

**IN THE HIGH COURT OF SINDH, KARACHI**

HCA No.274 of 2022

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DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)  
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*BEFORE: Irfan Saadat Khan,  
Zulfiqar Ahmed Khan, JJ*

A.M Qureshi  
Through L.Rs  
Appellant

: through Syed Mureed Ali Shah,  
Advocate.

..Vs..

Deputy Commissioner  
Respondent No.1.

Mr. Naeem Akhtar Talpur, A.A.G.  
for Respondents No.1 & 2.

Province of Sindh  
Respondent No.2.

Karachi Development Authority  
Respondent No.3.

: Nemo

Karachi Water Management  
Board (Defunct)  
Respondent No.4.

: Nemo

Capital Co-operative Housing Society  
Respondent No.5.

through M/s. Khalil Ahmed  
Siddiqui & Zulfiqar Ali,  
Advocates

Commissioner Karachi  
Respondent No.6.

: Mr. Naeem Akhtar Talpur,  
A.A.G.

Manzar Hussain Kazmi  
Respondent No.7.

: Nemo

Mrs. Mumtaz Muzakkir  
through LRs  
Respondent No.8.

: Nemo

Shaikh Muhammad Hussain  
through LRs  
Respondent No.9.

through Mr. Muzaffar Leghari  
Advocate.

Begum Hafizunnisa Qureshi  
through LRs  
Respondent No.10.

: Nemo

Khalid Rehman Muhammad Qureshi  
Respondent No.11.

: Nemo

Date of hearing : 15.11.2022

Date of decision : 22.11.2022

JUDGEMENT

**Irfan Saadat Khan,J.** This High Court Appeal (HCA) has been filed against the order dated 13.07.2022 passed on CMA No.20144/2021 filed under Order 1 Rule 10 CPC in Suit No.661/1979.

2. Briefly stated the facts of the case are that there were some property disputes between the Plaintiff and the Respondents regarding property bearing Naiclass 21 of Deh Doozan, Sector 34/A, 34/B, 35/A, 35/B & 36/A of Scheme-33, Malir Karachi which was allotted in the name of late A.M. Qureshi on 14.10.1963. However on 07.1.1976 the Deputy Commissioner East Karachi cancelled the lease of the land and thereafter late A. M. Qureshi filed a Suit No.661/1979 before this Court seeking declaration, perpetual and mandatory injunction. Ad-interim injunction was then granted by this Court on 28.8.1979, which was subsequently confirmed on 22.11.1981. During the pendency of the said Suit Mr. A. M. Qureshi expired on 22.6.1989 and is stated to be survived by the appellant and the Respondents No.8 to 12 of the present HCA. The Respondent No.10(a) to 10(h), however have also filed a Suit No.1155/2008 before this Court. Due to enhancement of pecuniary jurisdiction of this Court, Suit No.661/1979 was sent to the Civil Court Malir for disposal. The Trial Court however dismissed the said suit and thereafter the appellant filed a Civil Revision No.09/2007 before the District

Judge Malir, Karachi, which too was disposed of vide order dated 26.7.2007. Against the said order the appellant filed a petition bearing CP No.D-1620/2007, which also was dismissed vide order dated 10.09.2008, against which CPLA No.29/2009 was filed before the Hon'ble Supreme Court of Pakistan and the Apex Court vide order dated 03.6.2010 (which is reported in PLD 2010 SC 913) disposed of the matter by restoring the original suit i.e. Suit No.661/1979. Thereafter the present legal heirs of Respondent No.9 filed/moved an application under Order 1 rule 10 CPC for becoming a party in the Suit No.661/1979 which was allowed through the above referred order and the plaintiff in the suit was directed to file amended title of all the legal heirs of M.H. Qureshi as co-plaintiffs No.4 to 7. It is against this order that the present HCA has been filed.

3. Syed Mureed Ali Shah, Advocate has appeared on behalf of the Appellants and at the very outset stated that the legal heirs of Respondent No.9 are in fact the sons and daughters of one Shaikh Muhammad Hussain s/o Shaikh Hussain and not that of Muhammad Hussain Qureshi. He stated that the Respondent No.9 are aliens and want to join in the suit to gain benefits from the properties left by late A.M. Qureshi. He stated that the learned single Judge erred in allowing the said application as this would further complicate the matter between the parties as according to him a High Court Appeal No.67/2007 under the name and style of *Muhammad Hussain ..Vs.. Mrs. Mumtaz Muzakkir* is also pending adjudication and the present application under Order 1 Rule 10 CPC has been filed by the legal heirs of one Shaikh Muhammad

Hussain to complicate the matter and to deprive the legal heirs of late A.M. Qureshi from their due and legitimate share left by the deceased. Learned counsel stated that legal heirs of the Respondent No.9 are not the legal heirs of late A.M. Qureshi and hence are not entitled to have share of inheritance in the properties left by late A.M. Qureshi. He stated that he would have no objection if the said Respondents may be directed to make their submissions in HCA No.67/2007, which is pending adjudication, but they cannot be impleaded as a party in Suit No.661/1979.

