

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

R.A. No.168 of 2013.

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For katcha peshi.
2. For hearing of C.M.A-1234 of 2013.

05.04.2018.

Mr. Jagdish R. Mullani, Advocate for the applicants.

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Zulfiqar Ahmad Khan, J.- The instant revision has been preferred against the judgment of the appellate Court dated 19.09.2013, where the appellate Court remanded the case back to the trial Court to be decided afresh on merits within a period of three months.

2. The litigation between the parties commenced when F.C. Suit No.375/2005 was filed by Syed Irshad Hussain and his mother Mst. Bibi Shah Khatoon for declaration, mutation, partition and possession etc. of the land in question, which was agricultural as well as urban. The trial Court framed 10 issues, out of which the relevant issue was issue No.4 that "*Whether the plaintiff No.02 is entitled to inherent the suit property being LRs of Budhal Shah, to the extent of his share i.e. 18 paisa?*" The findings of the trial Court on the said issue was answered as "not proved" and the suit was accordingly dismissed. The dispute in question in fact commenced from the order of the Assistant Commissioner Nawabshah bearing No.Asstt/1601 of 2001 dated 13.08.2001, a copy of which has been produced on page-245 of the Court file, where shares of various legal heirs have been described, however, worth noting is that the said order is passed declaring a large number of female legal heirs as ex-parte. The plaintiffs in instant suit claiming to be the legal heirs of Syed Budhal Shah claimed their appropriate shares. It was also stated that plaintiff / respondent No.1 challenged the order of Assistant Commissioner, however, did not pursue the same thereafter. The trial Court while deciding issue No.4, examined the Assistant from the office of DDO Revenue, who produced the said order of the Assistant Commissioner. The order of the

Assistant Commissioner clearly spells out the objections of Syed Ghulam Hyder Shah, Syed Tariq Hussain Shah and Syed Irshad Ali Shah, having been declared irrelevant by the Assistant Commissioner for no cogent reasons. The trial Court considered that the plaint challenging the said order being time barred under Article 14 of the Limitation Act and was also of the view that the plaintiffs have instituted the suit without exhausting the remedies available to them by way of revision etc. While the plaintiff / respondent No.1, who was also attorney of the respondent No.2 produced certain documents thereby claiming urban properties, however, since it only failed to disclose numbers of those properties at the time of examination-in-chief, on the basis of this minor error, the share of plaintiffs by way of inheritance was denied by the trial Court. The appellate Court having taking note of the said infirmities remanded the matter back to the trial Court to decide afresh.

3. For the above reasons, the findings of the appellate Court remanding back the matter to the trial Court with directions to decide the same afresh after giving an opportunity of producing evidence to both parties and considering the same as well as the documents produced by the plaintiff / respondent No.2 during her evidence are well reasoned and need no interference. There appears clearly a case where womenfolk have been kept away from the process, denying their right of inheritance, which is utterly illegal as well as unfortunate, thus cannot be allowed at any cost. Therefore, the instant revision is dismissed and the judgment of the appellate Court for remanding the matter back to the trial Court for hearing afresh is maintained.

JUDGE

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