

IN THE HIGH COURT OF SINDH AT KARACHI

Suit NO. 1000 of 2014

Plaintiff : Mst. Ghazala Ishrat,
through: M/s. Asif Iqbal and Mr. Shahab Ghauri,
Advocates.

Defendants : Ms. Haleema Khan, Advocate for Defendant No.2.

Date of hearing : 19.01.2016.

Date of announcement: 01.03.2016.

ORDER

SALAHUDDIN PANHWAR, J. Through order dated 15.5.2015, this Court while disposing off two CMAs, framed a legal proposition (*legal issue*) to be addressed. The concluding para thereof is reproduced hereunder:-

“WHILE parting, it is relevant to mention that above discussion and existing of following undisputed facts:-

‘the defendant no.1 was owner of the subject matter and such title was maintained in relevant Record of the Rights’

‘since the plaintiff and even defendant no.2 claims to have obtained title on basis of gift, made by defendant no.1, hence authority (status of defendant no.1 is owner) cannot be denied or disputed by them’

‘the gift in favour of the plaintiff is prior in time and even stood affirmed by defendant no.1

WHILE

gift, in favour of defendant no.2 is later in time and is denied by defendant no.1 (donor), even;

has made it *prima facie* clear that legal status of the subsequent gift by one and same donor, who admits later but denies former(subsequent), is the root question which shall decide the

case, as a whole, can competently be decided on such question of law, as is the object of the Order XIV rule 2 of the CPC. Accordingly, it would be just and proper to frame legal issue, which is as under:-

'What is the legal status & value of subsequent gift when donor & donee of subsequent gift acknowledge execution of first gift?'

Needless to add that the above are purely questions/issues of law, therefore, the parties are directed to come prepared on next date of hearing to argue the above said issues *first* which shall sufficiently decide the whole case, because the rights and claims are being claimed or denied with reference to such subsequent gift."

2. I have heard the respective parties and have also perused the available record with reference to relevant provisions of law, dealing with *gift*:

3. The very *first* ingredient, required *even* to think for making a *gift* would be nothing but status and competence of *donor* which shall stand clear from the term '*Hiba or gift*' defined by Section 138 (Chapter XI) of Muhammadan Law i.e:

'A hiba or gift is 'a transfer of property, made immediately, and without any exchange,' by one person to another, and accepted by or on behalf of the latter.'

It is well established principle of law that one cannot *legally make* 'a transfer of property' if he/she does not own title thereof. The moment one *makes* a gift he/she, *as the case may be*, transfers the property hence his/her status of '*owner*' ceases. In absence of status of '*owner*' of a property, one cannot make 'a transfer of property'. Thus, in existence of *first* gift, no second *gift* can be made by the donor for want of '*status of ownership*' without which no transfer of a property can take place.

4. I have no *hesitation* in acknowledging the competence of the *donor* to revoke the *gift* subject to procedure, detailed by Section 167 of the Muhammadan Law. It is undisputed fact the *first* gift was made by a mother (defendant no.1) in favour of the plaintiff (real daughter) within active knowledge and notice of the defendant no.2 (subsequent donee). The provision of Section 167 leaves nothing ambiguous that remedy of *revocation* is available for the *donor* alone on certain grounds, as provided under the law.

5. Here, it is worth to mention that defendant no.2, (subsequent donee) was in active knowledge of *first gift* in favour of the plaintiff as it appears from pleading (written statement) of defendant no.2.

‘It is further contended that father of the plaintiff and Defendant No.2 was of the opinion that since earlier gift by Defendant No.1 to the Plaintiff was contrary to the wish of the family, hence, he asked the defendant No.1 to execute another gift in the name of the defendant No.2, which she did in January 2006 and same was registered with the Registrar and all the.’

(Underlining is supplied for emphasis)

In such eventuality, if the *donor* was intending to *undo* earlier gift, the only course available with her, was to resort to Section 167 of the Muhammadan law because *the donor*, having made a gift, cannot *legally* presume himself/herself capable of making a another (second) ‘transfer of property(which property already gifted). It is a matter of record that *donor* (defendant no.1) never revoked the *first* gift, made in favour of the plaintiff nor the instant suit has been filed by her rather she *through* her written statement conformed the validity of *first* gift.

In view of above, the answer to the above proposition can be nothing but that subsequent gift was void *ab initio*.

6. Let me, insist again that controversy/issue, in the instant matter was revolving round the above *legal proposition* so it shall stand clear from reliefs, sought by plaintiff i.e:

- a) To declare that the gift deed dated 27.09.2003 got execute by the defendant No.2 in the year 2006 is forged and fabricated as well as the mutation dated 03.04.2013, therefore, the same are liable to be cancelled.

(this is second & subsequent gift for which declaration is sought)

- b) To direct the defendant No.2 to vacate the upper portion of the house No.B-119, Block 13-D/2, Measuring 400 Square Yards, Situated at Gulshan-e-Iqbal Karachi and hand over the peaceful possession of the said House to the Plaintiff.

(defendant no.2 retaining possession under second & subsequent gift)

- c) To grant permanent injunction restraining the defendant No.2 and his son, as well as his subordinates, attorneys, agents, any person or persons using the entrance inside the house and also to restrain not to create third party interest by selling out and let out the said property /house No.B-119, Block 13-D/2 Measuring 400 Square Yards, Situated at Gulshan-e-Iqbal Karachi."

Since, the second & subsequent gift (in favour of defendant no.2) is not legal, valid and lawful nor the defendant no.2 can *legally* keep the plaintiff out of possession of subject matter hence there remains nothing to try the suit *any more* because '*trial*' is always conducted to resolve '*controversy*'. The controversy or controversies, if any, after respond to legal issue/proposition have lost significance hence the suit of the plaintiff is decreed, as prayed. Accordingly, listed applications are disposed off.

Let such, decree be drawn.

JUDGE