

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
SUIT No.1745 of 2017

Date	Order With Signature Of Judge
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For orders on CMA Nos.

1. 15376/17
2. 15377/17

08.11.2017.

Mr. Zulfiqar Haider Shah, advocate a/w plaintiff No. 4.
Mr. Naveed Ahmed Khan, advocate a/w defendants
No. 1 & 2.

1. This urgency application has been moved by the counsel for the plaintiffs and defendants jointly, which is allowed.

2. The parties have filed compromise application (C.M.A. No.15377/ 2017), in which, it is stated that they have amicably resolved the dispute of administration of deceased's estate and want the disposal of this matter in terms of compromise application. Basically, this is a suit for administration, partition and distribution of shares of the estate of deceased Ali Muhammad Shaikh son of late Haji Sher Muhammad Shaikh, who expired at Karachi on 31.05.2006. The record reflects that the preliminary decree has been passed on 09.08.2017 and the Official Assignee was appointed as Administrator but both the learned counsel submit that the Official Assignee has not taken any step as Administrator in pursuance of the preliminary decree except that in compliance of the order passed on 28.08.2017 he has simply contacted the different banks for securing the bank statements and submitted in Court through Reference No.01/2017, which may be taken on record. The defendants No. 3 and 4, namely, Baby Areenn Ali Shaikh and Baby Eman Ali Shaikh are the daughters of

deceased Ali Muhammad Shaikh through his third wife Mst. Aira Iftikhar (defendant No. 2).

An application under Order XXXII Rule 3, C.P.C. is pending without marking any CMA Number, which was moved by the advocate for the plaintiffs with the supporting affidavit of plaintiff No. 4. The Additional Registrar (O.S) issued notice of this application to the Guardian *ad litem*. Since the defendant No. 2 is real mother of both the minors and no adverse interest against the defendants No. 3 and 4 (minors), therefore, this application is allowed and the defendant No. 2 appointed as Guardian *ad litem* of defendants No. 3 and 4. Office is directed to mark CMA number on the application.

In paragraph 4 of the plaint, some dealership of fuel stations have been shown in Schedule-A, while in paragraph 7 of the plaint, ownership of some properties have been shown in Schedule-B, whereas, in paragraph 9, the different accounts being operated by the deceased in different banks have been shown in Schedule-C. The aforesaid schedules reflect the total estate of the deceased in the plaint.

The plaintiff No. 4 is present in person and he is also attorney of plaintiffs No. 1 to 3 and 5 and 6. The original special power of attorney issued by the aforesaid plaintiffs in favour of plaintiff No. 4 is available at page 51 of the Court file, in which, the remaining plaintiffs have authorized their attorney to enter into compromise and this special power of attorney was issued by them particularly for this civil suit, whereas, the defendants No. 1 and 2 are also present in Court and the defendants No. 3 and 4 are

the minors daughters of defendant No. 2, for which, the application moved for appointment as Guardian ad litem has already been allowed today in preceding paragraph.

The parties have jot down various modalities to settle their dispute amicably for the distribution of their shares in the estate of deceased. They have also confirmed that after passing the preliminary decree no step has been taken by the Official Assignee. The plaintiffs want to deposit the shares of minors (defendants No. 3 and 4) with the Nazir of this Court, therefore, they have also made necessary correction in the application through hand writing and instead of Official Assignee they have agreed that the shares may be allowed to be deposited with the Nazir of this Court and the correction has been signed by the counsel for the plaintiffs and defendants both.

The learned counsel for the parties have also identified their clients, who are present in Court and the compromise application has been signed by Mogheez Ali Shaikh, the plaintiff No. 4 for self and being the attorney of the other plaintiffs with the counsel, whereas, defendants No. 1 and 2 have also signed the compromise application with their counsel.

In paragraph 4 of the compromise application, clause II, the plaintiffs have agreed to pay the shares of the defendants as per Schedule-A and handed over cheques to the defendant No. 1 in the sum of Rs.30,612,000/- and defendant No. 2 in the sum of Rs.12,612,000/- whereas, the plaintiff No. 4 has also brought two cheques of minors also i.e. cheque in the sum of Rs.35,040,000/- for the share of Areenn Ali Shaikh (defendant No. 3) and a cheque

in the sum of Rs.35,040,000/- against the share of Baby Eman Ali Shaikh (defendant No. 4). The plaintiff No. 4 undertakes that he will deposit both the cheques with the Nazir of this Court within three days without which the compromise shall not be effected. The Nazir shall invest this amount in some monthly profitable bearing scheme. The parties have also agreed for distribution of some immovable properties in the same compromise application. So far as the immovable properties are concerned, the parties are also not at variance and they have resolved the issue of distribution, therefore, the transfer of immovable properties through this compromise amongst the legal heirs including the dealership of fuel stations will be subject to the clear title of the deceased. The parties have also agreed that the bank accounts of the deceased may be transferred in favour of the plaintiff No. 4. For this purpose also the plaintiff No. 4 has to approach the concerned banks and after completing all the requisite codal formalities the transfer may be made by the banks in accordance with their rules and regulations/ law.

The suit stands decreed with the aforesaid modification and the office is directed to prepare the decree and attach the certified copy of the compromise application which will form the part of decree.

Learned counsel for the defendant No. 2 submits that she may require monthly profit on the shares of the minors (defendants No. 3 and 4) for their maintenance. If she wants to draw the profit for their maintenance, she may apply to the Court through proper

application once the amount is invested and profit accrued monthly.

At this juncture, learned counsel for the plaintiffs pointed out that he has attached the photocopy of the two cheques issued in the name of Official Assignee for minors (defendants No. 3 and 4) so he may be allowed to replace the photocopy of the cheques with the current cheques in the name of Nazir. Let him file the copy in the office, thereafter, the office is directed to replace photocopies of two cheques of the minors which now will be deposited with the Nazir rather than the Official Assignee. The copy of this order may also be transmitted to the Official Assignee for his information that the matter has been disposed of and no further action is required in pursuance of preliminary decree.

JUDGE

HANIF