

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
High Court Appeal No. 71 of 2024
(Masood Ahmed Khan Vs. Israr Ahmed Khan and others)

Dated	Order with signature of Judge
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Present:
Mr. Justice Muhammad Shafi Siddiqui
Justice Ms. Sana Akram Minhas

Hearing Case (Priority)

1. For hearing of Main Case
2. For hearing of CMA No. 397/2024 (stay)

Dated 02.05.2024

M/s. Ch. Muhammad Abu Bakar Khalil and Shahid Iqbal Rana
Advocates for the Appellant

Mr. Farooq Rashid Advocates for the Respondent No.2

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Learned counsel for the Appellant has raised a question that the subject property was owned by one Mst. Safia Khan, who was married to one Salahuddin Khan. Mst. Safia Khan passed away issueless, at that point in time she owned the said property while her husband was alive. The brothers and sisters of Mst. Safia Khan then filed a suit for administration without impleading her husband or his legal heirs, to whom per learned counsel for the appellant, 50% of the property devolved. Learned counsel has moved an application to implead the legal heirs of Salahuddin Khan as necessary and proper party in a suit for administration which was declined. The brothers and sisters of Salahuddin Khan in view of the above facts and circumstances are necessary and proper party. After demise of Salahuddin Khan 50% of the property subject to law would devolve upon her husband who was then alive, hence in absence of legal heirs of Salahuddin who passed away later the suit for administration cannot be taken to its logical end they are thus impleading as necessary and proper party. To this Mr. Farooq Rashid concedes.

2. We have inquired that the learned counsel as to the status of the suit and were informed that sale proclamation was issued in pursuance of a preliminary decree. Such proclamation would now be reissued once the legal heirs of Salahuddin Khan were arrayed as they were party and have also a right to participate in sale proceedings in terms of Order XXI Rules 64 & 66 C.P.C. A fresh sale proclamation be issued and the entire process of auction be taken to its logical end in three months' time.

3. Learned counsel for the Appellant has raised another point that since they have filed a suit for performance therefore instant suit under Section 10 be stayed. The nomenclature of two suits are different the referred suit is for performance, whereas, the instant suit is for administration. Nonetheless, if performance suit is decreed against original owner, the consequences would follow. In all fairness it is upto the Court hearing where a suit for performance is pending who may pass an order as deem fit and proper under the circumstances and under the law. No such order could be passed by this Court.

4. Learned counsel for the Appellant has replied upon a judgment passed by a Single Judge of this Court in the case reported as Mst. Arifa Begum Vs. Khulque Muhammad Naqvi (PLD 1969 Karachi 193), however, the facts of the case as relied upon are distinguishable, hence is not applicable.

5. With such understanding this appeal stands disposed along with listed application.

JUDGE

JUDGE