : Through Mr. S.M. Jahangir, Advocate
No.139/2003 and defendant No.9 in Suit
No.670/2006

JUDGMENT

Zulfiqar Ahmad Khan, J:- Suit No.139 of 2003 is filed by two sons and two daughters of deceased Qazi Manzoor Hassan against rest of the family for administration of the property left by the deceased. In the schedule of properties, two properties are mentioned, one bearing House No.130-E, PECHS, Block-II, Karachi (hereinafter to be called as “the subject property”) and the other being 25 acres of agricultural land situated at Deh Mann Tappo Gubopat, Karachi. It appears that during pendency of the suit parties agreed that the agricultural land bearing Survey Nos.3, 5, 10, 48 and 68 situated at Deh Manh, Tappo Gabopat be auctioned and its proceeds be distributed amongst all the legal heirs in accordance with Sharia, which exercise has been completed and now only the urban property at PECHS remains the subject matter of the suit. When this suit was filed, an application under order I rule 10 CPC was filed by the current defendant No.5, who previously was arrayed through his father Qazi Zahoor Hassan, as defendant No.9, to include in the list of defendants as he claimed that the deceased had gifted away the said

property to him when he was eight years old therefore his uncle Qazi Mashkooor Hassan was appointed as his *Wali*. The said gift deed is produced at Annexure-A in Suit No.670 of 2006. The suit was primarily filed with the following prayers:-

- a) To declare that the alleged gift deed is *void ab initio* and false and fabricated.
- b) For an account of all the properties of the deceased be taken from the Defendants and the share of the legal heirs be handed over to them.
- c) For a preliminary decree ordering such account and inquiries to be taken and made and for giving such other directions as this Honourable Court may deem fit.
- d) For final decree determining the respective share for the parties and in case the property is found indivisible the same may be put into auction, directing the payment thereof to be distrusted among the respective parties according to their shares, in consonance with principles as laid down by God.
- e) To appoint the Commissioner to collect use and occupation charges of the Estate from the Defendants and carryout all directions as may be given by this Honourable Court for permanent injunction restraining the Defendants from disposing of, alienating or creating charge or encumbering on any part of the Estate of the deceased and for costs.
- f) The Defendants No.4 may be directed to deposit the monthly rent in court along with arrears from the date when the part of the property was let out to him, till to date and continue to deposit the same till disposal of the suit, even after recovery from any unauthorized person to whom he has been making payment of monthly rent along with fixed deposit.
- g) Any further relief, which this Honourable Court may deem, fit and appropriate.

2. Soon after filing of the instant suit, the said defendant (defendant No.5) filed another Suit bearing No.670 of 2006 for declaration and permanent injunction, against all the legal heirs including defendant No.9, who was in possession of a portion of the said property, praying that the said intervener/defendant and the plaintiff in the connected suit be declared as lawful owner in the gifted property by virtue of oral gift dated 12.04.1970. Issues were framed by this Court's order dated 22.08.2005. Admittedly as agricultural land has already been distributed amongst the legal heirs, now there remain only the following issues:-

1. Whether Suit property bearing No.130-E, Block-II, PECHS, Karachi, was ever gifted by late Qazi Manzoor Hassan to defendant No.5, or such gift is forged and fabricated document?
2. Whether the plaintiff is entitled for reliefs claimed in the suit?
3. What should the decree be?

3. Relevant facts as averred in the plaint are that late Qazi Manzoor Hassan S/o late Sirajuddi was the owner of plot No.130-E, Block-II, PECHS, Karachi, with construction consisting double storey building with Mezzanine floor comprising 14 rooms and that he died on 14.03.1975 at Karachi intestate leaving behind the legal heirs, namely (1) Mst. Jamila Khatoon, widow, (2) Mst. Aqila Hamid, daughter, (3) Mst. Shakila Begum, daughter, (4) Qazi Zahoor Hasan, son, (5) Mst. Laiqa Begum, daughter, (6) Qazi Mansoor Hasan, son (7) Qazi Mashkoor Hasan, son (8) Qazi Zaheer hasan and (9) Qazi Masood Hasan, son, who have died and the plaintiffs as well as defendant Nos.1, 2, 3 and 5 are their legal heirs. Plaintiffs claim their respective share from the subject property of their grandfather.

4. Defendant Nos.1, 2 are grandsons and granddaughters of late Qazi Manzoor Hassan, whereas defendant No.3 is widow of one of legal heirs of Qazi Manzoor Hassan. Defendant No.4 claims to be the tenant of defendant No.5, who is also legal heir of Qazi Zahoor Hasan, and claims that the subject property has been gifted to him by his grandfather due to love and affection in the year 1970 and declaration of which was made in a ceremony held by his grandfather. At that time, he was eight years old and accordingly his uncle Mashkoor Hassan was appointed as his *Wali*.

