

**ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI**

Suit 279 of 2021

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Date: Order with signature of the Judge  
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1. For hearing of CMA No.17589/2021
2. For hearing of CMA No.2250/2021
3. For hearing of CMA No.12555/2021
4. For orders on CMA No.11976/2024
5. For orders on CMA No.11977/2024

**31.10.2024**

Mr. Ghulam Muhammad Dars, advocate for the plaintiff  
Mr. Naseer Nehal Hashmi, advocate for defendant No.1.  
Mr. Imtiaz Ali Effandi, advocate for defendant No.3.  
Ms. Rehmat-un-Nis, advocate for defendant/KDA

1. This is an application under Order VII Rule 11 CPC. It is pleaded that from bare perusal of the memorandum of plaint no cause of action is discernible, hence, the plaint ought to be rejected.

Briefly stated that suit is filed was the year 2021 seeking the following relief:

- i. Declare that the Plaintiff and the Defendant No.1 to 5 are the legal and lawful heirs/ successors of the deceased Noor Jehan (late) and by virtue of same are entitled to their respective share in the estate of the deceased i.e. House No. 7/2 H 2, Block H, Mohalla Nazimabad, Karachi-Central, belonging to the deceased Noor Jehan and which is well and truly within the possession, custody and control of the legal heirs of the Defendant No.1;*
- ii. To pass a preliminary decree in favour of the Plaintiff and other legal heirs for the estate of the deceased and appoint Nazir of this Hon'ble Court to inquire and take charge of the title deed documents, income and rent forming part of the estate of the deceased;*
- iii. To partition the property i.e. House No.7/2 H 2, Block H, Mohalla Nazimabad, Karachi-Central, belonging to the deceased Noor Jehan and if the same is not capable of division the same may kindly be ordered to be sold through the auction by the Nazir of this Hon'ble Court and out of the sale proceeds, the Plaintiff and other legal heirs be paid their respective shares according to sharia;*
- iv. Pass an order for the Mesne Profits and rendition of accounts of the rental income from the Subject Property of the deceased Noor Jehan;*
- v. Grant Ad interim relief by restraining the Defendants, from creating any third-party interest, including transfer, sale, alienation, rent or disposal in any manner of the Subject Property of the deceased Mst. Noor Jehan i.e. House No.7/2 H 2, Block H, Mohalla Nazimabad, Karachi-Central, till the final disposal of the instant Suit.*
- vi. Grant damages;*

vii. Grant cost of the Suit;

viii. Grant such further, additional or alternative relief, as this Honorable Court may deem fit and proper.

Learned counsel for the defendant demonstrates at the time that the suit was filed the suit property was *admittedly* not in the name of the deceased / predecessor in interest. Plaintiff's learned counsel articulated no cavil to the factum that the suit property was conveyed in the year 2008; while the said predecessor-in-interest was alive. It is also admitted that until the said predecessor-in-interest passed away in 2016, without ever having voiced any concern with regard to the conveyance, via registered gift deed, having taken place 8 years previously.

Perusal of the prayer clause demonstrates that there is no challenge to the registered conveyance, however, CMA no.11977/2024 has also been filed recently, post institution of the application seeking rejection of the plaint, seeking amendment of the plaint.

The maintainability of suit is the question that is to be determined by the court at the very onset and whilst the law provisions for amendment of pleadings etc., the same ought not to be done to the manifest detriment of defendant or with a specific view to defeat the defense raised by the defendant. The suit was filed three years ago and the plea for amendment is *prima facie* a complete departure from the original frame of the suit. It is unreasonable to comprehend that such a manifest infirmity escaped attention until the same was raised by the defendant.

Order VII Rule 13 CPC does not preclude presentation of a fresh plaint upon rejection, subject to the law, however, it could not be justified as to why the plaintiff's counsel is attempting to remedy a manifest infirmity vide resort to even more discrepant applications.

Be that as it may, in the present case, the plaintiff has failed to demonstrate an actionable cause or entitlement, per Section 42 of the Specific Relief Act, therefore, CMA 17589 of 2021 is allowed and the plaint is hereby rejected. All other pending applications are dismissed. The plaintiff remains at liberty to agitate any grievance with respect to the transfer of the suit property, subject to the law.

Judge

Amjad