

# THE HIGH COURT OF SINDH, KARACHI

## J.M. No. 73 of 2014

[Muhammad Younus Qureshi & others v. Muhammad Qutub-ul-Arifeen & others]

Applicants : Muhammad Younus Qureshi Son of Late Muhammad Haroon Qureshi and [07] others through M/s. Shamim Aolia and Muhammad Yasin Shahid Bhatti, Advocates.

Respondent 1 : Muhammad Qutub-ul-Arifeen son of Mufeezudin Farooqi through Syed Sibtay Hasan, Advocate.

Respondents 2-8 : Nemo.

Date of hearing : 07-08-2024

Date of decision : 12-08-2024

## ORDER

**Adnan Iqbal Chaudhry J.** - This is an application under section 12(2) CPC against a compromise decree dated 26.03.2014 passed in Suit No. 1660/2013 whereby the Respondents 2 to 6 as Defendants agreed to specifically perform a sale agreement dated 07.01.2013 for conveying the suit property to the Respondent No.1/Plaintiff. The Applicants, who were not party to the suit, claim to be the real owners of the suit property and allege that the compromise decree was obtained by fraud.

2. The Applicants are legal heirs of late Haroon Qureshi. The Respondents 2 to 6, who were Defendants in the suit, are the children of Hanif Qureshi and Mst. Madina Begum (spouses). Hanif Qureshi was the brother of late Haroon Qureshi. Hanif was also the Attorney of the Defendants in the suit. Since fraud is also alleged against him and Madina Begum, both have been arrayed as Respondents 7 and 8 herein.

3. It is averred by the Applicants that the suit property belonged to their predecessor, Haroon; that Hanif had forged Haroon's signature to fabricate a power of attorney dated 11.01.1987, and used that to transfer the suit property to his spouse, Madina Begum, by

way of a registered gift deed dated 07.09.1991; however, upon Suit No. 578/1993 filed by Haroon before this Court against Hanif and Madina Begum, both the forged power of attorney and the consequent gift deed were decreed for cancellation on 05-05-1999; that in spite of the decree of cancellation against her, Madina Begum conveyed the suit property to the Defendants (her sons) by way of a registered gift deed dated 01-02-2000, who in turn executed a sale agreement in favour of Respondent No.1/Plaintiff; and that a collusive Suit No. 1660/2013 was then filed by said parties to obtain a compromise decree. Counsel for the Applicants further submitted that in the record of rights the suit property stands mutated to the Applicants. She submitted that counsel for the Plaintiff in Suit No. 1660/2013, namely Mr. Muhammad Qutubuzzaman Advocate, was instrumental in the fraud as he was not only the Plaintiff's brother, but was also Advocate for Hanif and Madina Begum in Suit No. 578/1993.

4. Only the Respondent No.1/Plaintiff came forth to contest this J.M. He offered only a bald denial of the above allegations. His entire submission was that in execution of the compromise decree the suit property had been lawfully conveyed by the Nazir of the Court to the Respondent No.1 by a registered sale deed dated 15-06-2017, and therefore he is entitled to its possession from the Applicants.

5. Heard learned counsel and perused the record.

6. To demonstrate the fraud alleged, the Applicants place reliance on the undisputed record and proceedings of Suit No. 578/1993. Therefore, this is not a case that requires the recording of evidence.

7. The decree passed in Suit No. 578/1993 on 05.05.1999 against Hanif and Madina Begum is intact. By that decree, Haroon was declared lawful owner of the suit property, and the power of attorney dated 11.01.1987 used by Hanif to execute a registered gift deed dated 07.09.1991 in favor of Madina Begum, both were cancelled. Yet, Madina Begum proceeded to execute a registered gift deed dated

01.02.2000 to transfer the suit property to her sons, the Defendants. That gift deed reflects that the Defendants were minors at the time, and it was Hanif who accepted the gift on their behalf as their father. Not only was Madina Begum incompetent to gift the suit property to the Defendants, but she and Hanif both acted to subvert the decree passed in Suit No. 578/1993. This fact was brought to the attention of the Court by Haroon post-decree in Suit No. 578/1993 by way of a contempt application. At that time the Court was already seized of perjury proceedings against Hanif and Madina Begum. Mr. Muhammad Qutubuzzaman Advocate, who was representing Hanif and Madina Begum in the perjury proceedings, was also arrayed as an alleged contemnor for having drafted the subsequent gift deed dated 01.02.2000 despite knowledge of the decree. However, the contempt application against him was dismissed. The perjury proceedings culminated in order dated 26-02-2008 whereby a direction was given for registering an FIR against persons who had made the false power of attorney dated 11.01.1987 and gift deed dated 07.09.1991.

