

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

HCA No.57 of 2024
(Sabir Hassan Qureshi v. Asif Hasan Qureshi)

Date	Order with signature of Judge
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Present: **Muhammad Shafi Siddiqui, and**
Ms. Sana Akram Minhas, JJ.

1. For orders on office objection a/w reply at 'A'
2. For hearing of main case
3. For hearing of CMA No.311/2024 (Stay)

02.5.2024

Mr. Muhammad Rizwan Saeed, Advocate for Appellant
Mr. Muhammad Masood Khan, Advocate for Respondent

Muhammad Shafi Siddiqui, J: In the subject suit for possession, Appellant was defendant and defence was a family settlement agreement in respect of property; an oral understanding. The family settlement is seriously opposed as it is not in black and white.

2. Be that as it may, after recording the contentions of the respective parties in the impugned order two issues were framed, however, the Appellant was deprived, as claimed by him, of his right to lead evidence to establish settlement. Mr. Muhammad Masood Khan, learned Counsel appearing for the Respondent submits that since it was the burden on him, therefore, he has taken the risk and the learned Single Judge formed the view that it does not require evidence. As far as issue No.1 is concerned, perhaps on the strength of a title document a position be claimed by the Plaintiff, as he took risk on his own. However, in defence an oral family settlement is pleaded. The Respondent being Plaintiff in the suit may not be ready and agreeable as far as purported family settlement over the event is concerned, however, it was a defence taken in the written statement, Defendant therein being Appellant here has

a right to assert and express himself by recording evidence to establish the oral family settlement if it was there through witnesses or otherwise.

3. We, therefore, after hearing learned Counsel have reached the conclusion that it is not a case which does not at all require evidence, hence we have inquired from Mr. Muhammad Imtiaz Khan, Advocate if he could spare some time to record evidence within a fixed period, to which he has agreed. In fact, both learned Counsel have also agreed.

4. We, therefore, deem it appropriate to recall the impugned order only to the extent whereby the suit was ordered to be disposed of summarily without recording evidence. Mr. Muhammad Imtiaz Khan, Advocate, having office at 806-807, Land Mark Plaza, I.I. Chundrigar Road, Karachi, is appointed as Commissioner to record evidence. Both parties would submit their respective list of documents within one week from today. In case such list of witnesses is not filed, it may also be filed along with the list of documents. The pleadings be handed over to the Commissioner who may issue notice to the respective witnesses. The Commissioner may summon all those witnesses whose names have been disclosed in the list of witnesses. The Commissioner's fee is fixed at Rs.30,000/- per witness, to be paid by each party. The commission be concluded by the end of August 2024. In case any unnecessary adjournment is sought, the Commissioner may impose cost of Rs.20,000/-, to be deposited with the High Court Clinic.

5. With this understanding the Appeal is disposed of along with all pending applications, if any.

JUDGE

JUDGE

Shakeel, PS.