

Present:- Mr. Justice Irfan Saadat Khan
Mr. Justice Muhammad Humayon Khan

respondent is daughter of deceased Haji Noor Muhammad son of Haji Ghani, who died on 12.11.2008 and Mst. Momin Bai, real mother of the respondent died earlier on 11.09.1997. It is further pleaded that deceased Haji Noor Muhammad at the time of his death left behind him the following surviving legal heirs:-

S.No.	Name & CNIC of Legal Heirs	Relationship	D.O.B.
1.	Mst. Amian Bano CNIC # 42201-5620563-8	Widow (step mother of Legal Heirs)	1954
2.	Mst. Khair-un-Nisa CNIC # 42201-0523276-8	Daughter	09.12.1946
3.	Mst. Farida Bano CNIC# 42201-9792594-8	Daughter (Petitioner)	1951
4.	Mst. Jameela Bano CNIC# 42201-3170264-6	Daughter	1954
5.	Mr. Muhammad Amin CNIC # 42201-8830824-1	Son	1951

It is further pleaded that deceased Mrs. Momin Bai widow of Haji Noor Muhammad at the time of her death left behind her the following surviving legal heirs:-

S.No.	Name & CNIC of Legal Heirs	Relationship	D.O.B.
1.	Mst. Khair-un-Nisa CNIC # 42201-0523276-8	Daughter	09.12.1946
2.	Mst. Farida Bano CNIC# 42201-9792594-8	Daughter (Petitioner)	1951
3.	Mst. Jameela Bano CNIC# 42201-3170264-6	Daughter	1954
4.	Mr. Muhammad Amin CNIC # 42201-8830824-1	Son	1951

It is further pleaded that deceased Haji Noor Muhammad at the time of his death left the following properties:-

- i. M/s. Noor Silk Mills Limited, situated at D/47, SITE, Manghopir Road, Karachi (Moveable property);
- ii. Plot No. D/47, SITE, Manghopir Road, Karachi (Immoveable property);
- iii. House No. B-198, admeasuring 1000 square yards, situated in K.C.H. Society, Adam G. Nagar, Muhammad Ali Society, Karachi (Immovable Property).

It is further pleaded that deceased Mst. Momin Bai widow of Haji Noor Muhammad at the time of her death left the following property:-

- i. Open Plot No. B-6, admeasuring 400 square yards, situated in K.C.H. Society, Scheme No. 33, Karachi (immovable property).

It is further pleaded that since the appellant avoided to give shares to the legal heirs, the Securities & Exchange Commission of Pakistan issued show-cause notice and subsequently initiated proceedings against the appellant and other directors. It is further pleaded that the deceased Haji Noor Muhammad also published Aaqnama in daily Ailan on 09.01.1996 whereby the appellant was aaqued from the properties of deceased Haji Noor Muhammad. It is further pleaded that subsequently the deceased Haji Noor Muhammad executed WILL on 19.01.2000. Lastly, the respondent prayed for grant of letter of administration and succession certificate in respect of immovable and moveable properties of both the deceased persons as per schedules of properties.

3. The appellant filed counter affidavit and denied the claim of the respondent and pleaded that M/s. Noor Silk Mills Limited is a public limited registered company and therefore it is not the property of deceased Haji Noor Muhammad but it belongs to shareholders. It is further pleaded that Plot No. D/47, SITE, Manghopir Road, Karachi, is not owned by deceased

Haji Noor Muhammad but it is in the names of four persons including deceased Haji Noor Muhammad. Therefore, it is pleaded that the said properties cannot be inherited without partition and giving shares to other co-sharers. It is further pleaded that House No. B-198, Muhammad Ali Society, Karachi, was gifted to him by the deceased Haji Noor Muhammad in the year 2007. It is further pleaded that the matter before the Securities & Exchange Commission of Pakistan was closed after payment of penalty. Lastly, he prayed for dismissal of the said SMA.

4. We have heard the learned counsel for the parties and perused the material available on the record.

5. The learned counsel for the appellant contended that the impugned Order is in contradiction with earlier Order dated 23.06.2014, which was interim in nature and lost its value after the final order. He further submitted that the learned Single Judge exceeded his jurisdiction while passing order regarding entitlement of the respondent and other legal heirs to receive rent as per earlier orders. In support of his arguments, the learned counsel for the appellant relied upon the cases of (i) Glaxo Laboratories Limited Vs. Inspecting Assistant Commissioner of Income Tax and others (1992 PTD (Supreme Court) 932), (ii) Abdul Qayyum and another Vs. Niaz Muhammad and another (1992 SCMR 613) and (iii) Gen. (Retd.) Pervez Musharraf through Attorney Vs. Pakistan through Secretary Interior and others (PLD 2014 Sindh 389).

