

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT AT HYDERABAD
C.P. No.D-4532 of 2018
(*Mohsina Khanum versus Rizwan Cooperative Housing Society & others*)

Date	Order with signature of Judge
	Mr. Justice Adnan-ul-Karim Memon Mr. Justice Zulfiqar Ali Sangi

Date of hearing and order:- 10.02.2026

Syed Younas Saeed advocate for the petitioner
M/s Munawar Ali & Ali Asghar advocates for the respondents
Mr. Abdul Jalil Zubedi, AAG

ORDER

Adnan-ul-Karim Memon, J. – Petitioner Mohsina Khanum has filed this Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, with the following prayer: -

- a. Declaration that the orders dated 27.07.2016, 24.02.2017, and 17.05.2018, passed by the Respondent Nos. 3, 4, and 5 are illegal, void, and of no legal effect and may please be set aside;***
- b. Permanently restrain the Respondents No. 1 to 5, their officials, or anyone acting on their behalf from dispossessing the petitioner from the said plot.***

2. The case of the Petitioner is that she is the lawful owner and in peaceful possession of a residential plot measuring 400 square yards, bearing No. B-49-A, Sector 38-A, Rizwan Co-operative Housing Society-III, Gulzar-e-Hijri, Karachi, by virtue of a registered gift deed executed in her favour. It is submitted that the subject plot was originally allotted by Respondent No.1 to Muhammad Siddiq Hussain on 09.01.1989. Subsequently, the plot was transferred through a chain of transactions: first to Mrs. Rukhsana Asad vide registered sale deed dated 25.01.1995, thereafter to Irfan-ul-Haque through a General Power of Attorney dated 20.01.2007, and finally gifted to the Petitioner on 02.02.2011. The plot presently stands in the Petitioner's name and she remains in possession thereof.

3. learned counsel for the petitioner submitted that Respondent No.2, Kishwar Jehan, claiming ownership of the subject plot without any valid lease or title document, initiated arbitration proceedings under Section 54 of the Co-operative Societies Act, 1925, before Respondent No.3 in ABN Case No.39/2016. The said proceedings culminated in an award dated 27.07.2016 in favour of Respondent No.2, without impleading the Petitioner, who was a necessary and proper party. The award was passed in complete violation of the principles of

natural justice. An appeal filed by Respondent No.1 before Respondent No.4 was dismissed on 24.02.2017, and a subsequent revision before Respondent No.5 was also dismissed on 17.05.2018, thereby mechanically affirming the illegal and void award. It is urged that the entire arbitration proceedings and the subsequent appellate and revisional orders are illegal, void ab initio, based on misreading and non-reading of evidence, and passed without application of mind. He argued that the Petitioner was denied the right to a hearing, resulting in a grave miscarriage of justice. Since the original award is void, all subsequent orders affirming it are also without lawful authority. He prayed to allow this petition. An excerpt of the order dated 17.05.2018 is reproduced as under:-

“3. That brief history of the case is that Respondent No.1 ws lawful purchaser of Plot No. B-49/A, admeasuring 400 sq. yds., Sector 38/A Scheme-33, situated in Rizwan CHS (hereinafter call Plot in case” Indeed the Plot in case was originally allotted to Share holder member namely Mohammad Sadiq Hussain through Allotment Order No. 346, dated 9.1.1989 along with possession order and site plan dated 5.3.1989, thereafter Plot in case had been transferred in the name of Respondent No.1 through transfer letter dated 7.9.1991. The Respondent No.1 had paid all the payments with the Society without committing any default or delay with diligent therefore the Respondent No.1 was bona fide entitled for vacate physical possession of the Plot in case but per Respondent No.1, the Appellant/Society with mala fide intention declined to handover the physical possession of the Plot in case to Respondent-1.

4. That the Appellant/Society made impugned the Award dated 27.07.2016 by filing of the instant appeal under section 56 of the Cooperative societies Act-1925 after served the Notices on the parties the Respondent No.1/Kishwar Jahan filed Objections on 21.9.2016. The Respondent No.2/Mohsina Khanum filed her written statement on 22.2.2017, per Respondent No.2 she is Giftee through the Registered Gift Deed Registered with sub-registrar Gulshan-e-Iqbal Town Karachi at Registration No. 2214, dated 31.5.2013. The said Gift was executed by attorney namely Irfan-ul-Haq attorney to the purchaser Mrs. Rukhsana Asad, she purchased Plot in case from the lessee M. Siddique Hussain, he was holding Registered lease Deed dated 8.3.1999.

