

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
Suit No. 1251 of 2008

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DATE

ORDER WITH SIGNATURE(S) OF JUDGE(S)  
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1. For orders on Nazir Report dated 22.02.2016
2. For hearing of CMA No. 18334/2015

**24.08.2016**

Mr. Mehar Khan, advocate for the plaintiff.  
Mr. Shahab Sarki, advocate for Defendants No. 1 to 8.

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Through this application, defendant/applicant seeks to protect the property claimed by judgment-debtors by virtue of PT-I showing properties MIIF-194-A and MIIF-194-B measuring 725 square yards as out of the pleadings and dispute between the plaintiff and defendants. The arguments of this application as well as the Nazir Reference dated 22.02.2016 is that vide judgment dated 13.02.2015 has decreed the suit in the following terms :-

***“Any instrument or document registered in respect of any of the properties mentioned in paragraph 3(a) to (e) stands cancelled, revoked and declared unlawful against the rights of the legal heirs of the deceased (Syed Safdar Hussain).”***

Before the suit was decreed in respect of the properties mentioned in paragraphs 3(a) to (e) of the plaint, simultaneously the Nazir was directed to sell and distribute the sale proceeds amongst the legal heirs of the deceased in the plaint. Judgment-debtor has relied Annexure P-15 in respect of the properties mentioned as PT-I Form bearing MIIE-194, situated at Block-B, Lane No. 52, Urdu Bazaar Road, Sher Shah, Karachi-West relating to approximately 1200 sq. Yds. The PT-I filed by the plaintiff as Annexure P-15 clearly shows an area of 500 sq. yards instead of 1200 sq. yards mentioned in the aforesaid paragraph 3(c). There appears to be some typographical error in paragraph 3(c) of the plaint, in the first place Annexure P-15 from MIIF-194 and not MIIE and there is no confusion with regard to the area of the land i.e. 500 sq. yards, which has been typed in paragraph 3(c) as MIIF-194 approximately 1200 sq. yards. Be that as it may, alongwith the application, judgment debtor has filed PT-I Form in respect of the property bearing No. MIIF-194-A and MIIF-194-B showing the name of Syed Mehmood Shah Shamsi and Syed Younus Hussain Shamsi. These PT-I Forms dated back to 2001 and said to have been issued on 08.04.2004, much before death of Syed Safdar Hussain Shah.

Learned counsel for the judgment-debtors has filed counter-affidavit to the said application and has raised following arguments to defeat said application:-

- i. That the application is not maintainable;
- ii. In support of his pleading he has repeatedly claimed that the area in PT-I Form of MIIF-194 is 1200 sq. yards. However, except oral argument, which is on the face of the document, Annexure P-15 filed by him, no other proof of 1200 sq. yards has been given by him.
- iii. Regarding second argument raised by him, is that even in the evidence when the documents on record, it has not been denied by the judgment-debtors/applicants. He has filed cross-examination and in the cross-examination, he had relied On the following two lines :-

“It is also correct that the property MIIE-194 stands in the name of deceased Syed Safdar Hussain.”

However, there was no question or answer in the cross-examination regarding the measurement of the property.

Learned counsel for the applicants has relied on the cross-examination of the plaintiff wherein after showing the document, Annexure P-15, a clear suggestion was made that property bearing MIIE-194 or MIIF-194 was not of 500 sq. yards, however, no bald statement was given by the witnesses that despite the fact that the document showing the property of 500 sq. yards should be considered as 1200 sq. yards as mentioned in the paragraph 3(c). This is an admitted position that in view of the nature of the judgment and decree, since the suit was for partition and administration no formal execution was required to file by the decree-holders, mechanism of execution was already provided in the judgment. Therefore, the applicant when received the notice from Nazir for execution of decree in terms of order had no option except to make an application in terms of Order XXI rule 56 CPC and seek clarification of judgment in terms of Section 152, CPC to the extent that Annexure P-15, on which the plaintiff has relied as a document in respect of his claim in paragraph 3(c), the discrepancy should have been clarified by this Court, the statement of the plaintiff even on oath cannot be treated of more importance than the documents on which the plaintiff has relied at the time of filing plaint and even subsequently in his evidence. It is an admitted position that the plaintiff has never made any explanation in the plaint or even in the

evidence or in cross-examination that the area shown in Annexure P-15 shall be supposed to be 1200 sq. yards and the deceased was mixed up with the Excise and Taxation Department to secure his tax and got 1200 sq. yards property valued only for the measurement for 500 sq. yards in PT-I. This argument advanced by the leaned counsel today does not find any mention in the very situation of the case. Learned counsel for the judgment-debtors has not supported his arguments regarding non-maintainability of the application by any provision of law or any case law.

Learned counsel for the judgment-debtors has placed on record PT-Is of the area beyond 500 sq. yards in the name of applicant after the death. The official document clearly shows that the area beyond 500 sq. yards clearly shows in Annexure P-15 was shown in the record by the same Excise and Taxation Department in the name of the applicant. Therefore a bald statement of the plaintiff in paragraph 3(c) of the plaint that the property mentioned in Annexure P-15 should be read as 1200 sq. yards is not justified nor any proof to extract the area from 500 sq. yards to 1200 sq. yards. In view of the above, the application is allowed and Nazir's Reference is answered in the above terms.

J U D G E

Zahid Baig