

(Judgment Sheet)
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Regular First Appeal No.336 of 2020

Zeenia Satti
Versus
Abdul Karim Niazi & others

Appellant by:	In person.
Respondent No.1 by:	Mr. Ahmed Shahzad Awan and Ms. Zill-e-Huma, Advocates.
Respondent No.2 by:	Ms. Mehraj Tareen, Advocate.
Date of hearing:	14.01.2021

GHULAM AZAM QAMBRANI, J.:-Through this common Judgment, I intend to dispose of Regular First Appeals No.336, 337 & 342 of 2020, filed by appellant, Zeenia Satti D/o Muhammad Siddique Khan, wherein she has assailed the consolidated judgment and decree dated 09.10.2020 (hereinafter be referred to as “**impugned judgment**”), passed by the learned Civil Judge^{1st} Class, Islamabad-West, whereby three suits titled as “**Mst. Zeenia Satti Vs. Abdul Karim Khan and another**” for Possession, Mesne Profits and Permanent Injunction; “**Abdul Karim Khan Niazi Vs. Mst. Zeenia Satti and others**” for Declaration and Permanent Injunction; and “**Abdul Karim Khan Niazi Vs. Mst. Zeenia Satti and others**” for Declaration, Mandatory and Permanent Injunction, were jointly decided qua above-mentioned consolidated impugned judgment due to their common suit property and interlinked cause of action.

2. Briefly stated facts for filing of instant appeals are that one Brig. Retd. Muhammad Siddique Khan (late) was the owner of plot No. 267, Street No. 22, Sector E-7, Islamabad, measuring 1333 Sq. yards. He sold a portion of said plot measuring 533 Sq. yards to one Javed Akhtar Son of S.M Ishaq vide agreement dated 25.01.1988 for a sale consideration of Rs. 10,00,000/- only. Later on, some dispute arose between them regarding payment of sale consideration. The above mentioned Javed Akhtar filed a suit for

specific performance of the agreement dated 25.01.1988, which was ultimately decided in his favour by the Hon'ble Supreme Court of Pakistan vide judgment dated 07.02.2020 passed in C.P No. 1192/2018 titled as ***"Abdul Karim Niazi Vs. Javed Akhtar (deceased) through his legal heirs and others"*** in the terms given in the said judgments.

3. Briefly stated facts of Civil Suit No.270/2016, filed on 30.11.2016 titled as ***"Abdul Karim Niazi Vs Mrs. Zeenia Satti, (2) C.D.A & (3) S.H.O, Police Station, Kohsar, Islamabad"***, are that plaintiff Abdul Karim Niazi is the Son of Mst. Sumaira Satti Daughter of Brig. Retd. Muhammad Siddique Khan, wherein claimed that he is in legal and lawful possession of House No. 267-A, Street No. 22, Sector E-7, Islamabad. According to him, Mst. Zeenia Satti daughter of Muhammad Siddique Khan his real maternal aunt, lives in adjacent House No. 267-B. It was contended by him that in August, 2015 Mst. Zeenia Satti in collusion with staff of the C.D.A tried to dispossess him from the House No. 267-A, as such, he preferred Civil Suit No.614-A/2015 before the competent Court wherein, restraining order was issued in his favour. It was mentioned in the said suit that he had leased out some part of house to tenants for the last ten days. It was also contended that Mst. Zeenia Satti again tried to dispossess him from the House No. 267-A with the help of "Ghunda Persons", as such he filed an application under Section 22-A Cr.P.C before the learned Additional Sessions Judge, Islamabad. With the above mentioned averments, he filed Civil Suit No. 270/2016 with the following prayers:-

"Under the circumstances, it is, therefore respectfully prayed that a decree for declaration to the effect that the respondents have no right whatsoever to interfere in the peaceful possession of the plaintiff, may please be passed in favour of plaintiff against the defendants with costs.

As a consequential relief, a decree for permanent injunction restraining the defendants from dispossessing the plaintiff from the suit house, illegally and using illegal force and from threatening the plaintiff and creating harassment, may please be passed and the defendants be

directed to maintain status quo in this regard till final disposal of the case."

