

ORDER SHEET
**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.**

R.A.No. 133 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For hearing of CMA 1299/2021.
2. For hearing of main case.

Date of hearing: 25.04.2022.
Date of order: 25.04.2022.

Mr. Abdul Rasheed Mughal, Advocate for applicant.
Mr. Wali Muhammad Jamari, Assistant A.G.
Respondents No.1 and 2 present in person.
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Zulfiqar Ahmad Khan, J. This Revision Application impugns the judgment dated 29.04.2021 and Decree dated 05.05.2021 passed by learned Vth Additional District Judge, Hyderabad in Civil Appeal No.156 of 2013 in terms of which the judgment dated 31.07.2013 and Decree dated 07.08.2013 passed by the trial court has been set aside.

2. Concisely, facts of the case as reflected in the impugned judgment are that the appellants filed F.C.Suit No.29 of 2004 (old No.152 of 2004) for Declaration, Injunction, Cancellation of Deed of Will and Mutation in the City Survey Record against the respondents for the following reliefs:-

- a) Grant a judgment and decree declaring the Deed of Will made on 28.1.2000 purported to have been made by late Muhammad Yousuf son of Muhammad Ismail in favour of Akram the defendant No.1 in respect of House on plot No.G/33 measuring 381 Sq. Ft. Ward-G situated in Liaquat Colony, Hyderabad consisted of two small shops and one room is brander manipulated by the different No.1 is illegal, nullity in the eyes of law held that the alleged Will is a bogus document not executed by nor signed by late Muhammad Yousuf.

b) Grant permanent injunction against the defendant to restrain him from claiming the ownership over the plot No.G/33 measuring 381 Sq. Ft. Ward-G situated in Liaquat Colony, Hyderabad on the basis of forged and fraudulent Deed of Will add mutation.

c) Cancel the deed of Will executed prepared on 28.1.2000 purported to have been executed by late Muhammad Yousuf in favour of the defendant No.1 and also cancel the mutation effected in the City Survey Record on the basis of forged Deed of Will.

3. The respondents No.1 to 6 duly contested the suit and filed joint written statement in a relationship of parties in dispute was not denied so also over plot No.192-A as their names were mutated in revenue record. They stated that the suit plot was given to respondent No.1 through Will by their late father Muhammad Yousuf including consent of appellants and not committed any fraud. They claimed that at the time of executing Will late Muhammad Youuf was fit by health and denied the claim of the appellants and prayed for dismissal of the suit.

4. Both the parties lead their evidence and produced certain documents. After hearing arguments, the learned trial court passed the judgment and decree date 31.7.2013 and 07.08.2013 respectively, which are impugned in this appeal.

5. Counsel for the applicant submits that the Appellate Court has made a gross error in the impugned judgment and only considered the technical issue that the trial court judgment referred to Gift Deed instead of Will Deed which is mainly a typographical error appearing on various occasions otherwise under the Mohammedan Law this is not an illegality. The respondents No.1 and 2 are also present and state that one of their sister Sharifan has expired and respondent No.7 resides with them who is being represented by them. With regard to

respondents No. 4, 5 and 6, it is stated that they are their married sisters and reside in their own houses, who despite notice has chosen to stay away from this case.

6. The crux of the matter as agitated in this revision application is that there is illegality and impropriety floating on the surface of the impugned judgment. A perusal of the impugned judgment suggests that it has very carefully taken care all aspects of the case and has given cogent reasons on different aspects of the case. When confronted with the very specific question that under Article 117 of the Mahomedan Law, where a bequest to an heir is held to be not valid unless the other heirs consent to the bequest after the death of the testator, counsel was not able to satisfy the legal value of the Will Deed as in the case at hand too, the bequest intended to grant additional share in favour of one of the legal heirs, besides share of his own as per Shariah and when all male heirs other than the beneficiary of the Will has objected to the said Will how it satisfies requirement of Article 117 of Mahomedan Law. The appellate court has too considered all aspects of the case to the extent that the testator was nearly on death bed aged more than 90 years, as he died within 40 days of the date of the signing of the Will, and being at this last stage of life, special precautions ought to have been taken, which in my humble view also include making such announcement of the Will in front of the other legal heirs or to do any other "overt act" as held in the judgments cited as 2019 MLD 701 Karachi, 2011 PLD 10 Peshawar and 2006 CLC 531. It has also been appreciated by the learned appellate Court that one of the marginal witnesses chose not to support the contentions of the beneficiaries of the Will. The appellate court judgment in my humble view has carefully taken care of the concerns of the remaining legal rights, whose rights have been seriously prejudiced by the impugned Will.

In the given circumstances, I do not find any reason to interfere in the judgment and decree of the appellate court which are accordingly upheld. The instant Revision Application is dismissed alongwith the pending application.

JUDGE

Tufail