

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

H.C.A. No.145 of 2024
(Mst. Zahra Fatima Tariq vs. Public at large)

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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Fresh Case

1. For order on CMA No.867/2024 (Urgent).
2. For order on office objection a/w reply at 'A'.
3. For order on CMA No.868/2024 (Exemption).
4. For hearing of main case.
5. For order on CMA No.869/2024 (Stay).
6. For order on CMA No.870/2024 (U/O XVIII Rule 18).

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Dated 08.04.2024

Mr. Kashif Hanif, Advocate for the appellant.

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1. Urgency granted.

2-6. In a petition for letter of administration / succession certificate, a number of moveable properties were disclosed in relation to which succession certificate was granted. Grant of succession application has taken matter to its logical end and nothing further was required at least of the nature as disclosed in the impugned order.

Application on which the impugned order passed was for procurement of possession of a vehicle which is in possession of deceased's brother (not the legal heirs). Learned counsel for the appellant is of the view that all the moveable properties disclosed in the list were in the name of the deceased and the relevant registration books of the vehicles were shown as available, when the succession certificate was granted, however, it appears, by virtue of impugned order that one of the vehicles was in possession of the brother of the deceased; hence he is stranger to the succession proceedings.

Learned counsel for the appellant was required to show how such recourse to acquire possession from brother of deceased, could be adopted in a succession matter which otherwise was disposed of; he has not cited any law but submits that this is being done under normal practice. Mr. Kashif is of the view that since it is a moveable property i.e. vehicle, it will be deteriorated with the passage of time if not taken care of, immediately.

This could hardly be a reason to bestow jurisdiction to this bench. Learned counsel unless shows that jurisdiction of such nature is vested upon the bench, which to our understanding does not, we cannot pass any order in relation to the property which may include preservation of the property. The impugned order seems to be justified as the lis came to an end the moment succession certificate was granted. Even otherwise the issue of possession of a property from a stranger, could not be visualized in a succession matter. If someone is holding possession, the owners, to our understanding of law, may initiate legal proceedings as required under the law but not in the instant lis. Since Mr. Kashif has seriously contested the matter and has shown to have exhausted jurisdiction in a bonafide manner, the cost imposed in the impugned order may be considered as voluntary tender by the learned counsel. Order accordingly. The appellant, however, may exhaust their remedy for the above cause as required under the law. With the above observation, the appeal is dismissed alongwith listed applications.

JUDGE

JUDGE

Asif