4. That Mst. Zeenia Satti contested the suit by filing written statement raising a number of legal as well as factual objections. She also took a stance that she had been illegally dispossessed of the house by Abdul Karim Khan Niazi. Defendant No.2-C.D.A did not file written statement despite opportunities granted, therefore, on 17.04.2019 the right of C.D.A for filing written statement was closed.

5. Briefly stated facts of Civil Suit No. 221/2017, filed on 28.10.2017 titled as "**Abdul Karim Niazi Vs Mrs. Zeenia Satti and C.D.A.**", are that the plaintiff Abdul Karim Niazi filed suit for declaration, mandatory and permanent injunction with the averments that he is the son, legal heir of Mst. Sumaira Satti who was real daughter of Brig. Retd. Muhammad Siddique Khan. The above said Muhammad Siddique Khan was the lawful owner of plot No. 267-A, Street No. 22, Sector E-7, Islamabad (Suit Property), who transferred the same in the name of his daughter/ defendant No.1 Mst. Zeenia Satti on 27.03.1995. According to plaintiff Abdul Karim Niazi, Mr. Zeenia Satti, his maternal aunt, on account of natural love and affection and with her own free will and consent without coercion, orally gifted the suit property to him (Abdul Karim Khan Niazi and his real brother Abdul Azim Khan Niazi) in the year 2007. It was also averred that they both accepted the gift and possession of the suit property was also handed over to them. Since then plaintiff had been residing in the suit property. He had also leased it to different tenants through different lease agreements. He had also installed electricity connection at the suit property on his name. That Mst. Zeenia Satti went to United States of America and married with an American national. It is the case of plaintiff that in acknowledgement of the oral gift-deed, she also sent a written acknowledgment of oral gift-deed dated 21.05.2013 duly notarized. It is also the case of Abdul Karim Khan Niazi that suddenly Mst. Zeenia Satti changed her mind in August, 2015, she

incollusion with the staff of C.D.A tried to dispossess him from the house forcibly and illegally. As such, he filed a civil suit before the competent jurisdiction and obtained restraining order in his favour.

6. In the above background, civil and criminal litigation started between the parties. Plaintiff also filed instant civil suit No.221/2017 on 28.10.2017 and prayed for following relief:-

"Under the above circumstances, it is, therefore, respectfully prayed that a decree for declaration, to the effect that plaintiff is legal and lawful owner in possession of the suit property i.e. Plot No. 267-A, Street No. 22, Sector E-7, Islamabad through the oral as well as written gift-deed executed by the defendant No.1 and now the defendant No.1 has no right whatsoever to interfere in the peaceful possession of the plaintiff, may please be passed in favour of the plaintiff against the defendants with cost.

A decree for mandatory injunction directing the defendant No. 2 to transfer the suit property in the name of plaintiff may kindly be passed.

As a consequential relief, a decree for permanent injunction restraining the defendants from transferring, alienating or dispossessing the plaintiff from the suit house forcibly, may please be passed and the defendants be directed to maintain status quo in this regard till final disposal of the case.

Any other relief, which this Hon'ble Court deems fit and proper may also be awarded."

7. Defendant No.1, Mrs. Zeenia Satti, did not file written statement in this suit. On 20.07.2019, she gave a statement before the Court that she does not want to file written statement in this suit and relies on the contents of her plaint filed in the suit titled as **"Zeenia Satti Vs Abdul Karim & others"**, while defendant No.2/ C.D.A filed its written statement in this suit contesting the same to its extent only.

8. Briefly stated facts of Civil Suit No. 463/2018, filed on 11.01.2018 titled as **Mrs. Zeenia Satti Vs Abdul Karim Khan Niazi & C.D.A**", for possession, mesne profit and permanent injunction are that she claims to be owner of the House No. 267-A, Street No. 22, Sector E-7, Islamabad (Suit Property) which was transferred in her name by her father Muhammad Siddique during his lifetime vide letter dated 27.03.1995 issued by C.D.A. She was married to an

American national who was an agent of CIA and was involved in anti-State activities in Pakistan. She moved an application regarding his activities to the concerned authorities in Pakistan. Due to her marriage with an American national, she had been living in America as well. After the death of her husband, litigation started between plaintiff and her in-laws in America regarding the movable and immovable properties left by her late husband. It was averred that respondent No.1 Abdul Karim Khan Niazi, who is real nephew, in collusion with officials of C.D.A forcibly expelled her from the suit property in the night of 30.11.2016. As such, civil and criminal litigation started between them. With these averments she has filed Civil Suit No.463/2018 with the following prayer:-

