

Judgment Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Misc. Appeal Nos. S – 27 to 36 of 2021

- Appellants : Abdul Kader, Muhammad Ilyas, Muhammad Siraj Cochinwala, Bilqees Bai, Waqar Ahmed, Abdul Rasheed, Muhammad Yousuf, Rafiq Essa, Asif Balwani and Tehmina Munaf, through Mr. Abdul Naeem A. Qureshi Advocate
- Respondent No.1 : Court of Xth Additional District Judge South Karachi, through Mr. Imran Ali Jatoi, A.A.G. Sindh.
- Respondent No.2 : Jan Muhammad, deceased through his legal representatives Kulsoom, Sabira, Sabila, Zakira, Shahid, Muhammad Hanif, Saleem and Aziz, through Malik Khushhal Khan Advocate.
- Respondent No.3 : Abdul Sattar, through Mr. Tasawur Ali Hashmi Advocate.
- Dates of hearing : 03.02.2022, 21.02.2022 & 16.03.2022.

J U D G M E N T

NADEEM AKHTAR, J. : Through these appeals under Sections 384 and 299 of the Succession Act, 1925, the appellants have impugned identical orders passed by the learned Xth Additional District Judge, Karachi South, in Succession Miscellaneous Application Nos.60 to 69 of 2021 (**‘the applications’**) filed by them, whereby their said applications were returned to them under Order VII Rule 10 CPC for presentation before the Court having the pecuniary jurisdiction in the matters. As the questions of fact and law as well as the subject matter are common in all these appeals, they were heard together and are being disposed of through this common judgment.

2. The relevant facts of the case are that the predecessors-in-interest of the appellants were the co-owners of the immovable property bearing Survey No. 4-H, Survey Sheet No. K-16, measuring 1025 sq. yds., situated in Layari Quarters, Karachi (**‘the subject property’**). The applications were filed by the appellants for the grant of the Letters of Administration in their favour in respect of the following shares left in the subject property by their late predecessors-in-interest (**‘the deceased’**) :

S. No.	Appeal No.	Name of appellant	Share(s) of	Share
1.	27/2021	Abdul Kader	Mother	8.54% = 87.60 sq. yds.
2.	28/2021	Muhammad Ilyas	Mother and Brother	9.40% = 96.36 sq. yds.
3.	29/2021	Muhammad Siraj Cochinwala	Mother and Brother	8.54% = 87.60 sq. yds.
4.	30/2021	Bilqees Bai	Mother and Brother	8.54% = 87.60 sq. yds.
5.	31/2021	Waqar Ahmed	Father and Brother	9.40% = 96.36 sq. yds.
6.	32/2021	Abdul Rasheed	Father and Brother	9.40% = 96.36 sq. yds.
7.	33/2021	Muhammad Yousuf	Mother and Brother	8.54% = 87.60 sq. yds.
8.	34/2021	Rafiq Essa	Mother and Brother	8.54% = 87.60 sq. yds.
9.	35/2021	Asif Balwani	Mother and Brother	8.54% = 87.60 sq. yds.
10.	36/2021	Tehmina Munaf	Father and Brother	9.40% = 96.36 sq. yds.

3. It was the case of the appellants before the learned trial Court that the deceased were the co-owners of the subject property to the extent of their above mentioned shares. All the legal heirs of the deceased, except the present respondents 2 and 3, had no objection to the grant of the applications filed by the appellants. However, the present respondents 2 and 3, who are also co-owners of the subject property, filed objections. The learned trial Court called a report from the Incharge of the Central Record that revealed that there are thirteen (13) co-owners of the subject property. The learned trial Court also called a report from the Mukhtiarkar concerned regarding the valuation of the subject property that revealed that the lease thereof had expired in the year 1995, and due to this reason the same had been forfeited by the Government of Sindh. The said report further revealed that the market value of the subject property was Rs.17,000,000.00 to Rs.17,500,000.00. In view of the report submitted by the Mukhtiarkar, the applications were returned by the learned trial Court to the

appellants under Order VII Rule 10 CPC for presentation before the Court having the pecuniary jurisdiction in the matter.

4. It is contended by learned counsel for the appellants that the applications were maintainable before the trial Court and the trial Court had the pecuniary jurisdiction in respect thereof as the applications were filed only in respect of the share of the deceased in the subject property ; and, as the deceased were not the owners of the entire subject property, the entire subject property was not the subject matter of the applications. In support of this contention, the learned counsel placed reliance on several cases including Zafeer Gul V/S Dr. Riaz Ali and others (2015 SCMR 1691) and Fateh Muhammad V/S Mst Arshad Afza (1999 MLD 1481). The other cases cited by him are not relevant to the facts and circumstances of the present case.

