

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
SUIT NO. 703 / 2007

DATE	ORDER WITH SIGNATURE OF JUDGE
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- 1) For hearing of CMA No. 5473/2007.
- 2) For hearing of CMA No. 5474/2007.
- 3) For hearing of CMA No. 4060/2008.
- 4) For hearing of CMA No. 13293/2013.
- 5) For hearing of CMA No. 10995/2014.
- 6) For hearing of CMA No. 12189/2016.

21.02.2017.

Mr. Naraindas Motiani Advocate for Plaintiff.
Mr. Abdul Shakoor Advocate for Defendant No. 3.
Mr. Adnan Rasool Butt Defendant No. 14 in person.
Mr. Rizwan Ahmed Siddiqui Advocate for Defendant No. 16.

Order on CMA No. 12189 of 2016 filed by Defendant No.14.

This is a Suit between the Plaintiff and Defendants in respect of certain properties, which were owned by their grandfather and grandmother. Initially the claim of plaintiffs was in respect of properties in the name of deceased grandfather and grandmother and so also in the name of various companies and or entities, for which there are separate proceedings in the shape of Company J.M.'s as well as Suit and one SMA are also pending. It appears that on an Application under Order VII Rule 11 CPC filed by the defendants, a learned Single Judge of this Court had passed an Order dated 30.01.2015, whereby, the Plaint was rejected. Thereafter High Court Appeal No.76/2015 was preferred against the said order and on 19.04.2016 a learned Division Bench of this Court was pleased to set-aside the said order and observed as follows:-

“There is no denial on record that at least two of the properties cited above, needed administration through the suit subject matter of appeal and, therefore, by filing subsequent independent succession proceedings by the Respondent in respect of those two properties, the cause in the instant suit in view of Section 10 CPC could not be taken away as the administration in respect of the stated two properties admittedly owned by the grandmother and grandfather of the parties was asked for in this suit earlier in time and, therefore, are to be administered in this suit and the subsequent Succession Petition (SMA No.239/2009) which was

turned into administration suit in the year 2011 has to be stayed. Perhaps this aspect skipped the mind of the learned Judge resulting in impugned order. The law being very clear on the point that neither the plaint could be rejected in parts nor on account of filing subsequent proceedings in respect of portion of a claim the earlier proceedings could be rendered redundant / barred. In view of the fact that the administration in respect of the Bungalow No.37-A as well as Plot No.14-C, has to be decided in the earlier instituted Suit No.73/2007 from which this appeal has arisen and not in subsequently instituted Succession Petition (SMA No.239/2009) converted into (Suit No.1399/2011), we are left with no option but to allow the Appeal and set aside the impugned order and remand the case to be decided in accordance with law.”

The rest of the order in respect of other properties which are not in the name of deceased was confirmed as there are already separate proceedings pending to that extent. Subsequently CMA No.12189 of 2016 has been filed by Defendant No.14 on his behalf and as attorney of defendant Nos. 2, 5, 6(i), 6(ii), 6(iii), 7(a), 7(c), 13 & 14 for treating this Suit as an Administration Suit in respect of the two properties only and delete the rest of the properties from the purview of this Suit. The implication of the aforesaid order now is that insofar as the properties i.e. Bungalow No.37-A, Sindh Muslim Co-operative Housing Society, Double Storey Bungalow 660 Sq. Yds. Karachi and Plot of 1060 sq. yds in Sector No.27, Korangi Industrial Area, Darul-Islam Society, Karachi are concerned, a Preliminary Decree under Order XX Rule 13 CPC is to be passed by the Court to administer the aforesaid two properties in question as admittedly the appellate order, as above, has not been challenged any further by any of the parties.

In such circumstances and in the fitness of the matter, with the consent of Plaintiffs and Defendant No.14 on his behalf and as attorney of defendant Nos. 2, 5, 6(i), 6(ii), 6(iii), 7(a), 7(c), 13 & 14, let a preliminary decree be prepared in respect of the properties as stated above in terms of Order 20 Rule 13 CPC. Nazir is appointed as Administrator in the matter to carry out investigation and enquiry in respect of the above said properties left by the deceased as well as respective shares of the legal heirs who are party to present Suit. The parties at variance other than plaintiffs and the above defendants may lodge their respective claims, if any, before the Nazir. Nazir's Fees is tentatively fixed at Rs.75,000/-, which shall be payable by all the

contesting parties to the extent of their respective shares. After completion of the exercise, Nazir shall submit his report for passing of necessary order(s) for the purpose of passing a final decree in the matter.

Office is directed to prepare preliminary decree under Order 20 Rule 13 CPC read with Appendix D in the above terms.

CMA 12189 of 2016 is allowed, whereas, in view of such order, all the pending applications have served their purpose and are hereby disposed of.

J U D G E

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