

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
IInd APPEAL NO. 292 OF 2023

Date

Order with signature of Judge

FRESH CASE.

- 1) For orders on Misc. No. 8145/2023.
- 2) For orders on office objection a/w reply as at "A".
- 3) For orders on Misc. No. 8146/2023.
- 4) For hearing of main case.

25.10.2023.

Dr. Mariam Rehman, Appellant in person.

- 1) Granted.
- 2) Deferred.
- 3) Granted subject to all exceptions.
- 4) Through this 2nd Appeal, the Appellant (in person) has impugned Order dated 31.08.2023 passed by the District Judge, Karachi South, in Civil Appeal No. Nil of 2023, whereby the Appeal filed against Order dated 24.02.2023 passed by Senior Civil Judge-IV, Karachi South in Civil Suit No. 1460 of 2022, has been dismissed for non-prosecution.

It appears that the Appeal has been dismissed by the Appellate Court, as apparently, neither any compliance was made for registering the Civil Appeal, nor anybody had turned up to assist the Court on the above date. Thereafter, an attempt for recalling of the said order of dismissal of main Appeal has also failed by way of dismissal of the application for Non-prosecution. Therefore, no exception can be drawn to such orders in this 2nd Appeal, which has a very limited scope.

Moreover, since the Appellant has appeared in person and is not well versed with law, even if the merits of her case are looked into, no case for indulgence is made out in this 2nd Appeal inasmuch as the Appellant had filed a Suit for Partition in respect of a property, which admittedly, is not in her name; but in the name of her sister. While confronted, she submits that since they were

facing difficulty in selling the property through her sister / Respondent No.1, a Suit for partition was filed. I am afraid perhaps the Appellant was ill advised or may be wasn't advised, as in that case, a Suit for Partition is not maintainable and barred in law and the learned trial Court was fully justified in rejecting the plaint under Order 7 Rule 11 CPC. In terms of section 2 of the Partition Act, 1893, if it appears to the Court that, by reason of the nature of the property to which the suit relates, or of the number of the shareholders therein or of any other special circumstance, a division of the property cannot reasonably or conveniently be made, and that a sale of the property, and distribution of the proceeds would be more beneficial for all the shareholders, the Court may, if it thinks fit, on the request of any of such shareholders interested individually or collectively to the extent of one moiety or upwards, direct a sale of the property and a distribution of the proceeds. In the present case the property is not owned jointly but singly by Respondent No.1. The Court can only intervene to order sale of the property if it cannot be partitioned by means and bounds and to exercise jurisdiction under the Partition Act, it is a must that the property is jointly owned by at least two persons and to that there must not be any reservation or exception. In the present case it is not so.

In view of the above, no case for indulgence is made out; hence, this 2nd Appeal is hereby dismissed *in limine* with pending application(s).

J U D G E

Arshad/