"a. That a decree for possession directing the defendants to deliver the possession of the property to the plaintiff may graciously be passed against the defendants and in favour of plaintiff with costs throughout in the same manner,

b. That a decree for mesne profit, at the rate of Rs.300000/- per month from 30.11.2016 till the delivery of possession to the plaintiff may very graciously be passed against the defendants and in favour of the plaintiff in the interest of justice.

c. As a consequential relief, a decree for perpetual injunction, restraining the defendants from entering into any transaction, or agreement, rental, putting any third party into possession of the suit property, causing any damage to it in terms of changing its nature and scope may also graciously be passed in the same manner in the interest of justice.

d. Any other relief."

That Abdul Karim Khan Niazi failed to file written statement despite several opportunities, as such on 04.03.2019, his right to file written statement was closed. He did not challenge said order which has attained finality. Defendant No.2-C.D.A filed its written statement wherein it admitted the ownership of Mst. Zeenia Satti.

9. That all the above mentioned three suits were consolidated by the learned trial Court vide order dated 20.07.2019 and following consolidated issues were framed for determination:-

i. Whether the plaintiff is entitled for decree of possession as prayed for ?OPP

- ii. *Whether the plaintiff is entitled for the recovery of mesne profit @ Rs.3,00,000/-, per month from the defendant No.1 till delivery of possession? OPP*
- iii. *Whether the plaintiff is entitled for decree of permanent injunction as prayed for ?OPD*
- iv. *Whether the defendant No.1 Abdul Karim Khan is entitled for decree of declaration to the effect that he is legal and lawful owner in possession of suit property through oral as well as written gift deed ?OPD*
- v. *Whether defendant No.1 Abdul Karim Khan is entitled for decree of mandatory and permanent injunction as prayed for ?OPD1*
- vi. *Whether the suit filed by the defendant No.1 is not maintainable and liable to be dismissed ?OPP*
- vii. *Whether the defendant No.1 has concealed the material facts from the Court ?OPP*
- viii. *Whether the plaintiff has concealed the material facts from the Court ?OPD*
- ix. *Whether the suit is not maintainable and liable to be dismissed ?OPD*
- x. *Relief.*

Mst. Zeenia Satti was treated as plaintiff, while Abdul Karim Khan Niazi to as defendant No.1.

10. Plaintiff/ Mst. Zeenia Satti, in order to prove her case, got recorded her own statement as PW.1. She also filed following documentary evidence to corroborate her contentions.

- *Copy of letter dated 27.03.1995 regarding transfer of plot in the name of Mst. Zeenia Satti by her father(as Ex.P1),*
- *Copy of letter dated 06.05.1997 issued by C.D.A regarding Sub-Division of the plot(as Ex.P2),*
- *Copy of completion certificate dated 22.02.2000 issued by C.D.A(as Ex.P3),*
- *Bill of SNGPL for the month of November, 2016 in the name of Mrs. Zeenia Satti (as Ex.P4),*
- *Certified copy of report under Section 173 in case F.I.R No. 447, dated 23.12.2016 under Section 148/149/427 P.P.C, P.S Kohsar(as Ex.P5),*
- *Copy of report under Section 173 Cr.P.C in case F.I.R No. 407/2016 dated 22.11.2016 under Section 447/34 P.P.C, P.S Kohsar(as Mark A),*
- *Copy of application dated 17.11.2016 filed by Mst. Zeenia Satti with S.H.O, P.S Kohsar(as Mark B),*

- *Copy of charge sheet dated 10.02.2017 framed against Abdul Karim Khan Niazi (as Mark C),*
- *Copy of application under Section 249-A Cr.P.C.(as Mark D),*
- *Copy of plaint filed in the Civil suit titled as "Abdul Karim Khan Niazi Vs Mrs. Zeenia Satti", suit for declaration and permanent injunction, civil suit No. 614-A dated 27.08.2015(as Mark E).*

11. That on the other hand, respondent Abdul Karim Niazi, in rebuttal to the claim of Mst. Zeenia Satti got recorded his own statement as DW-1. He also filed following documentary evidence in support of his contentions,

