

**IN THE HIGH COURT OF SINDH AT
KARACHI**

SUIT NO.1685 OF 2023

Mst. Shahida Khatoon.....Plaintiff

Versus

Zahid Rehman.....Defendant

Abdul Moiz Jafri, Advocate, for the Plaintiff.
Zohaib Hussain Jagirani, for the Defendant.
Muhammad Asghar Awan, along with Harchand Rai,
Advocates, for the Interveners

Dates of hearing : 22.02.2024 and 07.03.2024

ORDER

YOUSUF ALI SAYEED, J. – The Suit pertains to an immovable property measuring 1506 square yards, bearing No. 301/7A, Street No.23, Block 3, Delhi Mercantile Cooperative Housing Society, Karachi (the “**Suit Property**”), which had been allotted by the aforementioned Society to the mother of the parties, namely Mst. Saeeda Khatoon (the “**Deceased**”), with a Form “A” Sub-License being executed in her favour on 30.09.1980, whereafter a double storey bungalow was constructed by her thereupon.

2. The Plaintiff claims joint ownership of the Suit Property on the strength of a Declaration of Oral Gift dated 28.10.2009 executed by the Deceased and registered at No. 1744 of Book No.1 by the Sub-Registrar III, Gulshan-e-Iqbal Town, Karachi with M.F. Roll No. 5024 (the “**Gift**”), as per which a 60% share is said to vest with her and the remaining 40% with the Defendant, being one of her brothers.

3. Through the Suit, the Plaintiff has sought a declaration of title as well as the partitioning of the Suit Property, or in the alternative, that the same be sold with the proceeds being distributed between both parties in accordance with their shares. It has also been sought that the Defendant be restrained from dispossessing her from the Suit Property or otherwise creating any third-party interest therein pending final determination of the matter. That claim proceeds on the basis of the Gift, coupled with the mutation of the Suit Property shown to have been carried out in the names of the parties in the records of the Society, with an Allotment Letter dated 16.04.2015 having been issued evincing their admission as its members in place of the Deceased, and it being averred that whilst they have remained in joint possession of the Suit Property since virtually the time of the Gift, a recent breakdown in their relations attributed to oppressive behavior on the part of the Defendant has sown discord and given rise to a serious apprehension of dispossession at his hands, necessitating the Suit.

4. On the other hand, seven other children of the Deceased (collectively the “**Interveners**”) have come forward while seeking to be added as parties, having also filed Suit No. Nil (-2033)/23 so as to impugn the Gift as having been obtained through fraud and undue influence, and seeking its cancellation whilst asserting a share in the Suit Property as her heirs. Their case for joinder is based on their professed status as heirs of the Deceased, with paragraphs 7 to 11 of their respective Affidavits reading as follows:

“7. That, I say that our deceased mother namely **SAEEDA KHATOON** W/o Khalil-ur-Rehman in her life time wanted to distribute shares amongst the all legal heirs according to Muhammadan law but due to ill health she executed Irrevocable General Power of attorney dated 21/01/1997, in my favour being one of her legal heir, duly registered by Sub-Registrar T Div.-II-A bearing Registration No.63, in respect of her immovable property in question, whereby she nominated me as authorized & responsible individual to sell the suit property and distribute the shares amongst all the legal heirs subsequently.

8. That, I say that despite the clear existence and validity of the afore mentioned Irrevocable General Power of Attorney, a disturbing tum of events unfolded, Plaintiff & Defendant have taken advantage of the deceased mother's vulnerable state due to her illness. With apparent malafide intentions and ulterior motives, they manipulated and persuaded her into signing a Gift Deed on the ominous date of October 28, 2009. This Gift Deed pertained to her immovable suit property, a significant and valuable asset.

9. That, I say that it is crucial to underscore the circumstances under which such Gift Deed was obtained secretly with fraudulently manner by the plaintiff & defendant, therefore they had not shared with the rest of legal heirs. It is submitted that the plaintiff & defendant are accused for conducting their motives in secrecy and deliberately withhold such information from me as well as other interveners/objectors. The clandestine nature of this transaction raises grave concerns about the integrity of the process at a time when the deceased mother was undoubtedly facing health challenges and was potentially incapable of fully grasping the implications of the Gift Deed, whereas the both plaintiff & defendant have exploited her vulnerability for their personal gain which raises questions about the ethics and morality actions, as well as their commitment with the other legal heirs of the deceased, from such alleged acts of plaintiff & defendant, it is clearly proved that how they have managed to deprive the other legal heirs from their respective share from the suit property.

10. That, I say that the plaintiff & defendant by orchestrating the signing of the Gift Deed without the knowledge or consent of me as well as other interveners / objectors have violated the very essence of family trust and unity, such actions have been manifested from the beginning till now, as they wanted to deprive the other legal heirs of their rightful share in the suit property.

