IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Omar Sial

High Court Appeal No. 201 of 2021
High Court Appeal No. 202 of 2021

Ziauddin Qazi ……. **Appellant**

through Syeda Fariha Anjum, Advocate

vs.

Shakeela Begum & others ……. **Respondents**

through M/s. S.M. Jehangir and Hassan Jehangir, Advocates

Date of hearing : 7th February, 2024
Date of judgment : 20th February, 2024

JUDGMENT

OMAR SIAL, J.: The issue involved in these proceedings is not an uncommon one. Qazi Manzoor Hasan died on 14.03.1975. **Suit No. 139 of 2003** was filed by two sons and two daughters of the late Qazi on 03.02.2003 seeking directions for the administration of two properties left behind by their deceased father – House No. 130-E, PECHS Block 2, and 25 acres of agricultural land, both situated in Karachi. The legal heirs amicably resolved the dispute as far as the agricultural land was concerned, so the administration was restricted to House No. 130-E. The appellant in these proceedings, Ziauddin Qazi, claimed that House No. 130-E could not be made part of the administration as his grandfather (the late Qazi Manzoor Hasan) had gifted it to him during his lifetime on 12.04.1970.

2. Three years after Suit No. 139 of 2003 had been filed, Ziauddin Qazi filed **Suit No. 670 of 2006** seeking declaration and permanent injunction against the other legal heirs of the late Qazi in connection with House No.

130-E, praying that he be declared the lawful owner of the house because of the Gift Deed his grandfather had executed in his favour. No evidence was recorded in Suit No. 670 of 2006; however, the Court recorded in its order dated 27.01.2021 that the evidence recorded in Suit No. 139 of 2003 would be considered to resolve the dispute in Suit No. 670 of 2006.

3. Pursuant to the impugned judgment, Suit No. 139 of 2003 was decreed in favour of the legal heirs of the late Qazi, whereas Suit No. 670 of 2006 was dismissed. The decision has been challenged through the two captioned appeals. The argument of the learned counsel for the appellant is the same as was made before the learned Single Judge, i.e. House No.130-E had been gifted by the late Qazi to the appellant Ziauddin Qazi during his lifetime. Counsel argued that the fact that the gift deed is unregistered does not take away the sanctity of the gift that had been made.

4. We have heard the learned counsels for the appellant and the respondents and perused the record. Our observations and findings are as follows.

5. The issue in these proceedings is whether House No. 130-E was validly gifted under Islamic law by the late Qazi during his lifetime to his grandson Ziauddin Qazi. At trial, to prove his claim, Ziauddin Qazi produced an unregistered Declaration of Oral Gift prima facie showing that the late Qazi had confirmed an oral gift of House No. 130-E having been made to Ziauddin Qazi on 12.04.1970. As Ziauddin was a minor then, Mashkoor Hasan (Ziauddin's uncle) accepted the gift and confirmed that possession was taken over. The gift was made in the presence of two witnesses while it was attested by an Oath Commissioner named Munawar Ali Khan. The names of the two witnesses cannot be deciphered from the document; however, it is admitted that apart from the late Qazi, both the witnesses to the gift and Mashkoor Hasan had all died before the Suit was filed. The record is silent regarding the Oath Commissioner. However, he was not examined as a witness at trial.

6. We will first address the objection raised by the learned counsel for the respondents that the Declaration of Gift being un-registered had no

sanctity and could not create a valid gift. In **Maulvi Abdullah and others vs Abdul Aziz and others (1987 SCMR 1403)**, it was held that a gift by a Muslim would be complete even if there were no writing and that a declaration of a gift would not require registration in **Mst. Nagina Begum vs Tahzim Akhtar (2009 SCMR 623),** which had somewhat similar facts as the case in hand, the Court held that (i) there is a difference between a declaration of a gift and a gift deed, (ii) a gift by a Muslim would be complete if a person proved the three necessary and inseparable ingredients, i.e. declaration/offer by the donor, acceptance of the gift by the donee and delivery of possession under the gift (iii) although the Court gave no definite finding as to whether two attesting witnesses were necessary to prove the document, the Court held that even if the witnesses had to be produced, and they were not as they had died, the document could be proved through other admissible evidence. **Muhammad Zaman Khan vs The Additional Chief Land Commissioner and another (1986 SCMR 1121)**, it was held that a gift could be orally made and no writing was essential to do the same in **Mst**. **Umar Bibi and three others vs Bashir Ahmed and three others (1977 SCMR 154)**, the Court held that registration of a gift was expressly excluded from the operation of the Transfer of Property Act, 1882 by section 129 and thus, a valid gift could be effected even orally or under an unregistered document. Given the precedent cited in this paragraph, we are of the view that the Declaration of Gift did not need to be registered for it to be a valid document admissible in evidence to show that a gift had been made under Muhammadan Law. However, the mere fact that a gift can be declared through an unregistered document would, by no stretch of imagination, mean that the document also does not require proof.

7. We have reviewed the evidence that was produced at trial. Rukhsana Aqeel was examined as the first witness on behalf of the plaintiffs at trial. She was the granddaughter of the late Qazi. She denied that House No. 130-E was ever gifted to the appellant. The second witness examined was Fahad Hassan. He was a grandson of the late Qazi and was born after his demise. Fahad also denied that his grandfather had ever gifted the property

to the appellant. Mairajuddin was examined as the first witness for the defendants in the Suit. He, too, was a grandson of the late Qazi and made a vague statement supporting the appellant. "*I say that para no. 13 does not pertain to me, but as it was known to all the family members plaintiff and defendants of the suit that the property bearing no. 130-E, Block 2, P.E.C.H.S. was factually gifted to Ziauddin Qazi*." His credibility was impacted by the fact that, on the one hand, he testified that the gift had been made when his father was present, but in the very next breath, he stated that his father was not present when the gift was made as he was in Islamabad. In the affidavit in evidence Mairajuddin swore he made a vague statement supporting the appellant. The third witness, Qazi Masood Hasan, was the son of the late Qazi. He denied that the property was gifted to the appellant. The last witness for the defence was the wife of Qazi Mashkoor (the person whom the appellant claims was appointed as his guardian and accepted the gift on his behalf). Her name was Saeeda Mashkoor. She testified that during his lifetime, her husband had never mentioned that the late Qazi had gifted the property to any person.

8. After reviewing the evidence, we find that:

(i) the declaration of gift, to be valid, did not require registration;

(ii) the original gift deed was not in possession of the appellant;

(iii) the most important witnesses at trial were Qazi Masood (the son of the late Qazi) and Saeeda Mashkoor (daughter-in-law of the late Qazi). Both categorically denied that the late Qazi had ever made a gift to the appellant;

(iv) Admittedly, the donor and the two witnesses to the declaration of the gift had died; however, the Oath Commissioner, who attested the document, was also not examined as a witness;

(v) The property to this date stands in the name of the late Qazi. No explanation was provided as to why the appellant did not make any effort to transfer the title in his name in the 33 years from the date of the alleged gift to when the Suit was filed.

(vi) We agree with the learned Single Judge that the appellant failed to establish his case on the preponderance of evidence. It is well settled now that the mere fact that the trial court could have reached a different conclusion would not necessarily mean that the appellate court interfered with the impugned order.

9. Both appeals stand dismissed.

JUDGE

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