

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Misc. Appeal No.160 of 2024

Muhammad Ramzan and others..... Appellants

Versus

Public at large and others.....Respondents

Hearing/Priority

- 1. For orders on office objection along with reply as at ‘A’.
- 2. For hearing of M.A. No.8017/2024
- 3. For hearing of main case.

Mr. Shuhab Deen Siyal, advocate for the Appellants.
Mr. S. Israr Ali Shah, advocate for the Respondents.

Date of Hearing: 16.04.2025

Date of announcement of order: 15.05.2025

J U D G E M E N T

- 1. Instant Succession Misc. Appeal under Section 299 of Succession Act, 1925 (the Act), has been preferred against the impugned order dated 29.07.2024 passed by the District & Session Judge, South Karachi, in SMA No.134 of 2017.
- 2. Brief facts pertaining to the said appeal are that the Respondent No.2 (Imam Bux) filed the above mentioned SMA for inheritance and succession of Shahzadi Begum (deceased), who had died at Karachi on 20.12.2016, leaving behind both moveable and immoveable properties listed in the schedule of the application. It is important to mention that the Respondent No.2 was the husband of the deceased and filed the SMA after obtaining Affidavits of No Objection from the Appellants. Thereafter, vide order dated 25.07.2017, the

above mentioned SMA was allowed as prayed and the learned Court was pleased to allow the grant of Letter of Administration to be issued in the name of Respondent No.2 for the immoveable properties mentioned in the schedule of the petition. Further direction was given to the Respondent No.2 to mutate the same in the name of all the legal heirs. Further, Succession Certificate was also issued, however, the same is not pertinent for the purposes of present adjudication. Thereafter, an application was filed by the Appellants requesting the Court to either transfer the ownership of the immoveable property to all the legal heirs or the same to be sold through auction. The said application was dismissed vide impugned order, wherein, it was held by the learned District & Sessions Judge, South Karachi, that considering the objections of Respondent No.2, the distribution of shares can only be decided in a Civil Suit.

3. Learned counsel for the Appellants has argued that the above mentioned SMA was granted on 25.07.2017 and despite a lapse of many years, the Appellants being legal heirs of the deceased, have been deprived of their respective shares in the immoveable property left behind by the said deceased. He has further argued that the Respondent No.2 was “dragging on the matter” giving them false hopes on one pretext or the other. Learned counsel has further argued that the Respondent No.2 at no point of time objected to the mutation of the property in the name of the Appellants and it only transpired at a belated stage that the Respondent No.2 made no effort to mutate the property in favour of the Appellants. Learned counsel has further averred that the Respondent No.2 being in possession of the property is enjoying reaping the benefits of the same and is disinterested in mutation of the property as directed vide order dated 25.07.2017. Lastly, learned counsel for the Appellants has argued that Letter of Administration can only be

revoked in circumstances provided for in Section 263 of the Succession Act, 1925.

4. Conversely, learned counsel for the Respondent No.2 has argued that the property was purchased in the name of Respondent No.2's deceased wife and the structure constructed therein was paid for entirely by the Respondent No.2. Therefore, he has opposed the transfer and/or sale of the immoveable property. He has stated that the said property does not fall within the estate of the deceased and hence the legal heirs i.e. Appellants are not entitled to any share from the same.

5. I have heard the learned counsels for the parties and perused the record with their assistance. It is apparent that the above mentioned SMA was filed by the Respondent No.2 as a petitioner, disclosing the Appellants as the legal heirs of the deceased in the memo of the said application. It is also apparent that the Appellants, in the SMA, filed their Affidavits of No Objection in favour of Respondent No.2, who upon filing of the said application tacitly conceded to the fact that the immoveable properties were owned by the deceased at the time of her death. No plea of benami was ever raised by Respondent No.2 and the said Respondent at a belated stage, on an application preferred by the Appellants, has come up with the said pleas as recorded above, only as an afterthought. It can safely be presumed that the said plea has only been taken to deprive the Appellants from the lawful share in the immoveable property left behind by the deceased.

6. The circumstances under which Letter of Administration can be revoked have clearly been spelled out in Section 263 of the Act. The same is reproduced below: -

“Revocation or annulment for just cause. The grant of probate or letters of administration may be revoked or annulled for just cause.

Explanation. — *Just cause shall be deemed to exist where — (a) the proceedings to obtain the grant were defective in substance ; or*

(b) the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case ; or

(c) the grant was obtained by means of an untrue allegation, an act essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently ; or

(d) the grant has become useless and inoperative through circumstances; or

(e) the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Chapter VII of this Part, or has exhibited under that Chapter an inventory or account which is untrue in a material respect.

Illustrations *(i) The Court by which the grant was made had no jurisdiction.*

(ii) The grant was made without citing parties who ought to have been cited.

(iii) The will of which probate was obtained was forged or revoked.

(iv) A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.

(v) A has taken administration to the (intestate) of B as if he had died intestate, but a will has since been discovered.

(vi) Since probate was granted, a later will has been discovered.

(vii) Since probate was granted, a codicil has been discovered which revokes or adds to the appointment of executors under the will.

(viii) The person to whom probate was, or letters of administration were, granted has subsequently become of unsound mind.

7. It is abundantly clear that none of the circumstances and the conditions enumerated in the above noted Section are applicable in the case at hand. Neither was an application preferred by the Respondent No.2 for revocation of the Letter of Administration.

8. In the light of what has been held above, instant appeal is allowed. Consequently, the impugned order is set-aside with direction to Respondent No.2 to mutate the property in the names of respective legal heirs within 60 (sixty) days from the date of this order, as mentioned in the memo of above

mentioned SMA. In the alternate, the learned District & Sessions Judge, Karachi South, is directed to auction the property in question, after expiry of the aforementioned period and distribute the sale proceeds in accordance with the respective share as per sharia.

9. Instant appeal stands allowed in the above terms along with listed application.

JUDGE

Nadeem