

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

S.M.A. No.141 of 2009

Date

Order with signature of Judge

1.For orders on CMA No.562/2018.

2.For orders on CMA No.563/2018.

12.03.2018

Mr. Abrar Hasan & Syed Masroor Ahmed Alvi,
Advocates a/w the Petitioner Mst. Zubaida Ismail.

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1. Urgency granted.
2. This petition was allowed on 02.09.2009 with the direction to issue letters of administration to the petitioner subject to rules, however, on 15.09.2009 further order was passed whereby the Nazir was appointed to sell the property as per schedule to the petition and distribute the sale proceeds amongst the legal heirs in accordance with Islamic law. The learned counsel submits that only two flats are mentioned in the schedule. Flat No.203, 1st Floor, M.A. Center, Artillery Maidan, Nichaldas Vizirani Road, Saddar, Karachi has already been sold out by the Nazir but Flat No.D-10, First Floor, Block-K, Improvement Scheme No.2, Karachi has not been sold out for which the petitioner has applied to this court for permission to sell. She is also attorney of all legal heirs mentioned in the memo of petition and the powers of attorney are attached.

The proper provision to seek permission to sale is laid down under Section 307 of the Succession Act, 1925 but the petitioner has filed application under Section 151 CPC which in my humble view does not apply in presence of specific provision to deal the situation under the Succession Act itself. However, the court has to see the pith and substance of application and not the nomenclature, therefore, the application is treated under Section 307 of the Succession Act. The Deputy Nazir has submitted the report today after break to show that Flat No.D-10, situated at Sub-Plot No.FL-11/D-4, Block-K, Improvement Scheme has not been sold out by him. Since the counsel for the petitioner and the petitioner herself have categorically stated that she wants to sell it out by her own, therefore, this application is allowed. The petitioner may sell out the property and distribute the shares amongst the legal heirs in accordance with the Sharia.

Judge

Asif

