

**Suit No. 783 / 2017**

Order with signature of Judge

**15.08.2017**

• — • — • — •

**NAZAR AKBAR.J-** The Plaintiff has filed SMA on **08.10.2016** at his own without consulting other legal heirs of the deceased Haleema Vayani, who died on **07.11.2008**. Not a single legal heir has joined the petitioner by filing a no objection affidavit. The petitioner in para-8 of his succession petition has filed list of litigations pending between the legal heirs. All three cases were filed by the legal heirs against each other after the death of Mst. Haleema Vayani. Learned counsel states that all the cases mentioned in para-8 have already been decided in his favour. Then he should have filed execution applications for the satisfaction of decrees in his favour. In a situation like the one faced by the petitioner he cannot seek “grant of succession certificate” in his favour even by civil suit. An “objection” raised by the office cannot be treated as an “objection” by other legal heirs. Orders passed in absence of the legal heirs cannot be treated as order passed on the “objections” to treat an SMA as contentious. However, due to lack of assistance certain orders have been passed without appearance of the legal heirs of deceased. SMA can be converted into suit only if the objections filed by the objector are found prima facie tenable and the said objectors are to be treated as Defendants in terms of **Section 295** of the Succession Act, 1925. The objectors are to be treated as Defendants and in terms of **Rule 413** of the Sindh Chief Court Rules (O.S) objections filed by the objectors are to be treated written statement. In the present suit there is neither any objector nor “objections” on record are before the Court and the Plaintiff claims an order under **Order XX Rule 13 CPC** may be passed. No preliminary decree can be passed in absence of the parties.

The Defendants have neither been served with the notice / summons of this suit nor the Court has declared them exparte. Even proper title of suit has not been filed by the Plaintiff. In the absence of written statement and / or any formal objection to the grant of SMA there is no concept of exparte preliminary decree. The application is therefore, dismissed and Learned counsel for the Plaintiff is directed to satisfy the Court how this suit is maintainable.

JUDGE

*SM*