4. He next stated that the hearing of the said application took place on 22.2.2022, 08.3.2022 and 06.4.2022, however he was on general adjournment from 17.3.2022 to 04.4.2022. He therefore, in the end prayed that since the learned single Judge has passed the order without proper application of mind, this HCA may be allowed by setting aside the order of the learned single Judge.

5. Nobody has appeared on behalf of the Respondent No.3, 4, 7, 8, 10 & 11 despite proper service of notice.

6. Mr. Muzaffar Ali Leghari, Advocate has appeared on behalf of the legal heirs of Respondent No.9 and stated that in view of the decision given by the Hon'ble Supreme Court of Pakistan dated 03.6.2010, it was directed that the first set of LR's of late A.M. Qureshi be transposed as co-plaintiffs in the Suit No.661/1979. The counsel states that Respondent No.9 are the legal heir of late A.M. Qureshi and hence in compliance of the order of the Hon'ble Supreme Court moved present application for transposing them as co-plaintiffs rather than Respondents in the matter. He stated that

it is the appellant who with malafide intention has mentioned Muhammad Hussain Qureshi as Shaikh Muhammad Hussain son of Shaikh Hussain just to usurp the properties left by late A.M. Qureshi and to deprive the legal heirs of Muhammad Hussain Qureshi from their shares in the properties left by late A.M. Qureshi. He invited our attention to an affidavit sworn by S. Ameer Ali Shah, who is the real brother of Syed Mureed Ali Shah and son of Mst. Afroze Shah, mentioning that late Muhammad Hussain Qureshi was the real brother of his mother Mst. Afroze Shah. He also invited our attention to an application under Order 1 Rule 10 CPC filed in Suit No.661/1979 mentioning that Muhammad Hussain Qureshi, Mst. Mumtaz and Khalid Qureshi were from the first wife namely Mst. Kulsoom of late A.M. Qureshi. Learned counsel further submitted that there is no such person as Shaikh Muhammad Hussain rather in fact it was Muhammad Hussain Qureshi who has illegally been mentioned as Shaikh Muhammad Hussain son of Shaikh Hussain by the applicant for ulterior motives.

7. The learned counsel next stated that in view of the decision of the Hon'ble Supreme Court, mentioned above, it was incumbent to transpose the first set of legal heirs of late A.M. Qureshi as co-plaintiffs in the suit and thus the legal heirs of Muhammad Hussain Qureshi, from the first set of legal heirs of late A.M. Qureshi, are a proper and necessary party in the Suit No.661/1979, thus the learned Single Judge was quite justified in allowing the said application under Order 1 Rule 10 CPC by directing the appellant to file amended title, which according to

him has not been filed as yet, as co-plaintiffs. Mr. Leghari further stated that even if it is assumed that Syed Mureed Ali Shah was on general adjournment from 17.3.2022 to 04.4.2022 but he was very much available on the dates of hearing which were 22.2.2022, 08.3.2022 & 06.4.2022 as he remained on general adjournment from 17.3.2022 to 04.4.2022 and the above dates would reflect that these do not fall between 17.3.2022 to 04.4.2022 as 8.3.2022 was prior to his general adjournment and 06.4.2022 was subsequent to his general adjournment therefore, according to him on this account Mr. Shah could not plead that he was condemned unheard. He therefore, prays that the order of the learned Single Judge may be upheld and the present HCA may be dismissed with heavy cost.

8. M/s. Khalil Ahmed Siddiqui, Zulfiq Ali, Advocates appearing for Respondent No.5 and Mr. Naeem Akhtar Talpur, AAG Sindh appearing for Respondents No.1, 2 & 6 have adopted the arguments of Mr. Laghari and have supported the order of the learned Single Judge.

9. We have heard all the learned counsel at some length and have also perused the record.

10. Perusal of the record reveals that at the time of death of late A.M. Qureshi, who expired on 22.6.1989, was survived by two sets of legal heirs first being (i) Mst. Kulsoom Bibi (first wife) (ii) Mst. Afroze Begum (daughter) (iii) Khalid Rehman Qureshi (son) (iv) Mumtaz Muzakkir (daughter) (v) Muhammad Hussain Qureshi (son) and the second set comprised of (i) Hafizunnisa Qureshi (second

wife) (ii) Sabir Qureshi (son) (iii) Tariq Qureshi (son) (iv) Akbar Qureshi (son) (v) Iqbal Qureshi (son) (vi) Nasir Qureshi (son) (vii) Shahida Aftab (daughter) and (viii) Seema Ghulam Rasool (daughter). Mr. Muhammad Hussain Qureshi son of late A.M. Qureshi also expired and following are his legal heirs (i) Husna Qureshi, (daughter) (ii) Hira Qureshi, (daughter) (iii) Sarwat Gohar (son) (iv) Uzma Qureshi (daughter) and (v) Aamir Qureshi (son). When the Suit No.661/1979, due to pecuniary jurisdiction was sent to Malir Court for disposal, the same was thereafter dismissed by the concerned Judge after hearing the matter. Revision application filed thereafter was also dismissed by the Session Judge Malir. C.P. bearing No.1620/2007 filed by the present appellant was also dismissed. However in CPLA No.29 of 2009 the Hon'ble Supreme Court of Pakistan directed that the first set of legal heirs (who are from the first wife namely Kulsoom Bibi of late A.M. Qureshi) to be transposed as co-plaintiffs in the original suit and the matter was remanded to the High Court for deciding the same within seven months' time, which for one reason or the other is not yet decided and pending adjudication. As per the directions of the Hon'ble Supreme Court the first set of legal heirs were thus transposed as co-plaintiffs in the Suit No.661/1979 as legal heirs of late A.M. Qureshi. In the meantime, the legal heirs of late M.H. Qureshi also filed an application under Order 1 Rule 10 CPC for transposing them also as co-plaintiffs, keeping in view the decision of the Hon'ble Supreme Court of Pakistan as they also claim to belong to the first set of legal heirs of late A.M. Qureshi. The learned Single Judge while hearing the said application found that

