ORDER SHEET IN THE HIGH COURT OF SINDH AT KARACHI

SECOND APPEAL NO.122/2023

Date Order with signature of Judge

- 1. For order on CMA No.3737/2023
- 2. For order on CMA No.3738/2023
- 3. For order on office objection alongwith reply as at A.
- 4. For order on CMA No.3739/2023
- 5. For order on CMA No.3740/2023
- 6. For hearing of main case.

17.05.2023

Mr. Qaim Ali Memon advocate for appellant.

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1. Urgency granted.

2 to 6. Heard learned counsel, perused record.

Here concurrent findings of two courts below are challenged; appellant and respondent No.1 are brother and sister inter-se, respondent No.1 claims inheritance in a small property of 35 square yards on the ground that the property is in occupation of appellant after the death of their father who owned the property. Learned appellate Court concluded as under:-

> "10. On careful appraisal of the pleadings i.e. Plaint & written statement, shows that Appellant/Defendant and Respondent No.1/Plaintiff, are brother & sister inter se, children of deceased Shamso Khan being alias Muhammad Ismail, who died on 25.06.2021, leaving estate i.e. House No. 391-A, measuring 35 square yards, Parsi Gate, Mehmoodabad, Chanesar Goth. Appraisal further reveals that Appellant/Defendant, conceded that deceased Shamso Khan alias Muhammad Ismail, was owner of the Suit Property through registered lease No.KMC No.107 dated 19-07-1976, however, Appellant/Defendant claimed that he has already paid share amounting to Rs. 300,000/- in cash to the husband of Respondent No.1/Plaintiff in the year 1999. Scanning reveals that after hearing of the parties, learned Trial Court brush-aside the claim of the Appellant/Defendant and passed order dated 31.08.2022 on admission and issued a preliminary decree dated 30.09.2022. On juxtaposition evaluation of the material on record, I am of the firm view that learned Trial Court

has not committed any misreading or illegality in discarding the claim of Appellant/Defendant qua payment of Rs.300,000/- in cash to the husband of Respondent No.1/Plaintiff, as father of the parties who was actual owner of the Suit Property was alive in the year 1999 and he died on 25.06.2021, therefore, it is strange that Appellant/Defendant/Son paid the share from the property of the his father in the life time of the father which claim of the Appellant does not appear to the prudent mind as succession open on the death of the person, but not prior to the death of the person. As regard, contention that Respondent No.1/Plaintiff has overvalued the Suit Property, is concerned, I am of the considered view value of the property would be ascertained by the Nazir and the co-sharer would be entitled to the their respective share in accordance with Muhammadan Law from the sale proceeds, therefore, ground qua overvaluation is not a ground to set at knot the order which was passed after consideration of the admission & relevant law."

Appellant's stance was that respondent No.1's share in inherited property was duly paid, however he failed to prove such claim at trial.

There could hardly be any denial to the legal position that scope of second appeal is narrow and it could be exercised only if findings of fact arrived by Courts below are based upon misreading, non-reading or misinterpretation of the evidence on record. Guidance is taken from <u>case of Akhtar Aziz v. Shabnam Begum</u> (2019 SCMR 524) wherein scope of second appeal stood defined as:-

> "14. ... Although in second appeal, ordinarily the High Court is slow to interfere in the concurrent findings of fact recorded by the lower *fora*. This is not an absolute rule. The Courts cannot shut their eyes where the lower *fora* have clearly misread the evidence and came to hasty and illegal conclusions. We have repeatedly observed that if findings of fact arrived by Courts below are found to be based upon misreading, non-reading or misinterpretation of the evidence on record, the High Court can in second appeal reappraise the evidence and disturb the findings which are based on an incorrect interpretation of the relevant law. ..."

Perusal of judgments of the two courts below shows that they are in accordance with law and there is no misreading, nonreading or misinterpretation of evidence hence do not call for any interference by this Court. Accordingly, this second appeal is dismissed in limine, alongwith listed applications.

JUDGE

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