

ORDER SHEET
HIGH COURT OF SINDH, KARACHI

H.C.A. No. 260 of 2017

Date	Order with signature of Judge
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Present

Mr. Justice Muhammad Ali Mazhar.
Mr. Justice Adnan Iqbal Chaudhry.

Mehreen Abdul Jaleel & others.....Petitioners

Versus

Asif Mehmood & others.....Respondents

Date of hearing 18.09.2018

Mr. Rafique Ahmed Kalwar, Advocate for the appellants.

Mr. Javed Ahmed Rajput, Advocate for the respondent No.1 to 4.

Mr. Muhammad Arif Shaikh, Advocate for the respondent No.5.

Muhammad Ali Mazhar, J: The respondent No. 1 to 4 filed Civil Suit No.309/2013 for partition, administration and permanent injunction. It was alleged in the plaint that their deceased father Mohammad Mehmood Ahmed was the owner of House No. BS-02, Block-15, Dastagir, F.B. Area, Karachi. On 07.11.2016 the learned Single Judge decided CMA No. 14752/2016 filed under Order XX Rule 13 C.P.C. and directed the office to prepare preliminary decree. Learned counsel for the appellants argued that this order was passed without providing any opportunity of hearing to them. He further argued that appellant No.2 is the third wife of deceased Mohammad Mehmood Ahmed and the deceased in

his life time handed over all original title documents to the appellant No.3 and also orally gifted this property to her out of love and affection.

2. On the contrary, learned counsel for the respondents opposed this contention and they argued that this property was rightly mentioned in the suit for administration for its distribution in family pool. They further submit that the factum of gift is not mentioned in the written statement, whereas, learned counsel for the appellants pointed out para No.10 of the written statement which is available at page No. 75.

3. Right now the preliminary decree has been passed by the learned Single Judge and the rights and claims of the legal heirs are to be decided on proper inquiry by the administrator. Under para 8(a) of the preliminary decree, it is the responsibility of the administrator to conduct an inquiry what immovable property the deceased was seized of or entitled to at the time of his death? The inquiry is to be conducted in pursuance of the preliminary decree whether the property was gifted to the appellant No.2 by the deceased or not or this will come in the family pool for administration. This aspect can only be decided by the administrator after providing opportunity of hearing to all the legal heirs and submit the report in court. The legal heirs may also lead evidence to this particular aspect before the administrator.

4. Learned counsel for the respondents submits that preliminary decree was passed on 22.11.2016 but still the

matter is pending with the administrator. The Nazir/
administrator is directed to expedite the proceedings and
submit the final report in court within three months. The
appeal is disposed of in the above terms.

JUDGE

JUDGE

Aadil Arab