

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
Suit No. 386 of 2013

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| Date | Order with signature of Judge |
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For further orders in view of Court's order dated 05.11.2021.

**08<sup>th</sup> December 2021**

Mr. Salahuddin Khan Gandapur, advocate for the plaintiff.  
Mr. Abadul Hasnaini, advocate for defendant No.1.  
Mr. Muhammad Sabir Khan, advocate for defendant No.3.

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**Salahuddin Panhwar, J:-** Precisely relevant facts are that plaintiff filed suit for declaration, partition, possession, permanent injunction and mesne profits with the following prayers:

- a. Declare that Defendant No.1 and 2 are not real sons of the Late Syed Abdul Hameed the husband of Plaintiff No.1 and are not entitled in any way for their share in the Property of the deceased under Shariat Laws.
- b. Declare that the Partition of property between the Defendants in 1983 by the Respectable/Jirga was illegal and against the Shariat Laws.
- c. Declare that under the Shariat Laws the Plaintiff No.1 to 14 are entitled for their due share in the entire property (movable, immovable) of deceased Syed Abdul Hameed.
- d. The Defendant No. 1 & 2 may be directed to give possession of the property of deceased Syed Abdul Hameed to the Plaintiffs which they obtained illegally on the strength of the illegal Respectable/Jirga held in the year 1983.
- e. Declare that the Plaintiffs are also entitled for their legal share in the Properties of the Defendants which they have acquired through the property of deceased (Syed Abdul Hameed) by selling the chunk of property and investing the same money in their respectable businesses.
- f. That the mesne profit may also be awarded to the Plaintiffs from the property of Defendant which they are using for last many years for their own benefits.
- g. That the Defendants may be directed by way of Permanent injunction that no 3<sup>rd</sup> party interest may be created in the properties they are holding in their names at this point of time.
- h. Declare that the property in the name of Defendant No. 1, 2 & 3 through the PT-1 are benami properties purchased by the deceased Syed Abdul Hameed through his own resources.

- i. Defendant No.2 may also be directed to return the property to the Plaintiffs or alternately the value of the same property in today's terms the Plaintiffs.
- j. Cost of the Suit."

After issuance of summons, written statement was preferred and issues were settled on 05.03.2021, which are that:-

1. Whether the suit is maintainable under the law?
2. Whether the plaintiff suit is based on defamation and perjury amounting to qazzaf, if so what is effect?
3. Whether the plaintiff has any cause of action?
4. Whether the defendants No. 1 & 2 are not the real sons of late Abdul Hameed, the husband of plaintiff No.1, and therefore, they are not entitled to any share in the property left by the said deceased?
5. Whether the property left by the deceased Abdul Hamed were ever subject matter of any private partition in 1983, if so what is effect?
6. Whether the defendants have sold out plot No.2231 (old No.322) with constructed bungalow, measuring 240 Sq. Yds situated in Street No.7, Azam Town, Karachi and plot No.2237 with constructed 04 commercial shops and 01 room, admeasuring 120 Sq.yds situated in Street No.7 Azam Town, Karachi (refer to in para NO.14 of the memo of plaint) and purchased immovable property described in para-25 of the memo of plaint, if so what is effect?
7. Whether the defendant No.1 to 3 are the ostensible owners of the properties mentioned/described fully in para No.14 as (a), (b), (c), & and (f), if so what is effect?
8. Whether the plaintiffs are entitled to any mesne profit?
9. Whether the plaintiffs are entitled for the relief prayed for?
10. What should the decree be?

Thereafter with the consent of the parties, the matter was referred for evidence, plaintiff failed to adduce evidence, again matter was referred for evidence but in similar fashion plaintiff chosen not to appear before the commissioner, hence, side was closed. Accordingly, counsel was put on notice that why matter should not be proceeded in terms of order XVII Rule 3 CPC. Today learned counsel for the plaintiff seeks withdrawal of vakalatnama as plaintiff is not cooperating with him. In view of pleadings as mentioned in the plaint with appended documents *onus probandi* was on plaintiff to prove the present suit with regard to defamation and cause of action, whereas, plaintiff has not adduced any evidence or filed affidavit-in-evidence and he

has also failed to appear in witness box. Accordingly, plaintiff has failed to record his evidence, hence, suit is dismissed under order XVII rule 3 CPC. Office is directed to prepare decree accordingly.

**J U D G E**

Sajid.