5. Learned counsel for the plaintiffs contended that the alleged gift deed is fake document as well as unregistered having no sanctity in the eyes of law other than the beneficiary himself no one has supported the version that the defendant No.5 was owner of the subject property

through gift deed, even his brother has not supported this contention. Widow of the *Wali*, Qazi Mashkoo Hassan, appeared and did not support his contention that he had good terms with his *Wali* to the extent that she deposed that there was a rivalry between defendant No.5 and her husband upon the former sending telegraphs to the Government officials that her husband was involved in the illegal activities. The learned counsel by placing reliance on Mohamman law and 2003 SCJ 532 [Re: Muhammad Yaqoob (deceased) through LRs. v. Feroz Khan and others] stated that in case of *Hiba* delivery of possession is essential to constitute a valid gift. She stated that for a valid gift offer, acceptance and delivery of possession are the essential requisites, which are missing in the case at hand, as admittedly the defendant No.5 has no absolute possession of the subject property and other legal heirs are still residing therein. She states that property is still in the name of the deceased for all legal purposes.

6. Learned counsel for the plaintiffs stated that this Court through its order dated 27.01.2021 noted that no evidence was to be recorded in respect of Suit No.670 of 2006 and the evidence recorded in the instant matter i.e. Suit No.139 of 2003 is to be considered by the Court, as it covers proceedings of the consolidated suits.

7. Learned counsel for defendant No.5 placed reliance on her written synopsis and stated that this Court should first decide the pending applications rather than rendering its judgment. However, her attention was drawn to the order dated 27.01.2021 where the Court held that "Learned counsels present agreed that the suit No.670/2006 which before order dated 25.01.2018 was proceeding independently and wherein no evidence is recorded, the evidence in Suit No.139/2003 be considered to conclude the same covered by the proceedings of suit No.139/2003. Let both suit be consolidated and be fixed together.

Learned counsels present also state that parties have filed written synopsis/arguments in the matter earlier, however they would like to make oral submission also, as such the matter be considered on the basis of record present and whatsoever assistance as may be forthcoming on the next date wherein the pending applications be also concluded by the final order". Hence, such contention does not hold any water, as the directions from the previous order are that all the applications would be decided by the final order. Nonetheless, she only chose to press two applications today, one being for return of the original gift deed, and the other of which she was not even aware of. However, she could not satisfy as to why the applicant needs this original document, which is subject of the evidence and available with the suit file. Application being CMA No.8205/2021 is accordingly dismissed, alongwith all other not pressed applications. She could not support her client's contention that her client was absolute owner of the subject property, as clearly the property still stands in the name of deceased, for all legal purposes in the records of PECHS, KMC, Karachi Water and Sewerage Board and other authorities. Other than the evidence of the beneficiary himself, no one has come in support of his claim.

Issue Nos.1 and 2:

8. Since both these issues are interlinked, therefore, are taken up together. In support of the claim of the plaintiffs, Mst. Rukhsana Aqeel, daughter of one of legal heirs Shakeela acting on her behalf as well as being attorney of other plaintiffs appeared and stated that at the time of death of late Qazi Manzoor Hassan all the legal heirs were living in the said house and Qazi Manzoor Hassan expired in the year 1975, also his widow died in the year 1996. With regard to status of defendant No.5 as to the owner of the subject property pursuant to the said gift deed, she has denied that her grandfather had gifted away the said property to the said defendant No.5. She produced the Death Certificate of the deceased Qazi Manzoor Hassan (Exhibit P/3) and Mst. Jameela Begum,

widow (Exhibit P/5) as well as General Power of Attorney (Exhibit P/8) and copy of letter issued by counsel of Qazi Manzoor Hassan to the father of the said defendant as Exhibit P/9 restraining him from creating any third party interest or sub-letting the said property. She also produced before this Court ownership certificate from the record of Pakistan Employees Co-operative Housing Society Ltd. dated 30.12.2005 (Exhibit P/15) showing that the said Society through the aforementioned letter has declared that as per their record, Qazi Manzoor Hassan still stood as owner and allottee of the said property. Plaintiff also brought Fahad Hassan son of Qazi Zaheer Hassan to the witness box. The said witness stated that he is attorney of Qazi Zaheer Hassan, plaintiff No.4 and plaintiff No.5, one of the daughters of the deceased. He produced power of attorneys in his favour. In the cross, he categorically denied that late Qazi Manzoor Hassan has gifted away the said property to defendant No.5.

9. From the defence side, defendant No.1(a) namely Mairajuddin, who is elder brother of defendant No.5, appeared in the witness box and deposed as under:-

“I produce my affidavit-in-evidence as my examination-in-chief. The contents of the same are true and correct. The affidavit is marked as Ex-D.

