

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 467 of 2020

Date	Order with signature of Judge
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1. For orders on CMA No.5575/2021 (If granted) :
2. For ex-parte order :
3. For orders on CMA No.3946/2021 :

29.03.2021 : Syed Wasi Hyder Jafri, advocate for the plaintiff.

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1. Urgency granted.
2. This Suit has been referred to the Court by the Additional Registrar (O.S.) vide order dated 19.02.2021 for passing ex-parte order against the defendant. Record shows that several attempts were made to serve the defendant through bailiff, registered post and courier service. Since he could not be served through the said modes, order dated 10.12.2020 was passed by the Additional Registrar (O.S.) for publication of summons and notice in newspaper which were published on 08.01.2021 in Urdu daily 'Express'. Thereafter, vide order dated 19.01.2021 passed by the Additional Registrar (O.S.), four (04) weeks' time was granted to the defendant to file written statement, which has not been filed by him up till now. In view of the above, the Suit shall proceed ex-parte against the defendant.
3. All the plaintiffs and the defendant are the legal heirs of late Mst. Ismat Jabeen Anwer who was the sole and absolute owner of Plot No.3-B, Khayaban-e-Badban, Phase V, Defence Housing Authority, Karachi, measuring 500 sq. yds., with construction thereon (**'suit property'**). It is the case of the plaintiffs that after the demise of the above named deceased, the suit property, which is in joint possession of plaintiff No.1 and the defendant, has been inherited by all the legal heirs according to their respective shares as per *Shariah*. In paragraph 18 of the plaint, they have stated that the legal heirs have decided to sell the suit property as the same cannot be partitioned. They have alleged that the defendant has stopped sharing the monthly expenses in respect of the suit property and is receiving the entire amount of rent of the mobile tower installed at its roof top. In this background, this Suit for administration and partition of the suit property has been filed. Through this application, the plaintiffs have prayed that a preliminary decree for administration / partition / sale of the suit property be passed.

Before passing the final decree for administration and partition, the Court has to pass a preliminary decree for administration under Order XX Rule 13 CPC and a preliminary decree for partition under Order XX Rule 18 CPC, by ordering such accounts and inquiries to be taken and made, and by giving such other directions, as it may deem fit. Accordingly, a preliminary decree is passed in the following terms :

A. The Nazir of this Court is appointed as commissioner to inspect the suit property in order to ascertain whether or not the same can be partitioned / divided by metes and bounds in such a manner that shares / portions therein can be physically divided and handed over independently to each of the parties as per their respective shares. For this purpose, the Nazir may seek assistance of any qualified engineer or architect. He shall submit his report along with sketch(s) and building plan to this Court for further orders within one month. All future rents etc. in respect of the mobile tower installed at the roof top of the suit property shall be collected by the Nazir and shall be retained by him till further orders.

B. After examining the report of the Nazir, if this Court comes to the conclusion that the suit property can be partitioned and shares / portions therein can be divided and handed over independently to each of the parties as per their respective shares, a final decree shall be passed accordingly. However, if the Court concludes that such partition / division / distribution is not possible, then all the parties shall appear before the Nazir, on the date to be fixed by him after proper notice, and shall submit their respective offers to purchase the shares of the other parties in the suit property. If none of the parties succeed in purchasing the shares of the other parties in the suit property, the Nazir shall proceed to sell the suit property through public auction and the sale proceeds thereof shall be distributed by him amongst the parties as per their respective shares / entitlements according to *Shariah*.

C. The fee of the Nazir / commissioner is tentatively fixed at Rs.25,000.00 (Rupees twenty five thousand only). The said fee, as well as the fee, if any, of the engineer or architect shall be deducted by the Nazir from the sale proceeds of the immovable property before disbursing the shares of the parties.

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