

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Suit No.240 of 2008

Date Order with signature of Judge

For final arguments.

20.11.2017

Mr. Naveed Ali, Advocate for the plaintiff.
None present for defendant/objector.

NAZAR AKBAR, J. This suit was converted from SMA No.122/2006 into the present suit No.240/2008. The dispute is only between legal heir No.1 namely Fazil Khan and other legal heirs of deceased Mst. Sughra Begum who expired in Karachi on 18.10.1980. To be exact the deceased is survived by the following legal heirs, mentioned in para-2 of the plaint.

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|------------------------|----------|-----------|
| 1. Fazil Khan | Son | 52 years |
| 2. Israr Jamal | Son | 32 years |
| 3. Mst. Mohina Khanum | Daughter | 48 years |
| 4. Mst. Naseema Khanum | Daughter | 45 years |
| 5. Mst. Zarina Khanum | Daughter | 38 years |
| 6. Mst. Samina Khanum | Daughter | 40 years. |

2. The objection raised by Mr. Fazil Khan, legal heirs No.1 that he has contributed funds in the construction of property viz double story house constructed on Plot No.21, Row No.6, Sub-Block-G, Block No.3, Nazimabad, Karachi admeasuring 133 sq yds. which was owned by his deceased mother. Therefore, he claimed that he is entitled to additional/extra share in the estate of the deceased. The Court from the objections raised by said legal heir namely Fazil Khan framed the following issues.

1. *Whether the Defendant has contributed in the construction of the Suit property?*
2. *Whether the Defendant is entitled for his extra share besides his inheritance share?*
3. *Whether the Defendant has occupied the entire suit property after the death of his deceased mother?*
4. *Whether the defendant is getting any benefit from the said property in the form of rent, if yes, what are its effects?*
5. *Whether the plaintiff is entitled for the relief prayed for?*
6. *What should the decree be?*

3. My findings on these issues are as follows:-

Issues No.1 to 5.

4. The objector Fazil Khan was under obligation to establish his claim of having incurred huge amount in the construction of suit property viz Double story house constructed on Plot No.21, Row No.6, Sub-Block-G, Block No.3, Nazimabad, Karachi admeasuring 133 sq yds. However, he has failed to establish by cogent evidence that at the relevant time he was capable of expending any penny on the suit property. In evidence it has come on the record in the cross examination of the defendant/objector Mr. Fazil Khan that he had joined Pakistan Navy in **1971** as Proof Reader with Rs.300/- salary per month since he was only matriculate. The record shows that his father has purchased suit property in the name of his mother by registered document in **18.11.1961**. His father had obtained loan by mortgaging the suit premises for raising construction. The defendant himself has filed re-payment of loan whereby entire amount of loan has been cleared on or around **9.2.1973**. He has not produced any document showing payment of loan by him from his own income. His capacity to incur expenses from his job which he has started in 1971 onwards was not sufficient to clear the loan obtained by his father. His salary was only Rs.300/- per month from 1971. In fact he has

miserably failed to establish that he was capable to raise construction, therefore, the objection raised by him is rejected, the claim that he is entitled for extra amount of share beside inheritance is not established. This is undisputed that suit property remained in the name of his mother Mst. Sughra Begum till her death and, therefore, all the legal heirs including the objector was entitled to share in accordance with sharia. The issue raised by the said legal heir No.1 cannot be decided in his favour because it is not proved by him through evidence. Therefore, the issue Nos.1 and 2 are answered in negative. Regarding issue Nos.3 and 4, it is admitted by Mr. Fazil Khan/objector that he is in occupation of the property and he admits that it was on rent at the rate of Rs.2,000/- per month, therefore, the issue Nos.3 and 4 are decided in affirmative. The objector/legal heir No.1 (Mohammad Fazil) is to account for the rental income at the rate of Rs.2000/- per month from November, 1980 till the date of vacating the suit property by him.

Issue No.6.

5. In view of the evidence on record and my above finding, this suit is decreed as prayed. This being suit for administration and the administration of the estate of the deceased has been delayed only on account of frivolous objection by the defendant Fazil Khan, therefore, suit property is to be sold by the Nazir of this Court within ONE month and the sale proceeds thereof are to be distributed among all the legal heirs of deceased Mst. Sughra Begum. For the purpose of sale, the property should be vacated by the objector Fazil Khan within 30 days from the date of decree. In case of failure of Mr. Fazil Khan to vacate the premises, the Nazir is directed to obtain police aid and even break open the locks, if he finds that the said legal heir has locked the property. The share of objector/defendant No.1 namely Fazil Khan in the sale proceeds shall be subject to the disbursement

of share of other legal heirs of deceased from the total rental income to be calculated only at the rate of Rs.2000/- per month from November, 1980 to December, 2017 as the Nazir of this Court has to get the suit property vacated by him and anyone in possession including any tenant in any portion thereof within 30 days.

The suit stand decreed in the above terms and the caveat filed by the defendant is dismissed.

JUDGE