8. The Applicants also drew attention to a letter dated 19.09.2013 written by the KMC as the lessor of the suit property to the Sub-Registrar Liaquatabad Town, communicating to him the decree passed in Suit No. 578/2013 and calling upon Madina Begum to surrender the transfer order of the suit property issued to her. Thereafter, by a mutation order dated 12.06.2014, the KMC mutated the suit property to the Applicants.

9. Apparently, Hanif was undeterred by previous proceedings of perjury against him when he proceeded as the Attorney of the Defendants to first execute the sale agreement dated 07.01.2013 in favor of the Respondent No.1/Plaintiff, and then the compromise application in Suit No. 1660/2013 soon after the suit was filed. Counsel for the Plaintiff was none other than Muhammad Qutubuzzaman Advocate, his brother, who was Hanif's counsel during the perjury proceedings against him in Suit No. 578/1993.

Interestingly, in filing Suit No. 1660/2013, Qutubuzzaman even managed to sue the Defendants through Hanif as their Attorney. The collusion is manifest.

10. Hanif, acting as the Defendant's Attorney in Suit No. 1660/2013, and Muhammad Qutubuzzaman Advocate as the Plaintiff's counsel, both had active knowledge of the decree in Suit No. 578/1999 and played a blatant fraud on the Court in obtaining the compromise decree. Apparently, the Plaintiff too was complicit in the fraud. The act of Muhammad Qutubuzzaman Advocate also amounts to misconduct by a legal practitioner.

11. Given the circumstances, this is a fit case for imposing special costs on persons who defrauded the Court. As held by the Supreme Court in *Zakir Mehmood v. Secretary Ministry of Defence* (2023 SCMR 960), apart from actual costs and compensatory costs under sections 35 and 35-A CPC respectively, a civil court may also impose 'special costs' in exercise of powers under section 151 CPC, and that such costs can be imposed while exercising jurisdiction under section 12(2) CPC.

12. In view of the foregoing, J.M. No. 73/2014 is allowed with the following order :

- (i) the compromise decree dated 26.03.2014 passed in Suit No. 1660/2013 is set-aside along with the interim order dated 01.01.2014 passed therein. Resultantly, the suit is revived. The Plaintiff shall file an amended plaint within two weeks after joining the Applicants as defendants;
- (ii) costs of the J.M. are allowed to the Applicants under section 35 CPC alongwith markup @ 6% per annum from the date of J.M. to-date, so also compensatory costs under section 35-A CPC to the maximum of Rs. 25,000/- (Rupees Twenty Five Thousand only) against the Respondent No. 1, recoverable by attachment and sale of his property;
- (iii) special costs are also imposed on the Respondents 1 and 7 and on Muhammad Qutubuzzaman Advocate in the sum of Rs. 100,000/- (Rupees One Hundred Thousand only) each. In case of failure to deposit that with the Nazir of this Court for

the benefit of the Applicants, same may be recovered by attachment and sale of their respective properties;

- (iv) along with a copy of this order, the Registrar of the High Court shall file a complaint against Mr. Muhammad Qutubuzzaman Advocate with the Sindh Bar Council under section 41(2) of the Legal Practitioners and Bar Councils Act, 1973 for disciplinary proceedings against him.
- (v) As regards the registered sale deed dated 15-06-2017 executed by the Nazir of this Court in favor of the Plaintiff in execution of the compromise decree, since that decree has been set-aside, the Applicants may institute proceedings for restitution under section 144 CPC.

**JUDGE**

Karachi:

Dated: 12-08-2024

Execution No. 35/2017:

Since the underlying compromise decree is set aside in J.M. No. 73/2014, this execution application has become infructuous, and is disposed of accordingly. As regards the original documents deposited by the decree holder with the Nazir of this Court in this execution, those shall be retained until further orders of the Court in Suit No. 1660/2013.

Suit No. 578/1993

After the suit was decreed, applications were moved for taking proceedings for perjury and contempt. Those applications too were disposed of and nothing is pending.

The record shows that the Defendants were ordered on 14.05.2002, and again on 11.05.2005 to deposit the documents decreed for cancellation, which they did with the Nazir on 17.09.2005. The office shall cancel those documents, place them in the case file, and ensure compliance of the second part of section 39 of the Specific Relief Act for communicating the decree to the concerned Sub-Registrar, if not done already.