5. That the fresh facts bring by Respondent No.2, in the Proceedings, it disclosed on one hand that the authorized representative to the Society namely Aftab Ahmed Arian member of managing committee submitted false statement before the Registrar’s Nominee in written statement as well as false contention in the Appeal & in the instant Revision, that the Plot in case not exists in the Society or in the layout plan of the Society, the Registered lease Deed produced by Respondent No.2 denied facts submitted by the Society through its authorized representative.

In view of my above observations/findings, the order dated 24.02.2017, up held and instant Revision dismissed, with no orders as to cost.”

4. Learned counsel for the private respondents vehemently opposed the petition and submitted that the Petitioner has no lawful cause of action and has approached this Court with unclean hands. It is contended that the Petitioner’s alleged title is based on a General Power of Attorney and a

subsequent gift, which confer no valid ownership rights under the law, particularly in the absence of lawful transfer and mutation approved by the competent authority of the Society. It is further submitted that Respondent No.2 is the bona fide owner of the subject plot, whose rights were duly recognized by the competent forum after proper adjudication. The arbitration proceedings under Section 54 of the Co-operative Societies Act, 1925, were lawfully initiated and conducted in accordance with law, and the award dated 27.07.2016 was passed after affording due opportunity of hearing to all concerned parties as per the record available before the Registrar's nominee. Learned counsel argued that the Petitioner was neither a member of the Society nor a necessary party to the arbitration proceedings, and therefore the question of violation of principles of natural justice does not arise. It is maintained that the Petitioner's alleged possession, if any, is unlawful and does not confer any legal right or equity in her favour. It was further contended that the appeal and revision filed against the award were independently examined by the competent authorities and dismissed on merits through well-reasoned orders dated 24.02.2017 and 17.05.2018 respectively. The findings recorded therein are concurrent findings of fact, which cannot be interfered with in constitutional jurisdiction. Learned counsel emphasized that disputed questions of title and possession cannot be adjudicated in writ jurisdiction and the Petitioner, if so advised, may seek her remedy before the competent civil court. It was lastly submitted that the petition is misconceived, not maintainable, and liable to be dismissed. LA and AAG submitted that matter shall be decided by the Special Cooperative Judge under the Act 2020 as the issue of cancellation of documents needs to be taken care of, the court rather than cooperative department hierarchy.

5. We have heard the learned counsel for the parties and have perused the record with their able assistance.

6. It is an admitted position that the controversy between the parties revolves around rival claims of ownership, title, and possession of the subject plot, which necessarily involves disputed questions of fact requiring recording and appreciation of evidence, by the competent court having jurisdiction.

7. It is well-settled law that questions relating to title, validity of transfers, and cancellation of lease documents cannot be adjudicated in constitutional jurisdiction under Article 199 of the Constitution, particularly where factual controversies exist. It is also well settled that writ jurisdiction cannot be invoked for determination of disputed title and possession, which fall within the exclusive domain of civil courts exercising plenary jurisdiction.

8. It is further settled that lease documents/ registered instrument once executed, cannot be cancelled, annulled, or declared void by executive or departmental authorities. Such power vests solely in a court of competent civil jurisdiction after recording evidence and affording due opportunity of hearing to all concerned parties. In this regard, it is settled principle of law that wherein the administrative authorities cannot assume judicial powers to cancel vested property rights, duly registered under the law.

9. In view of the above legal position, any grievance regarding validity of allotment, transfer, gift, or lease of the subject plot can only be resolved by a competent civil court through a properly instituted suit or cooperative society suit. The fate of the subject plot shall, therefore, be determined by the trial court after recording evidence and deciding the matter on merits within a reasonable time, just upon approach by the aggrieved party.

10. Accordingly, to safeguard the interests of all parties and to prevent multiplicity of proceedings, it is directed that the subject plot shall remain subject to the custody and control of the trial court, just upon approach and no coercive action, including dispossession or cancellation of documents, shall be taken by the official respondents till final adjudication by the civil court.

11. This Constitutional Petition along with pending application(s) stands disposed of in the above terms.

JUDGE

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