I am deposing as attorney for defendant No.1. I produce the original Power of Attorney (original seen and returned) and photo copy of the same is marked as Ex D/I.

Cross examination to Mr. Rasheed Siddiqui Advocate for defendants 4 & 5.

It is correct that the defendant No.1 has not filed any suit from 1970 till January 2003. It is also correct that no other legal heirs filed any suit prior to January 2003. It is correct that late Qazi Manzoor Hussain had gifted the suit property in favour of Ziauddin Qazi, the defendant No.5, during his life time.

None present on behalf of defendant No.2 & 3.

Cross examination Miss. Tabassum Advocate for the plaintiff.

I am educated upto matric. I can read and write English to some extent. It is correct that my grand father Qazi Manzoor Hussain was also educated. He was an architect. I am not sure about his actual qualification. My father, the defendant No.1, was transferred from Karachi to Islamabad round about in 1964. I

do not have any such documents to show that my father was transferred to Islamabad in 1964. It is within my knowledge that the property bearing No. 130-E, Block 2, PECHS, was gifted to defendant No. 5 in the year 1970. It is not correct to suggest that in 1970, my father was not at Karachi. It is not correct that I am making a false statement that my father was not at Karachi in 1970. My grand father Qazi Manzoor Hussain expired in 1975. I cannot say as to what was his age at the time of his death but he was an old person. I was about 16 or 17 years of age at the time of death of my grand father. The defendant No. 5 was about 10 or 11 years old. He was not been financed any other legal heir was not financed him when he was on bed before his death. It is not correct that the plaintiff No. 4 Mr. Zaheer Hussain, was supporting my grand father. It is correct that my grand father was a religious person.

Q. Have you any knowledge as to why your grand father Qazi Manzoor Hussain had gifted the property No.130-E, Block 2, PECHS, Karachi only to defendant NO. 5, inspite of the fact that other legal heirs were there.

Ans. It was his will.

I had learned that my grand father had given some amount to the legal heirs for the purchase of plot. The amount was given to plaintiff No. 4 and defendant NO. 2 only.

It is correct that my father is alive and he was in Pakistan at Islamabad in 1970. Since Mashkoor Hussain had no issues, therefore, my grand father appointed late Mashkoor Hussain as guardian of defendant No. 5. I see para 6,7 & 8 of my affidavit-in-evidence in respect of legal heirs. They are residing with the permission of defendant No. 5. It is not correct that this fact is not mentioned in my written statement. It is not correct to suggest I have made any false statement in my affidavit-in-evidence or it is after thought. I see para 9 of my affidavit-in-evidence and say that my grand father had made an application to the settlement department in respect of units mentioned in this para. I have not filed any copy of such application. It is correct that the defendant No. 5 had filed a complaint against his guardian Qazi Mashkoor Hussain. It is not correct to suggest that I am making a false statement that Mashkoor Hussain was appointed as guardian of defendant NO. 5.

It is not correct that the Gift Deed is a forged document. It is not correct to suggest that I have given the name of Qazi Mashkoor Hussain as he has expired. It is not correct to suggest that the Gift Deed was not in possession of Qazi Mashkoor Hussain. It is correct that my father the defendant NO. 1 is a retired Govt. servant. My grand father had only 25 acre of land which is the subject matter of this suit and property No 130-E PECHS, Karachi which was gifted to defendant No. 5. The defendant No. 3 is occupying the Mezzanine Floor of 130-E. The defendant NO.2 is occupying the 1st Floor of 130-E, Mr. Mashkoor Hussain was also

residing at Mezzanine Floor. It is not correct that my statement in the Written Statement is false statement.

10. In his cross, he stated that it is in his knowledge that the said property was gifted to his brother in the year 1970 however admitted that in that year their father was in Karachi. He stated that he was sixteen or seventeen years of age at the time of death of Qazi Manzoor Hassan. On a question that why the deceased gifted the said property to defendant No.5 leaving behind all other legal heirs, he stated that it was *Will* of the deceased. He further stated that since Mashkooor Hassan had no issues, the grandfather appointed him as guardian of his younger brother i.e. defendant No.5. In his cross, he also admitted that defendant Nos.2 and 3 are still resident of the said property. Except photocopy of Power of Attorney, he did not produce any document in support of his contention. In his cross, he has also stated that that the said property was gifted to him by his grandfather in the year 1970 and produced photocopy of the gift deed as Exhibit D/80 and original produced before this Court on 22.08.2003 in compliance of this Court's order dated 18.08.2003. He admitted that he has not filed any application in the office of PECHS and he has no relationship with the other legal heirs residing in the suit property. He admitted that Qazi Masood Hassan and Syeeda Mashkooor Hassan are residing in the suit property. While he, in his counter affidavit filed to the plaintiff application under section 7 rule 14 CPC, in paragraph-4 stated that the grandfather had gifted him the said property through his own handwriting, however he denied such assertion in the cross and stated that it is correct that my grandfather has not given him any handwritten gift deed rather it was typed. He stated that before signing the said gift deed the grandfather made a declaration of Oral Gift with respect of the subject property however he failed to specify the name of the witness of such declaration, nor he has produced anyone amongst those. He stated

