

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 321 of 2007

Plaintiff : Nemo.

Defendant No.1 : Noor Muhammad, through Mr. Azizur Rahman Akhund, Advocate.

Intervenors : Zafar Ali and another, through Mr. Zahir Hussain Sheikh, Advocate.

Dates of hearing : 03.12.2019

ORDER

YOUSUF ALI SAYEED, J – CMA No. 3663/16 has been filed under Order I Rule 10 CPC on behalf of two persons, namely Zafar Ali and Mst. Mubeen Akhter (the “**Intervenors**”), who profess to be the son and widow of one Maghfoor Ali, and seek to be added as defendants on the basis that their deceased father/husband was one of the children of Mst. Fatima, who happened to have been the sister of Abdul Kareem, in relation to whose estate this Suit has been filed, and that Mst. Fatima had held a 25% share in one of the immovable properties that is the subject of the Suit, being the property mentioned at Sr. No.2 of the Schedule.

2. Learned counsel for the Intervenors invited attention to what was said to be an extract from the Property Register, as had been filed along with the aforementioned Application, and pointed out that same reflected that such interest had come to vest in Mst. Fatima on 08.08.1961, along with Abdul Kareem and other persons.

3. He submitted that whilst the extract reflects that such interest was then gift onwards by her on 30.06.1994 in favour of Plaintiff No.4 and the Defendants No.1 to 3, such gift according to him, was fraudulent and the entry was manipulated, hence Suit No.140/1990 had been filed before the 1st Senior Civil Judge, Larkana. On query posed, he stated that the Plaint of such Suit has since been rejected on 19.11.2019 and no Appeal had been filed as yet. He contended that the Interveners have a 25% share in the aforementioned property through Mst. Fatima, hence are proper and necessary parties to the Suit. He placed reliance upon the judgment in the case of Syed Mehdi Hussain Shah vs. Mst. Shadoo Bibi & others PLD 1962 SC. 291, Mst. Maqbool Begum vs. Gullan and others PLD 1982 SC. 46, Ghulam Ahmed Chaudhry vs. Akbar Hussain PLD 2002 SC. 615, Dr. Saleem Javed vs. Mst. Fauzia Nasim 2003 SCMR 965, Allah Rakhio vs. Khushmir Khan and 4 others 1986 CLC 1828, Mst. Kausar Bibi vs. Muhammad Mushtaq and 6 others 1990 CLC 1205, and Dinanath Kumar vs. Nishi Kanta Kumar AIR (39) 1952 Calcutta 102.

4. Conversely, whilst opposing the Application, learned counsel for the Defendant No.1 pointed out that the Interveners had no legal character inasmuch as they were not the legal heirs of the deceased, Abdul Kareem, and were neither necessary nor proper parties to this Administration Suit in respect of his estate. He submitted that the right of the Interveners, if any, in relation to the property at Larkana could not be adjudicated and established within the framework of this Suit. He submitted that the Application was misconceived and ought to be dismissed.

5. For purposes of the determination to be made, it is pertinent to note that in the case reported as Muhammad Zahid through Legal Heirs v. Mst. Ghazala Zakir and 7 others, PLD 2011 Karachi 83, a learned Division Bench of this Court considered the principles evolved in a number of Judgments of the Honourable Supreme Court as well as Division Benches of this Court so as to determine whether a dispute or objection as to ownership of property could properly be adjudicated within the framework of a suit for administration. In this context it was observed that:

“the proper test to establish whether such a determination lies within the scope of an administration suit, or beyond it is as follows: if the determination will not disturb the inter se position of the sharers, and will affect all the sharers equally, then the question lies outside the scope of the administration suit. If however, the determination will affect and upset the inter se position of the sharers, and may give one or more of the heirs an advantage over the others, then the question lies within the scope of the administration suit.” (at Page 93 A)

6. Ergo, where a stranger to the estate (i.e. a person other than an heir) claims a share in a property that is the subject of an Administration Suit and contends that to the extent of such share, the property does not form part of the estate, the determination of such a question would not affect the inter se position of the sharers. Hence, it is evident that, as per the aforementioned test, the question raised by the Interveners as to their interest in one of the properties would not fall within the scope of the Suit. The judgments cited on behalf of the Interveners are all distinguishable and not directly applicable to the proposition at hand.

7. As such, it is apparent that no case for joinder of the Interveners stands made out. CMA No. 3663/16 is therefore dismissed. CMA No. 7166/18, having thus become infructuous, also stands dismissed accordingly.

JUDGE

Karachi
Dated _____