11. That, I say that such situation created by the Plaintiff & defendant, has caused significant distress among the other legal heirs / interveners by managing intentionally with ill motives to deprive the other legal heirs / interveners from their legal shares, whereas the Plaintiff & defendant remained silent and did not disclosed for almost 14 years about such alleged managed Gift Deed and after the death of mother & father I & my brothers & sister / intervener / objectors approached to the Plaintiff & Defendant and requested to sale out suit property for distribution of their shares amongst the legal heirs of deceased mother but the Plaintiff & defendant kept the interveners on promise that they both are not well off therefore they are residing at deceased mother's suit property and due to economic condition of country the value of suit property has been decreased, so waiting for suitable time. In the month of May, 2023 I and other interveners/objectors once again requested the

Plaintiff & Defendant that handover photo copy of documents of suit property as we may sale the suit property, then Defendant showed photo copy of Gift Deed dated 28/10/2009 to us and we become very astonished that how Plaintiff & Defendant managed such Gift Deed, keep it secretly about 14 years and never ever disclosed with us /the interveners/objectors nor showed such documents to us / legal heirs of deceased prior to May, 2923.”

5. For his part, the Defendant has essentially echoed the contentions of the Interveners, with it being stated in Paragraphs E to H of the Preliminary Objections raised through his written statement that:

“E. That the plaintiff and defendant were well aware with the facts that their deceased mother had instructed / authorized the brother of the parties, namely Sultan Rehman S/o Khlil-ur-Rehman, to sell the suit property and distribute the share amongst all the legal heirs according to Mohammadan law and in this respect, she, in her life time executed Irrevocable General Power of attorney dated: 21/01/1997, in favour of all legal heirs, duly registered by Sub-Registrar T Div.-II-A bearing Registration No.63, in respect of her immovable property, whereby she nominated her son as authorized individual to sell the suit property and distribute the shares among all the legal heirs subsequently.

F. That the plaintiff enticed the defendant into getting their mother sign and register a Gift Deed discreetly, secretly and without knowledge of the all other legal heirs to devour the suit property for their personal gain, leaving their mother with the belief that she was actually signing the document for distributing shares to all the legal heirs. This was to be accomplished by taking advantage of the ill health of their late mother and father as they were not mentally alert and were incapable of understanding the true motives and implications of their misdeed.

G. That the plaintiff convinced the defendant with malafide intentions to obtain the signature of their late mother on the Gift Deed dated 28/10/2009 and get it registered in secrecy and without the knowledge of other legal heirs. Further the defendant fell prey to her pleadings for personal gain as greed had overcome me.

H. That the defendant agreed to pleadings by plaintiff, Defendant managed his mother to sign and register Gift Deed to have the whole suit property in their name as per 60/40% share by misleading the facts and deceiving their mother.” [sic]

6. The interlocutory applications pending within that framework are:
 - (a) CMA No. 16046/2023, under Order 39 Rules 1 & 2 CPC, whereby the Plaintiff has sought to restrain the Defendant from interfering with her possession of the Suit Property and creating any third-party interest in respect thereof; and
 - (b) CMA No. 1670/2024, under Order 1, Rule 10 CPC, whereby the Interveners have sought to be added as defendants.

7. Proceeding thereon, learned counsel appearing on behalf of the Plaintiff argued that the instrument of Gift had been lawfully executed by the Deceased of her own accord whilst of sound mind, without any undue influence, duress or coercion and, had then been registered for good measure, hence validly conferred title of the Subject Property on the parties. He submitted that contention of the Interveners that the Deceased was ill and in a vulnerable state at the time of execution of the Gift was false, and was belied by the fact that the Deceased had herself appeared before the Registrar with along with both beneficiaries to have the same registered. Moreover, the husband of the Deceased (i.e. the father of the parties), namely the late Khalil-ur-Rehman, was one of the witnesses to the Gift. Per learned counsel, such facts and circumstances demonstrated that the Gift was not one that had been obtained in secrecy and completely dispelled the version of the Interveners and showed that they had concocted a false narrative in an attempt to usurp the Suit Property. He submitted that the Interveners had advanced a grossly exaggerated case as to the Deceased being of ill-health at the time of execution of the Gift Deed, whereas she had very much been in her senses and had in fact lived on for approximately eight years thereafter without challenging its validity or calling for its revocation, and her husband had also lived on for approximately nine years after the execution of the Gift Deed, without raising any challenge in the matter.

8. Conversely, learned counsel appearing for the Defendant and Interveners fell back on the contentions raised through the respective pleadings and presented their arguments while reiterating their challenge to the Gift.
9. Having heard the arguments, it falls to be considered that the mere assertion of fraud or undue influence is not sufficient of itself to vitiate a registered instrument, which carries a presumption of correctness and legitimacy. The assertions made by the Interveners and Defendant are of a vague and general nature, with no material having been placed on record to even suggest at this stage that either the Deceased or her husband were of feeble mind or otherwise labouring under any impairment at the time of the Gift.
10. Under the given circumstances, in view of the Gift and the admitted fact of possession of the Suit Property vesting jointly with the Plaintiff and Defendant, a prima facie case for preservation thereof stands established, with the balance of convenience being in favour of maintaining the status quo pending final determination of the matter and it being apparent that an element of irreparable loss would be occasioned in the event of dispossession or creation of any third-party interest. As for the Interveners, it is apparent that they may advance their claim through their own Suit, as is already pending, which would fall to be determined on its own terms.
11. That being so, CMA No. 16046/2023 stands allowed with the ad-interim order made on 17.10.2023 for preserving the possession of the Suit Property and restraining the creation of any third-party interest therein being confirmed, and CMA No. 1670/2024 being dismissed.

JUDGE