

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Suit No.399 of 2015

Date	Order with signature of Judge
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1. For orders on Nazir report dated 06.03.2021.
2. For orders on objection to Nazir report 06.03.2021.
3. For orders on CMA No.9094/2021.
4. For orders on CMA No.13323/2020.
5. For orders on CMA No.6100/2016.
6. For orders on CMA No.7971/2019.
7. For orders on CMA No.10377/2020.
8. For orders on Nazir report dated 11.03.2020.
9. For orders on Nazir report dated 01.09.2020.
10. For order on objection to Nazir report dated 15.08.2017.
11. For further order on CMA No.3204/2020.
12. For further order on CMA No.5224/2020.
13. For further order on CMA No.5225/2020.
14. For hearing of CMA No.2198/2020.
15. For hearing of CMA No.11640/2017.
16. For hearing of CMA No.11641/2017.
17. For hearing of CMA No.10111/2017.
18. For hearing of CMA No.12039/2017.
19. For hearing of CMA No.13450/2017.
20. For hearing of CMA No.12682/2017.
21. For hearing of CMA No.6301/2017.
22. For hearing of CMA No.5613/2017.
23. For hearing of CMA No.8243/2017.
24. For hearing of CMA No.6830/2020.
25. For plaintiff's evidence as per Court's order dated 20.04.2016.

01.06.2021

Plaintiff is present in person.
Mr. Huzaiifa Khan, Advocate for defendants No.1 & 2.

NAZAR AKBAR.J.- This is a suit for administration of property bearing Survey No.333, Survey Sheet J.M. (Old survey No.C/8, measuring 985 square years situated in Cosmopolitan Cooperative Housing Society Karachi (the suit property) owned by the parents of the plaintiff and others jointly. The plaintiff has claimed inheritance from the partial joint ownership of his father and mother in the suit property. By order dated **07.9.2015** a preliminary decree was ordered to be prepared only to the extent of claim of inheritance from the shares of mother and father of the plaintiff in the suit property.

Consequently a preliminary decree was prepared on **17.10.2015**. Thereafter on the applications of the parties and after proper valuation of the suit property determined by the Nazir the share of the plaintiff in the suit property was also determined and handed over to him under the Court orders through cheque No.53450550 dated **29.8.2017**. This fact has been repeatedly pointed out by the Nazir and again it was mentioned in his report dated **06.3.2021**. The suit should have ended on **29.8.2017** since there was only dispute of inheritance raised by the plaintiff and his share has been purchased by the other legal heirs / defendants in the suit. However, after the preliminary decree dated **17.10.2015** a final decree could not be passed as the plaintiff even after getting his share in the suit property continued to file frivolous applications and this Court in order dated **30.11.2018** checked his frivolous behavior in the following terms:-

.....However as the **plaintiff desires to re-agitate the matter** he is put to notice as to why an order should not be passed for the benefitted acquired by him to be deposited back by him before the further adjudication of this matter.

The plaintiff never replied the question raised by the Court in the above order and continued to file frivolous applications.

1, 2, 8, 9 & 10. Orders on Nazir Reports and objections: In view of the above discussion and the above order, Nazir report dated **06.3.2021** is taken on record and objections of the plaintiff are overruled. Likewise Nazir reports at **serial No.8, 9 and 10** are also disposed of in view of the fact that report dated **15.8.2017** was in compliance of order dated **17.5.2016** regarding character of the suit property. It was not disputed by the plaintiff and the Nazir in reports dated **11.3.2020** and **01.09.2020** has pointed out that plaintiff has already received his share equivalent to his right of inheritance in the suit property. Both reports need no orders in view of the fact that

nothing hurts the plaintiff in these reports and defendants, too, do not claim anything out of these reports.

Now I intend to dispose of all the listed applications after hearing the parties.

3. **(CMA No.9094/2021)**. The plaintiff through this application seeks recording of his evidence on the issue of mesne profit. This application was filed after more than 4 years of payment of his share having been received by him. Even otherwise co-owners by way of inheritance when occupying joint property are not supposed to pay any mesne profit to the other co-owner who was not occupying the property by his own choice, therefore, the instant application is dismissed as it has no merit.

