

**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**

**Civil Misc. Appeal No. S – 04 of 2014**

**(Mohib Ali Jamali Vs. Syed Liaquat Ali Shah & others)**

**Date of hearing & Decision: 14-02-2022**

Mr. Umrah Khan Yousufzai, Advocate for the Appellant  
Mr. Safdar Ali Bhatti, Advocate for Respondents 1 to 4, 6 & 8  
Mr. Zulfiqar Ali Bhutto, Advocate for Respondents 5 & 7  
Mr. Ahmed Ali Shahani, Assistant Advocate General

**ORDER**

**Muhammad Junaid Ghaffar, J**;- Through this Civil Miscellaneous Appeal, the Appellant has impugned order dated 17-02-2014 whereby the learned Additional District Judge-III, Khairpur has allowed an Application under Order 1 Rule 10 CPC; and so also a Review Application in respect of order dated 10-11-2010, through which the letter of administration was granted to the Appellant.

2. Heard the learned Counsel for the parties and perused the record.

3. Insofar as Counsel for Respondents 5 and 7 is concerned, he has filed a statement on their behalf to the effect that the present Respondents do not have any claim in the property of the Appellant, whereas, they had filed a joint application mistakenly before the Court below, on which the impugned orders have been passed; hence, they do not wish to contest the Appeal. As to the learned Counsel for the other private Respondents is concerned, he submits that the impugned order is correct, and the Appeal is liable to be dismissed.

4. It appears that the Appellant was granted the Letter of Administration in respect of the properties mentioned in Succession Petition and after grant of the same, the contesting Respondents filed an Application for Review of the order dated 10-11-2010 along with an Application under Order 1 Rule 10 CPC, as according to them the property was not owned by the deceased. The said application was to the extent of their part of the property. Learned Court while allowing the Application as above, has recalled the grant of Letter of Administration, which order

appears to be correct in law; however, at the same time, the learned Court has fallen in error in not treating the Succession Petition as a Suit in terms of Section 295 of the Succession Act, 1925; which reads as under; -

**295. Procedure in contentious cases:** In any case before the District Judge in which there is contention, the proceedings shall take, as nearly as may be, the form of a regular suit, according to the provisions of the Code of Civil Procedure, 1908, in which the Petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who has appeared to oppose the grant shall be the defendant.”

5. Since the parties are at variance, whereas, the Letter of Administration already stands recalled, therefore, in the interest of justice and by invoking the above provision the impugned order is modified to this extent. Accordingly, the Appeal is allowed / disposed of by modifying the said order whereas, the proceedings pending before the Court shall be treated as a Suit in terms of Section 295 of the Act, *ibid*, and the same shall be transferred to the concerned Court having jurisdiction to try the suit by District Judge concerned. The applicant is to be treated as a plaintiff and the objector(s), to the extent of their claim, if any, as defendants. The parties, if so advised, are at liberty to file their amended pleadings in accordance with law. With these observations, this Civil Miscellaneous Appeal stands disposed of with pending Application(s).

**Judge**

ARBROHI