

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI
HCA No. 11 of 2018

DATE	ORDER WITH SIGNATURE OF JUDGES
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Present

Mr. Justice Muhammad Ali Mazhar.

Mr. Justice Adnan Iqbal Chaudhry.

Hearing (Priority) Case

1. For hearing of main case
2. For hearing of CMA No. 105/2018
3. For orders on Nazir report dated 23.01.2018.

01.10.2018

Mr. Jaffer Raza, Advocate for the Appellant

Mr. Mustafa Lakhani, Advocate for the Respondents

Muhammad Ali Mazhar, J: The appellant has challenged the impugned order dated 08.12.2017 passed in Suit No. 1568/2015, whereby the office was directed to prepare preliminary decree under Order XX Rule 18(2) CPC. Relevant portion of the impugned order is reproduced as under:-

“Accordingly preliminary decree for partition is passed in terms of order XX Rule 18(2) CPC by appointing the Nazir as Administrator in respect of the property in question with the mandate to partition the property with metes and bounds, if possible, and then to allot actual share by division and possession thereof. If the property cannot be partitioned with metes and bounds, then Nazir is authorized to carry out the sale of the property firstly by private sale amongst the parties, and if not then through an open auction, wherein parties to the Suit can also participate. Whereafter, the amount be distributed amongst the legal heirs according to their respective share(s)”.

At the very outset, learned Counsel for the appellant argued that no notice was served on him, therefore, on the date when the order for preliminary decree was passed no body appeared on behalf of the defendant to defend the matter. The learned Single Judge in his order dated 8.12.2017 reproduced the order dated 24.11.2017, which shows that the notices were sent to the appellant, which is also reproduced as under:-

“1. Matter is listed for ex-parte order against the Defendant, who according to the Bailiff was served with summons on 03.09.2015, whereafter the Additional Registrar gave several chances to file written statement but none affected appearance. Ordinarily an order could be passed for ex-parte proceedings but

since this is a Suit for Administration, let another notice be repeated upon the Defendant through first three modes for 08.12.2017 with a note of caution that if no one turns up on behalf of Defendant on the next date, coercive measures may be taken against the Defendant.

2. Adjourned. Interim order, passed earlier, to continue till next date of hearing”.

During course of arguments, learned Counsel for the Appellant categorically stated that so far as the partition of the property in question is concerned, the appellant has no objection but the second direction in the same order that if the subject property cannot be partitioned with metes and bounds then it will be sold by the Administrator which is basically a bone of contention between the parties. He further argued that property is partitionable, however, he admits that no inspection has been carried out by the Nazir nor any report submitted before trial Court whether property is partitionable or not. Learned Counsel for the Respondents argued that the order has been properly passed and let the Nazir may submit the report whether subject property is partitionable or not?

After arguing at some length, both learned Counsel have agreed for disposal of appeal as under:-

Nazir shall visit the property in presence of representatives of the Appellant and the Respondents and shall carry out proper inspection of the property and if he deems fit for his assistance, he can also engage/hire the services of any Architecture/Civil Engineer. The fee of the Architecture/Civil Engineer shall be borne proportionally by the parties. The Nazir shall submit report in Suit No. 1568/2015 as to whether subject property is partitionable or not. In case, parties have any objection on Nazir report they may file objections before learned Single Judge, which shall be decided on its own merits. If any party is found aggrieved he may avail appropriate remedy in accordance with law.

JUDGE