

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

**High Court Appeal No. 143 of 2011**

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Date	Order with signature of Judge
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For Katcha Peshi

**20.08.2015**

Syed Hassan Ali, Advocate for Appellants.  
Mr. Anwar Mohammad Siddiqui, Advocate for Respondent No.1  
Mr. Abdul Hameed Yusufi, Advocate for Respondent No.2.

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Through instant appeal, the appellants have impugned order dated 13.5.2011, whereby CMA bearing No. 11417/2009 filed Under Order XIV Rule 5 CPC as well as CMA bearing No.1672//2009 Under Order 1 Rule 10 CPC have been dismissed with costs.

Learned Counsel for the appellant has contended that the learned Single Judge has erred in law and fact by dismissing appellant No.1's application Under Order XIV Rule 5 CPC for framing of an Additional issue in respect of the Suit Property as it was gifted by defendant No.1 to the appellant and appellant No.2's application Under Order 1 Rule 10 CPC for impleading him as a defendant in Suit. Counsel further submits that appellants are real brothers and are also in possession of first floor of the Suit property on the basis of Gift Deed dated 4.7.2004. Counsel further submits that original deceased defendant No.1 had never entered into any agreement with respondent No.1, as the property has already been gifted to them by their sister (Respondent No.2/ defendant No.1), therefore no agreement could have been lawfully executed by respondent No.2 of which specific performance is being sought in the Suit.

Conversely, learned Counsel for respondent No.1 submits that the Suit is now fixed for final arguments after recording of evidence of the plaintiff/respondent No.1, whereas, the appellant No.1 as well as respondent No.2 have failed to lead any evidence and to cross examine the plaintiff/respondent No.1, whereas, the applications for framing of Additional issue as well as for joining the appellant No.2 as defendant in the Suit are frivolous in nature

and to cause delay in the final adjudication of Suit in which they have failed to lead any evidence.

After hearing the Counsel at length, and on perusal of the record it appears that insofar as application for framing Additional issue filed on behalf of appellant No.1 is concerned, we tend to agree with the findings of the learned Single Judge in this regard, as it reflects that appellant No.1 has failed to lead any evidence before the Trial Court, whereas, the proposed issue also does not appear to be in conformity with the averments of appellant No.1 in its written statement nor does the alleged hand written Gift Deed, dated 4.7.2004, though on stamp paper, lends any support in this regard. Therefore, we are of the view that such application was filed with malafides and to circumvent and delay the proceedings pending before the Trial Court. The order of the learned Single in this regard is hereby affirmed.

Coming to the second application Under Order 1 Rule 10 CPC filed on behalf of the appellant No.2, who claims to be the brother of respondent No.2 and owner of the property in question on the basis of Gift Deed dated 4.7.2004 allegedly executed by respondent No.2, his real sister. This also appears to be an attempt for delaying the proceedings, as the Suit is pending before this Court since 2007, in which the appellant No.1 is already a defendant, who also claims to be the owner of the property on the basis of same Gift Deed dated 4.7.2004, whereas, the application Under Order 1 Rule 10 CPC has been filed in the year 2010. It further appears from the record that another Suit bearing No.94 of 2007 has been filed by respondent No.2 against respondent No.1 which is coming up for hearing along with Suit No.367 of 2007, in which the impugned order has been passed. The learned Single Judge while dismissing the application has been pleased to observe that perusal of the such Suit reflects that nowhere it has been claimed by respondent No.2 that the Suit property was gifted by her to her brothers/present appellants and that by virtue of such Gift, the respondent No.1 has no title or interest therein. It has been further observed by the learned Single Judge that the application has been filed and setup by the applicant at the behest and/or in league with defendant No.1 (Respondent No.2) to further aggravate the situation in the Suit and to delay its quick disposal. The learned Single Judge has further recorded the findings with

regard to the conduct of the applicant/appellant No.2 and we would like to refer to such finding in this regard, which reads as under:-

“It would be seen that affidavit of the applicant, filed in support of this CMA in paragraph 5 says, “That my brother Syed Zahid Ali who is defendant No.2 in the above suit has disclosed the fact of gifting the suit property by the defendant No.1 to we two brothers and has filed the copy of such gift deed along with his written statement”. This disclosure by the applicant itself shows that one of the basic ingredients, “acceptance” of the gift was totaling missing and the gift, alleged to have been made by defendant No.1 at no stage of time was accepted and/or perfected. Further Syed Zahid Ali, the defendant No.2 is a person who himself has filed various legal proceedings against defendant No.1 in respect of the subject property and if the subject property was gifted in 2004, as claimed by the applicant to him and Syed Zahid Ali, then there was no incident available to Syed Zahid Ali to file cases against his sister, the defendant No.1, all of which, save one, had been initiated after in time than the date of Gift deed dated 04.07.2004. Under the circumstances, I find the CMA not only meritless but also to be malafide, aimed at to further aggravate, confuse and complex the proceedings. It is dismissed with cost of Rs.10,000/-“.

After having gone through the aforesaid findings of the learned Single, we are of the view that the impugned order is unexceptional and has dealt with the issue by correctly appreciating the facts and law, whereas, Counsel for the appellants has failed to make out any case for indulgence. Accordingly, instant appeal being misconceived and devoid of merits is hereby dismissed by maintaining the impugned order, with directions to the appellants to deposit the cost imposed in the impugned order forthwith

Appeal stands dismissed with cost.

JUDGE

JUDGE