

ORDER SHEET  
**IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD.**

IInd Appeal No. 11 of 2010

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DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on CMA 629/2022.
2. For hearing of CMA 2694/2021.
3. For hearing of CMA 1582/2021.
4. For hearing of main case.

28.03.2022

Mr. Arbab Ali Hakro, Advocate for respondent No.3.  
Mr. K. B. Lutuf Ali Leghari, Advocate for respondent No.6.  
Mr. Saleemuddin Patoli, Advocate for applicants / interveners.  
Mr. Rashid Nizam Arain, Advocate for intervener in CMA  
No.2694/2021.  
Mr. Wali Muhammad Jamari, Assistant A.G.

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**Zulfiqar Ahmad Khan, J:** This IInd Appeal was filed on 20.08.2010 posing two conflicting findings between the trial Court and the Ist Appellate Court where, the trial Court held that power of attorney on the basis of which subsequent transactions in respect of the suit property were carried out was forged therefore, of no legal effect. However, the learned 1<sup>st</sup> Appellate Court examined the case from a totally different prospective and held that since the contesting respondent acquired the property from an ostensible owner therefore, the suit ought to have been dismissed. Thereafter, comments were called from the officials and time and again interveners continued joining. Parties were directed to maintain status-quo by order dated 05.05.2010. However, on account of absences and delay posed, this Court vide order dated 13.12.2016 vacated the interim order.

Court was later informed that the parties were contemplating compromise and the matter was adjourned on that account too. Order dated 23.11.2017 shows that the learned counsel for the appellant was not present. Court considered the matter of compromise and disposed of the application. It appears that Mr. Ayatullah Khwaja, Advocate stood before the Court for the first time on 24.01.2020 on behalf of the appellant and requested that the instant appeal be converted into a fast

track case, which request was granted by this court. Whereafter, the matter came up on 28.08.2020 when the Court was informed that Mr. Khwaja was unwell and the matter was adjourned to a date in office. Thereafter, the case came up on 14.09.2020 when the learned counsel for the appellant was not present and the matter was adjourned in the interest of justice. On 11.12.2020 Mr. Ayatullah Khwaja made a request to adjourn the matter which was granted and the matter was adjourned to 11.01.2021 when Mr. Khwaja was not present and the matter was adjourned for the second week of February 2021. Mr. Khwaja appeared on 10.02.2021 however, when the matter was taken up on 02.03.2021 none was present on behalf of the appellant and the Court was informed that the appellant had died and his legal heirs were to be brought on record. On 26.03.2021 Mr. Ghulam Sarwar Baloch, Advocate appeared for the appellant and sought time for compliance of the order dated 02.03.2021 to bring the legal heirs of deceased on the record. Mr. Ayatullah Khwaja appeared on 09.08.2021 and sought further time to comply with the order dated 02.03.2021. Matter thereafter, came up on 23.08.2021 where the issue of bringing the legal heirs of appellant on record was not satisfied. Similar was the case on 29.10.2021 when a brief was held for counsel for the appellant and the court was again informed that after the death of appellant, his legal heirs were keeping away from the Court hence the IInd Appeal be dismissed without any further indulgences, with this observance the matter was adjourned. On 18.11.2021 again a brief was held for counsel for the appellant. On 31.01.2022 the Court was again informed that the appellant has expired and counsel for the appellant sought time once again to join the legal heirs of the appellant. Thereafter, the matter came up on 11.02.2022 when Mr. Khawaja informed the Court that he will file the list of legal heirs alongwith a proper application under his Vakalatnama. The matter thereafter came up on 25.03.2022 when a brief was held on behalf of Mr. Khwaja and it was observed that one

application bearing CMA No.629 of 2022 moved under Order XXII Rule IV C.P.C has been made by the counsel for appellant and was fixed for Orders. It was noted that neither within, nor alongwith the said application list or details of the legal heirs was attached however, the said application was supported by an affidavit of Mr. Muhammad Noman Chandrigar, stating that he was the attorney of the appellant. The Court was informed that in fact the said individual is a stranger and had no valid power of attorney in his hand, hence not capable of moving the instant application. Mr. Ayatullah Khwaja was directed to satisfy the Court on the next date of hearing as to why the instant application may not be dismissed in limine where no list or details of the legal heirs was provided and where it is alleged that the person who has signed the affidavit in support of application was not competent.

Today the matter was taken up accordingly and the Court was informed that Mr. Ayatullah Khwaja is out of station. On Court query that who is Mr. Muhammad Noman Chandrigar, it was stated that he is attorney for the appellant. Someone introduced himself as Mr. Noman Chandrigar, showed the Court an unregistered power of attorney and he admitted that appellant / executor of the said Power had expired. The Court posed question that when having admitted that executor of the Power of Attorney had expired, what is the competency of Mr. Chandrigar to support the affidavit on behalf of the legal heirs, Mr. Azizullah Khwaja was unable to answer the query.

Now coming to the merits of the instant application made under Order XXII Rule IV C.P.C. The procedure dealing with death of one or several parties is dealt with by Order XXII Rule III/IV C.P.C. With regards the procedure to be followed in the case of death of one of several plaintiffs or sole plaintiff, Order XXII Rule III is to be followed where Court on an application made in that event is directed to cause the legal representatives of the deceased plaintiff to be made as a party and to proceed with the suit. As early as from 1935 (All. 106 DB AIR

1936 Pat. 548), it is an un-disputed position that Order XX besides being applicable to suits, is also applicable to the appeals. In the case titled as 2016 CLC 1485, the Honourable Supreme Court of AJK has held that if legal heirs of deceased plaintiff were not arrayed as party, suit to his extent was automatically abated. It is also admitted position as stated in 1997 SCMR 260 that time limit of 90 days as prescribed under Article 176 of the Limitation Act, 1908 for making an application for bringing legal heirs of a deceased be adhered to. In the case at hand, Court was informed as early as 02.03.2021 that the appellant had expired but it was not before 7<sup>th</sup> March 2022 when an halfhearted application under Order XXII Rule IV C.P.C was moved without any mention of the legal heirs and that too by a person who had lost his competency to act as attorney of the appellant long before. No application for condonation is attached, neither any extract from register of death or NADRA is attached to show that deceased has left how many legal heirs and who are those individuals.

In the given circumstances, the subject application made under Order XXII Rule IV C.P.C (CMA No.629/2022) being marred with infirmities and falsehood is dismissed in limine.

JUDGE

Tufail