

IN THE HIGH COURT OF SINDH AT KARACHI**S.M.A. No.394 of 2020**

Saleem Islam s/o late Syed Zafar-ul-Islam

Vs

Wing Cdr. Syed Feroze Ali Rizvi & others

(Syed Zafar-ul-Islam and Sarwari Zafar-ul-Islam.....deceased)

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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Present:**Mr. Justice Muhammad Shafi Siddiqui**

For further orders: [D.R (O.S) diary dated 18.11.2021].

Date of hearing: **21.02.2022**Date of Announcement: **23.02.2022**

Ms. Maria Ahmed, Advocate for the petitioner.

ORDER

Muhammad Shafi Siddiqui, J.- The petitioner has attempted to file this petition to obtain both Letter of Administration and Succession Certificate, as it includes movable and immovable properties. The deceased were parents (mother and father) of all the legal heirs mentioned in para-2. On 08.09.2020 i.e on the second day of the filing of the original petition (since subsequently amended version was filed), the objections were raised by office regarding the original title documents of the immovable property and the matter was taken up by the Court on this count. First order on office objection was passed on 23.11.2020 that concerns immovable property i.e Apartment No.38-A, Askari-III, Ground Floor, Minwalla School Road, Karachi Cantonment which was questioned, as the title documents were not available. It is a case of the petitioner that property was purchased on an agreement and subsequently a power of attorney was also executed. Such defence was not considered by this Court in terms of order dated 28.01.2021 and the counsel was

directed to satisfy the Court. On 23.02.2021 the counsel did not press this petition in respect of the said immovable property at serial No.2 of schedule which is at page-63. The petitioner was allowed to file amended memo of petition but then the Deputy Registrar of this Court on 18.11.2021 submitted objections that on the exclusion of the above immovable property this Court has no pecuniary jurisdiction left in the matter. Learned counsel with reference to these office objections submitted that the jurisdiction of this Court as well as that of the district judge in exercise of the powers under Succession Act is concurrent in terms of Section 300. Learned counsel has relied upon the judgment of Idara-e-Noor-e-Haq reported as PLD 2020 Sindh 563 and submitted that since the matter is pending for quite some time, this Court can exercise its concurrent jurisdiction and proceed with the case.

2. I have heard learned counsel for the petitioner and perused the material available on record.

3. On the facts alone the case law referred by the learned counsel is distinguishable. The subject immovable property was never stood in name of deceased parents at any point of time. It was only an agreement of sale on the strength of which an attempt was made by the petitioner to include it in the list of the immovable properties. As record reflects, this petition was filed on 07.09.2020 and on 08.09.2020 (next day) objections regarding the original title documents were taken by the Deputy Registrar (O.S). Thus the petitioner was promptly informed and was very much aware that this petition was filed in the absence of title documents of an immovable property on the basis of which the pecuniary jurisdiction could be invoked by this Court. However, it was also at the request of the counsel that amended petition after excluding the immovable

property was filed which took away the pecuniary jurisdiction of this Court.

4. Section 15 of the Civil Procedure Code provides that every suit shall be instituted in a Court of lowest grade competent to try it. The primary reason, amongst many, is that a right of appeal may be available before appellate jurisdiction which jurisdiction is asked to exercise concurrent jurisdiction. Concurrent jurisdiction could only be exercised in exceptional cases and circumstances which do not exist here. It could also be exercised when appeal is being heard and orders are required to be passed as being from original court/forum, for exercise of concurrent jurisdiction as in the case of Idara-e-Noor-e-Haq.

5. In the case of Idara-e-Noor-e-Haq it was miscellaneous appeal where concurrent jurisdiction was exercised in respect of an ownerless property not properly dealt with as understood by my learned brothers and hence on this count alone the case is distinguishable from the facts and circumstances of the case in hand. The appeal was dismissed and the additional order with regard to ownerless property was passed by the learned Judge of this Court while exercising the concurrent jurisdiction in miscellaneous appeal as perhaps there was no logic in remanding the case back to Court which otherwise decided the matter. In the case of Karachi Building Control Authority reported as 1992 CLC 1904 learned single Judge of this Court while dilating upon Section 15 CPC has observed as under:-

“No doubt concurrent jurisdiction is given to the High Court as well as the District Court in the matter of entertaining revision applications, but view of the principle embodied in section 15, C.P.C. which provides that a suit shall be instituted in the Court of lowest grade competent to try the same, the revision application in this case should also have been in all propriety file before District Court. Admittedly the

valuation of the suit was also not above the pecuniary limit prescribed for filing an appeal in the District Court and therefore, this revision application all the more ought to have been filed in the District Court. A departure from the rule could have been claimed by the applicant if he had shown any legal exigency and given very strong reason therefor. No such legal exigency or strong reasons have been shown in the revision application."

6. In view of the above facts and circumstances, the office objections dated 18.11.2021 are sustained, as the matter does not fall under the prescribed pecuniary jurisdiction of this Court and the situation and circumstances are not such which could compel this Court to exercise concurrent jurisdiction in terms of Section 300 of Succession Act. The office is directed to return the petition to the petitioner along with documents, after retaining a complete set of pleadings and documents, to enable the petitioner to file the same in a Court of competent jurisdiction.

7. The instant Succession Miscellaneous Application is disposed of in the above terms.

JUDGE

Karachi
Dated: 23.02.2022

Ayaz Gul