

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI

**Suit No.1003 of 2016**

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Order with signature of Judge(s)

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1. For hearing of CMA No.8302/2018
2. For hearing of CMA No.8303/2018

**13.08.2018**

Ms. Afshan Rani, Advocate for the Plaintiff  
Mr. Riaz Haider, Advocate for Defendant No.1

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1. Through instant application a prayer is made that this Court be pleased to recall the order dated 16.04.2018. The counsel for the Plaintiff by way of background states that the instant suit was filed for administration and partition of the property bearing Plot No.64/D, Block-2, PECHS, Al-Falah road, admeasuring 400 square yards, which was owned by late Arjumand Muhammad Khan who expired on 04.07.1981 leaving behind one son and three daughters and submits that some of the legal heirs died during the pendency of the suit and appropriate amended titles were filed. It appears that legal heirs of some of the defendants are residing overseas, however the defendant No.1 was present in Pakistan, who is represented by Mr. Haider who is present in Court.

This Court vide order dated 16.04.2018 observed that since the legal heirs are residing out of country publication in foreign countries' newspapers were to be made. Learned counsel for the Plaintiff submits that while all of the legal heirs belong to the same family and have through attachment made through the instant application attempted to show that they were aware of these proceedings and emails to that effect have exchanged and they are not stranger to the controversy. Thus placing adverts in international newspapers at exorbitant costs will be an unnecessary cost imposed.

The matter simply pertains to partitioning of the property owned by the father/grandfather of the parties. Law offers expeditious disposal of partition

cases as one can imagine there always will remain some parties residing outside of the jurisdiction of the Court. The fact that this Court in earlier order dated 23.01.2018 already held service good on these Defendant No.2(i to vi) and declared them *ex-parte*, therefore per counsel, the extra burden passed by the order dated 16.04.2018 was neither mandated by law nor serves any interest of justice as the Plaintiff is over 78 years of age and all of his siblings have expired whose legal heirs have been brought on record.

In these circumstances when the counsel for the Plaintiff has shown to the satisfaction of this Court that the legal heirs are aware of these proceedings and it is in the common interest for all the parties that the suit property be partitioned without any delay and share be distributed in accordance with Sharia, and when counsel for Defendant No.1 present and submits that his client would have no objection to put the property on sale provided however his client may also be permitted to make an offer. Plaintiff present in person also has no objection to put the property to sale provided however he also has option to purchase the same. Now the only legal heirs of Defendant No.2 remain who have been declared *ex-parte* by this Court's order dated 23.01.2018, however their interest could be protected in the manner that notice of intended sale of the property be communicated to them through email known to the counsel for the Plaintiff and by dispatching intended sale notices to them via Registered Air Mail. Court is also informed that the property admeasuring 400 square yards cannot be equitably partitioned under the relevant Society Building Bye-Laws and on account of its monolithic nature cannot be partitioned in small parts.

In the circumstances, Nazir is appointed to initiate the process of putting the property on sale. Plaintiff present in Court submits that he is in possession of the original title documents, which he is directed to handover to the Nazir of this Court in due course. Nazir to affect the sale of the property in question through open public auction after giving notice of the intended sale in Urdu as well as English newspapers and to submit details of the bids received in respect of the

property to this Court. It is made clear that first right to purchase the property will reside with the legal heirs and all the legal heirs would be at liberty, if they chose to do so, participate in the said proceedings. Even at a later stage, any legal heir will be at liberty to match the highest bid received from an outsider. Nazir's cost of Rs.55,000/- (Rupees Fifty Five Thousand) shall be deducted from the said sale proceeds. The exercise be completed within two months. To come up thereafter.

JUDGE

Barkat Ali, PA