ORDER SHEET

IN THE HIGH COURT OF SINDH,

CIRCUIT COURT, HYDERABAD

1. IInd Appeal No.13 of 2005
2. R.A. No.145 of 2005
3. R.A No.146 of 2005
4. R.A. No.147 of 2005
5. R.A No.148 of 2005

DATE	ORDER WITH SIGNATURE OF JUDGE

12.03.2018.

Mr. Muhammad Arshad S. Pathan, Advocate for the applicants/ appellants.

Mr. Arbab Ali Hakro, Advocate for the respondent Mst. Bibi Bilqees.

Mr. Wali Muhammad Jamari, Assistant A.G.

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Learned counsels have submitted their arguments in respect of IInd Appeal No.13 of 2005, R.A. No.146 of 2005, R.A. No.147 of 2005 and R.A. No.148 of 2015, whereas it is also agreed by learned counsels that R.A. No.145 of 2005 may not be dealt in consonance as the same has not been argued upon and even otherwise the same has a different subject matter limited to Sajjada Nasheene.

Learned counsel for the applicants / appellants states that the learned trial Court as well as the learned appellate Court has failed to consider the similarity of treatment as required to the different properties that were the subject matter of the case as despite having same status the same properties were treated differently. It is also contended on part

of learned counsel for the applicants / appellant that proper issues were not framed and as such without the specific evidence in respect of the specific property, the judgments as rendered are not tenable in law. Learned counsel for the applicants / appellants further contends that the evidence as brought forward by the applicants / appellants has not been looked into as the claim of the applicants / appellants was based upon the statements of the donor and the admitted position as were present during the lifetime of the deceased, who was the owner. Learned counsel for the applicants / appellants in this regard has referred numerous documents and separately dealt with the properties. It is also contended on part of learned counsel for the applicants / appellants that the learned trial Court as well as appellant Court had determined the properties of the deceased to a status, which is contrary to the Notification of the Auqaf Department, who is required to regulate the same. Learned counsel for the applicants / accused relies upon case laws reported in ***PLD 1992 Karachi 234(a), 2000 CLC 632 Lahore (c), AIR 1927 P.C. 22 (a), PLD 1992 Quetta 47(a), PLD 1995 Lahore 191(A), 1999 YLR 1956 Peshawar (c), PLD 1968 SC 140(b), 1991 CLC 1622 Lahore (a), PLD 1956 (W.P) Karachi 521 (c), 2001 CLC 1455 Lahore (b), PLD 2004 Karachi 543 (b), PLD 2004 SC 682 (a), PLD 1976 Karachi 142 (a), 1992 CLC 505 Lahore (c), 1989 MLD 1840 Karachi (a), AIR 1971 SC 361 (a) and PLD 1983 Lahore 253(c).***

Learned counsel for the respondent No.6 on the other hand supports the judgment and further submits in respect to the proving of specific issue that where the matter has been caused the same is not liable to be disturbed, in this regard, he also relies upon the judgment of appellate Court. Learned counsel for the respondent No.6 further contends that neither the power of attorney, which was the basis of transfer was produced by the otherside nor the original sale agreement was ever brought before the Court of law and relies upon the discussion as made in the impugned judgments in this regard. It is also contended on part of learned counsel for the respondent that reappraisal of the evidence since appreciated twice is not open to disturbance. Learned counsel for the respondent further contends that the properties though being dealt under the same documents were discussed separately an account of their status and were accordingly treated by the learned Courts below. He relies upon case law reported in **2001 SCMR 1641, 2004 MLD 1033, 2006 MLD 448 and 1992 SCMR 2298.**

Learned Assistant Attorney General supports the judgments stating that the same are based upon the material that was brought forward by the parties and issues framed accordingly, which were discussed thoroughly.

Having heard the learned counsels, gone through the record with their assistance.

It may be observed that it was open for the parties to bring their respective evidence before the learned trial Courts below. The dispute in the matter pertains to inheritance of the

deceased Pir Gul Hassan Hassan Shah, which were challenged by his daughter claiming the same to be inherited properties. The applicants / appellants on the other hand had contested the matter on the basis of whatever entitlement was shown. It was the contestation of the parties that the properties were not available for inheritance and as such the said daughter could not claim the same. It bares from the record, however, that the entitlement to the subject properties as were claimed by the applicants / appellants had to be shown in such circumstances to have been not only been duly alienated consideration thereof and the entitlement of the same which were to the onus of the said applicants / appellants. The defects to the claimed alienation have been pointed out by learned trial Court as well as learned appellate Court in the matter. No grounds have been shown as to the defects present, as such to be considered otherwise then already made by the learned trial Court as well as learned appellate Court. The entitlement against a legal heir is undoubtedly an uphill task but in cases where the Court is called upon to look into such entitlement, clarity of claim as to alienation and as such the entitlement is a must. Not having found any material whereby the consistent findings can be disturbed, the first Appeal No.13/2005 as well as revision applications bearing Nos.146/2005, 147/2005 and 148/2005 stand dismissed with normal costs.

SEAL OF THE HIGH COURT OF SINDH

The R.A No.145 of 2005, has not been ordered upon and the same is adjourned as requested.

Sd/- MEHMOOD A. KHAN,
JUDGE.

CERTIFIED TO BE TRUE COPY

ASSTT REGISTRAR

17/3/18

HIGH COURT OF SINDH