

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

SMA No.153 of 2015

Date	Order with signature of Judge
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1. For orders on office objections and reply of the advocate for the petitioner.
2. For hearing of CMA No.946/2015
3. For hearing of CMA No.807/2015
4. For orders on Nazir's report dated 22.04.2016 as flagged.

26.05.2016.

Mr. M.S Bukhari, advocate for petitioner a/w petitioner
Syed Yasir Ahmed Shah, advocate for objector
Mr. Fazal-e-Rabi, advocate for objector

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Syed Yasir Ahmed Shah advocate files Vakalatnama on behalf of respondents No.XII and Ms. Razia Begum; taken on record.

Through instant SMA the petitioner seeks an order for retaining the movable properties as successors of deceased Tarique Ahmed Shaikh which the deceased has left behind in shape of saving certificates as well bank accounts in his (*deceased's*) name. Admittedly the legal heirs are Ms. Razia Begum (mother), Ms. Sonam Tariq (widow), Ahsan Tariq (son) and Shariq Tariq (son), whereas objectors are brothers and sisters of deceased Tariq Ahmed Shaikh as well mother and they vehemently contended that there are many movable and immovable properties, saving certificates and bank accounts which are in the name of deceased Tariq Ahmed Shaikh but are *benami*. As well there are other properties i.e. petrol pumps, houses and immovable properties established by the joint business of their father and these brothers. Petitioner filed a suit No.1756/2015 with regard to partition of immovable property is also pending for adjudication. It is contended that in special

saving certificates deceased has nominated his brothers as *nominee*.

It is well settled law that *nominee* is a person who, *in law*, can receive / collect property for purpose of distributing it among the legally entitled persons (*legal heirs*); such status (*nominee*) by itself shall not earn one a *legal right* to inherit a share in the collected / received property as *nominee*. The *nomination* does not *necessarily* require one to be the legal heir of nominator but whenever there is a question of *inheritance* it shall be the divine directions / instructions, governing the inheritance of such *person*, which shall determine the *legally entitled persons* (legal heirs). Thus, it is quite safe to say that rule, provided under National saving scheme, *shall* not prevail over law of inheritance. Regarding plea of *benami* property , raised by objectors, it would suffice to say that such question cannot be decided by this Court. Question of *benami* requires evidence hence cannot be undertaken in summary proceedings, governed and controlled by *Succession Act*. Merely on the plea of *benami* one cannot be deprived from his legal right (rights of inheritance) particularly when it to be decided in independent jurisdiction and is a *mere* claim till its determination by a competent court of law.

At this juncture widow/petitioner, present along with her minor, contends that she has been expelled from the family house and has no financial sources of earning for livelihood. Accordingly instant SMA which is for release of the bank accounts and saving certificates, held by deceased in his name, is allowed. Nazir shall ensure that this amount shall be released in favour of all aforesaid legal heirs which *in total* are four (04) in numbers and

this exercise shall be completed within 15 days with compliance report.

2-3 With regard to CMA No.807/2015 for amounting to Rs.10,000,000.00 and CMA No.946/2015 for amounting to Rs.2,39,700.00 whereby petitioner is claiming that one Naveedullah Shaikh brother of deceased Tariq Ahmed Shaikh being nominee encashed that both amounts from bank accounts. Issue show cause notice to the Bank Manager i.e. Bank Al Habib Ltd, Fatima Jinnah colony branch-6, Ruby Apartment Jamshed Quarters, new M.A Jinnah Road, Karachi and Incharge National Saving Certificate as well Naveedullah Shaikh, that under what law such amount was released to Naveedullah Shaikh and whether the same amount has been distributed amongst all the legal heirs and in case of failure appropriate proceedings would be initiated against the bank managers as well Naveedullah Shaikh.

Adjourned.

Judge