they are necessary and proper party and allowed the same, against which the present HCA has been filed.

11. The record reveals that now there are three sets of parties, first the legal heirs from the first wife of late A.M. Qureshi, second the legal heirs from the second wife of late A.M. Qureshi third the legal heirs of M.H.Qureshi. Though the legal heirs of the first wife of late A.M. Qureshi have denied that M.H. Qureshi was not the son of late A.M. Qureshi and an application for DNA test in the other Suit No.1155/2008 is pending but it could not be denied that the dispute with regard to the properties left by the deceased A.M. Qureshi is not only with regard to the action taken by the official respondents against late A.M. Qureshi but amongst these legal heirs also with regard to the inheritance share belonging to each one of them.

12. Mr. Mureed Ali Shah, during the course of the arguments has candidly conceded that he would have no objection if the legal heirs of late M.H. Qureshi, though he has stated they in fact are the legal heirs of Shaikh Muhammad Hussain, become a party in the other suit i.e. Suit No.1155/2008 but he has objected that they cannot become co-plaintiffs in Suit No.661/1979 since paternity of M.H. Qureshi is yet to be decided. We are of the view that since the matter has become quite excessively contested where the legal heirs of late A.M. Qureshi are even questioning the paternity of the other legal heirs, thus the interest of justice could only be resolved by way of framing proper issue(s) in this regard, adducing evidences and calling for witnesses etc., and thereafter have the



matter decided in accordance with law. The parties may if so advised furnish their respective issues as required, under Order 14 CPC and it would be for the Court to frame the said issue and thereafter decide the matter after hearing the parties in accordance with law.

13. In our view in this way the issue with regard to the legitimacy of Respondent No.9 would not only be resolved, but the shares pertaining to the plaintiffs or co-plaintiffs, as the case may be, in the properties left by late A.M. Qureshi, would also be decided fairly in accordance with law, which in our view would be as per the directions given by the Hon'ble Supreme Court of Pakistan in the above referred CPLA.

14. This view finds support from the case of *Muhammad Baqar ..vs.. Mst. Ghulam Parver etc. (2017 SCMR 1062)* wherein the Hon'ble Apex Court held that "*in order to pass a proper decree. It is upto the Court to implead necessary and proper party in the instant matter so that at the time of passing final decree no difficulty or complication would arise*". In the case of *Ghulam Ahmed Chaudhry ..Vs.. Akbar Hussain through Legal Heirs and another (PLD 2002 SC 615)*, it was observed that "*a wide judicial discretion is vested in the Court to add party at any stage of suit in whose absence no effective decree can be passed*". Another decision given by Hon'ble Supreme Court in the case of *Rauf B. Kadri ..Vs.. State Bank of Pakistan and another (PLD 2002 S.C 1111)*, it was observed as under:-

“6. Order 1, rule 10, CPC is very wide in its scope. The power to transpose is derived,

*amongst others, from the aforesaid provisions, which has always been interpreted liberally in the interest of complete adjudication of all the questions involved in lis and in order to avoid multiplicity of the proceedings. This power is invariably exercised generously and technical hurdles and always bypassed for considerations of effectual adjudication and inexpensive access to justice. For reference see Said Alam v. Raja Sohrab Khan (1970 SCMR 639), Central Government of Pakistan v. Suleman Khan (PLD 1992 SC 590) and Uzin Export Import Enterprise v. Union Bank of Middle East Ltd., (PLD 1994 SC 95).”*

15. We therefore under the circumstances find that impleading the legal heirs of late M.H. Qureshi as a proper and necessary party in Suit No.661/1979 was quite a justified decision of the learned Single Judge, and no interference in this regard is warranted. The order of the learned Single Judge therefore, is hereby upheld. This HCA stands dismissed. The plaintiff in the Suit No.661/1979 is hereby directed to file amended title in the said suit within one week from the date of this order. Before parting with the order, we would like to state that all the parties in the Suit No.661/1979 and that of Suit No.1155/2008 are directed to appear before the learned Single Judge and proceed with the matter without seeking unnecessary and uncalled for adjournments so that both these matters could be heard and disposed of within shortest possible time.

JUDGE

JUDGE

Karachi  
Dated: 22.11.2022

SM