

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

High Court Appeal No.336 & 337 of 2022

[Fateh Ali vs. Mst. Shahida & others]

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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Present:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Omar Sial

Dated 13.03.2024

Mr. Muhammad Ramzan Tabassum, Advocate
for the Appellant.

Mr. Hifzur Rahman, Advocate for Respondent No.1.

Mr. Abdul Jalil Zubedi, A.A.G. Sindh.

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MUHAMMAD SHAFI SIDDIQUI; J – These two appeals impugn a common order dated 18.08.2022 whereby a preliminary decree in respect of the subject property was passed. Today before us a certified copy of the extract of the Property Register Karachi Garden West was filed which in terms of its serials disclosed that originally the property was owned and mutated in the name of Mst. Shaker Khanam. All of a sudden it got mutated in the name of one of her sons only i.e. Kamaluddin son of Sabz Ali. The property then came under litigation. At one point of time a letter of administration was filed treating this property to be of Kamaluddin, however, some of the legal heirs were not disclosed and a fine was imposed. Be that as it may, that controversy had not ended fruitfully and two suits were then filed i.e. Suit No.1580/2007 and Suit No.568/2009 although both suits seek administration but one of the suits seeks administration as a property of Kamaluddin and the other suit seeks administration as if it was the property of Mst. Shaker Khanam and incorrectly mutated in the name of one son, Kamaluddin. The suit was also for

cancellation of such mutation. Relying on the later mutation, a preliminary decree was passed which is impugned before us in terms of order dated 18.08.2022.

2. We have heard learned counsel for the parties and perused the material available on record.

3. The respondent No.1's counsel is unable to provide us a title documents of Kamaluddin by virtue of which this property was mutated in the names of Kamaluddin or his legal heirs, after his death. Admittedly, this property was originally owned by Mst. Shaker Khanam. The record does not disclose if it was either gifted or relinquished in favour of Kamaluddin. It is not even a case of Kamaluddin or his widow that the property was mutated in his name by virtue of any of the above transactions.

4. Mr. Muhammad Ramzan Tabassum, learned counsel, concedes that there is no such title available either in the record or with them. In view of the above facts and circumstances, it would be in the interest of all the legal heirs of Mst. Shaker Khanam that this issue be decided first as to whether the property was lawfully devolved amongst the legal heirs of Mst. Shaker Khanam or it otherwise exclusively vested in favour of Kamaluddin. Unless such controversy is resolved, the preliminary decree treating property to be of Kamaluddin, should not have been passed.

5. We, therefore, in view of the above facts and circumstances, deem it appropriate to set aside the impugned order dated 18.08.2022, remand the matter back to the learned single Judge to frame issues in this regard. In this regard issues may be proposed

by the two learned counsel and evidence be recorded i.e. status of the property shall be determined and the legal heirs shall then be entitled to claim their respective shares out of the property.

6. In view of the above, both the appeals are allowed to the above extent and disposed off along with pending application(s).

JUDGE

JUDGE

Asif