- *Copy of W.P No. 1726/2019 filed by Mrs. Zeenia Satti vs Abdul Karim Khan Niazi(as Ex.D1),*
- *Copy of bill of electricity on the name of Abdur Rehman Khan Niazi, for the month of March, 2017 (as Ex.D2),*
- *Copy of complaint filed by Mrs. Zeenia Satti against Michel Galop in (as Ex.D3),*
- *Letter dated 01.02.2019 issued by C.D.A(as Ex.D4),*
- *Copy of lease agreement of November, 2012(as Mark D1).*
- *Copy of lease agreement dated 22.07.2014(as Mark D2),*
- *Copy of lease agreement dated 13.04.2010(as Mark D3),*
- *Second page of mark D/3(as Mark D4),*
- *Copy of lease agreement dated 25.02.2016(as Mark D5),*
- *Copy of lease agreement dated 05.7.2011(as Mark D6),*
- *Acknowledgment oral gift deed(as Mark D7),*
- *Affidavit regarding compromise executed by Mrs.Zeenia Satti (as Mark D8).*

12. That the learned trial Court after recording of evidence, and hearing the learned counsel for the parties, vide consolidated impugned judgment dated 09.10.2020 dismissed the Civil suit No.463/ 2019 filed by appellant and decreed the other two suits bearing No. 270/2018 and 221/2017 filed by respondents. Being aggrieved and dis-satisfied from the impugned consolidated judgment and decree, the appellant has filed instant appeals.

13. Appellant in person contended that she has not executed any oral or written gift of the suit property in favour of respondent; that the respondent illegally and by force expelled her from the house on 30.11.2016; that she lodged criminal proceedings against him, but the local police in collusion with the respondent did not properly take-up her case and he succeeded in earning his acquittal from the Court of law; that the respondent failed to produce any evidence in support of his claim; that the impugned judgment passed by the learned Trial Court is against the facts, evidence and law; that the impugned judgment and decree is not maintainable in the eye of law, therefore, it may be set aside and the suit filed by her may be decreed in her favour and the two suits filed by respondent may be dismissed.

14. Conversely, learned counsel for the respondent/ defendant contended that the appellant had given the suit property to the respondent through an oral gift deed; that she has also admitted the execution of gift-deed in her statement recorded before the Court; that she cannot retract from her voluntary statement recorded before the Court of law, which operates as an admission on her part; that possession of the suit property was also delivered to the respondent; that the basic ingredients of a valid gift i.e. offer, acceptance and delivery of possession are complete which has also created a valid right and title in favour of the respondent; that the learned Trial Court after proper appreciation of evidence, has passed the judgment and decree and lastly prayed for dismissal of these appeals.

15. I have heard the arguments of appellant and learned counsel for the respondents and have perused the material available on record with their able assistance.

16. Perusal of the record reveals that the parties are in litigation regarding the suit property, House No. 267-A for the last about five years starting w.e.f 27.08.2015, when for the first time, Abdul Karim Khan Niazi filed civil suit No. 614-A/2015 on 27.08.2015 for

declaration and permanent injunction tilted as "**Abdul Karim Khan Niazi Vs Mrs. Zeenia Satti & C.D.A**". In this suit, following prayer was made by Abdul Karim Khan Niazi:-

"Under the circumstances, it is, therefore respectfully prayed that a decree for declaration to the effect that the respondents have no right whatsoever to interfere in the peaceful possession of the plaintiff, may please be passed in favour of plaintiff against the defendants with costs.

As a consequential relief, a decree for permanent injunction restraining the defendants from dispossessing the plaintiff from the suit house, illegally and using illegal force and from threatening the plaintiff and creating harassment, may please be passed and the defendants be directed to maintain status quo in this regard till final disposal of the case."