4 & 14. **(CMA No.9094/2021)** & **(CMA No.2198/2020)**. The plaintiff through these applications has prayed for re-calculation of his share. These applications have been filed in the year 2020 and the plaintiff has received his share way back on **29.08.2017** through cheque No.53450550 dated **29.8.2017**. He has not complied order dated **30.11.2018** for re-agitating his claim, therefore, these applications after more than 3 years are also dismissed with cost of **Rs.5000/-** for defy order of this Court dated **30.11.2018** for re-agitating his claim through these applications. The cost is to be paid by the plaintiff in favour of High Court Bar Clinic within one week.

5. **(CMA No.6100/2016)**. This is a contempt application filed by the plaintiff. This application is between the plaintiff and someone namely Mr. Salman against whom there is allegation of abusing the plaintiff. This dispute is out of the purview of contempt proceedings, therefore, this application is dismissed.

6. **(CMA No.7971/2019)**. This application under Order V Rule 20 CPC is regarding issuance of notices to the defendants. Since the defendants are before the Court and represented through their lawyer, therefore, this application has become infructuous.

7. **(CMA No.10377/2020)**. This is an application under Order 23 Rule 3 CPC filed by defendants and according to learned counsel for defendants No.1 and 2, this is already disposed of application, therefore, this application needs no order.

15 & 16. **(CMA No.11640/2017) & (CMA No.11641/2017)**. Both these applications are dismissed being frivolous on the face of it since these applications were filed prior to realizing his share by the plaintiff in the suit property. Even otherwise prayer in these applications is already covered in subsequent order and these applications were inadvertently pending just for nothing. The same should have not been even listed.

17. **(CMA No.10111/2017)**. Through this application the plaintiff has made a frivolous complaint against the Nazir of this Court and even this application was filed prior to receiving his share by the plaintiff from the same Nazir and, therefore, the same is also dismissed having become infructuous as nothing is left in this application to be pressed by the plaintiff.

18, 19, 20, 21, 22 & 23. All these applications bearing **CMA Nos.12039, 13450, 12682, 6301, 5613, and 8243 of 2017** were filed prior to realizing his share by the plaintiff from the Nazir of this Court on **29.08.2017** and that is why he has never pressed these applications and today he was specifically directed to argue these applications but he has kept silence, therefore, all these application

are dismissed having already served its purpose or otherwise having become infructuous.

24. **(CMA No.6830/2020)**. The plaintiff through this application has prayed for DNA test of defendant No.8. This frivolous application has nothing to do with the plaintiff since the plaintiff himself has impleaded defendant No.8 and irrespective of this, he has already realized his share from the subject property, therefore, this application being frivolous is also dismissed with cost of **Rs.5000/-** to be paid by the plaintiff in favour of High Court Bar Clinic within one week, since plaintiff has not been able to justify even filing of this application.

25. Since the plaintiff has realized his share as stated above after the order dated **20.4.2016**, nothing is left in this suit to be decided after recording of evidence, therefore, there is no need of recording of evidence of the plaintiff.

In continuation of the last order dated **22.04.2021** the plaintiff was supposed to address the Court on all the applications filed by him during the period from 2016 to 2021. The plaintiff has been seeking adjournments again and again by filing one application after the other. However, today all the above applications are disposed of and nothing is left in this case to proceed further. All the Nazir reports have also been taken on record and disposed of.

In view of the above facts and discussion, the instant suit stand finally disposed of. This suit was for distribution/payment of share of the plaintiff in the estate of deceased Haji Muhammad Ibrahim and Mst. Rasheeda Begum (Father and mother of the plaintiff) as per Sharia and it has been done. The other legal heirs have no dispute regarding distribution of share of the deceased

among legal heirs. With the disposal of all the pending applications when the purpose of filing of this suit has been achieved, the office is directed to prepare a formal final decree in accordance with law to perfect the title of suit property in terms of various orders passed till date. The plaintiff is hereby restrained from interference in the ownership rights and entitlement of the defendants in the suit property.

All the applications listed for hearing today were unnecessary burden on the Court when the instant suit had been disposed of on **29.8.2017**, therefore, the plaintiff is directed to deposit **Rs.10,000/-** cost imposed in the orders on two different applications at serial No.4, 14 and 24 above in favour of Sindh High Court Bar Clinic. The office is directed not to entertain any application from the plaintiff in this very suit unless and until he has already deposited cost of Rs.10,000/- as ordered.

JUDGE

Ayaz Gul