5. Objections have been filed in these appeals by respondents 2 and 3. It is contended by learned counsel for respondent No.2 that the said respondent has purchased the shares of some of the co-owners and as his paternal aunts / co-owners were trying to sell their share in the subject property, he has filed Suit No.572/2020 at the original side of this Court, wherein an ad-interim order has been passed which is still in the field ; this fact was concealed in their applications by the appellants ; and, in an earlier Suit viz. Suit No.1411/2016, the said paternal aunts of respondent No.2 had admitted in a compromise application that he was the lawful owner of the share claimed by him, which fact was also concealed by the appellants in their applications. It is further contended by the learned counsel that the applications were not maintainable in view of the dispute between the parties in respect of the shares of co-owners in the subject property.

6. Learned counsel for respondent No.3 contends that the subject property is owned by a partnership firm viz. M/S Sekha & Company, which firm is still the registered owner of the subject property ; as the appellants are not partners in the said firm, they are not entitled to agitate their claim in respect of the subject property ; a litigation in respect of the subject property initiated by the said firm for the eviction of the tenant is pending before the Hon'ble Supreme Court ; instead of filing the applications in the testamentary and intestate jurisdiction, the appellants ought to have filed proper proceedings before the competent Court ; and, the applications filed by the appellants were not maintainable and have been rightly returned by the trial Court.

7. I have heard learned counsel for the parties and have examined the material available on record and the law cited at the bar. Perusal of the impugned orders shows that the applications were not returned on the grounds that there was a dispute between the co-owners of the subject property with regard to their ownership / share therein, or that a litigation is pending between some of the parties, or that the subject property is owned by a partnership firm. In fact, none of these grounds was considered or discussed in the impugned orders. The sole ground on which the applications have been returned under Order VII Rule 10 CPC is that the learned trial Court did not have the pecuniary jurisdiction as the valuation of the entire subject property was found to be more than the maximum limit of its pecuniary jurisdiction. It is not the case of any of the respondents, nor was it held in the impugned orders by the learned trial Court, that the valuation of even the individual share of the deceased was more than the upper limit of the pecuniary jurisdiction of the learned trial Court.

8. It is an admitted position that the appellants had filed separate applications and not a joint application, and the entire subject property was not the subject matter of any of the applications as the appellants had sought the Letters of Administration only in respect of the share left by each of the deceased. As every deceased had a separate and distinct share in the subject property falling within the pecuniary jurisdiction of the learned trial Court, each of their respective legal representatives was entitled to file a separate application, particularly when there is no bar in law that separate applications in respect of separate and distinct shares or portions in the same property cannot be filed. Accordingly, separate applications could be filed before the Court having the pecuniary jurisdiction to the extent of the said share of each of the deceased. The case of Zafeer Gul (supra) cited and relied upon by learned counsel for the appellants supports this view. The relevant portion of the cited authority is reproduced below for ease of convenience and ready reference :

*“3. To expound the legal position in relation to the valuation of a suit for partition and separate possession for the purpose of jurisdiction, it will be pertinent to mention here that every co-sharer in the immovable property is legally deemed to be in its joint possession to the extent of his undivided share. Therefore, in a suit of such nature, **law permits him tentative valuation of his share in the immovable property** as specified in the plaint for the purpose of pecuniary jurisdiction, which is subject to final determination by the Court; till then the valuation shown in the plaint is to be deemed as proper value of the suit property for the purpose of availing the remedy of appeal qua determining the forum of appeal. For further guidance see: *Ajiruddin Moudal and another v. Rahman Fakir and others* (PLD 1961 SC 349).”* (emphasis added)

9. In view of the above-cited authority, the learned trial Court ought not to have returned the applications. Accordingly, the impugned orders, being not sustainable in law, cannot be allowed to remain in the field. Regarding the contention of respondents 2 and 3 that the shares of some of the co-owners in the subject property are disputed, needless to say, in such situations, the applications filed in the testamentary and intestate jurisdiction are converted into Suits whereafter the dispute is decided on merits after recording of evidence. The questions whether the subject property belongs to a partnership firm or whether the appellants had any *locus standi* to file the applications, were not agitated at the time of passing of the impugned order nor are they the subject matter of the present appeals.

10. In the above circumstances, the impugned orders are hereby set aside and the applications are remanded to the learned trial Court with the direction to decide the objections filed therein by all the objectors, including the present respondents 2 and 3, within a period of sixty (60) days on merits and after providing opportunity of hearing to all the parties ; and, if after hearing the parties the learned trial Court comes to the conclusion that the dispute between the parties is of such a nature that the same cannot be decided summarily or without evidence, the applications may be converted into Suits. In such an event, as they will be Suits of Administration and the entire subject property will have to be administered, the learned trial Court will be at liberty to consider the question of the pecuniary jurisdiction afresh. Let this order be communicated forthwith to the learned trial Court for compliance.

The appeals stand **disposed of** in the above terms with no order as to costs.

J U D G E