17. That this suit was dismissed for non-prosecution by the learned Trial Court vide order dated 02.12.2015. The respondent/ plaintiff did not challenge the order dated 02.12.2015 which has attained finality. There is a dispute between the parties regarding the title/ ownership over plot/House No. 267-A.Cause of action if any, as mentioned in Civil Suit No. 614-A/2015 arose in favour of Abdul Karim Khan Niazi, a week before filing of Civil Suit No. 614-A/ 2015 when allegedly the staff of C.D.A visited the house and threatened for dire consequences and tried to forcibly dispossess him. The cause of action if any once starts running does not stop and still continues till the dispute is settled according to law. The dispute had not been resolved, neither appellant/ Mrs.Zeenia Satti admitted his title or possession to be lawful owner of the suit property. The only course open for the respondent/plaintiff was to file an application for setting aside the order dated 02.12.2015, but he did not do so. The order dated 02.12.2015 attained finality and the respondent was estopped to file a second suit regarding the same subject matter, the same cause of action and between same parties. However, after dismissal of the first Civil Suit No. 614-A/2015, he filed second Civil Suit No. 270/2016 on 30.11.2016. Reliance in this regard is placed on the case reported as

"Muhammad Chuttal Versus Atta Muhammad through L.Rs." (2007 SCMR 373) wherein, it has been held as under:-

"There is no cavil to the proposition that on dismissal of suit in default, the plaintiff or his successor-in-interest may not be able to bring fresh suit on the same subject as the law does not permit repeated litigation on the same cause of action but the question relating to the bar of Order II, rule 2, C.P.C. must be examined in substance as the subsequent suit, may not be barred for mere reason that cause of action in two suits was founded to be the same rather it would depend upon the decision of question whether in a case in which the previous suit was decided on merit, the fresh suit would be barred by law or in all circumstances, the subsequent suit cannot proceed. The law is clear on the proposition that if the facts on the basis of which right is claimed by the plaintiff, are the same and infringement of such right by the defendant in the two suits has arisen out of the same transaction, the subsequent suit on the basis of same cause of action may not be competent and barred by the doctrine of res judicata,..."

18. In para No.05 of the third suit, the respondent for the first time claimed that in the year 2013, Mrs. Zeenia Satti with her free will and consent had sent him a written acknowledgment dated 21.05.2013 of oral gift deed through stamp paper duly notarized which he produced before the Court as Mark D-7. The respondent took this stance for the first time in the third Civil Suit No. 270/2017, which was entirely a contradictory stance as taken by him in first and second suit No. 614-A/2015 and Civil Suit No. 270/2016, after four years and three months from execution of the alleged acknowledgment dated 21.05.2013. The respondent did not file copy of the acknowledgment deed dated 21.05.2013, as required under Order VII Rule 14 C.P.C nor filed any statement as required under Order VII Rule 15 C.P.C with the first and second suits. From the perusal of record it appears that after filing of the first and second suits, he changed his stance and during pendency of second civil Suit No. 270/2016 filed the third civil suit No. 221/ 2017 on 28.10.2017 for declaration, mandatory and permanent injunction with the prayer as mentioned in para No.03 above entirely on a different ground of gift only in order to strengthen his case,

therefore, third suit is in contradiction with his stance as taken by him in the first two suits. It was mandatory for the respondent/plaintiff (Abdul Karim Khan Niazi) to file a certificate regarding pendency of Civil Suit No. 270/2016, but he did not do so. It shows that the respondent intentionally concealed the facts from the Court that earlier Suit No. 270/2016 on the same subject matter and between the same parties was already pending adjudication before a civil Court of competent jurisdiction at Islamabad. That due to non-filing of certificate, Civil Suit No.221/2017 was marked to some other Civil Court on 28.10.2017. Third Civil Suit No. 270/2016 is also incompetent for being in violation of Order VI Rule 7 C.P.C.

19. The respondent has not brought on record the original acknowledgment of oral gift deed dated 21.05.2013. It is a registered document. He has not proved its execution by producing two marginal witnesses of the same as required under Article 79 of the Qanoon-e-Shahadat Order, 1984 regarding proof of a document through secondary evidence, therefore, mark D/7 cannot be taken into consideration as an evidence of execution of gift in favour of Abdul Karim Khan Niazi. Reliance in this regard is placed upon the judgment titled as "Farid Bakhsh versus Jind Wadda and others" (2015 SCMR 1044), wherein it has been held as under:-

"This Article in clear and unambiguous words provides that a document required to be attested shall not be used as evidence unless two attesting witnesses at least have been called for the purpose of proving its execution. The words "shall not be used as evidence" unmistakably show that such document shall be proved in such and no other manner. The words "two attesting witnesses at least" further show that calling two attesting witnesses for the purpose of proving its execution is a bare minimum. Nothing short of two attesting witnesses if alive and capable of giving evidence can even be imagined for proving its execution"