that the oral gift was made in a ceremony held by the grandfather and admitted that the said gift deed is not a registered document. It could be noted that none of those members of the ceremony were produced before this Court as witness to support this contention that the late Qazi Manzoor Hassan had gifted the said property in a ceremony. He admitted that he was eight years old and his uncle Mashkooor Hassan was appointed as his *Wali* for the gift purpose. By referring to Exhibit D/57, he admitted that he sent telegram to DIG, Karachi Police, Headquarter complaining against the said *Wali*. He admitted that his father was in Karachi when this entire transaction took place however neither name of his father appears anywhere in the record, nor he became witness to the said gift deed, he voluntarily suggested that at the particular time when this ceremony was happening his father was in Islamabad on some official work, but no proof of such an assertion was brought to the Court either. To a question that why the said grandfather gifted the property to him by leaving dozen of legal heirs, he stated that he was a beloved grandson. As it could be seen while most of the defendants know late Qazi Manzoor Hassan as owner of the property only Exhibit D/76, a Tenancy Agreement between himself and Aftab Ahmed in respect of a room on the road side on the said premises admeasuring 6½ X 13 feet, has some value for his case. However, has diminishing relevancy. Qazi Masood Hassan, defendant No.2 also appeared in the witness box and relied on his affidavit-in-evidence. In the cross, he admitted that he had not brought his NIC at the time of the examination. He denied having rented out any portion of the said property to anyone and admitted that the plaintiffs are residing on the back portion of the ground floor of the said property. In his cross, he also admitted that “all were residing jointly in the said property”. He stated that he has paid property tax up to the year 2000, however filed tax receipts till 1998. In his cross, he stated that “*it is not correct to suggest that defendant No.5 is the*

owner of the property. The real owner of the property is our father”.

He stated that he is also residing on the said property on the first floor consisting of two rooms and a bath room. He denied that the marriage ceremony of defendant No.5 Ziauddin Qazi held in the suit property; admitted that his brother Ziauddin Qazi rented out to Mr. Aftab Ahmed, one shop in the said building, who was running business in the name of Paradise Enterprises. He made a suggestion that he is ready and willing if the suit property is distributed amongst the legal heirs according to Sharia. He has brought Exhibit D/3 to D/47, however all of these documents show that owner of the property is Qazi Manzoor Hassan and not the defendant No.5. Water bills from Karachi Water and Sewerage Board were also exhibited. However, it could be noted that all of these bills are also in the name of deceased Qazi Manzoor Hassan. Property tax notices are also produced, which are also in the name of Qazi Manzoor Hassan. Mst. Syeeda Mashkooor wife of late Qazi Mashkooor Hassan appeared in the witness box on behalf of defendant Nos.2 and 3 and denied that she was married previously, stated in her cross that she had one marriage and that too with late Qazi Mashkooor Hassan. She admitted that she has been residing in the said property during life time of the deceased Qazi Mashkooor Hassan since her marriage. She also admitted that Rashid and Aftab Ahmed were tenants of the suit property given in such tenancy by her husband while Rashid through Ziauddin, defendant No.5. She categorically, denied that late Manzoor Hassan had gifted away the subject property to defendant No.5.

11. Defendant No.4 appeared in the witness box, produced photocopy of the rent agreement with an endorsement of the defendant No.5 as Exhibit D/51. In his cross, he denied that he was witness of the gift deed. No claim to the ownership of the property has been made by the said defendant.

12. In the above circumstances this Court reaches to the conclusion that the plaintiffs were able to prove their case against the defendants as preponderance of evidence leads that the suit property was owned by the late Qazi Manzoor Hassan and not by the defendant No.5 and be distributed amongst all of his legal heirs in accordance with Sharia as the gift deed remained an un-registered document and its execution could not be proved. Possession definitely is not with the defendant No.5 exclusively neither his name appears in any records of the society or the utility agencies. It is for these reasons Issue Nos.1 and 2 are decided in affirmative. Suit No.139 of 2003 is thus decreed as above, whereas, connected/rival Suit bearing No.670 of 2006 is dismissed. Let the original gift deed be impounded by the Nazir of this Court and decrees be drawn accordingly.

Judge

Karachi,
Dated: Aug 23, 2021
Barkat Ali, PA