6. On the other hand, the learned counsel for the respondent while supporting the impugned Order contended that the Nazir of this Court be directed to collect tenancy agreements from the tenants and correct figures of the quantum of rent for the reason that the rent of the said property is

more than Rs.16,00,000/- but the appellant with malafide intention has not disclosed the correct figure. In support of her arguments, the learned counsel for the respondent pointed out to us the Deed of License dated 01.02.2006 executed between Noor Silk Mills Limited and Naveed Anjum Shaikh, Proprietor of Zain Industries, which shows that the license fee was Rs.3,17,000/- per month for three years from 01.02.2006 to 31.01.2008, which shall be increased at 10% per annum. Therefore, she contended that presently the license fee must have been more than Rs.5,00,000/-. She lastly contended that all the legal heirs including the respondent have been deprived of their shares by the appellant, who has usurped all the immovable and moveable properties of deceased Haji Noor Muhammad.

7. So far as Open Plot No. B-6, admeasuring 400 square yards, situated in K.C.H. Society, Scheme No. 33, Karachi, is concerned, there is no dispute between the appellant and respondent and therefore the learned Single Judge has rightly held that this plot shall be auctioned and the sale consideration shall be distributed among all the legal heirs and any legal heirs would be at liberty to match the price and purchase the said plot.

8. So far as Noor Silk Mills Limited is concerned, all the legal heirs of deceased Haji Noor Muhammad are entitled to transfer of shares of deceased in their names as per their shares provided in the Mohammadan Law. However, any legal heir would be at liberty to approach Company Court under the Company Law for winding up of the said Mill as it is not functioning.

9. So far as Plot No. D/47, SITE, Manghopir Road, Karachi, is concerned, it is in the names of (i) deceased Haji Noor Muhammad, (ii) Haji Muhammad son of Haji Ahmed, (iii) Muhammad Younus Haji Aziz and (iv)

Mst. Hajiani Halima Bai daughter of Ayub. However, the share of deceased Haji Noor Muhammad in the said plot shall be divided among all his legal heirs as per Mohammadan Law and Nazir of this Court is directed to send such intimation to SITE for necessary mutation.

10. So far as House No. B-198, admeasuring 1000 square yards, situated in K.C.H. Society, Adam G. Nagar, Muhammad Ali Society, Karachi, is concerned, this property is subject matter of Suit No. 1733 of 2014, which is pending in this Court.

11. Now, there remains only one point for determination regarding quantum of rent and distribution of rent among all the legal heirs of deceased Haji Noor Muhammad. We direct the Nazir to pay surprise visit upon the said property and to prepare an inventory of all the occupied tenements, unoccupied tenements, list of tenants and/or licenses, quantum of rent and/or license fee and then the Nazir should issue notices to all the tenants and/or licenses to attend his office with tenancy agreements and/or license agreements and proof of monthly rent and/or license fee and thereafter the Nazir should direct all of them to deposit the monthly rent and/or license fee in Court and thereafter the Nazir should distribute the amount so deposited among all the legal heirs of deceased Haji Noor Muhammad as per their shares in Mohammadan Law. In case, if Nazir is satisfied that any tenement is lying vacant then the Nazir should immediately seal the said tenement and let it out the same on rent. In case of disobedience of this order by any legal heir or tenant or license, the Nazir should immediately take legal action against the person, who violates this order and send reference to this Court to initiate contempt proceedings against such person in this appeal. Nazir would be entitled to take Rs.20,000/- fees from the amount which will be

deposited by the tenants and/or licenses. However, the interim arrangements for payment of rent to the legal heirs by the appellant as per earlier orders passed in SMA No.82 of 2013 shall continue till the implementation of this Judgment, which should be implemented by the Nazir within a month from the date of this judgment and submit his report to this Court in this appeal.

12. It is well settled principle of law that on appeal the original order merges in the appellate order. Reliance can be placed upon the cases of (i) Glaxo Laboratories Limited Vs. Inspecting Assistant Commissioner of Income Tax and others (1992 PTD (Supreme Court) 932) and (ii) Gen. (Retd.) Pervez Musharraf through Attorney Vs. Pakistan through Secretary Interior and others (PLD 2014 Sindh 389).

13. In view of the above discussion, this appeal is dismissed with no order as to costs and the Order dated 14.04.2016 of the learned Single Judge is upheld with modifications as per paragraph-11 of this Judgment.

J U D G E

J U D G E