20. From perusal of the Civil Suit No. 270/2016 it reflects that the respondent has mentioned the address of Mrs. Zeenia Satti to be resident of House No. 41, Street No. 03, Sector E-7, Islamabad. There is nothing on record to suggest that the appellant was

residing at the given address. On the other hand, title of civil suit No. 221/2017 also shows that respondent has mentioned the address of Mrs. Zeenia Satti as residing at container village Kamra, Tehsil Kotli Satian, District Rawalpindi. Nothing has been produced on record that Mrs. Zeenia Satti was in fact residing in a container. The respondent has also made improvement in the prayer clause as compared to the second suit. From the non-filing of record, address of Mrs. Zeenia Satti and filing of civil suit No. 221/2017 during pendency of the Civil Suit No. 270/2016 with concealment of facts lead this Court to inference that the respondent Abdul Karim Khan Niazi has not come to the Court with clean hands. It was incumbent upon the respondent to include the whole claim in his first suit bearing No. 614-A/2015. He did not claim his title on the basis of the oral gift allegedly executed by Mrs. Zeenia Satti in the year 2007; therefore, his first two suits were also defective under Order II Rule 2 C.P.C.

21. Further perusal of the record reveals that the respondent Abdul Karim Khan Niazi has not filed written statement in Civil Suit No. 463/2018 filed by appellant. In this suit, Mr. Ahmad Shahzad Awan, Advocate filed his power of attorney on behalf of respondent on 30.04.2018. The respondent was given a number of opportunities for filing of written statement, but he failed to do so. Ultimately, after complete ten months, his right for filing of written statement was closed on 03.04.2019 as he did not file any written statement in the suit filed by appellant Mrs. Zeenia Satti, therefore, according to law there is no rebuttal by the respondent to the claim of appellant as set up in her plaint/suit, therefore, there was no denial by him to the claim of appellant. As such, due to non-filing of written statement the claim of appellant stands admitted by him.

22. For the reasons mentioned above, the second and third suit filed by respondent/Abdul Karim Khan Niazi were not maintainable in law and there was no need to consolidate all these three suits or

framed consolidated issues, as was done by the learned Trial Court on 20.07.2019. In view of above background, the learned trial Court was under obligation to decide all these three suits separately keeping in view the relevant law regarding estoppel, Order II Rule 2 C.P.C and the fact of non-filing of written statement by Abdul Karim Khan Niazi in the suit filed by appellant Mrs. Zeenia, hence entire proceedings conducted by learned Trial Court suffer from material irregularities, illegalities and cannot be sustained. The impugned judgment is also a result of misreading and mis-appreciation of the facts and circumstances of the suits.

23. There is also an important aspect of the cases that C.D.A as well as the respondent Abdul Karim Khan Niazi have admitted that Muhammad Siddique Khan transferred plot No.267-A in the name of his daughter Mrs. Zeenia Satti (the appellant) vide letter dated 27.03.1995 issued by C.D.A. As such, title of appellant Mrs. Zeenia Satti over the suit plot is admitted. It is also an admitted fact that the appellant raised construction of a residential building on the suit plot and the completion certificate Ex.P3 was also issued by C.D.A in her favour. All the above facts also prove that she was in physical possession of the suit property before the dispute arisen between her and the respondent Abdul Karim Khan Niazi.

24. In paragraph No. 2 & 3, of Civil Suit No. 614-A/2015, the respondent has clearly mentioned that he being legal heir of Mst. Sumaira Satti who was real daughter of Brigadier Muhammad Siddique Khan is in legal and lawful possession of House No. 267-A, Street No. 22, Sector E-7, Islamabad while the appellant is his maternal aunt and is residing at adjacent part of the same plot being numbered by the C.D.A as 267-B, however, it was alleged by him that the appellant in collusion with C.D.A officials tried to dispossess him from House No. 267-A. In the said suit, he did not mention the basis or ground of claiming his title over the suit property. Merely being a son of Mst. Sumaira Satti does not entitle him to the ownership over the suit property. Inasmuch as the suit

property was neither inherited by his mother Mst. Sumaira Satti nor his maternal grandfather Muhammad Siddique Satti gave the same to her by way of gift or sale. In the first and second suit, the respondent also did not take the plea that his maternal aunt/ Mrs.Zeenia Satti had ever executed any oral or written gift in his favour or ever put him into possession of the suit property. He has also not mentioned an exact date of his coming into possession over the suit property. From the all facts, one has reason to believe that the respondent Abdul Karim Khan Niazi came into possession of suit house otherwise than by due process of law.

25. The appellant has alleged that she was illegally dispossessed from the suit house by the respondent with force. The respondent also admits that he is in possession of the suit house for several years. It is the claim of respondent that he is in possession for the last ten years since 2015. He has filed copies of lease agreement executed by him with different persons from time to time. It is sufficient to prove that he has been deriving handsome income from the rent of the suit house without any lawful justification and title over the suit property and without lawful possession over the same. The appellant being the lawful owner of the suit house was entitled to enjoy its peaceful possession and benefits, but she has been deprived from peaceful enjoyment of propriety rights, possession and monetary benefits arising out of the suit property by the respondent illegally and without lawful justification, therefore, the appellant in addition to possession of suit property is also held entitled to recover the mesne profit from the respondent.

26. The only ground for passing the impugned judgment and decree dated 09.10.2020 passed by learned Trial Court is Ex.P/3. This document even if accepted to be true, if not a gift deed, it also does not show the intention of appellant to transfer the ownership or title of the suit property to the respondent and to his brother by gift. It also states that the two brothers were not inclined to legally

transfer the suit property in their name. Ex.D3 is the only document relied upon by respondent and the learned Trial Court. Its plain reading reflects that it does not fulfill the three ingredients of a valid gift. Ex.D3 cannot be taken as an acknowledgement or admission of execution of deed by the appellant. As per contention of respondent, the oral gift was executed in the joint names of him and his brother Abdul Azeem Khan Niazi who has not come up before the Court even to support claim of his brother. Also none of the legal heirs of Mst. Sumaira Satti (mother of the respondent) have come before the Court to claim any right over the suit property. These facts also lead to draw an inference against the contradictory claims put up by the respondent.

27. For the foregoing reasons, all the three appeals are **accepted** and impugned consolidated judgment dated 09.10.2020 suffering from mis-appreciation and non-appreciation of facts and relevant law is hereby set aside. Resultantly, Civil Suit No.463/2019 filed by appellant is decreed. The second civil suit No. 270/2016 being filed after dismissal of Civil Suit No. 614-A/2015 between the same parties regarding the same subject matter and same cause of action is not maintainable and is dismissed. The third civil suit No. 221/2017 being filed during pendency of the second suit No. 270/2016 with concealment of facts and improvements to fill up the lacunas is also not maintainable and is dismissed. The respondent Abdul Karim Khan Niazi is directed to hand over the vacant physical possession of the suit property to the appellant Mrs. Zeena Satti forthwith and he is also permanently restrained from interfering into the lawful enjoyment of the proprietary rights over the suit property by the appellant. In addition to the possession of the property, the appellant has also claimed recovery of mesne profit. While appearing as PW-1, she claimed mesne profit @ Rs.3,00,000/- per month, as per the monthly rental value of the property since 30.06.2016.

28. Minuet perusal of the record reveals that this portion of examination-in-chief has not been subjected to cross-examination by the respondents and the same remained unchallenged. It is settled principle of law that if a fact is alleged by a witness in his/her examination in chief and he/ she has not been cross-examined on the said particular point, such fact, remains uncontroverted and shall be deemed to be admitted, would be given full credit and accepted it as true. Since, the claim of the appellant qua mesne profit remained unchallenged, therefore, the same shall be deemed to be admitted and is to be accepted, as such. In this regard, I am fortified by the law laid down in "Mst. Nur Jehan Begum through Legal Representatives versus Syed Mujtaba Ali Naqvi" (1991 SCMR 2300) and "Waqar Ambalvi versus Faqir Ali And Others" (1969 SCMR 189). Since, the suit of the appellant/ plaintiff has been decreed, therefore, she is also held as entitled to recover mesne profit qua the suit house @ Rs.3,00,000/- per month from the respondent since 30.11.2016 till recovery of the physical possession of the suit property to her.

(GHULAM AZAMQAMBRANI)
JUDGE

Announced in open Court, on this 29th January, 2021.

JUDGE